



→ Chapter Name

→ History (Act)

→ 2013

Act	
7 SCH.	29 CH

consolidate [Previous all]  
Amend [Co. Law]

→ Applicability → All the Co. in India?



# Applicability of Act →

(1) TCA - applicable on all the companies incorporated under this Act (2013) or previous company law. ✓✓✓

The Companies Act

Registered.

Special cases

TCA app.?

<u>Insurance</u>	<u>Electricity</u>	Banking	Special Act.
YES	YES	YES	YES.
BUT if any inconsistency = Individual Act will WIN			

✓  
Incorporated Association

①



②  
created by Law

③

can come to an END only by LAW

Natural person? (X)

ARTIFICIAL Person (✓)

Fictitious person (X)  
(फरजी) (X)

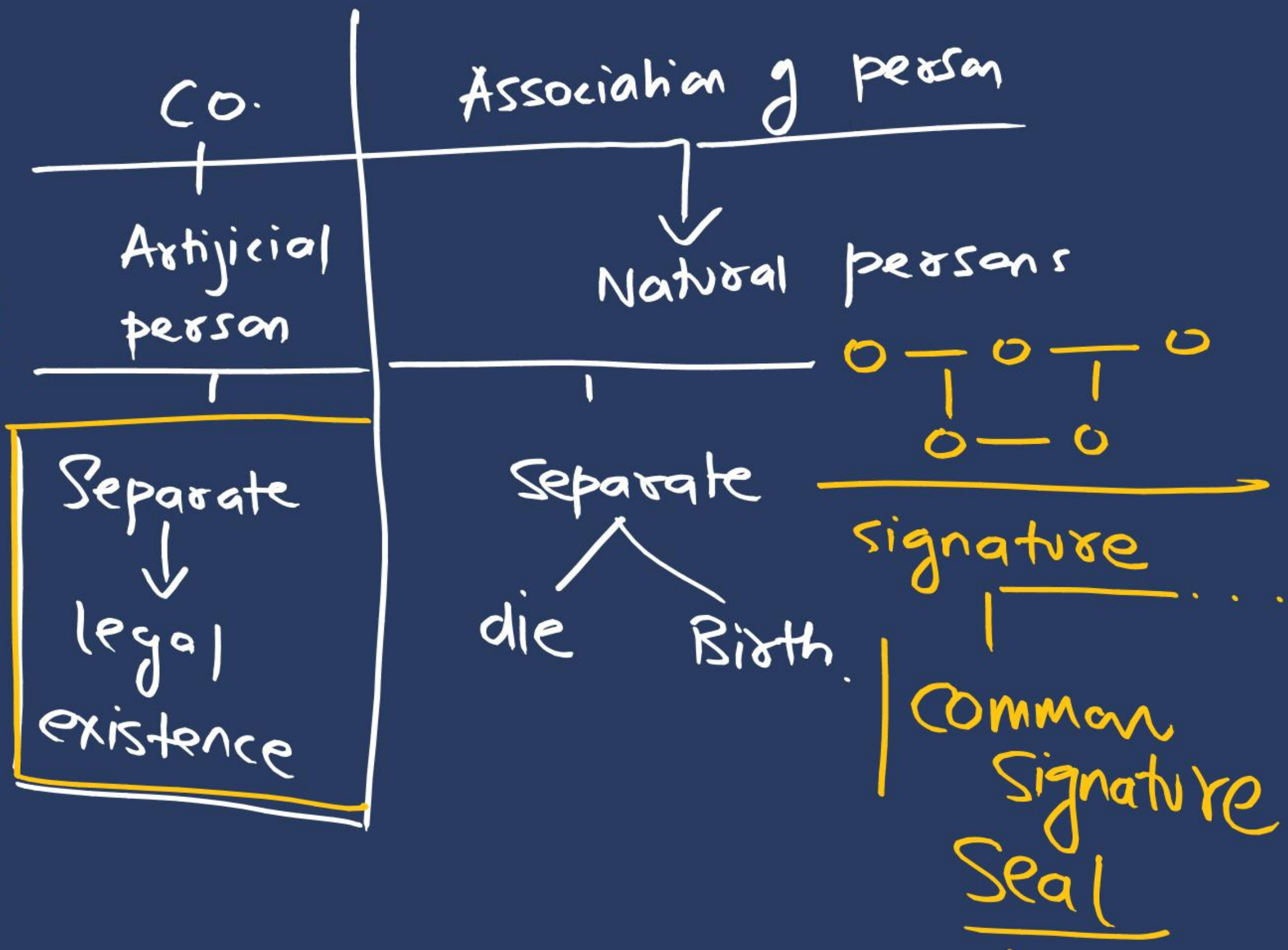
death? - WIND UP By law

PERPETUAL SUCCESSION.



4

8



<b>I</b>	Incorporated Association ✓	Registered <u>group of members</u> . <u>Public 7</u> and <u>Private 2</u> . ✓
<b>T</b>	Transferability of Shares	As per the Articles, as shares are <del>*</del> <u>movable property</u> . <ul style="list-style-type: none"><li>• <u>In Pvt</u> - Restricted but not prohibited</li><li>• <u>In Public</u> - <u>Freely transferable</u></li></ul>
<b>O</b>	<u>Ownership - separate from its members</u>	Members do not participate in day-to-day affairs. The company is managed by BOD elected by members. So ultimate control of members
<b>P</b>	Perpetual Succession ✓	Members <u>may come and go but</u> company goes on <u>forever</u> . ✓



TRF  
Shares





C	Common Seal	Sign of a company as it's an artificial person. Now optional as per the Act ✓
L	Limited Liability	Limited by shares - Unpaid value
A	Artificial Legal Person	Yes, not a fictitious person. Exist only in the eyes of law. ✓
S	Seperate Legal Entity	Distinct from its members having its own rights & obligations
S	Seperate Property and Sue ✓	Can enjoy property in its own name. Members are neither owners or co-owners nor they have any insurable interest. Also, company can sue and can be sued ✓



- LEGAL personality.
- SAME rights and powers as a human being.

①

Its existence is Distinct and separate from that of its members.

- CAN OWN Property
- Have bank account
- Raise loans
- Incur liabilities and
- Enter contracts.

It is a unique feature of a Co. which says that Co. is distinct & separate from its members.

②

Property (+)  
(-)

contract

Can sue - case →  
can be sued ←

L/L incur.



## Perpetual Succession :-

- ① This is a feature of a company which means - members may come & go, but the company goes on forever.
- ② Company is created by law & law alone can end its life (winding up)
- ③ Death / Insolvency do not affect co's life.



## ARTIFICIAL LEGAL PERSON -

- (1) It means co. is created by Law & not by any natural birth process.
- (2) It is not a fictitious person.
- (3) It exist in the eyes of law.
- (4) It requires human agency :- Directors etc.



# Common Seal -

①

official signature  
of the Co.



authorize ✓

②

affix



sign



sign.

③ Optional as per the Act. Not compulsory.



## Corporate Veil Theory -

- (1) legal concept - company is identified separate from its members.
- (2) Members are shielded from Co.'s liability.
- (3) If company incurs DEBT & Contravenes any law then members are not liable for that.
- (4) Members are protected from Co.'s Act.

CORPORATE INSULATION



When :- ?  
CORPORATE VEIL - LIFT?

⇒ Court will disregard / Ignore the separate legal entity concept and will look behind the company to see the real person for the act.

⇒ When it is the question of control & not merely question of ownership.



I

Case law → Daimler<sup>co.</sup> vs Continental Tyre Co Ltd.

When - we need to check - character of the Co.

Enemy Friend

WWII

German  
Germany

English  
UK

Daimler  
Co Ltd

Regist.

Continental  
Tyre Co  
Ltd

Trading

UK  
sell  
UK

500,000 £  
Manufacturer

Germans = stick figures

To see if  
in benefit  
for  
Public Int





Case study based → CVT / SLE

→ H1

PROVISION / LAW =

2-3

Small Para

- (a) CVT - legal concept
- (b) Shield / protect
- (c) co. debts / liabilities / contravention

H2

REF. case name :- Saloman Vs Saloman Co. Ltd.

→ H3

Conclusion (Analysis) & Conclusion.

As per the provision stated above, - - -

..... - - - - -

(2) — Dinshaw MP = ★★

To Protect Revenue  
To stop Tax evasion

→ DMP incorporated 4 SHAM companies to evade  
tax & lower his own income. He transferred  
his income to these companies which had no  
other Businesses.

→ Court declared that income from these 4 companies  
should be taxed under DMP. personal income

→ Hence, corporate veil was lifted in  
this case.



IV

= Merchandise Transport Co. Ltd. VS BRITISH Transport Comm.



= Formed a subsidiary co. to act as an Agent



= A Principal co. joined another subsidiary co



to transfer vehicles & get license in its name.

= It was held that (P) co. & (S) co. are one unit only & hence the application was rejected.



Court

Grifford Motors Co

12

Job.  
for

Mr. Horne  
Managing Director

job  
Leave

(Same Biz) (X)  
(Competing Biz) (X)

Horne  
non-compete  
clause  
sign

customers  
solicit

Co. ✓

DIR  
wive

friends  
cousins  
members

IS binding on you  
& the company  
both

## Gilford Motor Co. vs. Horne



Held

The Court saw through the corporate veil and held that Mr. Horne was the person behind it and

that the non-compete clause in the employment contract should be interpreted as binding

not only on Mr. Horne personally but also on the new company.



## To determine the character of the company.



- A company does not have mind or conscience; therefore, it cannot be a friend or enemy.
- It may, however, be characterized as an enemy company, if its affairs are under the control of the people of an enemy country.
- For this purpose, the Court may examine the character of the persons who are really behind affairs of the company.
- A company can take on the character of its controllers, especially during wartime.
- The court held that paying the debt to Continental Tyre Co. (incorporated in England but controlled by Germans) would result in trading with the enemy, which was illegal during wartime. Thus, Daimler Co. Ltd. was not required to pay.

## To protect revenue or tax -



- Where corporate entity is used to evade or circumvent tax the Court can disregard the corporate entity.
- DMP had formed four private companies and transferred his income-producing assets (shares and securities) to these companies. 4.
- These companies then distributed the income back to him in the form of loans. DMP = loans.
- The arrangement was made to reduce his tax liability, as the companies were taxed at a lower rate, and the "loans" he received were not taxable.
- The Court decided - The private companies were a sham and not genuine at all but merely the assessee himself disguised under the legal entity of a limited company hence the corporate veil was lifted.

SHAM

## To avoid legal obligation -



- The Principal company created a subsidiary company which has NO Assets of its own except those transferred to it by the principal company,

NO - Assets / BIZ / Income

- No Business or income of its own except receiving dividends from shares transferred to it by the principal company and DIV.

- With a Purpose except to reduce the gross profit of the principal company to reduce the amount paid as bonus to workmen.

- The workmen contended that the new subsidiary company was formed to pay lower bonuses because of transferring the dividend amount to the subsidiary company.

- Thus, the Supreme Court brushed aside the separate existence of the subsidiary company.

## Formation of subsidiaries to act as agents -



### Facts of the Case:



- A transport company wanted to obtain licenses for its vehicles but could not do so if applied in its own name. X
- It therefore formed a subsidiary company and the application for license was made in the name of the subsidiary.
- The vehicles were to be transferred to the subsidiary company.

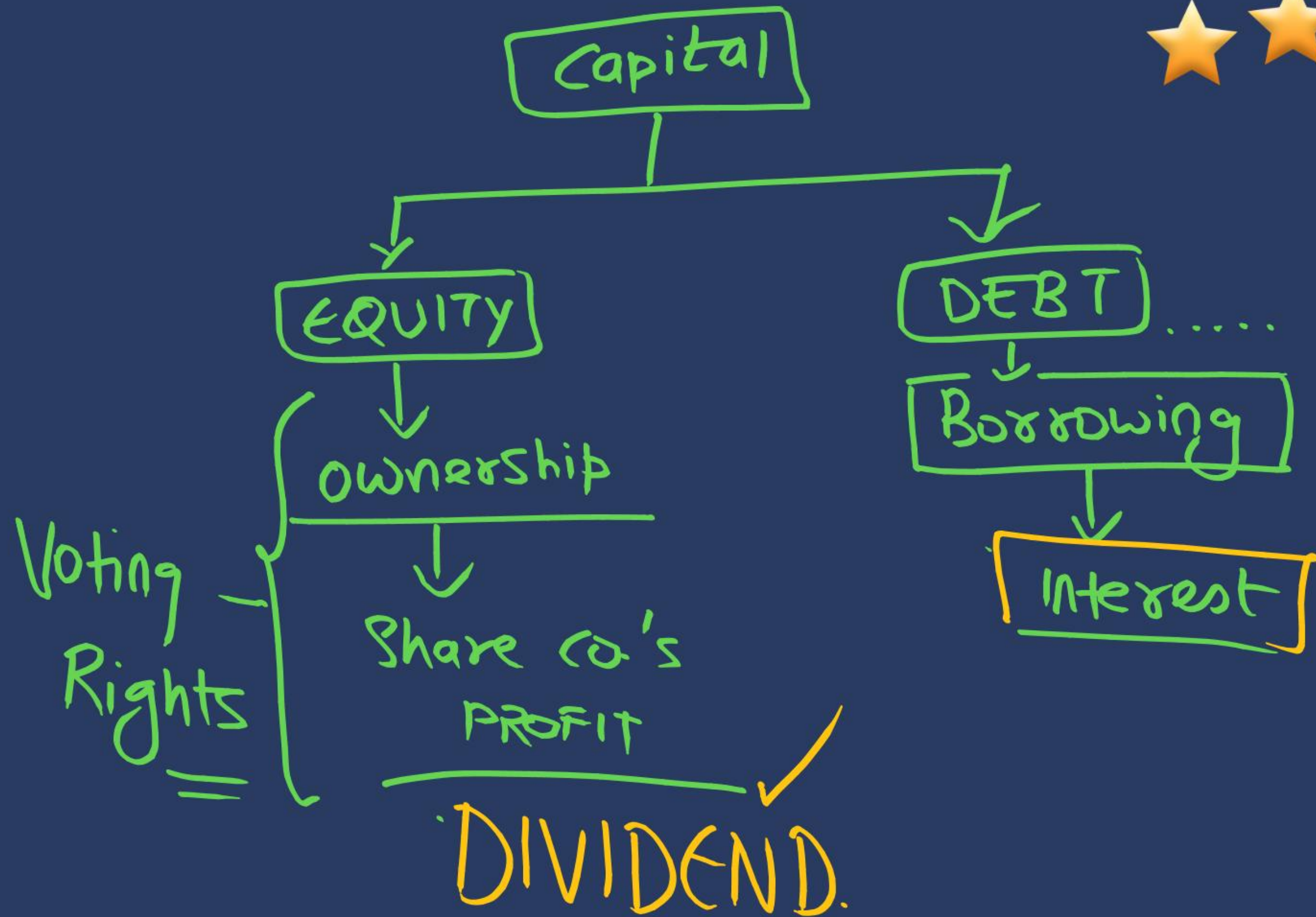
### Judgement and Star Statement:

- Held, the parent and the subsidiary were one commercial unit and the application for licenses was rejected. 1

## Company formed for fraud/improper conduct or to defeat law -



- Where the device of incorporation is adopted
  - for some illegal or improper purpose,
  - To defeat or circumvent law, to defraud creditors or to avoid legal obligations.
  - Held The Court saw through the corporate veil and held that Mr. Horne was the person behind it and that the non-compete clause in the employment contract should be interpreted as binding not only on Mr. Horne personally but also on the new company.
- Handwritten notes in green:*  
non-compete → clause (Sign)  
A checkmark is placed above the word 'clause'.



# SHARES



- (1) Is a smallest unit of Co's Capital & Assets.
- (2) It represents partial ownership in the company
- (3) Every share is distinctively numbered.
- (4) Share represents your proportional interest in the company.
- (5) It is represented in terms of money but it is a bundle of rights & obligation eg: Voting rights etc

## Types.

There are two types of SC - 

(1) Equity SC = means which is not a PSC.  
= which means it does not have  
any kind of preferential rights.

= ESC is of two types :-

(a) with uniform voting rights -

which means one share one vote

(b) Differential VR which means diff.

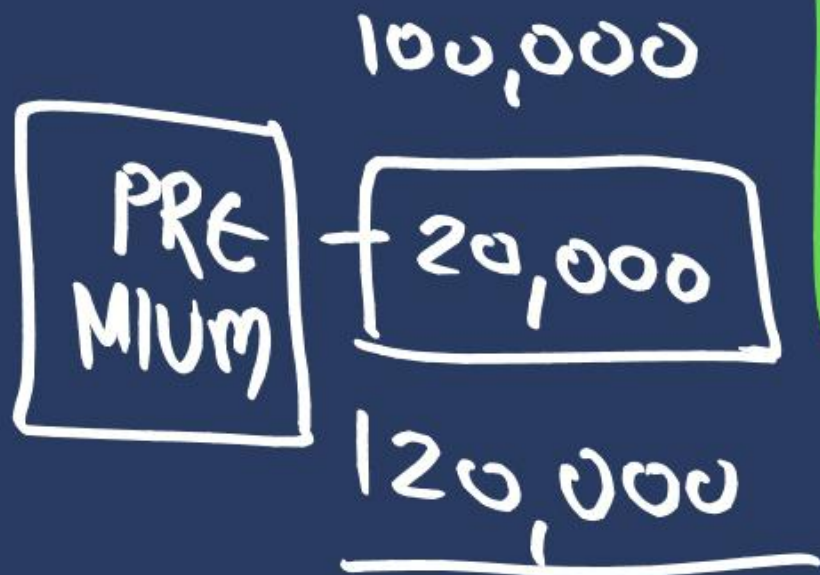
rights on dividend or voting rights

# PREFERENCE SC -

★ It is a SC which has 2 preferential rights attached to it -

★ (1) DIVIDEND - Fixed amount 100 % - 2%

(2) Repayment of Capital → Winding up.  
PRIORITY.



$$\text{PSH} - 10,000 \text{ Shares} \times 10/- = \underline{100,000}$$

2% - DIV

$$\text{Premium} - \text{redeem } \underline{12/-} = \underline{120,000}$$

## ★ ★ ★ UNLIMITED CO. ⇒

- (1) It is a company where liability of its MEMBERS is UNLIMITED.
- (2) But it is unlimited ONLY WHEN company is being wound up.
- (3) Members could be called up to contribute to the co's liability ONLY in the case of WP.
- (4) Member liability = Co. debts / liabilities.
- (5) A member can call OTHER members to contribute.

# Company limited by Shares

Section 2(22)



- When the liability of the members of a company is limited by its memorandum of association to the amount (if any)

MOA / AOA

- unpaid on the shares held by them,

- It is implied that for meeting the debts of the company, the shareholder may be called upon to contribute only to the extent of the amount, which remains unpaid on his shareholdings.

2(22)

- His separate property cannot be encompassed to meet the company's debt.





deg<sup>n</sup> →

### LIM BY SHARES

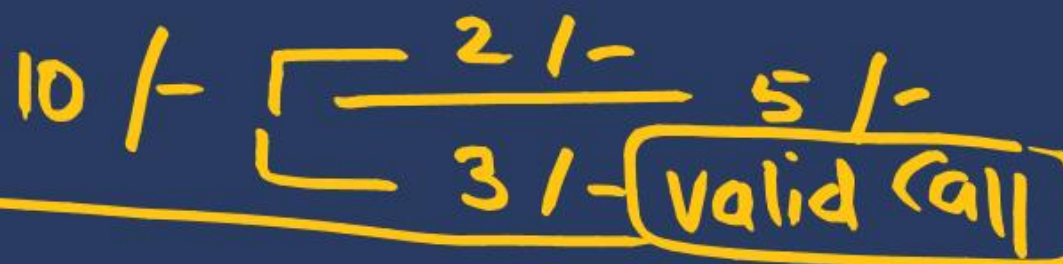
MoA = member liability unpaid amt on share

### LIM BY Guarantee

→ MoA = m. liability upto guaranteed amt.

When does liability arise? →

कब कब / Anytime



only @ the time of WP.

Suitability कौन सी Co. ? →

Huge initial capital is required.

Borrowing arranged from FI / Bank etc  
Huge initial capital Not required.

Answer

2(68) = As per the provision of sec 2(68)  
of TCA 2013,



⇒ PP. RR. LIM = def<sup>n</sup> ①  
②  
③.

⇒ while counting 200 members we should exclude the following -

① Existing ee who are members also.

② Former/Ex-employees who become member

while they were in the employment and they



③

Continue to hold shares till now/Parent.  
While counting Joint members consider them  
as single members.

As per the provision stated above —

(a) Jagannath oil limited has to reduce its  
members below 200 because these 25  
members were not in the employment  
when they were allotted shares in Dec. 2016.

★★★★ (b) The answer would not remain the same because if 25 members are in the employment till 28/06/2017 then they are allotted shares in Dec. 2016 which means they are current/Existing employees. Hence, the counting of the members stands at  $220 - 25 = 195$  which is below 200. So no reduction in no. of members is required.



## ONE PERSON CO. = OPC

- (1) It is a type of PRIVATE company.
  - (2) All OPC are private but all private are not OPC.
  - (3) OPC has only one person as a member.
  - (4) OPC also has separate legal entity & limited liab.  
SLE LL
- 

Nominee → OPC shall have one person as a nominee  
↓  
Compulsory.  
in the case of :- member's death or  
→ incapacity to contract.

# Nominee

= written consent = required.  
= form → ROC (file).



Can withdraw his consent = Yes.

= OPC (सदस्य) = change its nominee intimate ROC OPC.

- ONE MEMBER - Can be a member in only ONE OPC.
- ONE NOMINEE - Can be nominee in ONE OPC only.
- ONE Person can be nominee in one OPC & member in the other OPC but in case of member's death this person has to wind up one OPC in 180 days.



Who can be a member & Nominee?

→ कौन बन सकता है ?

→ Eligibility ?

①

Natural person

+

②

Indian CITIZEN

COMPULSORY

ONLY.

③

Resident of India

or otherwise ✓

whether or not ✓

NOT Compulsory

IGNORE



# What are the DON'T ?

- ① MINOR  $\neq$  OPC member / nominee
- ② OPC Yes except Sec. 8 Company  
x Charity / NGO.
- ③ OPC
  - convert PVT ✓
  - convert Public ✓
- ④ OPC  $\neq$  Non Banking Fin. Co. NBFC.
  - activity No
  - Investment entity No



Small Co. 2 (85)

→ It is a private company.

→ It is not a public company.

→ A company which satisfies both the Cond<sup>n</sup> -

PSC \$  
not more than  
4 CR

Turnover  
not more than  
40 CR  
Which yr?

2023-24 ← 2024-25

Immediately prev. FY

JFK	
CG	Power
10	/ 100
CR	CR
IGNORE	



Small company status cannot be applied or given to these companies — holding or subsidiary

① A co. which is of another co.

② A sec. 8 co.

③ Any co. registered under any special Act.

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# Holding and subsidiary companies:



Definitions are in relation to each other –

Holding Company means who –

**EITHER - A or B**

✓ **A** Controls the composition of the Board of Director

**OR**

**B** Exercises or controls more than one-half of the total voting power

*More than 50% or more* of total Share Capital ☆

**DIRECTLY – either at its own or**

**INDIRECTLY – Together with one or more of its subsidiary companies**

What do you mean by controlling BOD?

**HC** at its discretion can appoint or remove all or majority of the directors



# HOLDING & SUBSIDIARY CO. :-

(1) A co. will be called a holding co. of another Co.

When :- Either <sup>composition of</sup> majority or all the Board of Directors of another Company.

OR

(b) exercises/controls more than  $\left(\frac{\text{one-half}}{50\%}\right)$  of Total voting power of another company.

directly or indirectly on its own or with its one or more subsidiaries



# Associate Company →

(1)

A Company where another company holds  
SIGNIFICANT INFLUENCE →

{ At least 20%  
and  
Maximum 50% } of TVP.

(2)

It is not a SC.

(3)

It includes Joint Venture - is a joint agreement

Where two parties <sup>have</sup> joint control over the assets of  
a Company.

Ans.



An associate co. is a company in which other co. has significant influence in it i.e. atleast 20% \$ max.

50% of Total voting power.

In the question, it is not mentioned that Conv. PS has VR or not. So, XYZ Ltd holds only 15% of 100 cr which is less than 20%. Hence not an associate co.

Alternatively,

It can be assumed that Convertible PS have Voting Rights. In that case XYZ will hold  $(15 \text{ cr} + 10 \text{ cr}) = 25 \text{ cr}$  out of 100 cr, which is 25% of TVP. Hence, <sup>It will be.</sup> an associate co.

☆☆☆ SECTION 8 Co. -

- (1) A company formed with any kind of charitable object like education, religion, environment etc.
- (2) A sec. 8 co. shall apply its profit only to promote its object
- (3) This co. is prohibited from paying DIVIDEND to its members.
- (4) License to these companies are given by CG (Delegated to ROC)
- (5) A sec. 8 co. is a type of LIMITED CO.

★ ★ ★ CG may revoke the license when :-

- (6) → When conditions of Sec. 8 are not followed / contravened  
→ When affairs of the Co. are conducted fraudulently  
→ When it is prejudicial to Public Interest.

(7) On Revocation CG may ORDER →

- To convert the status & name to Pvt / Public  
→ To wind up the company  
→ To Amalgamate (only with a Co. of SIMILAR OBJECT)



Government Company means any company in which -

CG + SG + Both

Not less than 51% of the paid-up share capital (with Voting rights) is held by-

- Central Government, or
- State Government or Governments, or
- Partly by the CG and partly by one or more SG,

and

- Includes a company which is a subsidiary company of such a Government company.



# Government Co.

①

②



Gov. Co.

SC

Automatic



Not less  
51%

**MINIMUM**

hold PSC



CO

40%	70%	51%	50%
X	✓	✓	X

CG = 25%  
Raj. Gov = 15%  
SG —————  
40%

Not a Gov. Co.

XYZ Ltd — 25% (X)  
Gov. Co

LIC — 15% (X)



VIMP



SECTION 3

→ FORMATION OF CO.

→ 4

→ 5

MOA

AOA

two most IMP. Documents to incorporate a COMPANY.

→ 7

→ INCORPORATION OF COMPANY.

COI { Certificate of INC }



Foreign Co.

= A Co.

- Incorporated o/s India
- Place of Biz = India
- Itself / Agent
- Physically / ©.

→ अनुच्छेद  
TCA 2013  
Reg. (X).

# DORMANT COMPANY :- 455.



(1)

A company formed for future project or to hold assets

(2)

This co. has { NO SIGNIFICANT SAT ACCOUNTING TRANSACTION }  
MEANS INACTIVE CO.

intellectual property.

(3)

This type of co. may apply to ROC (application)  
{ status = Dormant }

(4)

No Business	No SATs
No operations	No FS/AR - in the last 2 YRS.



क्या SAT गद्दी होता है ?

Means these transaction are not considered as significant Acc. Transactions →

- ① Payment of Fees = ROC
- ② Payment = required by Act / law.
- ③ Office Maintenance / Records
- ④ Allotment of shares, if any.



## SECTION - 3

To form a company you require -

① Min. numbers of persons -

(a) In case of Pvt Co = 2 or more

(b) In case of Public Co. = 7 or more

(c) OPC = 1 member.

② For lawful purpose

③ You need to comply the ACT.

④ By subscribing their names.



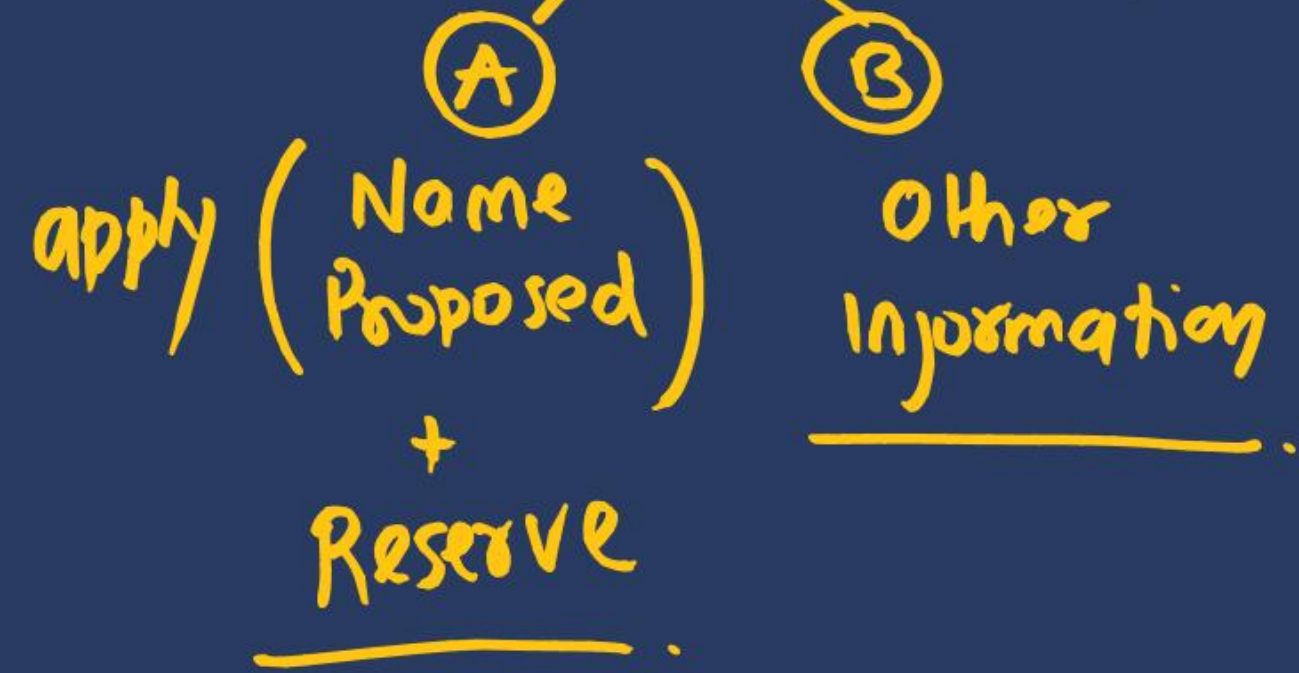
# SECTION 7 = Incorporation of company 1-

BASE SHEET

- ⇒ Ministry of Corporate Affairs (MCA)
- ⇒ Registrar of Company (ROC)

⇒ SPICE+ ⇒ online platform. **INC-32** FORM.

⇒ Name (Proposed)



- ⇒ obtain - Digital Sign. Certificate **DSC**.
- DIRECTORS. (DIN) Identification Number.



① obtain DSC + DIN

② Application (SPICE+) - INC-32

Reserve the proposed name - in Part A of form

③

Documents (Major = MoA + AOA)  
④ 😊 (INC 33 - 34)

⑤

Proposed Registered Office (RO) = Address.

⑥

Declaration - (a) Professionals (CA, CS, Lawyer etc.)

⑦

😊 - (b) Subscribers / DIRECTORS.

⑧

Particular LIST. - Full name / add. / Nationality / DIN etc.

INC  
Process

# DECLARATIONS

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

INC 8 ↓

All the requirements of the ACT & RULES have been followed - / Complied

Should be engaged in the process of formation of company.

↑ DIR/MGR/SECR.

⇒ declaration No. 2 → FROM SUBSCRIBERS & 1<sup>st</sup> DIRECTORS.

INC 9

- 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  
 Form DIR-12 → In Other Firms / Body Corporates  
 ✓ ✓ (+) WITH CONSENT. Form DIR-2

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

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

SUBMIT TO.

ROC

INC-11

CERTIFICATE OF INCORPORATION





1. MOA/AOA – Shall be duly signed by subscribers. ✱

2. Declaration –

a) Signed by – CA/Cost Accountant/Advocate/CS in practice and Director/Manager/Secretary as per articles. AOA.

b) By every subscriber & 1<sup>st</sup> directors that :

- I. Not been convicted for promotion & related activities.
- II. Has not been found guilty of fraud in 5 years.
- III. All doc with ROC are correct and complete.

3. Address – Till the RO is established.

4. Particulars of every subscriber and 1<sup>st</sup> director info :

POI, Full name, Family name, Resi. Address, DIN, nationality etc.

Proof of Address.

5. Interest held by directors in other entities & consent to act as director. ✓



Time

V: FURNISHING FALSE MATERIAL INFORMATION

At (5) of INC }  
Post INC (बाद में)

Promoters ✓  
Directors ✓  
Professionals ✓

447 (FRAUD की Section)

AGAINST THE COMPANY

→ Removal of Name

→ Limited Liability to UL

→ Winding up

→ make changes in MOA + AOA

in Interest - Public / members / Creditor

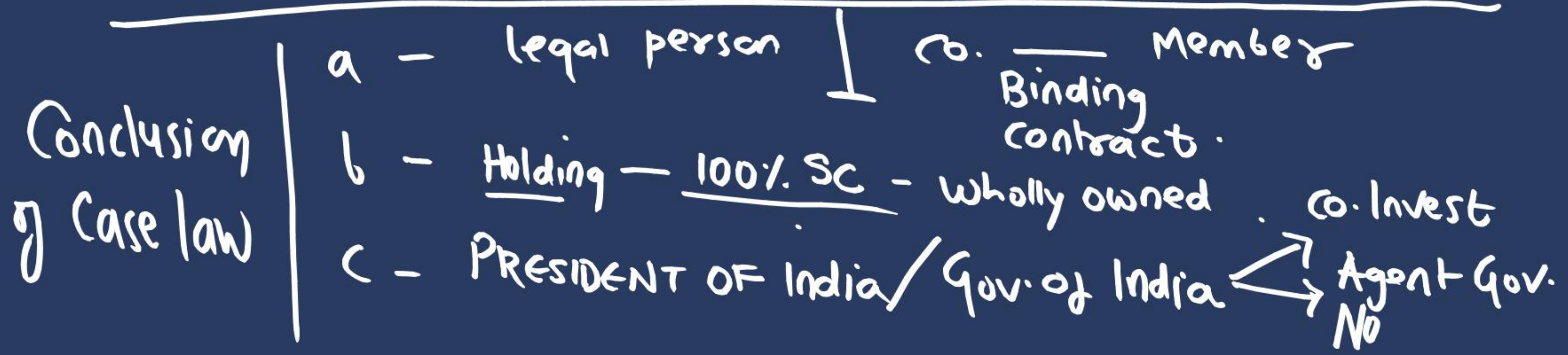
कौन ? TRIBUNAL NCLT

Before this

opportunity of being heard (DoBH)

☆☆☆ SECTION 9 = effect of REG.

- (1) Subscribers → Members
- (2) Company → Body corporate.
- (3) Contract / Property / sue / SLE / PS etc.
- (4) कब से ? ⇒ date of INC COI.



# MEMORANDUM OF ASSOCIATION - [SECTION 4]

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

PRESUMED to have

Every person before entering into Contract } KNOWLEDGE



Originally framed

or

altered from

+++



OG or

altered from time to time.



Fundamental doc :- All info of co.



S.S.O.N.N

C.L.

Situation

RO

Object

Subscription

Subscribe

Name

OPC

Nominee

Nomination

Capital

Liability



MOA

AOA

AS originally formed / framed

or

Altered form + + +  
time to time

under

the Act or any Previous law

2013

1956-----

old

# CONTENT OF MOA



anything which is **CONTRARY**

- ① MOA cannot contain anything which is **CONTRARY** to TCA, 2013
- ② All other documents of the co. **SHALL** **COMPLY** MoA.
- ③ There are 7 compulsory clauses (conditions) as per section ④



Section 4(1) :- ★★ ★

(a) Name clause :-  
Public Co = LTD  
Pvt Co = Pvt Ltd  
OPC = OPC  
Gov. Co = LTD.

SEC. 8 :-  
Foundation, Federation  
Electoral Trust etc.  
Council

(b) Situation / RO clause :- To establish domicile of the Co.  
:- State name = RO established.

(c) OBJECT clause :- The object for which Co. is Incorporated  
:- Main object ← to you  
:- Ancillary (additional) object / Related



Liability

clause :- This clause shows the nature of the members liability. where it could be :-

- (a) LIM by shares → upto unpaid amt. of shares
- (b) LIM by Guarantee → ————— Guaranteed amt.



Who? ⇒ while you are a member  
OR

within one yr ceases to be a Member

(1) ex (e) Capital clause :- Amount of Authorized Nominal SC

₹ 10,00,000  
 100,000 SH x 10/-

:- Divided into how many shares  
 :- Face / Nominal value of each Sh.  
 :- Not applicable to the Co. without SC

ii (e) Subscription / Association clause :-

Subscriber name details → no. of SH Subscribed  
 [even only 1]

(5) Nomination clause →

Applicable only to OPC

= Nominee details

## Section 5 = Article of Association :- ★★ ★

- (1) It is an internal document of the company.
- (2) It contains Rules / Regulation to control co's affairs.
- (3) It contains BYE-LAWS to be followed by :-  
Directors, officers, employees or MGT. of the Co.
- (4) It contains rules regarding matters like :- meetings, voting, appointment / removal of DIR / Auditors etc.
- (5) Co. may adopt all or any regulation as applicable.  
It may include additional matters as well.

# The contents and model of articles of association -



S. No.	Clause	Description
1	Contains regulations	The Rules and regulations for internal management of the company.
2	Inclusion matters of	A company may also include such additional matters in its articles as may be considered necessary for its management. *
3	Entrenchment provision (सख्ती)	To protect something or to have extra additional safeguards - Certain specified provisions can be altered to make them more restrictive and tough to override. x  Entrenchment may be made :- <ul style="list-style-type: none"><li>• At the time of formation</li><li>• By amendment - Through consent of all in Private and SR in case of Public company.</li></ul> Shall give notice to ROC for such provision.



# Entrenchment :-

- ① To make a provision more Restrictive
- ② To make it tough to override
- ③ To provide extra layer of protection.

## When?

→ @ time of formation <sup>(SPICE +)</sup>

→ After the formation

→ RoC Inform (Notice)   
 FORM JFR-MGT-14

Pvt = 100% UNANIMOUS All members consent

Public = Special Resol<sup>n</sup> SR

# ★ ★ ★ DOCTRINE OF ULTRA VIRES :-

(1) It is a theory which says that company should not GO BEYOND ITS LEGAL POWERS

(2) This means company should not go beyond its OBJECT CLAUSE stated in MOA, and should follow The Companies Act, 2013.

(3) If company does so then such act(s) will be called ULTRA VIRES ACTS.

# ☆☆☆ CONSEQUENCE of UV Act :-

Any acts or contracts entered into of any kind of trade or business which is ultra vires will result

into → ① a VOID AB INITIO.

② → It will Inoperative & Not binding on the parties.

③ → It cannot be enforced against the Co.

④ → Company cannot sue the other party & Co. cannot be sued.

⑤ → It has NO LEGAL EFFECT

★ ★ ★ = When directors mis-apply the funds of the company for any act / Business which is ultra vires then in such situation they will be held personally liable.

= This can be used as a remedy for outsider to recover any kind of damages / loans etc.

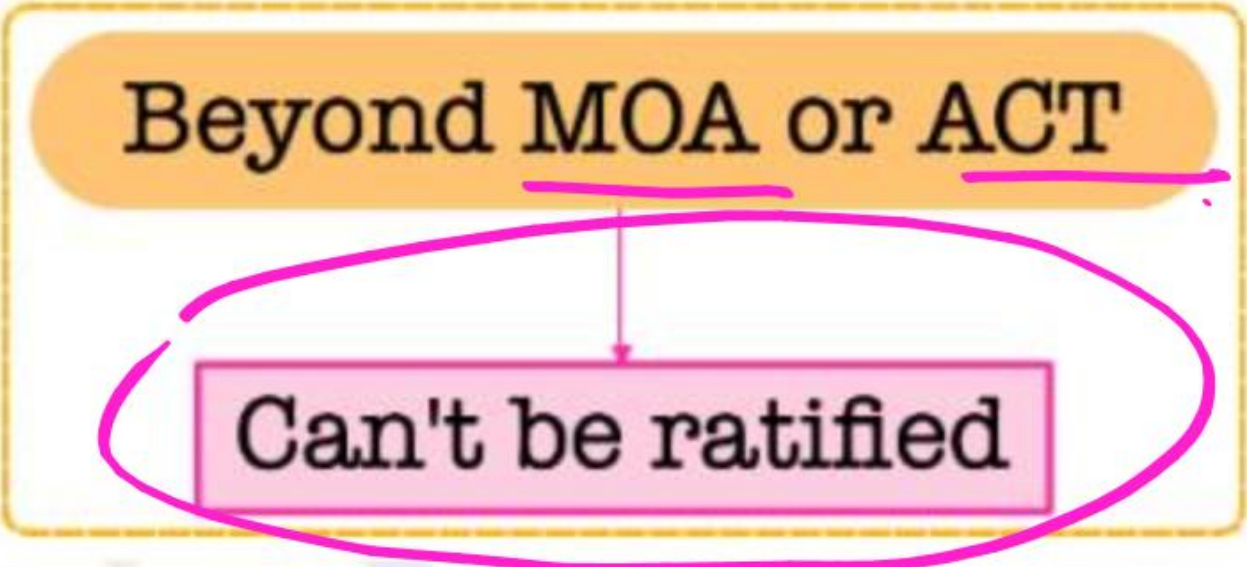
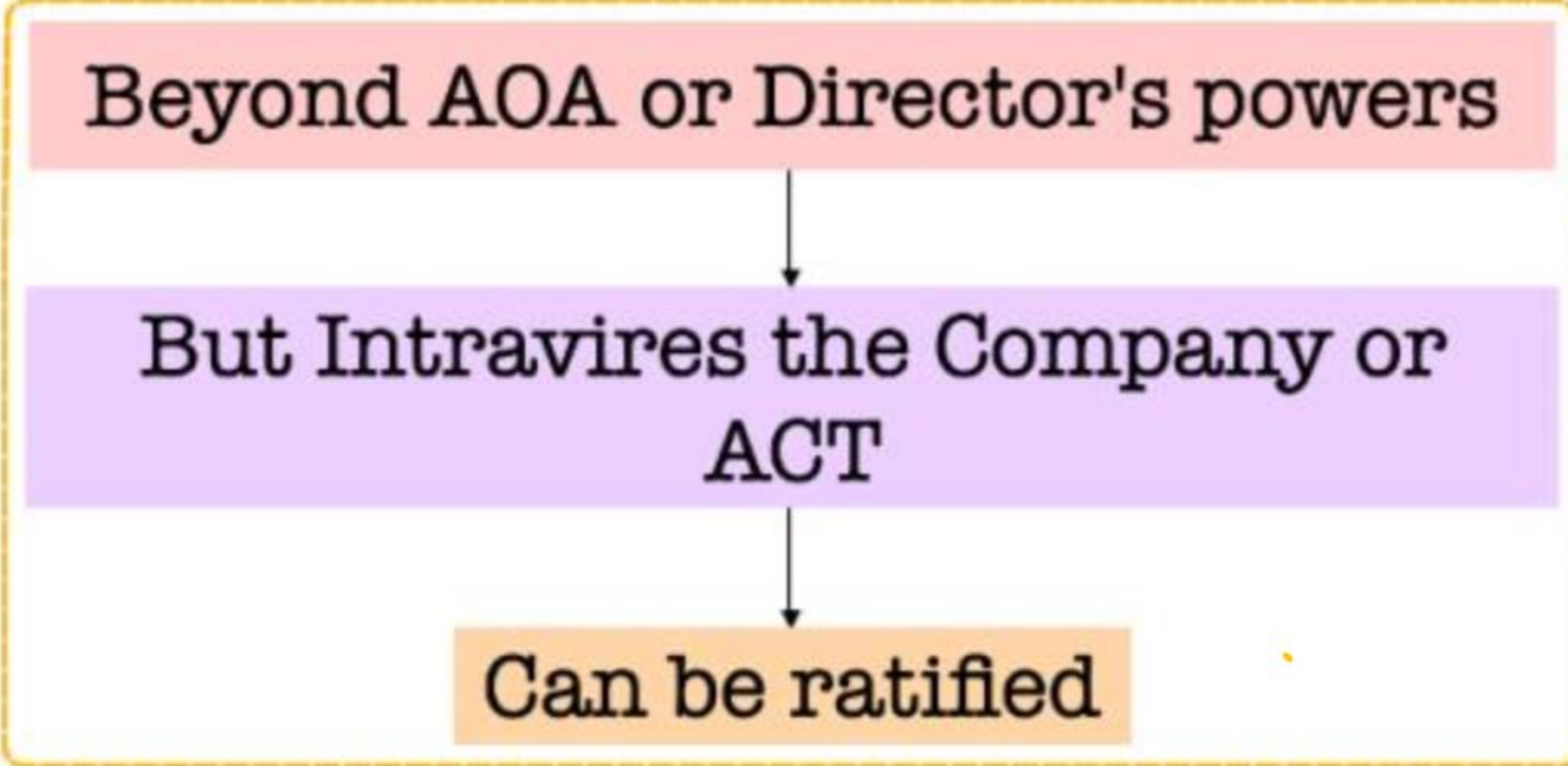
= The Co. does not become owner of the money which is received under any UV acts.



# RATIFICATION

To Approve after ACTION

WHEN CAN BE RATIFIED ? -  
(Approval through voting)



Ratification / To Ratify :-

→ Approve करना / कार्र करने के बाद.  
After action is done.

कौन ? Shareholders / members = VOTING.



Any UV Act ( TCA ↑  
MOA ↑ ) cannot be Ratified  
even if 100% SH

{ Any act beyond  
AOA or  
DIR. Power } But Intra  
Vires to  
MOA / ACT ⇒ Can be Ratified.

# 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  
*under*

UV -  
DIRECTOR

- ▷ UV - DIRECTORS but Intra vires the ~~MOA~~  
MOA
- ▷ Can be ratified

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



# Doctrine of Constructive Notice ⇒ ★★ ★

① This is a theory which works in the favour of the company.

② This theory creates presumption in the favour of Co.

③ This theory says that it is deemed (माना जाता है)

to have knowledge of the documents of the Co.

which are publicly available <sup>only</sup> (Means with Roc).

Whether or not, a person reads or understands it.



# What will happen?



If a person  
outsider

→ enters into a  
contract →

with the  
company

Which is beyond  
co. power  
defined in MoA

He does not acquire any rights against  
the company.

(CN)

Presumption - कानून

Co.

O/S Knowledge - दया  
deemed.

In the favour of Co.

(IM)



Presumption - कानून

O/S

Co. की internal दया?  
Mgt. = Regular

Not IRRegular

Good faith = Innocent O/S.

In the favour of O/S



## Key Differences:

Aspect	Constructive Notice	Indoor Management
Who it protects	Protects the company by presuming outsiders have knowledge	Protects outsiders dealing with the company
Obligation on third parties	Outsiders must verify the company's public documents	Outsiders can assume internal company procedures are correct
Assumption	Assumes third parties know internal rules from public documents	Assumes internal management is properly conducted
Focus	Focuses on external corporate documents	Focuses on internal corporate processes



## Case 1 -



### **Actual or constructive knowledge of irregularity:**

The rule does not protect any person

when the person dealing with the company has notice whether actual or constructive of the irregularity. <sup>Knowledge</sup> (X)

(आपको कमी या गलती का पहले से पता था तो आप इस Doctrine को खुदके प्रोटेक्शन के लिए use नहीं कर सकते)



शक .



## Case 2 -

# Suspicion of Irregularity



The doctrine in no way, rewards those who behave negligently.  
( बेवकूफो के लिए कोई जगह नहीं है )

- Where the person dealing with the company is put upon an inquiry,
- for example, where the transaction is **unusual** or
- **not in the ordinary course of business**,
- it is the **duty** of the **outsider** to make the necessary **enquiry**.
- the circumstances surrounding the contract are **suspicious** and therefore **invite inquiry**.
- Suspicion should arise from the fact that an **officer** who is **acting** in the matter which is apparently outside the scope of his authority.



### Case 3 -

## Forgery

IM use X



(चोरी और ऊपर से सीना जोरी) - धौके के लिए use नहीं कर सकते

- The doctrine of indoor management applies only to irregularities
- which might otherwise affect a transaction
- but it cannot apply to forgery
- which must be regarded as nullity.
- Forgery may in circumstances exclude the 'Turquand Rule'.



Exceptions	Cases	About
<p>Knowledge</p> <p><u>IRR.</u></p>	<p>Howard vs Patent</p> <p>Morris vs Kassen</p>	<p>Shares or Debentures allotment – without approval</p>
<p>Suspicion</p>	<p>Anand vs Dinshaw</p> <p>Houghton vs Nothard</p>	<p>Accountant sold the property</p> <p>Director in two companies</p>
<p>Forgery</p>	<p>Ruben vs Great Fingall</p>	<p>SC – Forgery sign CS</p>