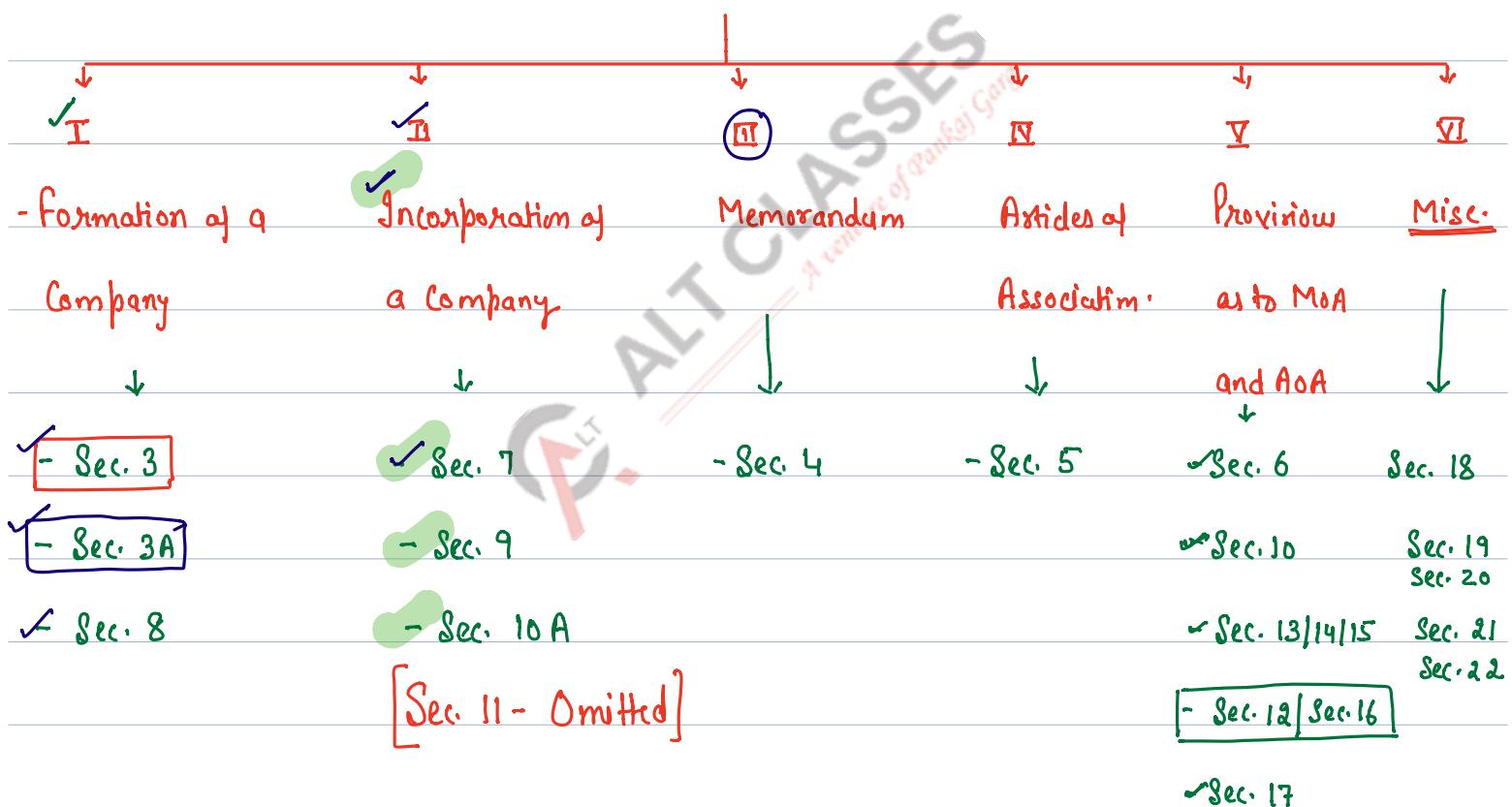


Chapter-2 "Incorporation of Company"



- Chapter II of Companies Act, 2013 [Sec. 3 to 22]
 - Companies (Incorporation) Rules, 2014 [as amended]
 - Companies (Incorporation) Amendment Rules, 2021
- ✓ " " .. 2nd " .. , 2021
" " .. 3rd " .. , 2021

Divisions



- (1) Formation of Company: ↗ Lawful purpose
 (Sec. 3) ↗ Min. No. of Members - 2/2/1 - Subscribers
 ↗ Limited - Share Capital; Unlimited liability

Members severally liable in certain cases:

(Sec. 3A)

Public → ≥ 7

Private → ≥ 2

No. of Members reduced to below statutory limit

i.e. Public Company < 7

Private Company < 2



Company carries on business with > 6 months



Remaining members are aware of this fact.



members are severally liable for the acts done during period.

(2) Special provisions in case of OPC : - Sec. 3

- ✓ OPC → 1 Member only (Individual, Indian Citizen); Resident in India [or otherwise]
 → MoA - shall indicate name of Nominee.

- ✓ Nomination → Nominee → Individual, Indian Citizen; Resident in India [or otherwise]
 → Not be a minor

→ Prior Written Consent

→ Withdraw his nomination

Example: → Mr. X (Age ≥ 18 years)

↓
Indian Citizen

↓
Resident in India

↓
Eligible to form OPC

↓
Resident o/s India.

- Subsequent to amendments

made through Companies

(Incorporation) and Amendment

Rules, 2021 (effective from

01.04.2021) → eligible to

form OPC

↓
Foreign Citizen

↓
Not eligible to
form OPC

Other Points: (i) A member of OPC cannot be member of another OPC at same time.

(ii) A member of OPC can be a nominee in one OPC at any point of time.

(iii) An individual cannot be a nominee in more than one OPC at same time.

Ex. Mrs. A.

A (OPC)

Member

Nominee

✓
Member

Nominee

B (OPC)

Member

Nominee

✓
Nominee

Member

X

X

✓

✓

Ex:

Mr. A is the sole member of A (OPC) and also a nominee of B (OPC).

B (OPC) was formed by Mr. B as a sole member. In an accident Mr. B dies and after his death, Mr. A, nominee in B (OPC) becomes member of B (OPC). Commut.

Ans: Mr. A is required to fulfill the eligibility criteria within 182 days.

(iv) Conversion of OPC into Other Company:

is permitted with an exception of Sec. 8 Company.

Conversion may be at any time.

Conversion should be in prescribed manner (Rule 6)

- Questions - 1, 7 and 8 → written practice (H.W.)

↳ ⑧ ✓

(3) Sec. 8 Companies:

Entity - form → promotion of commerce, art, science, education, social welfare, research, religion etc.

- may be incorporated under the Companies Act, 2013, subject to some conditions:-
- (a) → Objects → promotion.....
 - (b) → Application of the income → promotion of the objects
 - (c) → prohibition → distribution of dividend

- An application is to be made to C.G.
- C.G., if satisfied, grants a license.
- ROC - register the company u/s 8
- Company is not required to use the words 'limited' or 'private limited' along with its name.

- Implications of Regn:
 - Enjoy all privileges under Company law
 - Alteration of MoA / AoA → approval of C.G.
 - Alteration of MoA w.r.t. conversion into other kind of company → approval of R.D.

- Benefits of Sec. 8 Co:
 - . Sec. 149 (Min. director) (Independent director)
 - General meetings Notice (21 days - 14 days)
 - Exemptions .

- Revocation of licence:
- Contraventions of provisions of Sec. 8
 - " " " Conditions subject to which licence was granted
 - Affairs are conducted in fraudulent manner
 - " " " " against the objects.

↓

C.G. may revoke the license after providing an opportunity of being heard.

↓

dissolve the company / Wind-up

Amalgamate with another Co.

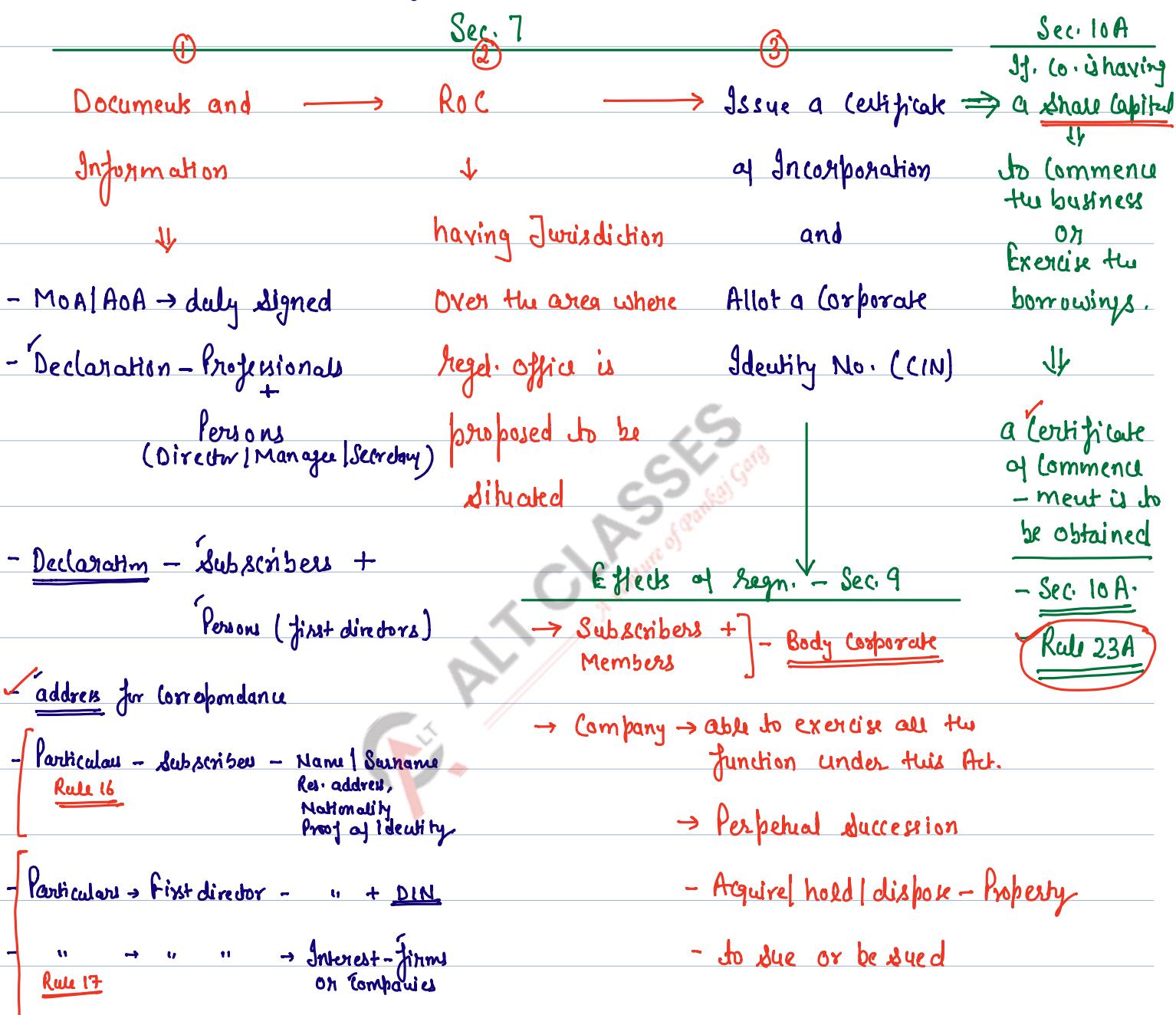
↓

Another Co. →

similar
activities

[Home Work → Written Practice of Q. No. 6]

④ Incorporation of a Company:



④ ↓

→ Company is required to maintain

and preserve → all documents/info.

at its regd. office - till its dissolution

a Certificate
of Commencement
is to be obtained

- Sec. 10A.

Rule 23A

⑤

Consequence of furnishing false info:

✓ Persons → furnishes → False / Incorrect Information → liable u/s 447

Or

Supress Material Information.

✓ Promoters + Person named as
first directors
+ Persons making declarations

↓

False / Incorrect Info. → liable u/s 447
False / Incorrect representation
Supress material facts
Fraudulent action

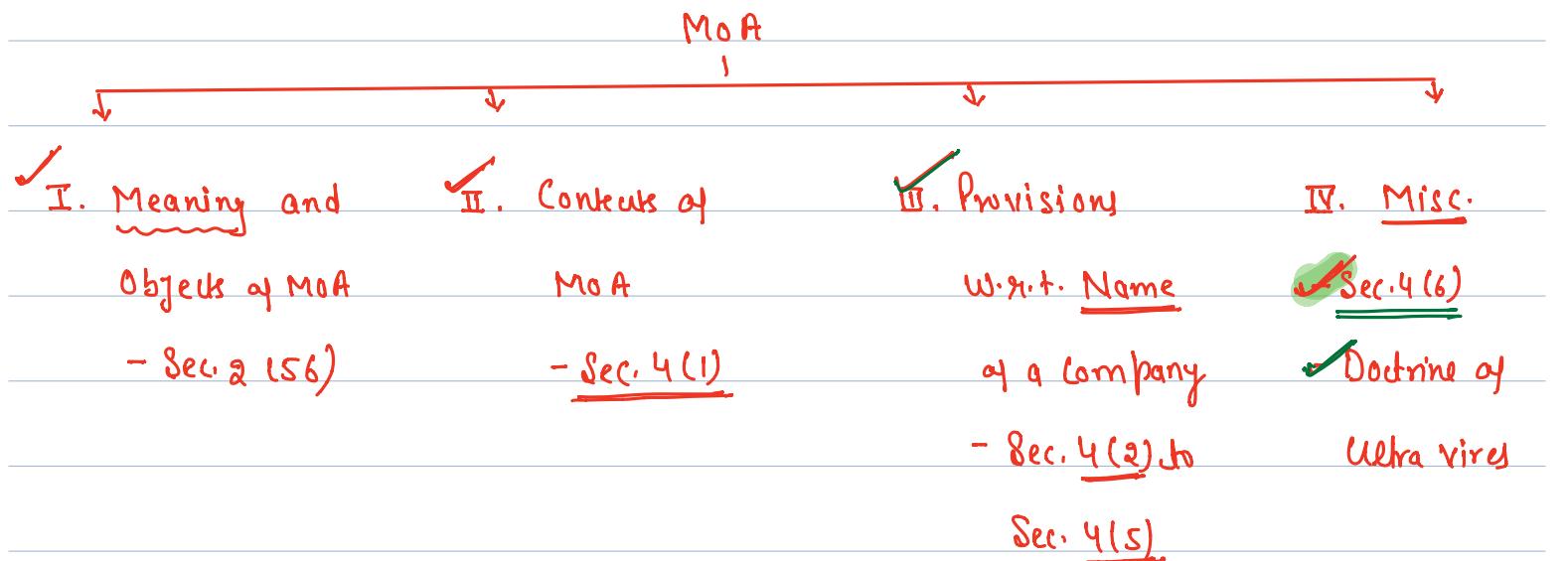
✓ Tribunal → On an application, may pass such orders as it deems fit
(NCLT)
(a) Changes in MoA / AoA
(b) Unlimited liability of members
(c) Removal of name from the Register of Companies
(d) Winding up order
(e) Such other orders.

H.W.-Q: To incorporate a Company Under the Companies Act, 2013, Certain documents and informations are to be furnished with the Registrar of Companies.

List such documents and informations to be furnished.

(6 Marks)

Lecture No. 3 [Sec. 4 - MoA]



(v) Memorandum of Association:

(a) Meaning and Objects:

Meaning: In general, memorandum of a Company is considered to be the Charter of the Company and defines the limitations of the powers of the Company.

Sec. 2(56): Memorandum as originally framed and
altered from time to time.

Objects: - MoA identifies the scope of operations of the company.
- MoA enables the stakeholders to know the powers of the company.

(b) Clauses / Contents of MoA : Sec. 4(1)

(i) Name clause

(ii) Regd. office clause → State

(iii) Object clause → (a) Main Objects (b) Other Objects

(iv) Liability clause → (a) Limited Shares guarantees (b) Unlimited

(v) Capital clause

without sh. Capital
with sh. Capital.

(vi) Subscription clause

(c) Forms of MoA - Sec. 4(6)

Table - A - Limited liability with share Capital

1. Name 2. Regd. office 3. Object 4. liability 5. Capital 6. Subscription

- B - Limited by guarantee without share Capital

1. Name. 2. Regd. office 3. Object 4. liability 5. undertaking 6. Subscription

- C - Limited by guarantee, having share Capital

1. Name. 2. Regd. office 3. Object 4. liability 5. undertaking 6. Capital 7. Sub-

- D - Unlimited, without share Capital

1. Name. 2. Regd. office. 3. Object. 4. liability 5. Subscription

- E - Unlimited, with share Capital

1. Name 2. Regd. office. 3. Object. 4. liability 5. Capital 6. Subscription

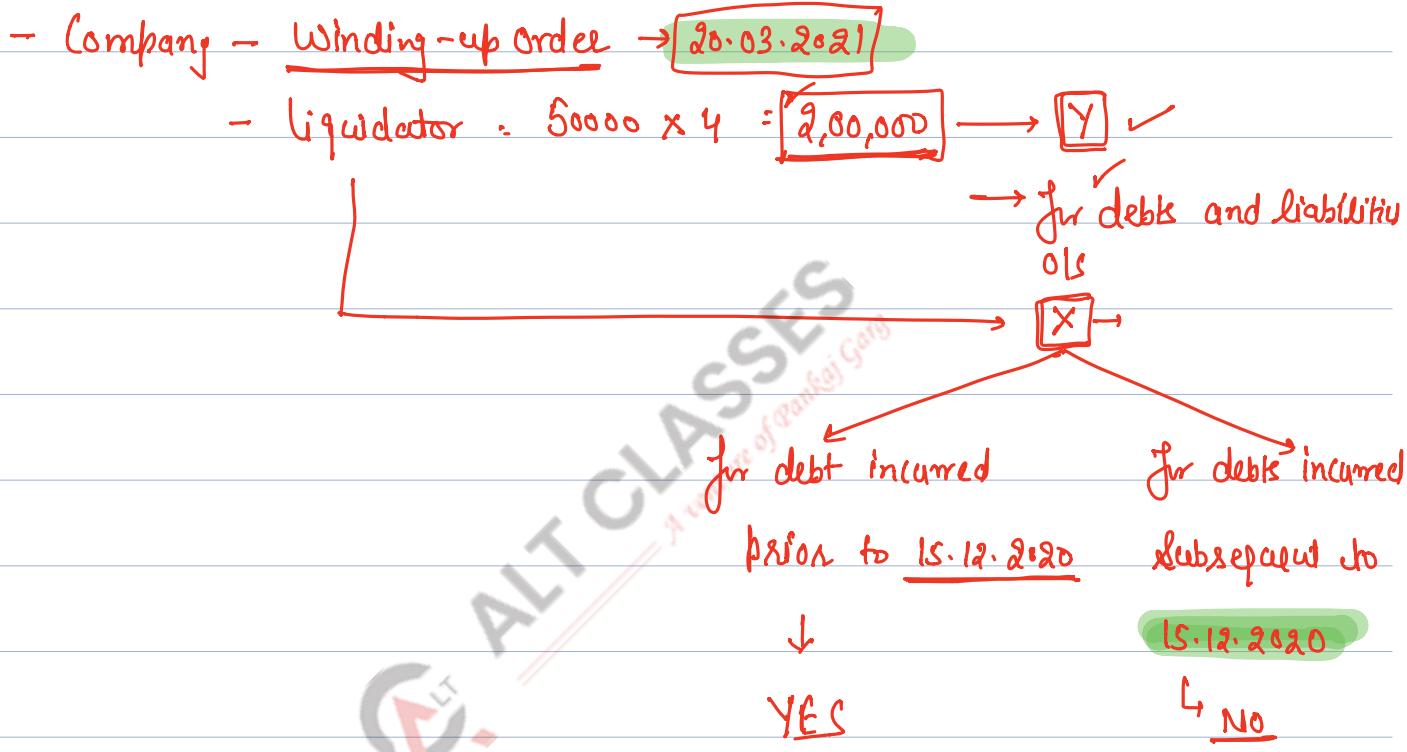
Past Member Contribution

Present Member Contribution
(Mr. Y)



Mr. X → 50000 shares of ₹ 10 each → transferred to Mr. Y
₹ 6 paid up.

on [15.12.2020]



(d) Provisions w.r.t. Name of a Company: Sec. 4(2) to Sec. 4(5)

✓ Sec. 4(2) : Applying for Name of a Company (Rule 8A)

✓ Sec. 4(3) : Registration of Name of a Company (Rule 8B)

✓ Sec. 4(4) : Application for reservation of name of co.

✓ Sec. 4(5) : Reservation of name of Company

- Details to be covered from book -

Sec. 4(2) → 'Identical' | 'Resemble' | 'contravention of any law' | 'undesirable'
 X X X X
 Examples → Rule 8

↓
Rule 8A

✓ Sec. 4(3) → Words | Expressions → patronage - (G) | S.G. | Authority | Body

↓ ↳ allowed & subject to previous approval of L.G.
Rule 8B

[Sec. 4(4)] → Spice + (Rule 9)

Sec. 4(5) → ROC - Reserve - 20 days

- 60 days

→ Name - Reservation → ROC

Not Incorporated - Cancel + 1 lac.
 up to
 Incorporate. → direction - change-
 - strike off
 winding up of Co.

(e) ~~Object~~ Doctrine of Ultra Vires:

- 'Ultra Vires' - implies beyond the powers.
- Powers of a Co. - as to activities → which a Company is entitled to pursue are covered in the memorandum.
- Any act which is beyond the powers of the Company will be considered Ultra vires and not binding over the Company.
- MoA is a public document and a Charter of the Company and states the powers of a Company.

- Ultra vires the Company / MoA → Void / Not binding on the co.
- Ultra vires the Articles → Valid if alteration made in Articles
- " " " " directors } → Valid if ratified in G.M of co.
(Intra vires the Company)

✓ H.W. : Explain doctrine of ultra vires and its implications. (6 Marks)



Lecture No. 4 "Articles of Association"

Meaning and
Concept

Legal Provisions
u/s 5

1
- Doctrine of Constructive Notice
- Doctrine of Indoor Management - Sec. 14
Alteration

(i) Meaning and Concept:

Sec. 2(5): Articles → AOA → as originally framed or

as altered from time to time

- In general, AOA comprises of Rules and Regulations for internal management of the company.
- Articles defines scope of duties, powers and rights of officers of company.
- Articles accept the memorandum as charter of the company and in case of any conflict, memorandum shall prevail.

(ii) Legal Provisions as per Sec. 5:

(1) Articles shall contain Regulations for management of the company.

(2) Articles shall also contain such matters as prescribed.

Table F : AOA of company limited by shares (Table A)

" G : " " " " " " " Guarantees, having share Capital (C)

" H : " " " " " " " , Not " " " " (B)

" I : " " " Unlimited Company, having " " (E)

" J : " " " " " " " , not " " " " (D)

Note: - Articles may also include additional matters as considered necessary.

- A Company may adopt all or any of the regulations covered in the Model Articles.

(3) Provisions for Entrenchment:

- Entrenchment means to make something more protective.
- Need consent of all members in case of a Private company and require a special resolution in case of public company.

(iii) Doctrine of Constructive Notice:

- Every person dealing with the company is presumed to have knowledge of MoA / AoA. (being MoA / AoA are public documents)
- This deemed knowledge of MoA / AoA is known as doctrine of Constructive Notice.

Limitation of doctrine of Constructive notice:

Outsiders dealing with the company are entitled to assume that as far as internal proceedings of the company are concerned, everything has been regularly done. (Doctrine of Indoor Management).

(iv) Doctrine of Indoor Management:

- Persons dealing with the company are not required to inquire whether internal proceedings relating to the contract are followed correctly.