Company law

Unit -1
Company

Introduction:

The word 'company' is derived from the Latin word Com Panis (Com means 'With or together' and Panis means 'Bread'), and it originally referred to an association of persons who took their meals together. In the leisurely past, merchants took advantage of festive gatherings, to discuss business matters.

In popular parlance, a company denotes an association of like minded persons formed for the purpose of carrying on some business or undertaking.

Meaning:

A company is **a legal entity formed by a group of individuals to engage in and operate a business—commercial or industrial—enterprise**

In general, a company is an artificial person, created by law that has a separate legal entity, perpetual succession, and common seal and has limited liability. It is a voluntary association of person who together contributes in the capital of the company to do business.

Definition:

According to Section 2 (20) of the Company Act 2013 "Company means a company incorporated under this Act or any previous Company Law."
In the legal sense, a company is an association of both natural and artificial persons and is incorporated under the existing law of a country.

Characteristics of Company:-

(i) Incorporated Association: A company comes into existence through the operation of law. Therefore, its incorporation under the Companies Act is must. Without such registration, no company can come into existence.

(ii) Separate Legal Entity: A company has a separate legal entity, which is not affected by changes in the ownership. Therefore being a separate entity, a company can contract, sue and be sued in its corporate name and capacity.

(iii) Artificial Person: A company is an artificial and juristic person that is created by law.

(iv) Limited Liability: Every shareholder of a company has limited liability. His liability is limited to the extent of the unpaid value of the shares held by him. If such shares are fully paid up, he is subject to no further liability.

(v) Perpetual Existence: The existence of company is not affected by the death, retirement, and insolvency of its members. That is, the life of a company remains unaffected by the life and the

tenure of its members in the company. The life of a company is infinite until it is properly wound up as per the Companies Act.

(vi) Common Seal: The company is not a natural person and has no physical existence. Hence, it cannot put its signature. Thus, the common seal acts as an official signature of a company that validates the official documents.

Vii). Contractual rights: A company, being a legal entity different from its members, can enter into contracts for the conduct of the business in its own name.

(viii) Transferability of Shares : Shares of a company are freely transferable, except in case of private companies. Transfer of shares of private companies is regulated by Articles of Association.

ix) Termination of existence: A company, being an artificial juridical person, does not die a natural death. It is created by law, carries on its affairs according to law throughout its life and ultimately is effaced by law. Generally, the existence of a company is terminated by means of winding up
x) Separate management: The members may derive profits without being burdened with the management of the company. They do not have effective and intimate control over its working and they elect their representatives as Directors on the Board of Directors of the company to conduct corporate functions through managerial personnel employed by them. In other words, the company is administered and managed by its managerial personnel

Types of Company

Types of Company under Companies Act, 2013

Entrepreneurs can register different types of companies under the Companies Act, 2013 ('Act') in India to conduct their business and provide a legal structure for the business. The different types of companies are as follows:

1. One Person Company
The Act introduced the concept of a One Person Company (OPC). As per the Act, an OPC is a company that has only one member. The member can also be the director of the company. Though the OPC should have only one member, it can have a maximum of fifteen directors.

2. **Private Limited Company**
A private limited company is a company where there cannot be more than 200 members. A minimum of two members are required to establish a private limited company. The members cannot transfer their share, and it is suitable for businesses that prefer to register as private entities. There needs to be a minimum of two directors, and there can be a maximum of 15 directors in a private limited company.

3. Public Limited Company
A public limited company means a company where the general public can hold the company shares. There is no maximum shareholders limit for a public limited company, but there needs to be a minimum of seven members to establish a public company. The company needs to have two directors and can have a maximum of fifteen directors.

4. Section 8 Company (NGO)

An association of persons or individuals can register a company under section 8 of the Act for charitable purposes. These companies are established to promote commerce, science, art, education,

sports, research, religion, social welfare, charity, the protection of the environment, or such other objects. The company should apply its profits and other incomes to promote its activities. Such companies intend to prohibit any dividend payments to their members.

Types of Companies Based on Size

The MSME Act classifies companies based on their size to give benefits provided by the government for MSMEs. The differentiation of companies based on size to obtain MSME benefits is as follows:

1. Micro Companies

A micro company is a company whose investment in plant and machinery does not exceed Rs.1 crore, and the annual turnover does not exceed Rs.5 crore.

2. Small Companies

A small company is a company whose investment in plant and machinery does not exceed Rs.10 crore, and the annual turnover does not exceed Rs.50 crore.

However, the Companies Act, 2013, also provides many benefits to small companies. A company with a paid-up share capital of below Rs.2 crore and an annual turnover of below Rs.20 crore is considered a small company under the Companies Act.

3. Medium Companies

A medium company is a company whose investment in plant and machinery does not exceed Rs.50 crore, and the annual turnover does not exceed Rs.250 crore.

Types of Company Based on Liability

The members of a company have either limited or unlimited liability. The liability of the company member arises at the time of bankruptcy, company loss, winding up or paying the company's debt. Thus, a company established under the Companies Act, 2013 can also be classified based on the liability of its shareholders.

1. Limited by Shares

A company limited by shares means the liability of the company members is limited by the Memorandum of Association (MOA). The company members are liable only for the unpaid amount on the shares respectively held by them. The equity shares held by a member measure the shareholder's ownership in the company.

2. Limited by Guarantee

A company limited by guarantee means the member's liability is limited to the amount they guarantee to contribute towards the company's assets. The member's liability is limited by the company MOA. The members undertake in the MOA to contribute the guaranteed amount in the event of the company being wound up. The percentage of the member's ownership is based on the amount guaranteed by them.

3. Unlimited Company

An unlimited company means the company members do not have any limit on their liability. If any debt arises, the member's liability is unlimited and extends to their personal assets. Usually, the company entrepreneurs choose not to incorporate this type of company.

Types of Company Based on Control

The companies can be classified based on the ownership structure and control as follows:

1. Holding Company

A holding company is a company having the majority of voting powers of another company (subsidiary company). The holding company is the parent company controlling the subsidiary company's policies, assets and management decisions. However, it remains uninvolved in the subsidiary's day-to-day activities.

2. Subsidiary Company

A subsidiary company is owned by another company (holding company) either partially or entirely. The holding company controls the composition of the board of directors of the subsidiary company or more than 50% of its voting powers. Where a single holding company holds 100% voting powers, the subsidiary is known as the Wholly Owned Subsidiary (WOS) of the holding company.

Types of Company Based on Listing

The companies are classified into listed and unlisted companies based on access to capital. Every listed company must be a public company, but vice versa need not be true. An unlisted company can be a private or public limited company.

1. Listed Company

A listed company is a company which is registered on various recognised stock exchanges within or outside India. The shares of the listed companies are freely traded on the stock exchanges. They have to follow the guidelines given by the Securities Exchange Board of India (SEBI).

A company that wishes to list its shares on stock exchanges should issue a prospectus to the general public for subscribing to its debentures or shares. A company can list its shares through an Initial Public Offer (IPO), while an already listed company can make a Further Public Offer (FPO).

2. Unlisted Company

An unlisted company is a company that is not listed on any recognised stock exchange, and its shares are not freely tradable on the stock exchanges. These companies fulfil their capital requirements by obtaining funds from friends, family members, relatives, financial institutions, or private placement. An unlisted company must convert to a public company and issue a prospectus if it wishes to list its securities on the stock exchanges.

Corporate veil

The company, once incorporated, holds a separate legal entity in the eyes of law. The company can act under its own name, have a seal of its own, can enter into contracts, purchase or sell property, have a bank account and sue or get sued in the same manner as an individual. Thus, a company is a juristic person different from the persons who constitute it.

Meaning of corporate veil

The Corporate Veil is a legal concept which separates the identity of the company from its members. Hence, the members are shielded from the liabilities arising out of the company's actions.

Therefore, if the company incurs debts or contravenes any laws, then the members are not liable for those errors and enjoy corporate insulation. In simpler words, the shareholders are protected from the acts of the company.

The Corporate Veil is a shield that protects the members from the action of the company. In simple terms, if a company violates any law or incurs any liability, then the members cannot be held liable. Thus, shareholders enjoy protection from the acts of the company.

Lifting up of Corporate Veil:

If it is found that the members are misusing the statutory privilege then the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will break through the corporate shell and apply the principle/doctrine of what is called as "lifting of or piercing the corporate veil".

Lifting of Corporate Veil

The lifting of the corporate veil can be Statutory Lifting or Judicial Lifting.

Statutory Lifting: If the company violates the Companies Act, 2013 and the act provides for the lifting of the veil for the same, then it is termed to be Statutory Lifting.

Judicial Lifting: If the company violates the Companies Act, 2013 and the act does not provide for the lifting of the veil then the judges can order the lifting of the veil which is known as Judicial Lifting.

Further, The Courts consider lifting the corporate veil are as below,

1] To Determine the Character of the Company:

There are cases where the Courts need to understand if the company is an enemy or friend. In such cases, the Courts adopt the test of control. The Courts usually avoid piercing the corporate veil, unless the public interest is in jeopardy. However, to ascertain if a company is an enemy company, the Court might choose to do so.

So, how can a company be an enemy? It does not have a mind or consciousness and cannot be a friend or foe, right? However, if the affairs of a company are under the control of people from an enemy country, then the company might be an enemy too. In such cases, the Court may examine the character of the humans who are at the helm of affairs of the company.

2] To Protect Revenue or Tax:

In matters concerning evasion or circumvention of taxes, duties, etc., the Court might disregard the corporate entity.
Imagine a company that is used to evade tax. In such cases, piercing the corporate veil allows the Court to understand the real owner of the income of the company and make the said person liable for legitimate taxes.

3] If trying to avoid a Legal Obligation

Sometimes the members of a company can create another company/subsidiary company to avoid certain legal obligations. In such cases, piercing the corporate veil allows the Courts to understand the real transactions. Imagine a company liable to share 20 percent of its profits with its employees as a bonus. This is a legal obligation. To avoid this, the company opens a wholly owned subsidiary company and transfers its investment holdings to it.
The new company formed has no assets of its own and no business income either. It is completely dependent on the principal company.
By doing so, the principal company reduced the amount of bonus liable to be paid to its employees.
The Courts, by piercing the corporate veil, can understand the real intention of the principal company and ensure that it fulfils its legal obligations.

4] Forming Subsidiaries to act as Agents

Sometimes, the basis of the formation of a company is to act as an agent or trustee of its members or of another company. In such cases, the company loses its individuality in favour of its principal. Also, the principal is liable for the acts of such a company.

5] A company formed for fraud or improper conduct or to defeat the law

In cases where a company is formed for some illegal or improper purposes like defeating the law, the Courts might decide to lift or pierce the corporate veil.

Cases where the court has ordered lifting up of veil-

- In case the Company commits a Fraud.
- Where the company do not have a physical presence, it is just on instruments.
- If the company has an enemy character because of its association with the enemy country.
- If the criminal activities are being hidden behind the company’s name