

## ➤ Chapter 1: Preliminary

### Section 2: Definitions

**Question 1:** The paid-up share capital of Altar Private Limited is Rs. 1 crore, consisting of 8 lacs Equity Shares of Rs. 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of Rs. 10 each, fully paid-up. New Private Limited and Ultra Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Altar Private Limited. New Private Limited and Ultra Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Altar Private Limited is a subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of Altar Private Limited? [RTP-May'18, May'19; May'00; May'07; June'09; Nov'17]

#### **Relevant Answer Points**

Refer to section 2(46): Holding Company and 2(87): Subsidiary Company

#### **Facts, Analysis and Conclusions**

- Total Equity Share Capital of Altar Pvt. Ltd = Rs. 80,00,000
- Equity Share Capital held by New Pvt. Ltd. = Rs. 30,00,000
- Equity Share Capital held by Ultra Pvt. Ltd. = Rs. 5,00,000
- **Equity Share Capital held by PQR Pvt. Ltd. = Rs. 35,00,000**

**Reason:** New Pvt. Ltd. and Ultra Pvt. Ltd. are subsidiaries of PQR Pvt. Ltd. Hence, for the purpose of determining the relationship between PQR Pvt. Ltd. and Altar Pvt. Ltd., shareholding of PQR's subsidiaries shall be taken into consideration. [Refer to Explanation (a) in section 2(87)]

❖ **Question:** Is Altar Pvt. Ltd. a subsidiary of PQR Pvt. Ltd.?

**No**, since PQR Pvt. Ltd. does not own more than one-half of the Equity Share Capital of Altar Pvt. Ltd.

❖ Will our answer change if PQR Pvt. Ltd. has 8 out of 9 directors on the board of Altar Pvt. Ltd.?

**Yes**, our answer then will be that Altar Pvt. Ltd. is a subsidiary of PQR Pvt. Ltd, because in that case, PQR Pvt. Ltd. would have control over the composition of the Board of Directors of Altar Pvt. Ltd.

**Point to be Noted:** In such question, we are inherently assuming that 1 share = 1 vote, because we need to consider "voting power" to establish the holding-subsidiary relationship as per section 2(87).

**Question 2:** MNP Private Ltd. is a company registered under the Companies Act, 2013 with a Paid up Share Capital of Rs. 45 lakhs and turnover of Rs. 43 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

- (i) Whether MNP Private Ltd. can avail the status of a small company?
- (ii) What will be your answer if the turnover of the company is Rs. 38 crores? [May'18; MTP-Oct'20; ICAI SM]

**Answer Hints**

**Meaning of Small Company:** Refer to section 2(85) read with Rule 2(1)(t) of the Companies (Specification of Definitions Details) Rules, 2014.

- (i) No. MNP Private Ltd. can't avail the status of a small company, as its turnover **exceeds** the limit of Rs. 40 Cr.
- (ii) **Status:** Small Company; since the turnover **does not exceed** the threshold of Rs. 40 crores.

**Question 3:** Teresa Ltd. is a company registered in New York (U.S.A.). The company has no place of business established in India, but it is doing online business through data interchange in India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as a Foreign Company. [Nov'18]

**Legal Provisions**

According to section 2(42) of the Companies Act, 2013, foreign company means any company or body corporate incorporated outside India which,-

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; **and**
- (b) conducts any business activity in India in any other manner.

As per the Rule 2(1)(h) given in the Companies (Specification of Definitions Details) Rules, 2014, the term "electronic mode", means carrying out electronically based, **whether main server is installed in India or not**, including, but not limited to-

- (i) Business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (iii) Financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
- (iv) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (v) All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

**Explanation:** For the purposes of this clause, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up u/s 18 of the Special Economic Zones Act, 2005 shall not be construed as 'electronic mode' for the purpose of section 2(42) of the Act.

**Current Case Analysis & Conclusion:** In the given question, Teresa Ltd. **will be treated as a foreign company** within the meaning of section 2(42) of the Companies Act, 2013 since it is doing online business through data interchange in India, even though the company has no place of business established in India.

**Question 4:** Herry Limited is a company registered in Thailand. It has no place of business established in India, yet it is doing online business through telemarketing in India having its main server for online business outside India. State the status of the Company under the provisions of the Companies Act, 2013. [Nov'19]

**Hint:** Refer to section 2(42). Herry Limited is a 'foreign company'.

**Point to be Noted:** Fact that the company's main server for online business is outside India is irrelevant.

**Question 5:** SKP Limited (Registered in India), a wholly owned subsidiary company of Milan Limited [Foreign Company] decided to follow a different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard. [Nov'19]

### Relevant Answer Points

Refer to section 2(41). As per its first proviso:

- Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India; **and**
- is required to follow a different financial year for consolidation of its accounts outside India,

the CG may, on an application made by that company or body corporate in prescribed form and manner, allow any period as its financial year, whether or not that period is a year. [First Proviso to section 2(41)]

**Conclusion:** SKP Limited needs to follow the above procedure and make an application to the CG.

**Question 6:** The information extracted from the audited Financial Statement of Smart Solutions Private Limited as at 31<sup>st</sup> March, 2020 is as below:

- (1) Paid-up equity share capital Rs. 50,00,000 divided into 5,00,000 equity shares (carrying voting rights) of Rs. 10 each. There is no change in the paid-up share capital thereafter.
- (2) The turnover is Rs. 2,00,00,000.

It is further understood that Nice Software Limited, which is a public limited company, is holding 2,00,000 equity shares, fully paid-up, of Smart Solutions Private Limited. Smart Solutions Private Limited has filed its Financial Statement for the said year with the Registrar of Companies (ROC) excluding the Cash Flow Statement within the prescribed time line during the financial year 2020-21. The ROC has issued a notice to Smart Solutions Private Limited as it has failed to file the cash flow statement along with the Balance Sheet and Profit and Loss Account.

You are to advise on the following points explaining the provisions of the Companies Act, 2013:

- (i) Whether Smart Solutions Private Limited shall be deemed to be a small company whose significant equity shares are held by a public company?
- (ii) Whether Smart Solutions Private Limited has defaulted in filing its financial statement? [July'21; Nov'23 MTP]

**Relevant Answer Points**

- Refer to section 2(85) for definition of a 'Small Company'.
- Refer to section 2(87) for definition of a 'Subsidiary Company'.
- Refer to section 2(40) for definition of 'Financial Statements'.
- Note that the financial statements with respect to a small company may not include the cash flow statement.

**Given Case Facts and Analysis**

- Nice Software Limited (a public company) holds 2,00,000 equity shares of Smart Solutions Private Limited (having paid up share capital of 5,00,000 equity shares @ Rs. 10 totalling Rs. 50 lakhs).
- Smart Solutions Private Limited is not a subsidiary of Nice Software Limited and hence it is a private company and **not** a deemed public company.
- Further, the paid up share capital (Rs. 50 lakhs) and turnover (Rs. 2 crores) is **within** the limits as prescribed under section 2(85) i.e. Rs. 4 crores and Rs. 40 crores respectively.

**Required Advice/Conclusions:**

- (i) Smart Solutions Private Limited is a small company as per Law.
- (ii) **No**, Smart Solutions Private Limited has not defaulted in filing its financial statements as the company is a small company and it is not required to file its cash flow statement.

**Question 7:** Referring the relevant provisions of the Companies Act, 2013, examine, whether following companies will be considered as listed company or unlisted company:

- i. ABC Limited, a public company, has listed its non-convertible Debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
- ii. CHG Limited, a public company, has listed its non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.
- iii. PRS Limited, a public company, which has not listed its equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Companies Act, 2013. [Nov'22]

**Hints:** Refer to section 2(52) read with Rule 2A of the Companies (Specification of Definitions Details) Rules, 2014.

- i. ABC Limited: Unlisted Company
- ii. CHG Limited: Unlisted Company
- iii. PRS Limited: Unlisted Company

**Question 8:** Johnson Limited goes for Public issue of its shares. The issue was oversubscribed. A default was committed with respect to allotment of shares by the officers of the company. There were no Managing Director, Whole time Director or any other officer/person designated by the Board with the responsibility of Complying with the provisions of the Act.

State, who are the persons considered as officers in default under the Companies Act, 2013. Examine who will be considered in default in the instant case? [July '21]

### Relevant Answer Points

As per section 39(5) of the Companies Act, 2013, which deals with the allotment of securities, in case of any default related to minimum subscription and of return of allotment money under sub-section (3) and (4), the company and its officer who is in default shall be liable to a penalty, **for each default**, of

- Rs. 1,000 for each day during which such default continues or
- Rs. 1,00,000, *whichever is less*.

**Officer in Default:** Refer to section 2(60)

### Analysis

In the company, there were no managing director, whole time director, or any other officer/person designated by the Board with the responsibility of complying with the provisions of the Act.

**Conclusion:** Therefore, all the directors of the company may be treated as officers in default.

**Question 9:** New Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of Rs. 3 crores and turnover of Rs. 42 crores. Explain the meaning of the “Small Company” and examine the following in accordance with the provisions of the Companies Act, 2013:

- (i) Whether the New Private Ltd. can avail the status of small company?
- (ii) What will be your answer if the turnover of the company is Rs. 35 crore and the capital is same as Rs. 3 crores? [MTP-Oct '21 (Modified)]

### Answer Hints

**Meaning of Small Company:** Refer to section 2(85) read with Rule 2(1)(t) of the Companies (Specification of Definition Details) Rules, 2014.

- (i) No, since its turnover **exceeds** Rs. 40 crores.
- (ii) It is a small company.

**Question 10:** H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31<sup>st</sup> March, 2022 of S Pvt. Ltd., its turnover was Rs. 1.80 crore; and paid up share capital was Rs. 80 lakh. The Board of Directors wants to avail the status of a small company. The Company Secretary of the company advised the directors that the company cannot be categorized as a small company. In the light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are required to examine whether the contention of Company Secretary is correct, explaining the relevant provisions of the Act. [May '23]