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Paper -4

PRINCIPLES OF CORPORATE LAW

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Principles of Corporate Law

Ob jectives :

In view of the changing niceties of global governance especially from the point of view of good governance, corporate governance plays a vital role in the development of an economy both nationally and internationally. Taking this into consideration, th e paper aims to introduce to the students the nuance of corporate law and the obligations of it towards society in discharging its trading relations and to be a good corporate citizen.

I.Intr oduction

a) Origin and Development of Corporate Law
b) Essential ingredients in establishment of Corporation

II. Sha res and sha re capita l

a) Concept of shares, share capital
b) Kinds of shares
c) Debentures,
d) Issue , Allotment , transfer and forfeiture of shares

III. Legal Aspects governing corporae manage ment-

a) Meetings, Majority Rule and minority protection
b) Prevention of oppression, mismanagement
c) Role of central government, Company Registrar, Company Law Board/ Tribunal,

IV. Am a lga mat ion, Reconstr uct ion, M er ger s, ta ke-over of Com panies

a) Meaning of the terms
b) Statutory provisions
c) Powers of court/ tribunal
d) Reconstruction/ amalgamation by sale of shares/sale of undertakings
e) Procedures of Winding up a Company

V. Corporate Governance

a) Concept,
b) Significance,
c) Dimensions,
d) Legal framework
e) Impact of globalization

VI. Corporate Social Responsibility

a) Evolution of the concept,
b) Dimensions of CSR
c) Legislations and CSR

Suggested Readings-

1. J.M. Thomson- Palmer‘s Company Law
2. Gower- Principles of Modern Company Law
3. Ramaiya- Guide to Companies Act
4. Indian Law Institute- Current problems of Corporate Law
5. Datta- Company Directors
6. Compendium on SEBI, Capital Issues and Listing by Chandratre, Acharya, Israni, Sethuraman

Paper No. 04

PRINCIPLES OF CORPORATE LAW

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Topic No. 1

Intr oduction

a) Origin and Development of Corporate Law

b) Essential ingredients in establishment of Corporation

History of Company Legislation in India

As noted in the initial paragraphs, the Company Legislation in India has closely followed the Company Legislation in England. The first legislative enactment for registration of Joint Stock Companies was passed in the year 1850 which was based on the English Companies Act, 1844. This Act recognised companies as distinct legal entities but did not introduce the concept of limited liability. The concept of limited liability, in India, was recognised for the first time by the Companies Act, 1857 closely following the English Companies Act, 1856 in this regard. The Act of 1857, however, kept the liability of the members of banking companies unlimited. It was only in 1858 that the limited liability concept was extended to banking companies also. Thereafter in 1866, the Companies Act, 1866 was passed for consolidating and amending the law relating to incorporation, regulation and winding-up of trading companies and other associations. This Act was based on the English Companies Act, 1862. The Act of 1866 was recast in 1882 to bring the Indian Company Law in conformity with the various amendments made to the English Companies Act of 1862. This Act continued till 1913 when it was replaced by the Companies Act, 1913. The Act of 1913 had been passed following the English Companies Consolidation Act, 1908. It may be noted that since the Indian Companies Acts closely followed the English Acts, the decisions of the English Courts under the English Company Law were also closely followed by the Indian Courts. Till 1956, the business companies in India were regulated by this Act of 1913. Certain amendments were, however, made in the years 1914, 1915, 1920, 1926, 1930 and 1932. The Act was extensively amended in 1936 on the lines of the English Companies Act, 1929. Minor amendments were made a number of times thereafter.

At the end of 1950, the Government of independent India appointed a Committee under the Chairmanship of H.C. Bhaba to go into the entire question of the revision of the Indian Companies Act, with particular reference to its bearing on the development of Indian trade and industry. This Committee examined a large number of witnesses in different part of the country

and submitted its report in March 1952. Based largely on the recommendations of the Company Law Committee, a Bill to enact the present legislation, namely, the Companies Act, 1956 was introduced in Parliament. This Act, once again largely followed the English Companies Act, 1948. The major changes that the Indian Companies Act, 1956 introduced over and above the Act of 1913 related to: (a) the promotion and formation of companies;(b) capital structure of companies;(c) company meetings and procedures; (d) the presentation of company accounts, their audit, and the powers and duties of auditors; (e) the inspection and investigation of the affairs of the company; (f) the constitution of Board of Directors and the powers and duties of Directors, Managing Directors and Managers, and (h) the administration of Company Law.

The Companies Act, 1956 has been amended several times since then. The major amendments were introduced in the years 1960, 1962, 1963, 1964, 1965,
1966, 1967, 1969, 1974, 1977, 1985, 1988 and 1991.

In the wake of economic reforms processes initiated from July, 1991 onwards, the Government recognized the many provisions of the Companies Act had become anachronistic and were not conducive to the growth of the Indian corporate sector in the changing environment. Consequently, an attempt was made to recast the Act, which was reflected in the Companies Bill, 1993. The said Bill, however, was subsequently withdrawn. As part of continuing reforms process and in the wake of enactment of the Depositories Act, 1996, certain amendments were, however, incorporated by the Companies (Amendment) Act, 1996.

In the year 1996, a Working Group was constituted to rewrite the Companies Act, following an announcement made by then Union Minister for Finance in his Budget Speech to this effect. The main objective of the Group was to re-write the Act of facilitate healthy growth of Indian corporate sector under a liberalized, fast changing and highly competitive business environment. Based on the report prepared by the Working Group and taking into account the developments that had taken place in structure, administration and the regulatory framework the world over, the Companies Bill, 1997 was introduced in Rajya Sabha on August 14, 1997 to replace by repealing the Companies Act, 1956. In the meantime, as part of the reforms process and in view of the urgency felt by the Government, the President of India promulgated the Companies (Amendment) Ordinance, 1998 on October 31, 1998 which was later replaced by the Companies (Amendment) Act, 1999 to surge the capital market by boosting morale of national business

houses besides encouraging FIIs as well as FDI in the country. The amendments brought about number of important changes in the Companies Act. These were in consonance with the then prevailing economic environment and to further Government policy of deregulation and globalisation of the economy. The corporate sector was given the facility to buy-back company‘s own shares, provisions relating to the investments and loans were rationalized and liberalized besides the requirements of prior approval of the Central Government on investment decisions was dispensed with, and companies were allowed to issue ― sweat equity in lieu of intellectual property. In order to make accounts of Indian Companies compatible with international practices, the compliance of Indian Accounting Standards was made mandatory and provisions for setting up of National Committee on Accounting Standards was incorporated in the Act. For the benefit of investors, provisions were made for setting up of –Investor Education and Protection Fund besides introduction of facility of nomination to shareholders debenture holders etc.[1] The First Amendment of 2002 provides for producer companies. The Second Amendment of 2002 replaces the Company Law Board with National Company Law Tribunal and also creates an Appellate Tribunal. Apart from taking over the jurisdiction of the Company Law Board, the National Company Law Tribunal has been vested with the jurisdiction of the High Courts under the Companies Act. The result is that the jurisdiction of the High Courts has also become reduced to a very few points. Since this amendments has not been enforced, the original Act holds good.[2]

As the name suggest , read the history behind the process of revamping the entire company law of the country

1. The Companies Act, 1956 (hereinafter referred to as the Act), was enacted with the object to consolidate and amend the law relating to companies and certain other associations. Simultaneously, Companies Act, 1913, then in force, was repealed.

2. Many changes have taken place in the national and international economic environment since the enactment of the said Act. This has made the economy more diverse, complex and dynamic. In this milieu, the corporate form of organization is increasingly emerging as the preferred vehicle for economic and commercial activity and has contributed significantly to the

[1] Company Law and Practice by A. K. Majmudar and Dr. G.K. Kapoor Taxmann‘s Publication 15th Edition see pg. 1 to 5

[2] Company Law by Avtar Singh Publication Eastern Book Company, 15th Edition see pg.3

growth of the Indian economy and the emergence of service, information and knowledge-based enterprises. The number of companies has expanded from 30,000 in 1956 to nearly 8 lakh companies functioning as of date. Companies are now mobilising resources at a scale unimaginable even a decade ago, continuously entering into and bringing new activities into the fold of the Indian economy, exporting a wide range of goods and services and providing increasing employment opportunities.

3. The expansion and growth of the Indian economy has also generated considerable interest in the international investing community. However, there is a need for sustaining growth in a globalised and competitive environment. The increasing options and avenues for international business, trade and capital flows have made it imperative for the growing Indian economy to note only to harness its entrepreneurial and economic resources efficiently but also to be competitive in attracting investment to sustain the impressive growth recorded by it in recent years. Many investors are also looking towards the statutory and regulatory framework for the corporate sector in the country while deciding on their investment options. Modernisation of corporate regulation, governing various aspects of setting up of enterprises, structures for sharing of risk and reward, their governance and accountability to stakeholders, financial procedures and responsibility for disclosures, procedures for rehabilitation, liquidation and winding up is, therefore, critical to the perceptions of investors and determining their business and investment decisions.

4. In the background of the above developments and recognising that the competitive and technology driven business environment today require the corporate entities to be provided greater autonomy of operation and innovation with reasonable process requirements and compliance costs, a need was felt to help sustain the growth of the Indian corporate sector by enabling a new legal framework that would be compact, amenable to clear interpretation, and respond in a timely and appropriate manner to meet the requirements of ever evolving economic activities and business models, while fostering a positive environment for investment and growth. In addition, there is also a need to avoid overlapping and conflicts of jurisdiction in the area of sectoral regulations. Therefore piecemeal re-engineering of the corporate regulatory framework was not considered adequate to enable the systemic changes required. Hence, a comprehensive review of the Companies Act, 1956, and introduction of a revised statutory

framework in the form of a new Companies Bill has been considered essential to achieve the desired reform.

5. In the above backdrop, the review of the Companies Act, 1956 and drafting of a new Companies Bill was taken up by the Government on the basis of a detailed consultative process. A 'Concept Paper on new Company Law' was placed on the website of the Ministry on 4th August, 2004. The inputs received were put to a detailed examination in the Ministry. The Government also constituted an Expert Committee on Company Law under the Chairmanship of Dr. J.J. Irani on 2nd December, 2004 to make recommendations in respect of new Company Law. The Committee included representatives from concerned Departments and Ministries, Professional Institutes and trade bodies and individual experts as members or special invitees. The Committee deliberated extensively on various issues and submitted its report to the Government on 31st May, 2005. After considering the report of the Committee and other inputs received from time-to-time, the Government took up the exercise of comprehensive review of the Companies Act, 1956. Broadly the objective of the review was to—

retain essential features of the existing framework, segregate substantive law from the procedures to enable a clear framework for good corporate governance that addresses the concerns of all stakeholders equitably;

revise the law so as to enable a compact statute that is amenable to easy understanding and interpretation;

enable greater flexibility in procedural aspects so that with the change of time the procedural framework, to be prescribed through rules, may be amended without amendment of the substantive enactment;

establish a climate that encourages setting up of businesses and their growth while enabling measures to protect the interests of stakeholders and investors, including small investors, through legal basis for sound corporate governance practices and effective enforcement;

provide a framework for responsible self-regulation through determination of corporate matters through decisions by shareholders, in the background of clear accountability for such decisions, obviating the need for a regime based on Government approvals;

address the practical concerns of small businesses so that people may deal with and invest in companies with confidence, promote international competitiveness of Indian businesses and

provide them with the flexibility to meet the challenges of the global economy;
incorporate international practices based on the models suggested by the United Nations Commission on International Trade Law (UNCITRAL); and
provide for a reasonable and appropriate framework for enforcement of the law that enables proper investigation and imposition of appropriate sanctions comprising of penalties for non-compliance and punishment for violation of the law and for fraudulent conduct, keeping in view the experience resulting from past stock market scams and concerns expressed by Joint Parliamentary Committees thereon.

6. Finally, a comprehensively revised Bill, the Companies Bill, 2008 was prepared in consultation with Ministry of Law and was introduced in the Lok Sabha on 23rd October, 2008 in the 14th Lok Sabha and was subsequently referred to the Department related Parliamentary Standing Committee on Finance for examination and report. However, before the said Committee could present its report, 14th Lok Sabha was dissolved and the Companies Bill, 2008 lapsed as per clause (5) of article 107 of the Constitution of India. In view of this, it is proposed to introduce the Companies Bill, 2009.

Company

The word _Company‘ has no strictly technical or legal meaning Stanley, Re.[3] It may be described to imply an association of persons for some common object or objects. The purposes for which people may associate themselves are multifarious and include economic as well as non-economic objectives. But, in common parlance, the word _company‘ is normally reserved for those associated for economic purposes i.e. to carry on a business for gain.

Used in the aforesaid sense, the word _company‘, in simple terms, may be described to mean a voluntary associations of persons who have come together for carrying on some business and sharing the profits there from.

Indian Law provides two main types of organisations for such associations:
_partnership‘ and _company‘. Although the word _company‘ is colloquially applied to both, the Statute regards companies and company law as distinct from partnerships and partnership law. Partnership law in India is codified in the Partnership Act, 1932 and is based on the law of

[3] [1906] 1Ch. 131

agency, each partner becoming an agent of the others and it, therefore, affords a suitable framework for an association of a small body of persons having trust and confidence in each other. A more complicated form of association, with a large and fluctuating membership, requires a more elaborate organisation which ideally should confer corporate personality on the association, that is, should recognise that it constitutes a distinct legal person, subject to legal duties and entitled to legal rights separate from those of its members. This can be obtained easily and cheaply by registering an association as a company under the Companies Act, 2013.

Definition of a Company

There are many definitions of a Company by various legal experts. However, Section 2(20) of the Companies Act, 2013, defines the term 'Company' as follows: "Company means a company incorporated under this Act or under any previous company law."

Hence, in order to understand the meaning of a Company, it is important to look at the distinctive features that explain the realm of a Company.

Features of a Company

A Company is a Separate Legal Entity

One of the most distinctive features of a Company, as compared to other organizations, is that it acquires a unique character of being a separate legal entity. Hence, when you register a company, you give it a legal personality with similar rights and powers as a human being.

The existence of a company is distinct and separate from that of its members. It can own property, bank accounts, raise loans, incur liabilities and enter into contracts. According to Law, it is altogether different from the subscribers to the Memorandum of Association.

Also, it has a distinct personality which is different from those who compose it. Member can also contract with the Company and acquire a right against it or incur a liability to it. However, for any debts, the creditors can sue the Company but the members cannot.

A Company can own, enjoy, and dispose of a property in its own name. While the shareholders contribute to the capital and assets, the company is the rightful owner of such assets and capital. Further, the shareholders are not private or joint holders of the company's property.

Legal entity distinct from its members

Unlike partnership, the company is distinct from the persons who constitute it. Hence, it is capable of enjoying rights and of being subjected to duties which are not the same as those enjoyed or borne by its members. As Lord Macnaughten puts it, ―the company is at law a different person altogether from the subscribers......; and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands receive the proceeds, the company is not in law, the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act. i.e., Solomon‘s case.

The first case on the subject even before the famous Solomon‘s case was that of Kondoli Tea Co. Ltd. In this case certain persons transferred a tea estate to a company and claimed exemption from ad valorem duty on the ground that they themselves were the shareholders in the company and, therefore, it was nothing but a transfer from them in one to themselves under another name.

Rejecting this, the Calcutta High Court observed- ―The Company was a separate person, a separate body altogether from the shareholders and the transfer was as much conveyance, a transfer of the property, as if the shareholders had been totally different persons.

Even where a single shareholder virtually holds the entire share capital, a company is to be differentiated from such a shareholder. In the well known case of Solomon v. Solomon & Co. Ltd[4] Solomon was a prosperous leather merchant. He converted his business into a limited Company- Solomon & Co. Ltd. The Company so formed consisted of Solomon, his wife and five of his children as members. The company purchased the business of Solomon for £ 39,000 for purchase consideration was paid in terms of £10,000 debentures conferring a charge over the company‘s assets, £20,000 in fully paid £1 share each and the balance in cash. The company in less than one year ran into difficulties and liquidation proceedings commenced. The assets of the company were not even sufficient to discharge the debentures held entirely by Solomon himself. And nothing was left for the unsecured creditors. The House of Lords unanimously held that the company had been validly constituted, since the Act only required seven members holding at least one share each. It said nothing about their independent or that there should be anything like a balance of power in the Constitution of the company. Hence, the business belonged to the

[4] [1859-99] All.ER 33 (HL)

company and not to Solomon. Solomon was its agent. The company was not the agent of the Solomon.

Likewise, in the case of Lee V. Lee‘s Air Farming Ltd[5] ‗L‘ formed a company with a share capital of three thousand pounds, of which 2999 pounds were held by ‗L‘. He was also the sole governing director. In his capacity as the controlling shareholder, ‗L‘ exercised full and unrestricted control over the affairs of the company. ‗L‘ was a qualified pilot also and was appointed as the chief pilot of the company under the articles and drew a salary for the same. While piloting the company‘s plane he was killed in an accident. As the workers of the company were insured, workers were entitled for compensation on death or injury. The question was while holding the position of sole governing director could ‗L‘ also being an employee/ worker of the company. Held that the mere fact that someone was the director of the company was no impediment to his entering into a contract to serve the company. If the company has a legal entity, there was no reason to change the validity of any contractual obligations which were created between the company and the deceased. The contract could not be avoided merely because ‗L‘ was the agent of the company in its negotiations. Accordingly ‗L‘ was an employee of the company and, therefore, entitled to compensation claim.

So much so that even if a shareholder acquires all shares of a company, business of the company does not become his business unless the company is treated as his agent. – Gramophone & Typewriters Ltd. V. Stanley [9].

Even where a decree has been issued by the Court in respect of sums due against a company, the same cannot be enforced against its managing director. In

H. S. Sidhana V. Rajesh Enterprises,[10] it was held that the liability to discharge the decretal amount was that of the company and not of its managing director. The executing court could proceed against the managing director only if it came to the conclusion that the managing director was personally liable to discharge the decretal amount.

Again, in Chamundeeswari V. CTO, Vellore Rural[11] it was held that a company being a legal entity by itself, any dues from company have to be recovered only from company and not from its directors.

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[5] [1960] 3 All. ER 420(PC)

Perpetual Succession

Another important feature of a Company is that it continues to carry on its business notwithstanding the death of change of its members until it is wound up on the grounds specified by the Act. Further, the shares of the company change hands infinitely, but that does not affect the existence of the company.

In simple words, the company is an artificial person which is brought into existence by the law. Hence, it can be ended by law alone and is unaffected by the death or insolvency of its members.

Limited Liability

One of the important features of a company is the limited liability of its members. The liability of a member depends on the type of company.

- In the case of a limited liability company, the debts of the company in totality do not become the debts of its shareholders. In such a case, the liability of its members is limited to the extent of the nominal value of shares held by them. The shareholders cannot be asked to pay more than the unpaid value of their shares.
- In the case of a company limited by guarantee, members are liable only to the extent of the amount guaranteed by them. Further, this liability arises only when the company goes into liquidation.
- Finally, if it is an unlimited company, then the liability of its members is unlimited too. But such instances are very rare.

Artificial Legal Person

Another one of the features of a company is that it is known as an Artificial Legal Person.

- Artificial – because its creation is by a process other than natural birth.
- Legal – because its creation is by law, and
- Person – because it has similar rights to a human being.

Further, a company can own property, bank accounts, and do everything that a natural person can do except go to jail, marry, take an oath, or practice a learned profession. Hence, it is a legal person in its own sense.

Since a company is an artificial person, it needs humans to function. These humans are Directors who can authenticate the company’s formal acts either on their own or through the common seal of the company.

Common Seal

While a company is an artificial person and works through the agency of human beings, it has an official signature. This is affixed by the officers and employees of the company on all its documents. This official signature is the Common Seal.

However, the Companies (Amendment) Act, 2015 has made the Common Seal optional. Section 9 of the Act does not have the phrase 'and a common seal' in it. This provides an alternative mode of authorization for companies who do not wish to have a common seal.

According to this amendment, if a company does not have a common seal, then the authorization shall be done by:

- Two Directors or
- One Director and the Company Secretary (if the company has appointed a Company Secretary).
- **Transferable Shares.** In a public company, the shares are freely transferable. The right to transfer shares is a statutory right and it cannot be taken away by a provision

in the articles. However, the articles shall prescribe the manner in which such transfer of shares will be made and it may also contain bona fide and reasonable restrictions on the right of members to transfer their shares. But absolute restrictions on the rights of members to transfer their shares shall be ultra vires. However, in the case of a private company, the articles shall restrict the right of member to transfer their shares in companies with its statutory definition.

In order to make the right to transfer shares more effective, the shareholder can apply to the Central Government in case of refusal by the company to register a transfer of shares.

- **Separate Property :** As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of its property. The company is the real person in which all its property is vested and by which it is controlled, managed and disposed of.
- **Delegated Management :** A joint stock company is an autonomous, self- governing and self-controlling organization. Since it has a large number of members, all of them cannot take part in the management of the affairs of the company. Actual control and management is, therefore, delegated by the shareholders to their elected representatives, know as directors. They look after the day-to-day working of the company. Moreover, since shareholders, by majority of votes, decide

the general policy of the company, the management of the company is carried on democratic lines. Majority decision and centralized management compulsorily bring about unity of action.

TOPIC NO.2

Shares and share capital

a) Concept of shares, share capital

b) Kinds of shares

c) Debentures,

d) Issue , Allotment , transfer and forfeiture of shares

INTRODUCTION

When a company issue a prospectus inviting the public to subscribe for the shares of a company, it is merely an invitation rather than an offer. An application for shares is an offer by the prospective shareholders to take the shares of the company. Such offers are made on application forms supplied by the company. When an application is accepted, it is called allotment. Allotment is the acceptance by the company of the offer made by the applicant. Allotment results in a binding contract between the parties. The term allotment has not been defined in the Companies Act.

In *Sri Gopal Jalan & Co. v. Calcutta Stock Exchange Association Ltd., (1963),* allotment of shares was explained by the Supreme Court as "the appropriation, out of the previously unappropriated capital of the company, of a certain number of shares to a person. It is only after allotment that shares come into existence. Reissue of forfeited shares is not an allotment'.

GENERAL PRINCIPLES REGARDING ALLOTMENT

The provisions of the law of contract regarding the acceptance of an offer apply to the allotment of shares by a company. The general principles relating to the allotment of shares are as follows :

1. Proper Authority

Allotment must be made by a resolution of the Board of Directors or by a committee authorised to allot shares on behalf of the Board if permitted by the articles.

2. Absolute and unconditional

The allotment must be absolute and unconditional. If an application for shares in made subject to

a condition, then that condition has to be fulfilled in order to make the allotment effective. In case that condition is not fulfilled, the applicant is not bound to take the shares.

3. Within a reasonable time

The allotment must be made within a reasonable time after the receipt of the application. Otherwise the applicant shall not be bound to accept it.

In *Ramasgate Victoria Hotel Co. v. Monterfiore*, Monterfiore applied for shares on June 28. But allotment was made on November 23 and he refused to take the shares. In this case it was held that the offer had lapsed and the applicant was not liable to pay for the allotment.

4. Must be communicated

The allotment must be communicated to the person making the application so that it is legally complete. Communication need not be in a particular form unless the articles of the company provide otherwise. Whatever is the mode of communication, it must be made to the applicant or his agent who is duly authorised to receive it. In case of postal communication, allotment is complete as soon as the letter of allotment is posted even though it is never received (Household Fire Insurance Co. v. Grant).

5. Revocation of the offer

An offer to take shares can be revoked at any time before the allotment is communicated.

H applied for shares in a company which were allotted to him. The letter of allotment was sent by the company's agent to be delivered by hand to H. Before the delivery of the letter of allotment, H withdrew his application. It was held that H was not a shareholder of the company. [*Re National Savings Bank Association (1867) L.R. 4E9.9]*

In the same way, the allotment can be withdrawn by the company before it is communicated completely to the applicant.

RULES OF ALLOTMENT

The Companies Act does not prescribe any restriction as to the allotment of shares and

debentures when issued by private companies. However, the Companies Act prescribes certain restrictions regarding the allotment of shares and debentures by public companies. Such restriction may be discussed under the following two heads :

(A) When no public offer is made.

(B) When public offer is made.

(A) When no public offer is made

A public company having share capital, which does not issue a prospectus or has issued a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless a statement in lieu of prospectus has been delivered to the Registrar at least three days before the first allotment of shares or debentures. The statement must be signed by every person who is a director or proposed director of the company or by his agent authorised in writing.

If the company contravenes the above provision, the allotment shall be irregular and voidable at the option of the allottee. Further, the company, and every director of the company who willfully authorises or permits the contravention, shall be punishable with fine which may extend to Rs. 1000.

(B) When public offer is made

In the case of public company offering shares or debentures to the public for subscription, the provisions relating to allotment may be discussed under the following three heads :

1. First allotment of shares.
2. Subsequent allotment of shares.
3. Allotment of debentures.

1. First allotment of shares

The Companies Act imposes the following restrictions which must be complied with by a public company which offers shares to the public for the first time :

(i) **Registration of prospectus :** The company must deliver a copy of the prospectus to the Registrar for registration on or before the date of its publication. It must be signed by every director or proposed director of the company or by his agent authorised in writing.

(ii) **Minimum subscription** : No allotment shall be made of any share capital of the company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount has been subscribed and the sum payable on application for such amount has been paid to or received by the company.

The amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash. A company making any rights or public issue of shares, debentures etc. must receive a minimum of 90 per cent subscription against the entire issue before making an allotment of shares or debentures to the public. If the amount of minimum subscription is not received within 120 days of the issue of the prospectus, all amounts received from the applicants shall be refunded to them immediately without interest. However, if the refund is not made within 130 days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay the money with interest @ 6% p.a. for the delayed period.

(iii) **Application money :** The amount payable on application for each share shall not be less than 5% of the nominal amount of the share [Sec.69(3)]. SEBI guidelines prescribe that in the case of mega issues (exceeding Rs. 500 crore), the amount payable with the application on allotment or any one call should not exceed 25% of the value of shares.

All moneys received from the applicants for shares shall be deposited and kept deposited in a scheduled bank :

(a) until the certificate of commencement of business is obtained, or

(b) where such certificate has already been obtained, until the entire amount payable on application for shares in respect of the minimum subscription has been received by the company.

If the conditions aforesaid have not been complied with, all moneys received from the applicants for shares shall be forthwith repaid to them without interest. If any such money is not so repaid

within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 6% p.a. from the expiry of 130 days. A director shall not be liable if he proves that default in the repayment of the money was not due to any misconduct or negligence on his part.

Any condition which requires or binds any applicant for shares not to comply with any requirement of Section 69 shall be void.

(iv) **Subscription list :** No allotment shall be made until the beginning of the 5th day after a date on which the prospectus is issued or such later time as may be specified in the prospectus. This day is known as the 'opening of the subscription list'.

Where after the issue of the prospectus, a public notice is given by some responsible person, disclaiming his responsibility for the issue of the prospectus, no allotment shall be made until the beginning of the fifth day after that on which such public notice is first given.

A company may proceed to allot shares soon after the opening of the subscription list. In case of listed shares, however, the subscription list must be kept open for at least 3 days under the rules of recognised stock exchanges. The prospectus generally states the time when the subscription lists will be closed. The allotment of shares in contravention of these provisions is valid. But the company and every officer who is in default shall be liable to a fine upto Rs. 5,000 .

An application for shares shall not be revocable until after the expiry of the fifth day after the opening of the subscription list. The object of these provisions is to discourage the activities of stags.

(v) **Shares and debentures to be dealt on a stock exchange :** Where a prospectus states that an application has been, or will be, made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, the allotment made under such prospectus be void :

(vi) if the permission has not been applied for before the 10th day after the issue of the prospectus, or

(vii) if permission has not been granted by the stock exchange, as the case may be, before the expiry of 10 weeks from the date of the closing of the subscription list.

If the allotment becomes void, the company must forthwith repay without interest all moneys received from applicants in pursuance of the prospectus and if any such money is

not repaid within 8 days after the company becomes liable to repay it, the directors shall be jointly and severally liable to repay that money with interest between 4 to 15% per annum from the expiry of the eighth day .

Return of excess money where permission is granted

Where permission has been granted by the recognised stock exchange or stock exchanges for dealing in any shares or debentures and moneys received from the applicants for shares or debentures are in excess of the aggregate of the application moneys relating to the shares or debentures in respect of which allotments have been made, the company shall repay the moneys to the extent of such excess forthwith without interest. If such money is not repaid within eight days from the day the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than 4% and not more than 15%, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money. If default is made in complying with the provisions, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 5000 and where the repayment is not made within 6 months from the expiry of the eight day, also with imprisonment for a term which may extend to one year.

All moneys to be kept in a separate bank account in a scheduled bank

Where a prospectus states that an application has been made to stock exchange for permission for the shares to be dealt in on the stock exchange, all moneys received shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted and where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal. Where the permission has not been applied for or has not been granted, the moneys shall be repaid within the time and in the manner specified. If default is made in complying with this Section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to Rs. 5000.

2. Subsequent allotment of shares

In case of subsequent allotment of shares all the 'statutory provisions' regarding 'first allotment of shares' apply equally, except :

(a) minimum subscription ; and

(b) application money must be deposited in a scheduled bank.

3. Allotment of debentures

In case of issue of debentures all the statutory provisions regarding 'first allotment of shares' apply equally, except :

(a) minimum subscription;

(b) the amount payable on application; and

(c) application money must be deposited in a scheduled bank.

TRANSFER AND TRANSMISSION OF SHARES

A. Transfer of Shares

The shares in a company are movable property and they can be transferred in the manner provided by the articles of the company. A private company with a share capital, by its very nature of the Act restricts the right of transfer in shares by its articles. Transfer of shares is less strict in a public company.

In a public company, every shareholder has right to transfer his shares to any person without the consent of other shareholders subject to such express restrictions as are found in the articles of the company. A restriction on transfer of shares which is not specified in the articles is not binding on the company or the shareholders. A transfer of share is valid if it is not forbidden under the articles of the company, even if it has been made with the object of escaping liability on the shares.

Procedure for Transfer of Shares

Ordinarily, shares can be transferred by a person whose name appears in the register of members and who is the holder thereof. A legal representative of a deceased member, although not a member at the time of transfer, can also transfer shares.

Shares may be transferred by executing an instrument of transfer (called the 'transfer deed'). The instrument of transfer must be in the prescribed form. Before it is signed by or on behalf of the transferor and before any entry is made therein, it shall be presented to the prescribed authority which shall stamp or otherwise endorse on it the date of presentation.

The instrument of transfer shall then be executed by the transferor and the transferee and completed in all respects. Thereafter, it shall be presented to the company for registration within the following time limits :

(i) Where the shares of the company are listed/dealt in/quoted on a recognised stock exchange, the instrument of transfer must be presented for registration at any time before the register of members is closed for the first time after the date of presentation of the instrument to the prescribed authority or within 12 months thereof, whichever is later.

(ii) In any other case, the instrument of transfer shall be presented to the company within 2 months of the date of presentation to the prescribed authority.

The Central Government may, however, on application extend the period by such further time as it may think fit to avoid any hardship

When a duly executed and stamped transfer deed is delivered to the company within the prescribed time, the transfer is complete irrespective of whether the company registers it or not. But the transferee becomes a member only when the transfer is registered. Pending registration, the transferor is a trustee of the shares for the transferee. The transferor continues to be the holder of the shares until his name is struck off the register and that of the transferee substituted in its place. The transferor must pay over to the transferee any dividends or other rights which he may receive from the company after the date of the transfer deed.

The application for transfer of shares may be made either by the transferor or the transferee. In case any application is made by the

transferor and relates to partly paid shares, the transfer shall not be registered unless the company

gives notice of application to the transferee and the later raises no objection to the transfer within two weeks from the receipt of such notice. No such notice needs to be given where fully paid shares are transferred or where the application for the registration of transfer is made by the transferee.

In case a company refuses to register the transfer of shares, it must give notice to the transferor and the transferee within 2 months from the date of which the instrument of transfer was delivered, giving reasons for such refusal.

The transferor or the transferee may prefer an appeal to the Central Government within 2 months of the receipt of such notice of refusal. In case the notice of refusal has not been given by the company, the appeal must be filed within 4 months from the date on which the instrument of transfer was delivered to the company. On its appeal, the Central Government must give an opportunity to the company, the transferor and the transferee to make their representation before issuing any order. If the refusal of the company seems to be unjustified, the Central Government may issue an order to the company to register the transfer.

Issue of new share certificate

On the approval of the transfer, the company shall cancel the old share certificate and issue a new one made out in the name of the transferee. Normally, it is done by making an endorsement on the back of the share certificate.

The transfer when registered has retrospective effect from the time when the transfer was first made. It should be noted that the seller of the shares is not bound to procure registration. He will simply hand over to the transferee a duly executed transfer form and the share certificate or the letter of allotment.

Power of Directors to refuse transfer

Where the articles do not contain any clause, allowing the directors to reject the transfer, the shareholder may freely transfer his share and can compel the directors for registering of shares. On the other hand, if the articles contain a clause empowering the directors to reject the transfer, the directors can reject such transfer but subject to the following conditions :

(a) Power must be exercised by the directors in the interest of the company as a whole and not in the interest of a section of shareholders.

(b) For rejection, the conditions given in the articles must be followed.

(c) Refusal must be exercised within a reasonable time.

(d) Refusal must be exercised by the board and not by one of the directors.

(e) The court cannot compel the directors to supply the reasons of rejection but if supplied can examine and if inadequate can reject the order of the directors.

The following are the grounds on which the board may refuse registration of transfer :

(a) If partly paid up shares are being transferred and transferee is known to be financially incapable of paying balance calls.

(b) Where partly paid up shares are being transferred to a minor incapable of entering into a contract.

(c) When the transferor is a debtor of the company and the company has lien on such shares.

(d) When the transferor has not paid the due call money.

(e) Where the instrument of transfer is incomplete, irregular and defective and not properly stamped.

(f) On any other reasons which are just and equitable and are in the general interest of the company.

Grounds on which the company may refuse to register transfer in the case of the listed companies

The Companies Act does not specify the grounds on which the board of directors may refuse to register a transfer of shares. But after the insertion of Section 22-A in the Securities Contract (Regulation) Act, 1956, the Board of Directors of a company, the shares of which are listed on a stock exchange, can refuse to register a transfer on only one or more of the four grounds.

Thus in the case of listed securities, the absolute powers with the directors to refuse registration of transfer are no longer available. There are now only four grounds (and no other) on which transfer can be refused in the case of listed shares. The four grounds are :

(a) Where there are defects or deficiencies in the transfer deed, i.e., instrument of

transfer is not proper or the certificate relating to the securities has not been delivered to the company or that any other requirement under the law relating to registration of such transfer has not been complied with. This is a technical ground on which transfer of shares can be refused.

(b) The transfer of shares is likely to result in such a change in the composition of the Board of Directors as would be prejudicial to the interests of the company or to the public interest.

(c) The transfer of shares is in contravention of any law.

(d) The transfer of shares is prohibited by any court, tribunal or other authority under any law for the time being in force.

Certification of transfer

Where a person purchases a number of shares, only one certificate of shares is issued in respect of the whole lot of shares so that when he desires to transfer a part of his shares, he is required to produce before the company his certificate of shares along with the instrument of transfer for the purpose of certification. The company then endorses on the instrument of the transfer the fact of the certificate having been lodged with the company. The company will cancel the old certificate and prepare two new share certificates to be delivered to the transferor and the transferee. This is known as the certification of transfer. The certification of shares amounts to a representation by the company that the document which evidences the title to the transferor has been produced to the company. It gives neither warranty of the transferor's title nor any guarantee on the part of the company.

Forged Transfer

A forged document never has any legal effect. If a forged transfer is lodged with the company for registration, the position of the parties affected is as follows :

(i) If the true owner has been removed from the register, he can compel the company to replace him.

(ii) If the company has issued a new certificate to the so called transferee, it can not deny his title to the shares, the certificate stops it (the company) from doing so.

(iii) The person lodging the transfer must indemnify the company against loss by forgery.

Companies normally notify the transferor of the transfer so that he can object if he wishes. The transferor is, however, under no legal obligation to reply and therefore no estoppel can be raised against the owner on his failure to reply.

Blank Transfer

A blank transfer is an instrument of transfer signed by the transferor in which the name of the transferee is not filled.

Since the name of the transferee is not filled, the shares in such cases may further be transferred merely by delivering the blank instrument of transfer. Thus, stamp duty and registration fee is saved. Only the last transferee has to bear these expenses. The results are :

(i) this helps in avoiding or reducing liability of tax thereon; and

(ii) these may act as clear security for creditors.

But blank transfer does not confer the ownership of shares on the transferee. If he wants to retain the shares, he can fill in his name and date in the transfer deed and get himself registered as shareholder. Until such registration, the original transferor continues to be the owner and remains liable for any amount remaining unpaid on the shares. Morally, he is a trustee for the dividends declared and received. But it does not confer
any right on the transferee to prefer any claim against the company in the event of the transferor's failure to pay him the dividends etc.

A blank transfer, however, can remain in circulation only for 12 months after its signing by the prescribed authority or up to the time of closure of the register of members by the company, whichever is later. This provision has been made to curb the abuse of this system.

B. Transmission of shares

When a registered shareholder dies or becomes bankrupt his share are transmitted to his legal representative or the Official Assignee or Receiver, This is called transmission of shares. It takes

place when a registered shareholder (a) dies or (b) becomes bankrupt.

Transmission of death : When a registered shareholder dies, his shares vest in his legal representative. If they wish, they may ask the company to register them as the holder of these shares and for this purpose no instrument of transfer is required and the company is bound to accept the probate of will or letters of administration as sufficient evidence of the title to those shares. When they are registered as the holder of these shares and their names are put on the company's register of members, they become personally liable on the shares. Thus if the shares are not fully paid, they will be liable to pay the unpaid value of the shares.

However, if the legal representatives do not wish to be registered as the holder of the shares, they may transfer them without being so registered. The legal representative to transfer the shares even if he is not himself a member of the company. Thus the transfer of shares of a deceased member made by his legal representative, although the legal representative does not get himself registered as the holder of

these shares, (i.e., the member of the company) is perfectly valid and the transferee acquires a good title to the shares.

Transmission on bankruptcy : If a registered shareholder is adjudged an insolvent, his shares vest in the Official Assignee or Receiver who may either get himself registered as the holder of the these shares or transfer them to another person. The Official Assignee or Receiver can also disclaim the shares if they contain liability. Usually the articles of the company contain provisions relating to the transmission of shares. If the transmission is not accepted by the company, the same remedies are available against the company as in the case of the refusal of a transfer of shares.

Distinction Between Transfer And Transmission of Shares

The following are the points of difference between transfer and transmission of shares :

(a) A transfer is a deliberate act of the holder, while transmission results by operation of law.

(b) A transfer requires an execution of an instrument of transfer, while transmission requires evidence showing the entitlement of the transferee.

(c) For the execution of transfer, stamp duty is payable, while no stamp duty is payable in case of transmission.

(d) The company charges for registering a transfer, while no charges are levied for registering a transmission.

(e) In case of transfer, the liability of the transferor ceases as soon as the transfer is complete, while in transmission, the shares continue to be subject to original liabilities.

SHAREWARRANTANDSHARECERTIFICATE

A. Share Warrants

A public company limited by shares may issue share warrants under its common seal in the following circumstances :

(i) if it is authroised by its articles ;

(ii) shares are fully paid up ; and

(iii) previous approval of the Central Government is obtained.

A share warrant is a document which shows that the bearer of the warrant is entitled to the shares specified therein. It is a substitute for the share certificate. A shares warrant may have coupons attached to it to provide for the payment of future dividends on the shares specified in the warrant. A shares warrant shall entitle the bearer thereof to the shares specified therein. The shares may be transferred by delivery of the warrant.

On issue of a share warrant, the company shall strike out of its register the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member. The following particulars shall be entered in the register :

(i) the fact of the issue of the warrant ;

(ii) a statement of the shares specified in the warrant, distinguishing each share by its number ; and

(iii) the date of the issue of the warrant.

The bearer of a share warrant shall subject to the articles of the company be entitled to have his

name entered as a member in the register of members on surrendering the warrant for cancellation and paying such fee to the company as the Board of Directors may from time to time determine.

The bearer of the share warrant may, if the articles of the company so provide, be deemed to be a member of the company.

B. Share Certificate

The holder of share or shares is issued a share certificate by the company. A certificate under the common seal of the company, signed by one or more of directors, specifying shares held by the member and the amount paid up on the shares shall be prima facie evidence of the title of the member to such share or shares.

Every company shall deliver the certificates to the allottee within three months from the date of allotment and to the transferee within two months of making of the application for the registration of the transfer of shares, debentures or debenture stock.

If default is made, the company and every officer of the company who is in default, shall be punishable with fine which may extend to Rs. 5,000/- for every day during which the default continues. The person may make an application to the court if default is not made good by the company within 10 days after the service of the notice. The court may order the company and any officer of the company to make good the default.

Objects and Advantages : Since a share certificate is prima facie evidence of title, a shareholder is able to show his title to the shares by producing his share certificate. Thus it is very easy for a shareholder to sell his shares in the market by producing a share certificate showing his title to these shares. Besides it would be very easy for a lender to lend money to the shareholder taking the possession of his share certificate by way of security.

Duplicate Certificate

a company may renew or issue a duplicate certificate if it is proved to have been lost or destroyed or having been defaced, mutilated or torn; is surrendered to the company. The articles may provide other terms and conditions like requiring the allottee to give an indemnity bond .

If a company with the intent to defraud renews a certificate or issues a duplicate thereof, the company shall be punishable with fine which may extend to Rs. 10,000 and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Rs. 10000 or with both .

The Central Government may prescribe rules regarding the issue or renewal of certificates and duplicates, fees, etc.. The rules so made override the provisions in the articles.

DIFFERENCE BETWEEN A SHARE CERTIFICATE AND A SHARE WARRANT

1. The holder of a share certificate is a registered member of the company whereas the bearer of a share warrant is not. The bearer of a share warrant can be a member only when the Articles so provide and only for the purposes defined in the Articles.
2. A share certificate may be issued in respect of partly or fully paid shares, whereas a share warrant can be issued only when shares are fully paid up.
3. Only public companies are authorised to issue share warrants but share certificates are issued by both public and private companies.
4. A share warrant is transferable by delivery only and no transfer deed and registration of transfer with the company is required. But a share certificate is transferred only in pursuance of a transfer deed along
with the delivery of the share certificate. The transfer of a share certificate must be registered with the company.
5. A share warrant is a negotiable instrument as it is transferable by delivery only. But a share certificate is not a negotiable instrument.
6. Stamp duty is payable for the transfer of a share certificate but no stamp duty is payable in the case of transfer of a share warrant.
7. The permission of the Central Government is not necessary for the issue of share certificates but share warrants can be issued only if allowed by the Articles and with the prior permission of the Central Government.
8. The holder of a share warrant does not qualify to become a director of the company (where qualification share are required for directorship). But the holder of a share certificate is so qualified.

9. The petition for the winding up of the company can be presented by the holders of share certificates only. Holders of shares warrants cannot do so.

10. Payment of dividend on a share warrant is made by way of coupons attached with it. But in the case of share certificates, the company issues dividend warrants to the holders by name.

TOPIC NO.3

Legal Aspects governing corporate management

INTRODUCTION

The company is an artificial person created by law having a separate entity distinct from its members. Being an artificial person, it cannot take decisions on its own. It has to take decisions on matters relating to its well being by way of resolutions passed at properly constituted and convened meetings of its shareholders or directors. The decisions about a company's management are taken by the directors in their meetings and they are to be ratified in the general meetings of the company by the shareholders.
There in an old proverb that "Two heads are always better than one". When two or more than two persons come together to discuss matters of common interest, there is said to be a meeting. It follows that to constitute a meeting there must be two or more persons. Generally, the purpose of a meeting is to consider issues of common interests to its attendants.

KINDS OFMEETINGS

The meetings of a company are of three kinds :

1. Meetings of the shareholders
   (i) General meetings
   (ii) Class meetings
2. Meetings of the Directors
3. Meetings of the Creditors

In this lesson, the discussion will be confined to the meetings of the shareholders.

STATUTORYMEETING

Every public company limited by shares and every company limited by guarantee and having a share capital, shall, within a period of not less than one month nor more than six months from the date on which the company is entitled to commence business hold a general meeting of the members of the company. This meeting is called 'the statutory meeting'.

A meeting held prior to the statutory period of one month from the date of entitlement of a company to commence business can not be called the statutory meeting. The notice for such a meeting should state it

to be statutory. The statutory meeting is held only once in the life time of a company.

Private companies, public companies limited by guarantee and not having a share capital and unlimited companies are not required to hold the statutory meeting. However, a private company which becomes a public company by the application of the Act will have to comply with the provisions of the Act which are applicable to public limited companies from the date of its becoming a public limited company. A private company can commence business on the date of its incorporation. If the date of its becoming a public company is within 6 months of its incorporation, it must hold a statutory meeting in accordance with the provision of the Act. If it becomes a public company after 6 months of its incorporation, it is not required to hold the statutory meeting.

Notice

The company must give notice to its members 21 days before the holding of the statutory meeting. The notice convening the statutory meeting must specifically state that the meeting is the statutory meeting. The time, date and place of the meeting must be mentioned in the notice. However, a shorter notice may be sufficient if consent is accorded by the members of the company :

(a) If the company has a share capital, holding not less than 95% of such part of the paid up share capital of the company as gives a right to vote at the meeting.

(b) If the company has no share capital, holding not less than 95% of the total voting power exercisable at the meeting.

Statutory Report

The Board of Directors is required to prepare a report which is known as the 'statutory report"

and must send this report to the members at least 21 days before the day on which the meeting is to be held. If the report is sent later than is required, it will be deemed to have been duly forwarded if it is so agreed to by all the members entitled to attend and vote at the meeting. Thus the delay in sending the report can be condoned by unanimous consent of all the members present at the meeting. The statutory report is required to be certified as correct by at least two directors of the company, one of whom must be a Managing Director, if there is any. Thereafter the auditor must certify the report to be correct in so far as it relates to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company. A copy of the report must be sent to the Registrar also.

Contents of Statutory Report

The statutory report shall set out :

(a) The total number of shares allotted, distinguishing those allotted as fully or partly paid-up otherwise than in cash, the extent to which they are partly paid up and the consideration for which they have been allotted.

(b) The total amount of cash received by the company in respect of all the shares allotted.

(c) An abstract of the receipts and payments made thereout up to a date within 7 days of the date of the report.

(d) The name, address and occupations of the directors of the company and of its auditors and also if there be any, of its manager and secretary.

(e) The particulars of any contract which , or the modification or the proposed modification of which is to be submitted to the meeting for its approval.

(f) The extent to which each underwriting contract (if any) has not been carried out and the reason therefor.

(g) The arrears due on cash from every director and from the manager.

(h) Particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director.

Procedure at the meeting

A list showing the names, addresses and occupation of the members of the company and the number of shares held by them must be produced by the Board of Directors at the commencement of the statutory meeting. The list is to remain open and accessible to any member of the company during the continuance of the meeting.

It is to be noted that the members of the company present at the meeting are at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not but one resolution may be passed of which notice has not been given in accordance with the provisions of Companies Act.

Adjournment of Statutory Meeting

The meeting may adjourn from time to time and at any adjourned meeting any resolution of which notice has been given in accordance with the provisions of the Companies Act may be passed and the adjourned meeting will have the same power as an original meeting.

Penalty

If any default is made in complying with the above provisions, every director or other officer of the company who is in default shall be liable to a fine which may extend to Rs. 500. Besides, if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting, the Court may order the compulsory winding up of the company.

Objects

The obvious purpose of the statutory meeting with its preliminary report is to put the shareholders of the company as early as possible in possession of all the important facts relating to the new company what shares have been taken up, what moneys received, what contracts entered into, what sums spent on preliminary expenses, etc. Furnished with these particulars the shareholders are to have an opportunity of meeting and discussing the whole situation in the management methods and prospects of the company. If the shareholders fails to do so, they have only themselves to blame.

ANNUAL GENERAL MEETING

Every company must in each year hold in addition to any other meeting a general meeting, as its annual general meeting and must specify the meeting as such in the notices calling it. The annual general meeting is to be held in addition to any other general meeting that might have been held in a year. It appears that holding of an annual general meeting in every calender year is a statutory necessity. Calender year is to be calculated from Ist January to 31st December and not twelve months from the date of incorporation of the company.

First annual general meeting

A company must hold its first annual general meeting within a period of not more than 18 months from the date of its incorporation and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year. For example a company is incorporated in October 1994. Its first annual general meeting is required to be held within 18 months from the incorporation, i.e. up to March 1996 and if such a meeting is held within this period, no other meeting will be necessary either for 1995 or 1996.

Subsequent annual general meeting

As already discussed a company is required to hold an annual general meeting in each year. Where a meeting called and held on a day in one year is adjourned to a date in the next year and held on that date, the meeting held on the latter date is not a different meeting and does not comply with the requirements of the Act. However, the gap between one annual general meting and the next should not be more than fifteen months.

In the case of Shree Meenakshi Mills Company Limited v. Astt. Registrar of Joint Stock Companies Madurai AIR 1938 Mad. 640, the annual general meeting of a company called in December 1934 was adjourned and held in March 1935. The next annual general meeting was held in January,

1936, no other meting being held in 1935. The company was prosecuted for failure to call the annual general meeting in 1935. It was held that there should be one meeting per year and as many meetings as there are years.

The Registrar can, for any special reason, extend the time within which any annual general meeting is required to be held by a period not exceeding 3 months but the time for holding the first annual general meeting cannot be so extended.

Power to convene an annual general meeting

The proper authority to convene an annual general meeting is the Board of Directors, and if the managing director, manager, secretary or other officer calls a meting without such authority, it will not be effectual unless the Board ratifies the act before the meeting is held.

Notice

A public company must give at least 21 days notice for convening any general meeting including annual general meeting. Annual general meeting may be called after giving a shorter notice than 21 days if it is so agreed by all the members entitled to vote in the meeting. In calculating 21 days, the date on which the notice is served and the day of the meeting are excluded.

Date, time and place of holding the annual general meeting

(a) Every annual general meeting shall be called at any time during the business hours, on a day that is not a public holiday. It shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. The Central Government may exempt any class of companies from the provisions of Sec. 166 subject to such conditions as it may impose. A public company or a private company which is a subsidiary of a public company, may by its Articles fix the time for its annual general meetings and may also by a resolution passed in preceding annual general meeting fix the time for its subsequent annual general meetings and

(b) A private company which is not a subsidiary of a public company may in like manner and also by a resolution agreed to by all the members thereof, fix the time as well as the place for its annual general meetings

Adjournment

Where an annual general meeting is held but adjourned, the adjourned meeting is nothing but continuance of the earlier meeting and therefore if in the adjourned meeting the Balance Sheet and the Profit and Loss Account of the company are laid and adopted and thereafter sent to the Registrar, is not violated.

Holding of annual general meeting where the annual accounts are not ready

According to Central Government instructions, in case the annual accounts are not ready for laying at the appropriate annual general meeting, the company must hold the annual general meeting within the time limit, transact all business other than the consideration of the accounts, announce when the accounts are expected to be ready for laying and pass a suitable resolution adjourning the said annual general meeting to a specific date or to a date to be specified later on. Thus the company cannot take the plea that the annual general meeting was not held because the accounts were not ready.

Power of Central Government to call annual general meeting

The Central Government may, on the application of any member of the company, call or direct the calling of a general meeting of the company. However, it is to be noted that the Court has no power to call such meeting. A general meeting held in pursuance of this order will be deemed to be an annual general meeting of the company.

The Central Government may direct that only one member of the company present in person or by proxy shall be deemed to constitute a meeting.

Penalty

If a default is made in holding an annual general meeting in accordance with the above provisions or in complying with the directions given by the Central Government, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 5000 and in the case of a continuing default, with a further fine which may extend to Rs. 250 for every day after the first during which the default continues.

Importance

It is the annual general meeting at which the shareholders can exercise control over the affairs of the company. At this meeting some directors retire and come up for re-election

and thereby the shareholders find an opportunity to refuse to re-elect a director of whose action and policy they disapprove. Appointment of auditors is also made at this meeting. Annual accounts are presented at this meeting for the consideration of the shareholders and the shareholders can ask any question relating to the account. It is at this meeting that dividends are declared. At
this meeting the shareholders can discuss any other matters relating to the company's business.

EXTRAORDINARY GENERAL MEETING

Regulation 47 of the Table A provides that all general meetings other than annual general meetings shall be called extraordinary general meetings. An extraordinary general meeting is called to consider those transactions or business which cannot be postponed till the next annual general meeting. Hence, it is a meeting of a company which is held between two consecutive annual general meetings for transacting some urgent or special business. An extraordinary general meeting may be convened :

1. By the Board of Directors on its own or on the resolution of members; or
2. By the requisitionists themselves on the failure of the Board to call the meeting ; or
3. By the Central Government.

1 Extraordinary meeting convened by the Board of Directors

(A) On its own

Regulation 48(1) of Table A provides that the board may, whenever it thinks fit, call an extraordinary general meeting. An extraordinary general meeting may be convened by the Board of Directors if some business of special importance requires the approval of the members and which in the opinion of the Board of Directors can not be postponed till the next annual general meeting. The directors can call an extraordinary general meeting by passing a resolution in a properly convened board meeting or by a circular resolution. Regulation 48(2) of Table A

provides that "If at any time, they are not present within India, the number of directors capable of acting and forming a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board”.

(B) On the requisition of members

The directors are bound to call an extraordinary general meeting of the company if the requisition is made :

(i) in the case of a company having a share capital, by the holders of at least one-tenth paid up capital having the right to vote on the matter of requisition ; or

(ii) in the case of a company not having a share capital, by members representing not less than one-tenth of the total voting power in regard to the matter of requisition.

The Board of Directors is under a legal obligation to proceed within 21 days of the deposit of the requisition to call a meeting. The meeting shall be held within 45 days of such deposit of the requisition with the company. On receipt of the requisition, the Board shall send out notices for the meeting giving not less that 21 days' time.

3. Extraordinary meeting covered by the Central Government

If due to any reason it is impracticable to call or conduct an extraordinary general meeting, the Central Government may, either on its own or on the application of any director or any member who would be entitled to vote, order a meeting to be called, held and conducted in such manner as the Central Government thinks fit and may give such directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting.

Any meeting called, held and conducted in accordance with any such order of the Central Government will, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

The word 'impracticable' may be taken to mean impossible to hold a peaceful or useful meeting. It has been held that the word 'impracticable' should be taken to mean impractical from a reasonable point of view.

In Opera Photographic Ltd. Re; 1989 BCL [763 (1989)] case, there were only two directors and

one of them who was holding 51% of the shares wanted to remove his fellow director. The Articles required the quorum of two. The fellow director did not attend the meeting to frustrate him. The Central Government ordered a meeting to be called with the presence of one as a sufficient quorum.

CLASS MEETINGS

Class meetings are the meetings of the shareholders and the creditors. Class meetings are held to pass resolutions which will bind only the members of the particular class concerned. According to regulation 3(1), if the rights attached to any class of shares are to be varied, it can be done with the consent of the holders of 3/4 of the issued shares of that class in a separate meeting of that class of holders. Similarly, where a scheme of arrangement or compromise is proposed, the meetings of several classes of shareholders and creditors are required to be held. Class meetings can only be attended by the members of that class. Whenever it is necessary to alter or change the rights or privileges of a class as provided by the Articles, a class meeting must be called.

REQUISITES OF A VALID MEETING

A meeting to be in order must fulfil certain requirements.

1. Proper Authority

The Board of Directors is the proper authority to convene a general meeting of a company and for this purpose the board should pass a resolution at a duly convened meeting of the board. However, if the board fails to call a general meeting of the company, the members or the Central Government or the Central Government may call such a meeting. Some defects in appointment or qualification of the directors present at the meeting of the board will not necessarily be fatal to the validity of the resolution passed at the meeting provided the board has acted bonafide.

2. Notice of Meetings

A proper notice of the meetings must be given to the members of the company. The notice must be given 21 days before the date of the meeting. The period of 21 days excludes the day of service of the notice and also the day on which the meeting is to be held.

The length of the notice may be waived :

(a) in the case of an annual general meeting by the consent of all members;

(b) in the case of any other meeting by the consent of the holders of not less than 95% of the paid-up share capital or the total voting power where the company has no share capital.

Notice to whom

The notice is required to be given to

(a) all the members of the company who are entitled to vote on the matters which are proposed to be dealt with at the meeting ;

(b) all the persons who are entitled to a share in consequences of the death and insolvency of a member ;

(c) the auditor or auditors of the company. Deliberate omission to give notice of the meeting to members or to a single member will make the meeting invalid, but an accidental omission to give notice to or the non-receipt of notice by any member will not invalidate the proceedings at the meeting.

Contents of Notice

Every notice of a meeting is required to specify the place and the day and hours of the meeting and must contain a statement of the business to be transacted at the meeting. If the time of holding meeting and other essential particulars are not specified in the notice, the meeting will be invalid and all resolutions passed at the meeting will be of no effect.

The notice of general meeting must contain a statement of the business to be transacted at the general meeting of the company. The business to be transacted at a meeting may be general business or special business.

The Act provides (a) in the case of an annual general meeting, all business to be transacted at the meeting will be deemed special except the business relating to the consideration of accounts, Balance Sheet and reports of the Board of Directors and

auditors, the declaration of dividends, the appointment of directors in the place of those retiring and the appointment of and the fixing of the remuneration of the auditors and (b) in the case of any other meeting, all business will be deemed special.

If any special business is to be transacted at an annual general meeting a statement to that effect must be annexed to the notice of the meeting. The statement must set out all material facts concerning each item of business including in particular the nature of the concern or interest therein of every director or other managerial personnel. Thus every notice calling a meeting is required to specify the business to be transacted at the meeting.

A notice of meeting must give a sufficiently full and frank disclosure to the members of the fact upon which they are asked to vote otherwise the resolution passed at the meeting will be invalid.

In Kaye v. Croydon Tramways Co., there was a provisional agreement between two companies for the sale of the undertaking of the one company to the other. Under the agreement the buying company agreed to pay, in addition to the sum payable to the selling company, certain amount to the directors of the selling company as compensation for the loss of office. The notice calling the meeting of the shareholders to consider the agreement for sale of the undertaking did not disclose that there was a provision in the agreement for the payment of compensation to the directors. The Court held that the notice could not make the full and fair disclosure of all the material facts to the considered and voted upon at the meeting and therefore the resolutions passed at the meting were invalid and ineffective.

3. Quorum

Quorum means the minimum number of members that must be present at the meeting. The quorum is generally fixed by the company's article. Unless the articles provide for a large number, five members personally present in the case of a public company (other than a public company which has become such by virtue of the Act) and two members personally present in the case of any other company will be the quorum for a meeting of the company. If within half an hour from the time appointed for holding a meeting of the company, a quorum is not present, the meeting will stand dissolved if it was called upon the requisition of members but in any other case it stands adjourned to the same day in the next week, at the

same time and place or to such other day as the Board may determine. If at a adjourn meeting also the quorum is not present within half an hour from time appointed for holding the meeting the members present sufficient will be quorum .

The meeting must be attended by more than one member so as to constitute it as a meeting. But a few exceptions to this general rule may also be noted :

(a) The Central Government may, on the application of any member of the company, call a general meeting of the company and may direct that even one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(b) The Central Government may call a meeting of the company other than an annual general meeting and may give direction that even one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(c) In *East v. Bennet Bros. Ltd.,* one shareholder held all these preference shares in the company. A meeting of preference shareholders attended by him only was held to be a valid meeting.

4. Chairman of meeting

Before a meeting of a company can start its business, it is required to have a Chairman. It is the Chairman who is to preside at the meeting of the company. He is to conduct the meeting and to maintain the
order. It is the Chairman who is to put up the resolution, count the votes and declare the result. Usually the articles provide for the appointment of a Chairman but if there is no provision in the articles to this effect, the members present in the meeting shall elect one of themselves to be the Chairman of such meeting on a show of hands . If a poll is demanded on the election of the Chairman, it shall be taken forthwith and in such a case the Chairman elected on the show of hands will exercise all the powers of the Chairman. If some other person is elected Chairman as a result of the poll, he will be the Chairman for the rest of the meeting . He can adjourn the meeting in the event of disorder but he should do so only as a last resort, if his attempts to restore order have failed.

A Chairman is not entitled to close the meeting prematurely and if he does so, a new Chairman may be elected and the meeting of the company may be continued. However, it is to be noted that where a meeting is called but it is not held due to pandemonium and

confusion and a note to this effect is made in the minute book by the Chairman, the shareholders cannot elect a new Chairman because in such a case no meeting has actually been commenced and consequently no question of dissolving the meeting permanently by the Chairman arises.

Duties of the Chairman

(a) He must take care that the minority is not oppressed in any way.

(b) He must give the members who are present a reasonable opportunity to discuss any proposed resolution and it must be ensured that all the views are adequately aired. But at the expiry of a reasonable time, if he thinks fit, he should stop the discussion on any resolution.

(c) He must see that the meting is properly convened and constituted i.e. proper notice was given to every person entitled to attend the meeting and his own appointment is in order. It is the Chairman who is to see whether a quorum is present before proceeding with the business.

(d) The Chairman must conduct the proceedings in accordance with the provisions of the Act, the companies Articles of Association or Table A or in the absence thereof, the common law relating to the meetings.

(e) He should adjourn the meeting when it is impossible, by reason of disorder or other like cause, to conduct the meeting and complete its business. He must not use this power in a malafide manner.

(f) He must take care that the opinion of the meeting is properly ascertained with regard to the questions before it. He must do so by putting the resolution in a proper form before the members and then declaring the result.

(g) He must keep order in the meeting. He must decide all questions which arise at the meeting and which require decision at the time.

(h) He should exercise his casting vote, if any, provided by the articles for the benefit of the company.

(i) The minutes of the meeting should be properly recorded and signed by the

chairman.

5. Minutes of the meeting :

Every company must keep a record of all proceedings of every general meeting and of all proceedings of every meeting of its Board of Directors and of every committee of the board. These records are known as minutes and the books in which these records are written are called 'minute books'.

Rules of Keeping Minutes

(a) Within 30 days of every such meeting, entries of the proceedings must be made in the books kept for that purpose.

(b) Each page of minutes book which records proceedings of a board meeting must be initialled or signed by the Chairman of the same meeting or the next succeeding meeting. In the case of minutes of proceedings of a general meeting, each page of the minute book must be initialled or signed by the Chairman of the same meeting.

(c) The minutes of each meeting must contain a fair and correct summary of the proceedings at the meeting.

(d) All the appointments of officers made at any of the meetings aforesaid must be included in the minutes. In the case of a meeting of the Board of Directors or of a committee of the board, the minutes must contain the names of the directors present at the meeting and the names of the directors dissenting from or not concurring in the resolution passed at the meeting .

(e) The Chairman may exclude from the minutes, matters which are defamatory of any person, irrelevant or immaterial to the proceedings or which are detrimental to the interests of the company. Minutes of meetings kept in accordance with the above provisions are evidence of the proceedings recorded therein.

(f) The minutes books must be kept (i) at the registered office of the company; and (ii) be open during business hours to the inspection of any member without charge subject to reasonable restrictions but at least two hours each day must be allowed for inspection.

Penalty

If default is made in complying with the provision of the Act in respect of any meeting, the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 50.

VOTING AND ROLL

A vote is the formal expression of the will of the members of the house either for or against a proposal. The matters proposed and duly recommended in a general meeting of the company are decided by the voting of the members of the company.

The procedure of voting is regulated by the Articles subject to the provisions of the Act. Members holding any share capital of the company have the right to vote on every motion placed before the company. However, the members holding preference shares can vote only on those motions which affect the rights attached to their capital. Share warrant holders, executors of a deceased member, receiver of an insolvent member can not exercise any voting right unless registered as members. The voting rights of an equity shareholder at a poll are in proportion to his share of the paid up equity capital.

Voting may take place in either of the following two ways :

1. Voting by a show of hands

At any general meeting, unless the Articles otherwise provide, a resolution put to the vote is in the first instance decided by a show of hands except when a poll is demanded . While voting by a show of hands, one member has one vote irrespective of the shares held by him. Proxies can not be counted unless the Articles otherwise provide. The Chairman will count the hands raised and will declare the result accordingly. Chairman's declaration of the result of voting by the show of hands to be conclusive evidence .

2. Voting by poll

If there is dissatisfaction among the members about the result of voting by the show of hands, they can demand a poll. 'Poll' means counting the number of votes cast for and against a motion. The voting rights of a member on a poll shall be in proportion to his share of the paid-up equity capital of the company. Before or on the declaration of the result of voting on any resolution by a show of hands, a poll may be ordered to be taken by the Chairman of the meeting of his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the person or persons specified below :

(a) In the case of a public company having a share capital, by any member or members present in person or by proxy and holding shares in the company:

(i) which confer a power to vote on the resolution not being less than one tenth of the total voting power in respect of the resolution, or

(ii) on which an aggregate sum of not less than fifty thousand rupees has been paid-up,

(b) In the case of a private company having a share capital, by one member having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members present in person or by proxy, if more than seven such members are personally present,

(c) In the case of any other company, by any member or members present in person or by proxy and having not less than one tenth of the total voting power in respect of the resolution .

The demand for a poll may be withdrawn at any time by the person or persons who made the demand. The provisions of the Act apply to a private company, which is not a subsidiary of a public company unless the articles provide otherwise.

A poll demanded on the question of adjournment or the election of the Chairman shall be taken forth with. A poll demanded on any other question shall be taken at such time not being later than forty eight hours from the time when the demand was made, as the Chairman may direct. Where a poll is taken, the meeting will be deemed to continue until the ascertainment of the result of the poll. Even a voter who was not present at the meeting when the poll was demanded to be taken, may vote personally in a poll held on the next day.

The Chairman of the meeting shall have the power to regulate the manner in which a poll shall be taken . Where a poll is to be taken, the Chairman of the meeting shall appoint two scrutiniser

to scrutinise the votes given on the poll and to report thereon to him. Of the two scrutiniser, one shall always be a member present at the meeting, provided such a member is available and willing to the appointed .

The Articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which calls or other sums presently payable by him have not been paid .

Proxies

A meeting has right to vote either in person or by proxy. Any member of a company who is entitled to attend and vote at a meeting of the company can appoint another person (whether a member or not) as his proxy to attend and vote instead of himself but a proxy so appointed will have no right to speak at the meeting. Unless the articles otherwise provide, a proxy will not be allowed to vote except on a poll. A member of a private company, unless the articles provide otherwise is not entitled to appoint more than one proxy to attend on the same occasion. Besides unless the articles provide otherwise a member of a company not having a share capital is not entitled to appoint a proxy. The instrument appointing a proxy is required to be in writing and signed by the appointor or his attorney duly authorised in writing. A proxy is revocable but it should be revoked before the proxy has voted. If the member who has appointed a proxy personally attends and votes at the meeting, the proxy is revoked by such conduct of the member. Death of the member who has appointed a proxy revokes the authority of his proxy but if the company has no notice of such death, then the vote given by the proxy will be valid.

RESOLUTIONS

The decisions of a meeting take the form of resolutions carried by a majority of votes. A question on which a vote is proposed to be taken is called a 'motion'. Once a 'motion' has been put to the members and they have opted in favour of it, it becomes a resolution. A resolution may, thus, be defined as the formal decision of a meeting on a particular proposal before it.

Types of Resolutions

Resolutions are of the following types :

1. Ordinary Resolutions ;
2. Special Resolutions ; and
3. Resolutions requiring special notice.

Ordinary Resolution

At a general meeting of which notice has been given, if votes cast in favour of the resolution by members exceed the votes, if any, cast against the resolution by members, the resolution so passed is an ordinary resolution

Unless the Companies Act or the memorandum or the articles expressly require a special resolution or resolution requiring special notice, an ordinary resolution is sufficient to carry out any matter.

Transactions where ordinary resolution is required

Important maters for which an ordinary resolution is enough are as follows :

(i) Issue of shares at a discount

(ii) Alteration of the share capital

(iii) Approval of the statutory report

(iv) The consideration of accounts, the Balance Sheet and the report of the Board of Directors and of the auditors

(v) Appointment of auditors and fixation of their remuneration .

(vi) Appointment of the first directors who are to retire by rotation .

(vii) Increase or decrease in the number of directors within the limits prescribed by the Articles .

(viii) Adoption of the appointment of sole selling agents .

(ix) Removal of a director and appointment of another director in his place .

(x) Declaration of dividend .

(xi) Appointment of liquidator in case of voluntary winding up and fixing his

remuneration .

(xii) To rectify the name of company .

(xiii) To cancel or redeem debentures .

(xiv) To cancel directors by rotation .

(xv) To approve the remuneration of directors .

(xvi) To fill the vacancy in the office of Liquidator .

Special Resolution

The resolution is a special resolution, if

(i) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting ;

(ii) the notice required has been duly given of the general meeting; and

(iii) the votes cast in favour of the resolution by members are three times the number of the votes, if any, cast against the resolution by the members .

A copy of the special resolution must be filed with the Registrar within 30 days of its passing.

Special Resolution Matters

In addition to the matters given in the articles of the company, the Companies Act specifies certain matters for which a special resolution must be passed ; for example,

(i) to alter the memorandum of the company ;

(ii) to alter the articles of the company ;

(iii) to issue further shares without pre-emptive rights ;

(iv) for creation of a reserve capital ;

(v) to reduce the share capital ;

(vi) to pay interest out of the capital to members,

(vii) for authorising a director to hold an office or place of profit;

(viii) for voluntary winding-up of a company.

Resolutions Requiring Special Notice

A resolution requiring special notice is not an independent class of resolutions. It is a kind of ordinary resolution, with the only difference that here the mover of the proposed resolution is required to give a special notice of 14 days to the company before moving the resolution, and the company shall then immediately give its members notice of the resolution in the same manner as it gives notice of the meeting. If that is not practicable, the company shall give not less than seven days notice before the meeting either by advertisement in a newspaper or in any other mode allowed by the articles .

In addition to the purposes enumerated in the articles requiring special notice, under the Act, special notice has to be given for the following matters :

(a) for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor and for a resolution providing expressly that a retiring auditor shall not be re-appointed .

(b) for certain persons who shall not be eligible for appointment as directors whose period of office is liable to determination by retirement of directors by rotation .

(c) for removing a director before the expiry of his period of office; and

(d) of any resolution to appoint a director in place of a director so removed.

MANAGERIAL REMUNERATION

Directors have no right to claim remuneration for their services unless there is a specific provision to that effect in the Articles or the company resolves for the same in a general meeting as per the provisions of the Act. The resolution may be ordinary or special as the Articles may require.

The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its directors and its managing agent, secretaries and treasurer or manager in respect of any financial year shall not exceed 11% of the net profit of that company for that financial year. This percentage shall be exclusive of the fees payable to the directors.

If in any financial year, a company has no profits or its profits are inadequate, the company shall not pay any remuneration to its directors except with the previous approval of the Central Government. The word remuneration shall include the following :

(i) any expenditure incurred on providing free accommodation and other amenities connected therewith ;

(ii) any expenditure incurred on providing any other amenity either absolutely free or at a concessional rate ;

(iii) any expenditure incurred in providing any obligation or service which in the absence of provision by the company would have to be borne by that person ;

(iv) any expenditure incurred in providing life insurance, pension, annuity or gratuity to such person or his spouse or child.

In computing the net profits of a company in any financial year for the purpose of the Act, credit shall be given for bounties and subsidies received from any government, or any public authority constituted or authorised in this behalf, by any government, unless and except in so far as the Central Government otherwise directs.

However credit shall not be given for the following sums :

(i) Profits, by way of premium, on the shares or debentures of the company, which are issued or sold by the company,

(ii) Profits on the sales by the company of the forfeited shares;

(iii) Profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof ;

(iv) Profits from the sales of any immovable property or fixed assets of a capital nature comprising in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets.

In making the aforesaid computation, the following sums shall be deducted :

(i) all the usual working charges ;

(ii) director's remunerations ;

(iii) bonus or commission paid or payable to any employees of the company whether on a whole time or on a part time basis ;

(iv) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;

(v) any tax on business profits imposed for special reasons or in special circumstances;

(vi) interest on debentures issued by the company ;

(vii) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets ;

(viii) interest on unsecured loans and advances ;

(ix) expenses on repairs to immovable or movable property provided the repairs are not of a capital nature ;

(x) contributions to charitable and other funds ;

(xi) depreciation to the extent specified;

(xii) past losses arising after Ist April, 1956 to the extent not already deducted in any year preceding that in which net profits have to be ascertained ;

(xiii) any compensation or damages under a legal liability or arising from breach of contract ;

(xiv) any sum paid by way of insurance against the risk of meeting any liability as specified in clause (iii) above ; and

(xv) bad debts written off or adjusted during the year of account.

The following sums shall not be deducted in computing the profits :

(i) Income tax and super tax payable by the company or any other tax on the

income of the company not falling under clauses (d) and (e) of Section 399 (4);

(ii) any compensation, damages or payments made voluntarily ;and

(iii) loss of a capital nature.

It is pertinent to note that, a whole time director or managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company, or partly by one way and partly by the other. Except with the approval of the Central Government, such remuneration shall not exceed 5 per cent of the net profits for one such director, or 10 per cent for all of them in case there are more than one such director.

A part time director may be paid remuneration either by way of a monthly, quarterly, or annual payment with the approval of the Central Government, or by way of commission if the company by a special resolution authorises such payment with the approval of the Central Government, or by a special resolution authorises such payment.

The remuneration paid to part time directors shall not exceed per cent of the net profits of the company if the company has a managing or whole time director or a manager and 3 per cent of the profits in any other case. However, the company in a general meeting may, with the approval of the Central Government, increase these rates of remuneration.

TOPIC NO 4

Procedures of Winding up a Company

INTRODUCTION

Winding up (which is more commonly called liquidation in Scotland) is proceeding for the realisation of the assets, the payment of creditors, and the distribution of the surplus, if any,

among the shareholders, so that the company may be finally dissolved. Professor Gover in his book *Principles of Modern Company Law* has described the winding up of a company in the following words :

‘‘Winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. An administrator called a liquidator is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.’’

Thus winding up is the last stage in the life of a company. It means a proceeding by which a company is dissolved.

Winding up should not be taken as if it is dissolution of a company. The winding up of a company precedes its dissolution. Prior to dissolution and after winding up, the legal entity of the company remains and it can be sued in a Court of law. On dissolution the company ceases to exist, its name is actually struck off from the Register of Companies by the Registrar and the fact is published in the official Gazette.

MODES OF WINDING UP

A company can be wound up in three ways :

1. Compulsory winding up by the Court;
2. Voluntary winding up : (i) Members' voluntary winding up; (ii) Creditors' voluntary winding up;
3. Voluntary winding up subject to the supervision of the Court .

WINDING UP BY THE COURT

A company may be wound up by an order of the Court. This is called compulsory winding up or winding up by the Court. Section 433 lays down the following grounds where a company may be wound up by the Court.

A petition for winding up may be presented to the Court on any of the grounds stated below :

1. Special resolution

A company may be wound up by the Court if it has, by a special resolution, resolved that it be wound up by the Court. But it is to be noted that the Court is not bound to order for winding up merely because the company by a special resolution has so resolved. Even in such a case it is the discretion of the Court to order for winding up or not.

2. Default in filing statutory report or holding statutory meeting

If a company has made a default in delivering the statutory report to the Registrar or in holding the statutory meeting, a petition for winding up of the company may be presented to the Court. A petition on this ground may be presented to the Court by a member or Registrar (with the previous sanction of the Central Government) or a creditor. The power of the Court is discretionary and generally it does not order for winding up in first instance. The Court may, instead of making an order for winding up, direct the company to file the statutory report or to hold the statutory meeting but if the company fails to comply with the order, the Court will wind up the company.

3. Failure to commence business within one year or suspension of business for a whole year

Where a company does not commence its business within one year from its incorporation or suspends its business for a whole year, a winding up petition may be presented to the Court. Even if the business is suspended for a whole year, this by itself does not entitle the petitioner to get the company wound up as a matter of right but the question whether the company should be wound up or not in such a circumstances entirely in the discretion of the Court depending upon the facts and circumstances of each case. Even if the work of all the units of the company has been suspended then too it will still be open to the Court to examine as to whether it will be possible for the company to continue its business. Before the order of winding up on this ground the Court is required to see what are the possibilities of resumption of the business of the company. The suspension of the business, for this purpose, must be the entire business of the company and not a part of it.

The Court will not order for winding up on the grounds, if :

(a) suspension of business is due to temporary causes ; and

(b) there are reasonable prospects for starting of business within a reasonable time.

4. Reduction of membership below the minimum

When the number of members is reduced, in the case of a public company, below 7 and in the case of a private company, below 2, a petition for winding up of the company may be presented to the Court.

5. Company's inability to pay its debts

A winding up petition may be presented if the company is unable to pay its debt. 'Debt' means definite sum of money payable immediately or at future date. A company will be deemed to be unable to pay its loan in the following conditions:

(a) a creditor of more than Rs. 500 has served, on the company at its registered office, a demand under his hand requiring payment and the company has for three weeks thereafter neglected to pay or secure or compound the sum to the reasonable satisfaction of the creditor ; or

(b) execution or other process issued on a judgement or order in favour of a creditor of the company is returned unsatisfied in whole or in part ; or

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts, taking into account its contingent and prospective liabilities, i.e. whether its assets are sufficient to meet its liabilities.

6. Just and Equitable

The Court may also order to wind up of a company if it is of opinion that it has just and equitable that the company should be wound up. What is 'just and equitable' depends on the facts of each case. The words 'just and equitable' are of wide connotation and it is entirely discretionary on the part of the Court to order winding up or not on this ground.

Thus the Court itself works out the principles on which the order for winding up under the section is to be made.

Winding up by the Court on 'just and equitable' grounds may be ordered in the cases given below :

(a) When the substratum of the company has gone : In the words of Shah, J. in *Seth Moham Lal v. Grain Chambers Ltd.* the "substratum of the company is said to have disappeared when the object for which it was incorporated has substantially failed, or when it is impossible to carry on the business of the company except at a loss, or the existing and possible assets are insufficient to meet the existing liabilities.

The substratum of a company will be deemed to have gone when

(i) The object for which it was incorporated has substantially failed or has become impossible or (ii) it is impossible to carry on business except at a loss or (iii) the existing and possible assets are insufficient to meet the existing liabilities of the company.

(b) When there is oppression by the majority shareholders on the minority, or there is mismanagement.

(c) When the company is formed for fraudulent or illegal objects or when the business of the company becomes illegal.

(d) When there is a deadlock in the management of the company. When there is a complete deadlock in the management of the company, it will be wound up even if it is making good profits. In *Re Yenidjee Tobacco Co. Ltd.* A and B the only sharehodlers and directors of a private limited company became so hostile to each other that neither of them would speak to the other except through the secretary. Held, there was a complete deadlock and consequently the company be wound up.

(e) When the company is a 'bubble', i.e. it never had any real business.

PERSONS ENTITLED TO APPLY FOR WINDING UP

The Court does not choose to wind up a company at its own motion. It has to be petitioned. the Companies Act enumerates the persons those can file a petition to the Court for the winding up of a company. The petition for winding up may be brought by any one of the following :

1. Petition by Company

A company can make a petition only when it has passed a special resolution to that effect. However, it has been held that where the company is found by the directors to be insolvent due to circumstances which ought to be investigated by the Court, the directors may apply to the Court for an order of winding up of the company even without obtaining the sanction of the general meeting of the company.

2. Petition by Creditors

The word 'creditor' includes secured creditor, debentureholder and a trustee for debentureholder. A contingent or prospective creditor (such as the holder of a bill of exchange not yet matured or of debentures not yet payable) is also entitled to petition for a winding up of the company.

Before a petition for winding up of a company presented by a contingent or prospective creditors is admitted, the leave of the Court must be obtained for the admission of the petition. Such leave is not granted (a) unless, in the opinion of the Court, there is a prima facie case for winding up the company; and (b) until reasonable security for costs has been given.

Notice that a creditor has a right to winding up order if he can prove that he claims an undisputed debt and that the company has failed to discharge it. When a creditors' petition is opposed by other creditors, the Court may ascertain the wishes of the majority of creditors.

3. Contributory Petition

The term 'contributory' means every person who is liable to contribute to the assets of the company in the event of its being wound up.

it includes the holder of fully-paid shares. A fully-paid shareholder will not, however, be placed on the list of contributors, as he is not liable to pay any contribution to the assets, except in cases where surplus assets are likely to be available for distribution.

A contributory is entitled to present a petition for winding up a company if :

(a) the number is reduced, in the case of a public company below seven and in the case of private company below two; and

(b) the shares in respects of which he is a contributory either were originally

allotted to him or have been held by him; and

(c) the shares have been registered in his name, for at least six months during the period of 18 months immediately before the commencement of the winding up; and

(d) the shares have been devolved on him during the death of a former holder .

4. Registrar's Petition

The Registrar can present a petition for winding up a company only on the following grounds, viz.,

(a) if a default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(b) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;

(c) if the number of members is reduced, in the case of a public company below seven and in the case of a private company below two ;

(d) if the company is unable to pay its debts; and

(e) if the Court is of opinion that it is just and equitable that the company should be wound up.

Note that the Registrar can file a petition for winding up only with prior approval of the Central Government. The Central Government before sanctioning approval must give an opportunity to the company for making its represent actions, if any.

Again a petition on the ground of default in delivering the statutory report or holding the statutory meeting cannot be presented before the expiration of 14 days after the last day on which the statutory meeting ought to have been held.

5. Petition by any Person Authorised by the Central Government

If it appears to the Central Government from any report of the inspectors appointed to investigate the affairs of the company, that it is expedient to wind up the company because its business is being conducted with intent to defraud creditors, members or any other person, or its business is being conducted for a fraudulent or unlawful purpose, or the management is guilty of fraud, misfeasance or other misconduct, the Central Government

may authorise any person to present to the Court a petition for winding up of the company that is just and equitable that the company should be wound up.

COMMENCEMENT OF WINDING UP (SECTION 441)

Where before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company will be deemed to have commenced from the date of the resolution. In all other cases (i.e. where the company has not previously passed a resolution for voluntary
winding up), the winding up will be deemed to commence from the time of the presentation of the petition for the winding up.

The Court may dismiss or allow the petition for winding up and also can adjourn its hearing or pass conditional order of winding up. In the case of *Misrilal Dharamchand Ltd. v. B. Patnaik Mines Ltd. (1978)* the Court ordered for winding up but stayed the operation of the order for six months so as to enable the company to pay the petitioner, if it could do so within this period and in case of failure the order was to come in force.

Powers of the Court

On hearing a winding up petition, the Court may dismiss it or adjourn the hearing or make interim orders or make an order for winding up the company, with or without costs or any other order that it thinks fit .

Consequences of winding up

(i) Where the Court makes an order for winding up of company, the Court must forthwith cause intimation thereof to be sent to the Official Liquidators and the Registrar .

(ii) On the making of a winding up order it is the duty of the petitioner in the winding up proceedings and of the company to file with the Registrar a copy of the order of the Court within 30 days from the date of the making of the order.

(iii) The winding up order is deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued.

(iv) When a winding up order has been made, no suit or other legal proceedings

can be commenced against the company except with the leave of the Court. Suits pending at the date of the winding up order cannot be further proceeded without the leave of the Court. the Court which is winding up the company has jurisdiction to entertain or dispose of (a) any suit or proceeding by or against the company;

(b) any claim made by or against the company;

(c) any application made by or in respect of the company ;

(d) any question of priorities or any other question whatsoever which may relate to or arise in course of the winding up of the company.

(v) An order for winding up operates in favour of all the creditors and of all the contributories of the company as if it had been made on the joint petition of a creditor and of a contributory.

(vi) any disposition of the property (including actionable claims) of the company, any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up shall be void, unless the Court otherwise orders.

Thus the Court can direct that any such disposition of property or actionable claims or transfer of shares or alteration of status of the members will be valid. But unless the Court so directs, such disposition, transfer or alteration will be void.

(vii) any attachment and sale of the estate or effects of the company, after the commencement of the winding up, will be void. In the case of winding up by the Court any attachment, distress or execution put in force, without leave of the Court, against the estate or effects of the company after the commencement of the winding up will be void. Similarly any sale held , without leave of the Court, of any of the properties or effects of the company after the commencement of the winding up will be void. With leave of the Court, attachment and sale of the properties of the company will be valid even if such attachment and sale are made after the commencement of the winding up of the company. Besides this section does not apply to any proceedings for the recovery of any tax imposed or any dues payable to the Government. Thus I.T.O. can commence assessment proceedings without leave of the Court.

(viii) It is to be noted that winding up order does not bring the business of the company to an end. The corporate existence of the company continues through winding up till the company is dissolved. Thus the company continues to have corporate personality during winding up. Its corporate existence come to an end only when it is dissolved.

(ix) An order for winding up operates in favour of all the creditors and of all the contributories of the company as if it had been made on the joint petition of a creditor and of contributory.

(x) On a winding up order being made in respect of a company, the Official Liquidator, by virtue of the office, becomes the liquidator of the company .

OFFICIAL LIQUIDATORS

Under the present Act, the only person who is competent to act as the liquidator in a winding up is the official liquidator. For the purpose of winding up, there shall be attached to each high Court an official liquidator appointed by the Central Government, who may be either a whole time or part time officer depending upon the volume of work. In district courts the official receiver will be the official liquidator. The Central Government may appoint one or more deputy or assistant official liquidators to assist the official liquidator in the discharge of his functions. There is no provision in the Act, for the removal of the official liquidator [Sec. 448(1) & (1-A)].

Liquidator

On a winding up order being made, the official liquidator, by virtue of his office, becomes the liquidator of the company (Sec. 449). Where the official liquidator becomes or acts as liquidator, there shall be paid to the Central Government out of the assets of the company such fees as may be prescribed.

A liquidator shall be described by the style of "The official liquidator" of the particular company in respect of which he acts and not by individual name .

Provisional Liquidator

The Court may appoint the official liquidator to be the liquidator provisionally at any time after the presentation of the petition for winding up and before making winding up order. Before making such an appointment notice must be given to the company and a reasonable opportunity must be given to it to make representation. The Court may dispense with such notice where there are special reasons. Such reasons must be recorded in writing. A provisional liquidator is as

much liquidator as a liquidator in the winding up of a company. But where a provisional liquidator is appointed by the Court, the Court may limit and restrict his powers. On a winding up order being made, the official liquidator shall cease to be provisional liquidator and shall become liquidator of the company.

General provisions for liquidators

The liquidator shall conduct the proceedings in winding up the company and perform such duties as the Court may impose. The official liquidator gets his remuneration from the Central Government and as such he is not entitled to any further remuneration. For the services rendered by the official liquidator to the company, the Central Government shall pay such fees out of the assets of the company as may be prescribed.

The acts of a liquidator shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification. But his acts shall not be valid if they are done after it has been shown that his appointment was invalid .

Statement of Affairs

The company must make out and submit to the official liquidator a statement as to the affairs of the company in the prescribed form verified by an affidavit and containing the following particulars :

(a) The assets of the company, stating separately the cash balance in hand and at the bank and the negotiable securities held by the company;

(b) Its debts and liabilities;

(c) Names, residences and occupation of its creditors, stating separately the amount of secured and unsecured debts;

(d) In the case of secured debts, particulars of securities given, their value and the dates on which they were given ;

(e) The debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof; and

(a) Such further or other information as may be prescribed or as the official

liquidator may require.

Note that the statement must be submitted and verified by one or more of the directors and by the manager, secretary or other chief officer of the company and it must be submitted within 21 days from the relevant date or within such extended time not exceeding three months .

Duties of the Liquidator

They may be summarised as under :

(i) He must conduct equitably and impartially all proceedings in the winding up according to the provisions of the law.

(ii) He must submit a preliminary report to the Court as to :

(a) the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities, giving separately, under the heading of assets such as

(i) cash and negotiable securities;

(ii) debts due from contributories;

(iii) debts due to the company and securities, if any available in respect thereof

(iv) immovable and movable properties belonging to the company; and

(v) unpaid calls.

(b) if the company has failed, as to the causes of the failure; and

(c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof.

Note that the Court may extend the period of six months for the submission of the above report by the official liquidator. The Court may also order that no such statement need be submitted.

(xi) The official liquidator may, if he thinks fit, make further reports, stating the manner in which the company was promoted or formed. He may state in the reports whether in his opinion any fraud has been committed by any person in its promotion or formation, or since the formation thereof. He may also state any other matters which, in his opinion, it is desirable to bring to the notice of the Court.

(xii) He must take into his custody and control the property of the company.

Notice that so long as there is no liquidator, all the property and effects of the company are deemed to be in the custody of the Court .

(xiii) Control of powers : The liquidator must in the administration of the assets of the company and the distribution thereof among its creditors have regard to any directions which may be given by a resolution of the creditors or contributories at any general meeting or by the committee of inspection . Any directions given by the creditors or contributories at any general meeting override any directions given by the committee of inspection.

(xiv) To Summon Meetings of Creditors and Contributories : He may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes. But he shall be bound to summon such meetings, at such times, as the creditors or contributories may, by resolution, direct, or whenever requested in writing to do so by not less than one tenth in value of the creditors or contributories, as the case may be.

(iii) Proper Books : The liquidator must keep proper books for making entries or recording minutes of proceedings at meetings and of such other matters as may be prescribed. Any creditor or contributory may, subject to the control of the Court, inspect any such books, personally or through his agent.

(iv) He must, at least twice in each year, present to the Court an account of his receipts and payments as liquidator. The account must be in the prescribed form and must be made in duplicate. The Court gets the account audited, keeps one copy thereof in its records and delivers the other copy to the Registrar for filling. Each copy shall, however, be open to the inspection of any creditor, contributory or person interested. The liquidator must also send a printed copy of the accounts so audited by post to every creditor and to every contributory.

(v) Within two months from the date of the direction of the Court, the liquidator must call a meeting of the creditors for determining the persons who are to be members of the committee of inspection, if such committee is to be appointed. Within 14 days of the meeting of the creditors, the liquidator must call a meeting of the contributories to consider the decision of the creditors.

(vi) Within two months of the expiry of each year from the commencement of winding up, the liquidator must file a statement duly audited, by a qualified auditor with respect to the proceedings in, and position of, the liquidation.
The statement must be filed :

(a) in the case of a winding up by or subject to the supervision of the Court, in the Court ; and
(b) in the case of voluntary winding up, with the Registrar.

Note that when the statement is filed in the Court, a copy must simultaneously be filed with the Registrar and must be kept by him along with the other records of the company .

Powers of The Liquidator

A liquidator has two types of powers under the Act :

(a) Powers exercisable with the sanction of the Court ; and

(b) Powers exercisable without the sanction of the Court.

Powers with the Sanction of the Court

(a) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, on behalf of the company ;
(b) to carry on the business of the company for the beneficial winding up of the company ;
(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract ;
(d) to raise any money required on the security of the assets of the company ;
(e) to appoint an advocate, attorney or pleader to assist him in the performance of his duties ;

(f) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Note that the Court may by order provide that the liquidator may exercise any of the above powers without the sanction of the Court. Powers Without the Sanction of the Court

The liquidator may exercise the following powers without the sanction of the Court, namely, powers :

(a) to execute documents and deeds on behalf of the company and use, when necessary, the company's seal ;

(b) to inspect the records and returns of the company or the files of the Registrar without payment of any fee ;

(c) to draw, accept, make and endorse any bills of exchange, hundis or promissory notes with the same effect as if drawn, accepted, made, or endorsed by the company in the course of its business ;

(d) to prove, rank and claim in the insolvency of any contributory for any balance against his estate and to receive dividends in respect thereof;

(e) to take out, in his official name, letters of administration to any deceased contributory ;

(f) to appoint an agent to do any business which he is unable to do himself . For example, he can appoint any advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties, but with the sanction of the Court.

Supervision and control over liquidators

1 Control by contributories and creditors

The contributories and creditors exercise control over the liquidator in the performance of his duties through the medium of the meetings which it is his duty to call from time to time. Any creditor or contributory may, subject to the control of the Court inspect the books which are maintained by the liquidator. The liquidator is also required to print and send a copy of the audited accounts to each creditor and contributory.

2. Control by Court

The liquidator shall apply to the Court for directions in relation to any matter arising in the winding up. The Court has the power to confirm, reserve or modify any act or decision of the liquidator if complained by any aggrieved person. The Court has the power to cause the accountsof the liquidator to be audited in such manner as it thinks fit.

3. Supervision by committee of inspection

The committee of inspection can inspect the accounts of the liquidator at all reasonable times. The liquidator is under an obligation to have directions from the committee of inspection.

4. Control by Central Government

The Act seeks to bring the conduct of the liquidators of companies under the control and scrutiny of the Central Government. Where a liquidator does not faithfully perform his duties and duly observe all the requirements imposed upon him by the Act or the rules thereunder with respect to the performance of his duties, or if any complaint is made to the Central Government by any creditor or contributory in regard thereto, the Central Government shall enquire into the matter, and take such action thereon as it may think fit . The power includes the power to remove the liquidator from office.

The Central Government may at any time require any liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding up in which he is engaged. It may also, if it thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up. The Central Government may also direct a local investigation to be made of the books and vouchers of the liquidator.

The provisions of this section do not apply where the winding up has been completed after dissolution.

Committee of Inspection

The Court may, at the time of making an order for the winding up or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator. Where such a direction is given by the Court, the liquidator is required to convene, within 2 months from the date of the direction, a meeting of the creditors to determine who are to

be the members of the committee, within 14 days from the date of the creditors' meeting, the liquidator must call a meeting of the contributories to consider the creditors' decision with respect to the membership of the committee. Contributories may accept the decision of the creditors with or without modification or reject it. If the contributories at their meeting do not accept the creditors' decision in its entirely, the liquidator shall apply to the Court for directions as to what the composition of the committee should be and who shall be its members. The committee shall consist of not more than 12 members, being creditors or contributories of the company in such proportion as may be agreed on by the meetings of the creditors and contributories and in case of difference of opinion, as may be determined by the Court. The Committee may inspect the accounts of the liquidator at all reasonable time.

The committee will meet at such times as it may from time to time appoint and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary. The quorum for a meeting of the committee will be one-third of the total number of the members or two, whichever is higher. The committee may act by a majority of its members present at a meeting but shall not act unless a quorum is present. A member may resign by notice in writing signed by him and deliver to the liquidator. If a member of the committee is adjudged as insolvent or compounds or arranges with his creditor or is absent from five consecutive meetings of the committee without leave of those members, who together with himself, represent the creditors or contributories, his office shall become vacant. A member of the committee may be removed at a meeting of the creditors, if he represents creditors, or at a meeting of contributories if he, represents contributories, by an ordinary resolution of which seven days' notice has been given stating the objects of the meeting. When any vacancy has occurred in the committee, the liquidator will call a meeting of the creditors or contributories, as the case may be, and the meeting may reappoint the same person or appoint some other person in the vacancy. However, the liquidator may apply to the Court that the vacancy need not be filled in and if the Court is satisfied that in the circumstances of the case the vacancy need not be filled, it may make an order accordingly.

Dissolution of Company in Winding up by the Court

The Court may make an order for the dissolution of a company in the following conditions : (a) When the affairs of the company have been completely wound up ; or (b) when the Court is of opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason and it is just and equitable in the circumstances of the case that an order of dissolution of the company should be made. Where such an order is made by the Court, the company will be dissolved from the date of the order of the Court. Within 30 days from the date of the order, the liquidator must send a copy of the order to the Registrar. On the dissolution, the corporate existence of the company comes to an end.

Company in liquidation exists as juristic personality until order of dissolution is based by the Court. After the order of dissolution, the legal personality of the company come to an end. The Court may declare the dissolution void within 2 years from the date of the dissolution.

VOLUNTARYWINDINGUP

Winding up by the creditors or members without any intervention of the Court is called 'voluntary winding up'. In voluntary winding up, the company and its creditors are left free to settle their affairs without going to the Court, although they may apply to the Court for directions or orders if and when necessary.

A company may be wound up voluntarily under the circumstances given hereunder :

1. when the period fixed for the duration of the company by the articles has expired or the event has occurred on the occurrence of which the articles provide that the company is to be dissolved and the company in a general meeting has passed a special resolution to wind up voluntarily; or
2. the company has passed a special resolution to wind up voluntarily. Thus a company may be wound up voluntarily at any time and for any reason if a special resolution to this effect is passed in its general meeting.

When a company has passed a resolution for voluntary winding up, it must within 14 days of the passing of the resolution gives notice of
the resolution by advertisement in the official Gazette and also in some newspaper circulating in

the district where the registered office of the company is situated.

Commencement of Voluntary Winding up

A voluntary winding up is deemed to commence at the time when the resolution for winding up is passed. The date of the commencement of the winding up is important for several matters such as liability of past members and fraudulent preferences, etc..

Consequences of Voluntary Winding up

The consequences of voluntary winding up are :

1. From the commencement of voluntary winding up, the company ceases to carry on its business, except so far as may be required for the beneficial winding up thereof .
2. The possession of the assets of the company vests in the liquidator for realisation and distribution among the creditors. The corporate state and powers of the company shall, however, continue until it is dissolved .
3. On the appointment of a liquidator, all the powers of the board of directors cease and the liquidator may exercise the powers mentioned in The Act including the power to do such things as may be necessary for winding up the affairs of the company and distributing its assets. The liquidator appointed in a members' voluntary winding up is merely an agent of the company to administer the property of the company for purposes prescribed by the statue.

Kinds of Voluntary Winding up

Voluntary winding up may be :

(a) A members' voluntary winding up; or

(b) A creditors' voluntary winding -up.

Members' voluntary winding up

A members' voluntary winding up takes place only when the company is solvent. It is initiated by the members and is entirely managed by them. The liquidator is appointed by

the members. No meeting of creditors is held and no committee of inspection is appointed. To obtain the benefit of this form of winding up, a declaration of solvency must be filed.

Declaration of solvency

Where it is proposed to wind up the company voluntarily the directors or a majority of them, may, at a meeting of the board, make a declaration verified by an affidavit that the company has no debts or that it will be able to pay its debts in full within a period not exceeding 3 years from the commencement of winding up as may be specified in the declaration. Such declaration shall be made within five weeks immediately preceding the date of the passing of the resolution for winding up and shall be delivered to the Registrar before that date. It shall also be accompanied by a copy of the auditors on the Profit and Loss Account and the Balance Sheet of the company prepared upto the date of the declaration and must embody a statement of the company's assets and liabilities as on that date.

Where such a declaration is duly made and delivered, the winding up following shall be called members' voluntary winding up. Where
the same is not duly made, it shall be called creditors' voluntary winding up.

The Act deal with provisions applicable to members' voluntary winding up. They are as follows :

1. Appointment and Remuneration of Liquidator

On the passing of the resolution for winding up, the company must in a general meeting appoint one or more liquidators and fix his or their remuneration. Any such remuneration cannot be increased at all, not even with the sanction of the Court and the liquidator cannot take charge of his office unless the remuneration is so fixed .

2. Powers of the Board on Appointment of Liquidator

On the appointment of a liquidator, all the powers of the board and of a managing or whole-time director, and manager, if there be any of these, shall cease, except for the purpose of giving notice of such appointment to the Registrar or in so far as the company in a general meeting or the liquidator may sanction the continuance thereof .

3. Office of the Liquidator Falling Vacant

If a vacancy occurs by death, resignation or otherwise in the office of any liquidator appointed by the company, the company in a general meeting may fill the vacancy .

4. Notice of Appointment to Registrar

The company must, within 10 days of the appointment of the liquidator, or the filling up of the vacancy, as the case may be, give notice to the Registrar of the event. Default renders the company and every officer (or liquidator) who is in default liable to fine upto Rs. 100 for every day of default .

5. Calling Meeting of Creditors

If the liquidator at any time is of opinion that the company is insolvent, he must summon a meeting of the creditors, and lay before the meeting a statement of the assets and liabilities of the company. Thereafter the winding up proceeds as if it were a creditors' voluntary winding up and not a members' voluntary winding up .

6. Calling General Meeting at the End of one Year

In the event of the winding up continuing for more than one year, the liquidator must call a general meeting of the company at the end of the first year from the commencement of the winding up at the end of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Central Government may allow, and must lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

7. Final Meeting and Dissolution

As soon as the affairs of the company are fully wound up, the liquidator makes up an account of winding up, showing how the winding up has been conducted and how the property of the company has been disposed of. He then calls a general meeting, of the company and lays before it accounts showing how the winding up has been conducted. This is called the final meeting of the company.

The meeting must be called by advertisement :

(a) specifying the time, place and object of the meeting ; and

(b) published not less than one month before the meeting in the official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situated.

Within one week after the meeting, the liquidator is required to send to the Registrar and the official liquidator a copy of the accounts. He must also make a report to each of them of the holding of the meeting and of the date thereof. If at the final meeting no quorum was present, the liquidator is required to make a report that the meeting was duly called but no quorum was present at the meeting. On receipt of the accounts and the report, the Registrar will register them. On receipt of the accounts and report, the official liquidator will make a scrutiny of the books and papers of the company and make a report to the Court stating the result of the scrutiny. If the report shows that the affairs of the company have been conducted bonafide i. e. not in a manner prejudicial to the interests of its members or to the public interest, then from the date of the submission of the report to the Court, the company shall be deemed to have been dissolved. If the official liquidator in the report has stated that the affairs of the company have been conducted in a manner prejudicial to the interest of its members or to the public interest, the Court shall direct the official liquidator to make a further investigation of the affairs of the company and on the report of the official liquidator on such further investigation, the Court may either make an order that the company shall stand dissolved with effect from the date to be specified in the order of the Court or to make such other order as the circumstances of the case brought out in the report permit .

Creditors' Voluntary Winding up

In creditors' voluntary winding up, it is the creditors who move the resolution for voluntary winding up of a company, and there is no solvency declaration made by the directors of the company. In other words, when a company is insolvent, that is, it is not able to pay its debts, it is the creditors' voluntary winding up.

Special provisions Relating to Creditors' Voluntary Winding up

There are certain special provisions to be completed with creditors' voluntary winding

up. They are :

1. Meeting of Creditors

The company must call a meeting of the creditors of the company on the same day or on the next following day on which the general meeting of the company is held for passing a resolution for voluntary winding up. The company must send the notice of the meeting to the creditors by post simultaneously with the sending of the notices of the meeting of the company. The company must also cause the notice of the meeting of the creditors to be advertised once at least in the official Gazettee and once at least in two newspapers circulating in the district where the registered office or principal place of business of the company is situated. At the creditors' meeting, one of the directors shall preside. The board of directors is required to lay before the meeting of the creditors(a) a full statement of the position of the company's affairs and (b) a list of creditors of the company with the estimated amount of their claims.

2. Notice of Registrar

Notice of any resolution passed at a creditors' meeting shall be given by the company to the Registrar within 10 days of the passing thereof.

3. Appointment of Liquidator

The creditors and the company at their respective meetings may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company. If the creditors and the company nominate different persons, the persons nominated by the creditors shall be the liquidator. If no person is nominated by the creditors, the person, if any, nominated by the company shall be the liquidator.

4. Committee of Inspection

The creditors at their first or any subsequent meeting may, if they think fit, appoint a committee of inspection of not more than five members. If such committee is appointed, the company may, either at the meeting at which the winding up resolution is passed or at a later meeting, appoint not more than five persons to serve on the committee. If the creditors object to persons appointed by the company, then the matter will be referred to the Court for the final decision. The powers of such committee are the same as those of a committee of inspection appointed in a compulsory winding up.

5. Remuneration

The committee of inspection or if there is no such committee, the creditors may fix the remuneration to be paid to the liquidator or liquidators. Where the remuneration is not fixed, it will be determined by the Court. Any remuneration fixed by the committee of inspection or creditors or the Court shall not be increased.

6. Board's Power to Cease

On the appointment of a liquidator, all the powers of the board of directors shall cease, except in so far as the committee of inspection, or if there is no such committee, the creditors in a general meeting, may sanction the continuance thereof.

7. Vacancy in the Office of Liquidator

If a vacancy occurs by death, resignation, or otherwise in the office of the liquidator (other than a liquidator appointed by or by the direction of the Court), the creditors in a general meeting may fill the vacancy.

8. Final Meeting and Dissolution

The liquidator must call a general meeting of the company and a meeting of the creditors every year within three months from the close of the liquidation year, if the winding up continues for more than one year. He must lay before the meeting an account of his acts and dealings and of the conduct of winding up during the preceding year and position of winding up. He must call, in the same manner, a final meeting when the affairs of the company are fully wound up and place the same statements before it, as he does in the case of a members' meeting in a members' voluntary winding up.

Liquidators in Voluntary Winding Up Appointment of liquidator

In a members' voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of collecting the company's assets and distributing the proceeds among creditors and contributories. If a vacancy occurs by death or resignation or otherwise in the office of the liquidator the company in general meeting may fill the vacancy.

In the case of a creditors' voluntary winding up, the creditors and the members at their respective meetings, may nominate a person to be the liquidator of the company. However, the creditors are given a preferential right in the matter of the appointment of the liquidator with a power to the Court to vary the appointment on application made within seven days by a director, member or creditor.

Power of the Court to appoint liquidator

In a members' or creditors' voluntary winding up, if for any cause whatever there is no liquidator acting, the Court may appoint the official liquidator or any other person as a liquidator of the company. The Court may also appoint a liquidator on the application of the Registrar.

Body corporate not to be appointed as liquidator

A body corporate shall not be qualified for appointment as a liquidator of a company in a voluntary winding up. Any appointment of a body corporate as liquidator shall be void.

Corrupt inducement affecting appointment as liquidator

Any person who gives or agrees or offers to give, any member or creditor of the company any gratification with a view to securing his own appointment or nomination or to securing or preventing the appointment of someone else, as the liquidator is liable to a fine which may extend upto Rs. 1,000.

Notice by liquidator of his appointment

When a person is appointed as the liquidator and accepts the appointment, he shall publish in the official gazette a notice of his appointment, in the prescribed form. He shall also deliver a copy of such notice to the Registrar. The liquidator shall do this within 30 days of his appointment. When the liquidator fails to comply with the above provision, he is liable to a fine which may extend to Rs. 50 for each day of default.

Effect of the appointment of liquidator

On the appointment of a liquidator, in a members' voluntary winding up, all the powers of the directors, including managing director, whole time directors as also the manager shall cease except so far as the company in general meeting or the liquidator may sanction their continuance.

On the appointment of a liquidator in creditors' voluntary winding up, all the powers of the board of directors shall cease. The committee of inspection or if there is no such committee, the creditors' meeting by resolution may sanction continuance of the powers of

the board.

Remuneration of liquidator

In a members' voluntary winding up, the general meeting shall fix the remuneration to be paid to the liquidators. Unless the question of remuneration is resolved the liquidators shall not take charge of the company. Once remuneration is fixed it cannot be increased.

In a creditors' voluntary winding up, the remuneration of the liquidator is fixed by the committee of inspection and if there is no committee of inspection then by the creditors. In the absence of any such fixation, the Court shall determine his remuneration. Any remuneration so fixed shall not be increased .

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall subject to the rights of secured creditors, be payable out of the assets of the company in priority to all other claims . Removal of Liquidator

In either kind of voluntary winding up, the Court may, on cause shown, remove a liquidator and appoint the official liquidator or any other person as a liquidator in place of removed liquidator. The Court may also remove a liquidator on the application of the Registrar.

Powers and Duties of Liquidator in Voluntary Winding Up Powers

The powers of the liquidator in voluntary winding up are just the same as those of the official liquidator in case of winding up by the Court. In the case of members' voluntary winding up with the sanction of a special resolution of the company and in the case of creditors' voluntary winding up with the sanction of the Court or committee of inspection or the meeting of the creditors if there is no committee of inspection, the liquidator may

(a) institute or defend any suit, prosecution or other legal proceedings in the name and on behalf of the company ;

(b) carry on the business of the company so far as may be necessary for the beneficial winding up of the company ;

(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract; and

(d) raise any money required on the security of the assets of the company . Besides, a liquidator in voluntary winding up may, without any sanction whatever, exercise any of

the other powers given by this Act to the liquidator in a winding up by the Court. In addition to these powers, a liquidator in voluntary winding up exercise

(i) the power of the Court of settling a list of contributories ;

(ii) the power of the Court of making calls;

(iii) the power of calling general meetings of the company.

Duties

As The Act provides a liquidator in voluntary winding up is required to pay the debts of the company and to adjust the rights of the contributories among themselves.

WINDING UP SUBJECT TO SUPERVISION OF THE COURT

Voluntary winding up may be under the supervision of the Court. At any time after a company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court. The Court may give such liberty to creditors, contributories or others to apply to the Court and generally on such terms and conditions as the Court thinks just .

A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall be deemed to be a petition for winding up by the Court .

The Court will not in general make a supervision order on the petition of a contributory, unless it is satisfied that the resolution for winding up was so obtained that the minority of members were overborne by fraud or improper or corrupt influence. Where the company is insolvent, the wishes of the creditors only are regarded or the investigation is required.

If a company is being wound up voluntarily or subject to supervision of the Court, a petition for its winding up by the Court may be presented by :

(a) any person authorised to do so (which deals with provisions as to applications for winding up), or the official liquidator. Where a supervision is made, the Court may appoint an additional liquidator or liquidators, or remove any liquidator at any time and fill any vacancy. The Court may also appoint the official liquidator as an additional liquidator or to fill any vacancy. The Registrar is also given power to apply to the Court for the removal of a liquidator and the Court may do so. The liquidator appointed by the Court will act as a voluntary

liquidator. In a voluntary liquidation brought under the Court's supervision, the liquidator's remuneration cannot be increased.

A liquidator appointed by the Court has the same powers, is subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of the Companies Act with respect to the appointment of liquidators in voluntary winding up.

Consequences of Winding up

The consequences of winding up may be discussed under the following heads :

1. Consequences as to Shareholders

A shareholder is liable to pay the full amount upto the face value of the shares held by him. Not only the present, but also the past members are liable on the winding up of the company. The liability of a present member is the amount remaining unpaid on the shares held by him, while a past member can be called upon to pay if the present contributory is unable to pay.

2. Consequences as to Creditors

A company, whether solvent or insolvent, can be wound up under the Act. In case of a solvent company, all claims of its creditors when proved are fully met. But in case of an insolvent company, the rules under the law of insolvency apply.

A secured creditor need not prove his claim against the company. He may realise his security and satisfy the debts. For deficiency, if any, he may put his claim before the liquidator. The secured creditor has also the option to relinquish his security and to prove the amount as if he were an unsecured creditor.

Where an insolvent company is being wound up, the insolvency rules will apply and only such claims shall be provable against the company as are provable against an insolvent person.

When the list of claims is settled the liquidator has to commence making payments. The assets available to the liquidator are applied in the following order :

a. Secured creditors .

b. Cost of the liquidation.

c. Preferential payments.

d. Debentureholders secured by a floating charge.

e. Unsecured creditors

f. Balance returned to the contributories.

Preferential payment

The Act enumerates certain debts which are to be paid in priority to all other debts. Such payments are called preferential payments. It may however by noted that such payments are made after paying the secured creditors, and costs, charges and expenses of the winding up.

These preferential payments are :

(a) All revenues, taxes, cesses and rates due from the company to the Central or State Government or to a local authority. The amount should have become due and payable within 12 months before the winding up.

(b) All wages or salary of any employee in respect of services rendered to the company and due for a period not exceeding 4 months within 12 months, before the winding up and any compensation payable to any workman under any of the provision of Chapter V-A of the Industrial Disputes Act, 1947. The amount must not exceed Rs. 20,000 in the case of any one claimant.

(c) All accrued holiday remuneration becoming payable to any employee or in the case of his death to any other person in his right, on the termination of his employment before or by the effect of the winding up.

(d) All amounts due in respect of contributions payable by the company as employer but this is not payable if the company is being wound up voluntarily for the purpose of reconstruction and amalgamation

(e) All amounts due in respect of any compensation or liability for compensation in respect of death or disablement of any employee under the Workmen's Compensation Act, 1923 but this is not payable if the company is being wound up voluntarily for reconstruction or amalgamation.

(f) All sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employee maintained by the company.

(g) The expenses of any investigation held in pursuance of the Act, in so far as they are payable by the company.

3. Consequences as to servants and officers

A winding up order by a Court operates as a notice of discharge to the employees and officers of the company except when the business of the company is continued. The same principle will apply as regards discharge of employees in a voluntary winding up. Where there is a contract of service
for a particular period, an order for winding up will amount to wrongful discharge and damages will be allowed as for breach of contract of service.

4. Consequences of proceedings against the company

When a winding up order is made, or an official liquidator has been appointed as provisional liquidator no suit or legal proceedings can be commenced and no pending suit or legal proceeding continued against the company except with the leave of the Court and on such terms as it may impose. In the case of a voluntary winding up, the Court may restrain proceedings against the company if it thinks fit.
It may be noted that law does not prohibit proceedings being taken by the company against others including directors, or officers or other servants of the company.

5. Consequences as to costs

Where the assets of the company are insufficient to satisfy the liabilities, the Court may make an order for payment out of the assets of the costs, charges and expenses incurred in the winding up. The Court may determine the order of priority in which such payments are to be made.

6. Consequences as to documents

When a company is being wound up whether by or under the supervision of the Court or voluntarily, the fact must be made known to all those having any dealing with the company; every document in the nature of an invoice, order for goods or business letter issued in the name of the company, after the commencement of winding up must contain a statement that the

company is being wound up .

Where a company is being wound up, all documents of the company and of the liquidators shall, as between the contributories of the company, be prima facie evidence of the truth of all matters recorded therein.

Where an order for winding up of the company by or subject to the supervision of the Court is made, any creditor or contributory of the company may inspect the books and the papers of the company, subject to the provisions made in the rules by the Central Government in this behalf.

WINDING UP OF INSOLVENT COMPANIES

the Companies Act applies to winding up of the company which cannot pay all its debts i.e. to an insolvent company only in respect of the following :

(a) debts provable.

(b) the valuation of annuities and future and contingent liabilities; and

(c) the respective rights of secured and unsecured creditors.

All persons who would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up and made such claims against the company as they respectively are entitled to. But it is not necessary for a secured creditor to prove his debt in the winding up and he can stand wholly outside the winding up proceedings. However, if a secured creditor instead of giving up his security and providing for his debt proceeds to realise his security, he shall be liable to pay the expenses incurred by the liquidator for the presentation of the security before its realisation by the secured creditor.

The rules of insolvency in India are to be found in the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920. Only such of the rules contained in these Acts as relate to the respective rights of the secured and unsecured creditors, and to debts provable and to the valuation of certain liabilities shall apply. Apart from these provisions, in respect of other matters such as those relating to priority of debts, all questions have to be determined with reference to the Companies Act only.

It is found the company in the course of winding up is not insolvent. The provisions of the laws of insolvency applicable to insolvent companies will not apply to such company and it will be

treated as having been solvent throughout the winding up proceedings.

WINDING UP OF UNREGISTERED COMPANIES

The term "Unregistered Company" includes any partnership, association of company consisting of 8 or more members at the time when the petition for winding up is presented, but it does not include a railway company incorporated under any Act of Parliament or other Indian Law or any Act of Parliament of U.K., a company registered under the present Indian Companies Act or any of the previous Indian Companies Acts. An unregistered company may be wound up under the provisions of this Act and with some exception all the provisions relating to the winding up are applicable to it. However such a company can only be wound up by the Court and cannot be wound up voluntarily or subject to the supervision of the Court. Such a company may be wound up if (a) the company is dissolved or has ceased to carry on business or is carrying on business only to wind up its
affairs; (b) the company is unable to pay its debts; and (c) the Court is of opinion that it is just and equitable that the company should be wound up.

WINDING UP OF FOREIGN COMPANIES

Where a foreign company which has been carrying on business in India, cease to carry on business in India, it may be wound up as an unregistered company, not withstanding that the foreign company, has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated .

EFFECTS OF WINDING UP ON ANTECEDENT AND OTHER TRANSACTIONS

The effects of winding up on antecedent and other transactions are as follows:

1. Fraudulent Preference

Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property, within six months before the commencement of its winding up, shall be deemed a fraudulent preference of its creditors and be invalid accordingly.

Fraudulent preference here relates similarly to fraudulent preference under insolvency law, where any individual transfers any property or makes any payment within three months before the presentation of an insolvency petition, such transfers shall be deemed a fraudulent preference

in his insolvency. Under the Companies Act, the period is six months instead of three months.

2. Avoidance of the Voluntary Transfer

Any transfer of property, movable or immovable, or any delivery of goods made by a company within a period of one year before the commencement of its winding up shall be void against the liquidator unless such transfer or delivery is made in the ordinary course of business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration.

Further, any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors in void.

3. Avoidance of floating charge

Section 534, prevents an insolvent company from creating a floating charge on its undertaking to secure past debts or for moneys which do not come in the hands of the company. It provide that where a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, expect to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration, for the charge, together with interest on that amount at the rate of five per cent, per annum or such other rate as may for the time being be notified by the Central Government in this behalf in the official gazettee :

Section 534 makes the charge invalid but the debt is not affected. The debt secured by such charge becomes an unsecured debt.

4. Disclaimer of Onerous Property

Disclaimer means abandoning. Where any part of the property of a company which is being wound up consists of :

(a) land of any tenure, burdened with onerous covenants ;

(b) shares or stock in companies;

(c) any other property which is unsaleable by reason of its binding the possessor thereof either to the performance of any onerous act or to the payment of any sum of money ; or

(d) unprofitable contracts.

The liquidator of the company may, with the leave of the Court, by a writing signed by him, at any time within 12 months after the commencement of the winding up, disclaim the property.
The disclaimer shall release the company and the property from the rights, interests and liabilities. The disclaimer shall not affect the rights or liabilities of any other person.
The Court before or on granting leave to disclaim may require such notices to be given to persons interested.

TOPIC NO 5

Corporate Governance

a) Concept,

b) Significance,

c) Dimensions,

d) Legal framework

e) Impact of globalization

What is corporate governance? It is a process set up for the firms based on certain systems and principles by which a company is governed. The guidelines provided ensure that the company is directed and controlled in a way so as to achieve the goals and objectives to add value to the company and also benefit the stakeholders in the long term.

The high profile corporate governance failure scams like the stock market scam, the UTI scam, Ketan Parikh scam, Satyam scam, which was severely criticized by the shareholders, called for a need to make corporate governance in India transparent as it greatly affects the development of the country.

To understand the scope of the legal framework and study the amendments, proxy advisory firms analyze the role of directors and how they are impacted by changes in the amendments. Proxy firms offer analytical data for the shareholders and corporate advisory services to companies.

The Objectives Of Corporate Governance

Transparency in corporate governance is essential for the growth, profitability and stability of any business. The need for good corporate governance has intensified due to growing competition amongst businesses in all economic sectors at the national, as well as international level.

The **Indian Companies Act of 2013** introduced some progressive and transparent processes which benefit stakeholders, directors as well as the management of companies. Investment advisory services and proxy firms provide concise information to the shareholders about these newly introduced processes and regulations, which aim to improve the corporate governance in India.

Corporate advisory services are offered by advisory firms to efficiently manage the activities of companies to ensure stability and growth of the business, maintain the reputation and reliability for customers and clients. The top management that consists of the board of directors is responsible for governance. They must have effective control over affairs of the company in the interest of the company and minority shareholders. Corporate governance ensures strict and efficient application of management practices along with legal compliance in the continually changing business scenario in India.

Corporate governance was guided by **Clause 49** of the Listing Agreement before introduction of the Companies Act of 2013. As per the new provision, SEBI has also approved certain

amendments in the Listing Agreement so as to improve the transparency in transactions of listed companies and giving a bigger say to minority stakeholders in influencing the decisions of management. These amendments have become effective from 1st October 2014.

A Few New Provision for Directors and Shareholders

- One or more women directors are recommended for certain classes of companies
- Every company in India must have a resident directory
- The maximum permissible directors cannot exceed 15 in a public limited company. If more directors have to be appointed, it can be done only with approval of the shareholders after passing a Special Resolution
- The Independent Directors are a newly introduced concept under the Act. A code of conduct is prescribed and so are other functions and duties
- The Independent directors must attend at least one meeting a year
- Every company must appoint an individual or firm as an auditor. The responsibility of the Audit committee has increased
- Filing and disclosures with the Registrar of Companies has increased
- Top management recognizes the rights of the shareholders and ensures strong co-operation between the company and the stakeholders
- Every company has to make accurate disclosure of financial situations, performance, material matter, ownership and governance

Additional Provisions

- Related Party Transactions – A Related Party Transaction (RPT) is the transfer of resources or facilities between a company and another specific party. The company devises policies which must be disclosed on the website and in the annual report. All these transactions must be approved by the shareholders by passing a Special Resolution as the Companies Act of 2013. Promotors of the company cannot vote on a resolution for a related party transaction.
- Changes in Clause 35B – The e-voting facility has to be provided to the shareholder for any resolution is a legal binding for the company.
- Corporate Social Responsibility – The company has the responsibility to promote social development in order to return something that is beneficial for the society.
- Whistle Blower Policy – This is a mandatory provision by SEBI which is a vigil mechanism to report the wrong or unethical conduct of any director of the company.

Why is Corporate Governance in India Important?

A company that has good corporate governance has a much higher level of confidence amongst the shareholders associated with that company. Active and independent directors contribute towards a positive outlook of the company in the financial market, positively influencing share prices. Corporate Governance is one of the important criteria for foreign institutional investors to decide on which company to invest in.

The corporate practices in India emphasize the functions of audit and finances that have legal, moral and ethical implications for the business and its impact on the shareholders. The Indian Companies Act of 2013 introduced innovative measures to appropriately balance legislative and regulatory reforms for the growth of the enterprise and to increase foreign investment, keeping in mind international practices. The rules and regulations are measures that increase the involvement of the shareholders in decision making and introduce transparency in corporate governance, which ultimately safeguards the interest of the society and shareholders.

Corporate governance safeguards not only the management but the interests of the stakeholders as well and fosters the economic progress of India in the roaring economies of the world.

Corporate governance is concerned with set of principles, ethics, values, morals, rules regulations, & procedures etc. Corporate governance establishes a system whereby directors are entrusted with duties and responsibilities in relation to the direction of the company's affairs.

The term "governance" means control i.e. controlling a company, an organization etc or a company & corporate governance is governing or controlling the corporate bodies i.e. ethics, values, principles, morals. For corporate governance to be good the manager needs to meet its responsibilities towards its owners (shareholders), creditors, employees, customers, government and the society at large. Corporate governance helps in establishing a system where a director is showered with duties and responsibilities of the affairs of the company.

For effective corporate governance, its policies need to be such that the directors of the company should not abuse their power and instead should understand their duties and responsibilities towards the company and should act in the best interests of the company in the broadest sense.

The concept of 'corporate governance' is not an end; it's just a beginning towards growth of company for long term prosperity.

HISTORY & NEED OF CORPORATE GOVERNANCE

Corporate governance concept emerged in India after the second half of 1996 due to economic liberalization and deregulation of industry and business. With the changing times, there was also need for greater accountability of companies to their shareholders and customers. The report of Cadbury Committee on the financial aspects of corporate Governance in the U.K. has given rise to the debate of Corporate Governance in India.

Need for corporate governance arises due to separation of management from the ownership. For a firm success, it needs to concentrate on both economical and social aspect. It needs to be fair with producers, shareholders, customers etc. It has various responsibilities towards employees, customers, communities and at last towards governance and it needs to serve its responsibilities at the best at all aspects.

The "corporate governance concept" dwells in India from the Arthshastra time instead of CEO at that time there were kings and subjects. Today, corporate and shareholders replace them but the principles still remain same, unchanged i.e. good governance.

20th century witnessed the glossy of Indian Economy due to liberalization, globalization, and privatization. Indian economy for the 1st time here was together with world economy for product, capital and lab our market and which resulted into world of capitalization, corporate culture, business ethics which was found important for the existence of corporation in the world market place.

DIFFERENT DEFINITIONS OF CORPORATE GOVERNACE

1. Cadbury Committee (U.K.), 1992 has defined corporate governance as such : "Corporate governance is the system by which companies are directed and controlled. It encompasses the entire mechanics of the functioning of a company and attempts to put in place a system of checks and balances between the shareholders, directors, employees, auditor and the management."

2. "Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides this; it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance."

3. Definition of corporate governance by the Institute of Company Secretaries of India is as under :

"Corporate Governance is the application of best Management practices, Compliance of law in true letter and spirit and adherence to ethical standards for Effective Management and distribution of wealth and discharge of social Responsibility for sustainable development of all stakeholders".

ROLE OF LA W IN CORPORATE GOVERNANCE

Law can only provide a minimum code of conduct for proper regulation of human being or company. Law is made not to stop any act but to ensure that if you do that act, you will face such consequences i.e. good for good and bad for bad. Thus, in the same manner, role of law in corporate governance is to supplement and not to supplant. It can not be only way to govern corporate governance but instead it provides a minimum code of conduct for good corporate governance. Law provides certain ethics to govern one and all so as to have maximum satisfaction and minimum friction. It plays a complementary role. Role of law in corporate governance is in Companies Act which imposes certain restrictions on Directors so that there is no misrepresentation of documents, there is no excessive of power, so that it imposes duty not to make secret profit and make good losses due to breach of duty, negligence, etc, duty to act in the best interest of the company etc.

PERSPECTIVES OF CORPORATE GOVERNANCE

Before dealing with 'perspectives' of corporate governance lets understand what is meant by the term 'perspective'. Oxford Advanced Learner Dictionary defines the term perspective as:-

1. 'The Art of drawing solid objects on a flat surface so as to give the right impression of their relative height, width, depth, distance, etc.'
2. Apparent relation between different aspects of a problem.

In simple terms it means 'the right impression'.

Mainly we will deal with the perspectives of corporate governance from three points of view:

1. Shareholders (Capital Market) – Control perspective
2. Organization (Management) – Control perspective
3. Stakeholders – Control perspective

1. Shareholders: as providers of a risk capital have final control on resource allocation decisions.

2. Organization: have the main purpose is to control i.e. through skills, intelligence, innovation, ideas, professionalism etc. Therefore, here in this perspective, resource allocation decision should rest with them.

3. Stakeholders: here, it says that for long term business, only shareholders value maximization should not be seen as sole goal but it should be for well being of all groups with stake of long run of business and it should be goal of corporate governance.

IMPORTANT ISSUES IN CORPORATE GOVERNANCE

There are several important issues in corporate governance and they play a great role, all the issues are inter related, interdependent to deal with each other. Each issues connected with corporate governance have different priorities in each of the corporate bodies.

The issues are listed as below:

1. Value based corporate culture
2. Holistic view
3. Compliance with laws
4. Disclosure, transparency, & accountability
5. Corporate governance and human resource management
6. Innovation
7. Necessity of judicial reforms
8. Globalization helping Indian companies to become global giants based on good corporate governance.
9. Lessons from Corporate failure

1. Value based corporate culture: For any organization to run in effective way, it needs to have certain ethics, values. Long run business needs to have based corporate culture. Value based corporate culture is good practice for corporate governance. It is a set of beliefs, ethics, principles which are inviolable. It can be a motto i.e. A short phrase which is unique and helps in running organization, there can be vision i.e. dream to be fulfilled, mission and purpose, objective, goal, target.

2. Holistic view: This holistic view is more or less godly, religious attitude which helps in running organization. It is not easier to adopt it, it needs special efforts and once adopted it leads to developing qualities of nobility, tolerance and empathy.

3. Compliance with laws: Those companies which really need progress, have high ethical values and need to run long run business they abide and comply with laws of Securities Exchange Board Of India (SEBI), Foreign Exchange Regulation Act, Competition Act 2002, Cyber Laws, Banking Laws etc.

4. Disclosure, transparency, and accountability: Disclosure, transparency and accountability are important aspect for good governance. Timely and accurate information should be disclosed on the matters like the financial position, performance etc. Transparency is needed in order that government has faith in corporate bodies and consequently it has reduced corporate tax rates from 30% today as against 97% during the late 1970s. Transparency is needed towards corporate bodies so that due to tremendous competition in the market place the customers having choices don't shift to other corporate bodies.

5. Corporate Governance and Human Resource Management: For any corporate body, the employees and staff are just like family. For a company to be perfect the role of Human Resource Management becomes very vital, they both are directly linked. Every individual should be treated with individual respect, his achievements should be recognized. Each individual staff and employee should be given best opportunities to prove their worth and these can be done by Human Resource Department. Thus in Corporate Governance, Human Resource has a great role.

6. Innovation: Every Corporate body needs to take risk of innovation i.e. innovation in products, in services and it plays a pivotal role in corporate governance.

7. Necessity of Judicial Reform[5]: There is necessity of judicial reform for a good economy and also in today's changing time of globalization and liberalization. Our judicial system though having performed salutary role all these years, certainly are becoming obsolete and outdated over the years. The delay in judiciary is due to several interests involved in it. But then with changing scenario and fast growing competition, the judiciary needs to bring reforms accordingly. It needs to speedily resolve disputes in cost effective manner.

8. Globalization helping Indian Companies to become global giants based on good governance: In today's age of competition and due to globalization our several Indian Corporate bodies are becoming global giants which are possible only due to good corporate governance.

9. Lessons from Corporate Failure[6]: Every story has a moral to learn from, every failure has success to learn from, in the same way, corporate body have certain policies which if goes as a failure they need to learn from it. Failure can be both internal as well as external whatever it

may be, in good governance, corporate bodies need to learn from their failures and need to move to the path of success.

CHAPTER VII: CORPORATE GOVERNANCE IN INDIA PAST, PRESENT & FUTURE

Good corporate governance in the changing business environment has emerged as powerful tool of competitiveness and sustainability. It is very important at this point and it needs corporation for one and all i.e. from CEO of company to the ordinary staff for the maximization of the stakeholders' value and also for maximization of pleasure and minimization of pain for the long term business.

Global competitions in the market need best planning, management, innovative ideas, compliance with laws, good relation between directors, shareholders, employees and customers of companies, value based corporate governance in order to grow, prosper and compete in international markets by strengthen their strength overcoming their weaknesses and running them effectively and efficiently in an efficient and transparent manner by adopting the best practices.

Corporate India must commit itself as reliable, innovative and prompt service provider to their customers and should also become reliable business partners in order to prosper and to have all round growth.

Corporate Governance is nothing more than a set of ideas, innovation, creativity, thinking having certain ethics, values, principles etc which gives direction and shape to its people, employees and owners of companies and help them to flourish in global market.

Indian Corporate Bodies having adopted good corporate governance will reach themselves to a benchmark for rest of the world; it brings laurels as a way of appreciation. Corporate governance lays down ethics, values, and principles, management policies of a corporation which are inculcated and brought into practice. The importance of corporate governance lies in promoting and maintains integrity, transparency and accountability throughout the organization.

Corporate governance has existed since past but it was in different form. During Vedic times kings used to have their ministers and used to have ethics, values, principles and laws to run their state but today it is in the form corporate governance having same rules, laws, ethics, values, and morals etc which helps in running corporate bodies in the more effective ways so that they in the age of globalization become global giants.

Several Indian Companies like PepsiCo, Infuses, Tata, Wipro, TCS, and Reliance are some of the global giants which have their flag of success flying high in the sky due to good corporate governance.

Toady, even law has a great role to play in successful and growing economy. Government and judiciary have enacted several laws and regulations like SEBI, FEMA, Cyber laws, Competition laws etc and have brought several amendments and repeal the laws in order that they don't act as barrier for these corporate bodies and developing India. Judiciary has also helped in great way by solving the corporate disputes in speedy way.

Corporate bodies have their aim, values, motto, ethics and principles etc which guide them to the ladder of success. Big and small organizations have their magazines annual reports which reflect their achievements, failure, their profit and loss, their current position in the market. A few companies have also shown awareness of environment protection, social responsibilities and the cause of upliftment and social development and they have deeply committed themselves to it. The big example of such a company can be of Deepak Fertilizers and Petrochemicals Corporation Limited which also bagged 2nd runner up award for the corporate social responsibility by business world in 2005.

Under the present scenario, stakeholders are given more importance as to shareholders, they even get chance to attend, vote at general meetings, make observations and comments on the performance of the company.

Corporate governance from the futuristic point of view has great role to play. The corporate bodies in their corporate have much futuristic approach. They have vision for their company, on which they work for the future success. They take risk and adopt innovative ideas, have futuristic goals, motto, and future objectives to achieve.

With increase in interdepence and free trade among countries and citizens across the globe, internationally accepted corporate governance standards are of paramount importance for Indian Companies seeking to distinguish themselves in global footprint. The companies should always keep improving, enhancing and upgrading themselves by bringing more reliable integrated product and service quality. They should be more transparent in their conduct.

Corporate governance should also have approach of holistic view, value based governance, should be committed towards corporate social upliftment and social responsibility and environment protection. It also involves creative, generative and positive things that add value to

the various stakeholders that are served as customers. Be it finance, taxation, banking or legal framework each and every place requires good corporate governance.

Hence corporate governance is a means and not an end, corporate excellence should be end.

The concept of corporate governance hinges on total transparency, integrity and accountability of the management and the board of directors. The importance of Corporate Governance lies in its contribution both to business prosperity and to accountability.

In the age of globalization, global competition, good corporate governance helps as a great tool for corporate bodies. It existed from Vedic times as the Highest standards in ArthaShastra to today's set of ethics, principles, rules, regulations, values, morals, thinking, laws etc as good corporate governance.

Corporate Governance is a means not an end, Corporate Excellence should be the end. Once, the good Corporate Governance will be achieved, the Indian Corporate Body will shine to outshine the whole world.

TOPIC NO 6

CORPORATE SOCIAL RESPONSIBILITY

a) Evolution of the concept,
b) Dimensions of CSR
c) Legislations and CSR

The concept of Corporate Social Responsibility (CSR) goes beyond charity and requires the company to act beyond its legal obligations and to integrated social, environmental and ethical concerns into company's business process.

Business has today, emerged as one of the most powerful institutions on the earth. Some of the biggest companies in the world are in fact, bigger in size than some of the developing countries of the world. Globalization makes the world smaller, and business, worldwide, is expanding like never before. Companies are expanding their operations and crossing geographical boundaries.

Indian companies too have made their way into the business boom and are today globally acknowledged as major players. India is currently amongst the fastest growing countries in the world. The globalization and liberalization of the Indian economy has helped in stepping up growth rates. Integration of the Indian with the global economy has also resulted in Indian businesses opening up to international competition and thereby increasing their operations.

In the current scheme of things, business enterprises are no longer expected to play their traditional role of mere profit making enterprises. The ever-increasing role of civil society has started to put pressure on companies to act in an economically, socially and environmentally sustainable way.

The companies are facing increased pressure for transparency and accountability, being placed on them by their employees, customers, shareholders, media and civil society.

Business does not operate in isolation and there is today, an increased realization that not only can companies affect society at large, but they are also in a unique position to influence society and make positive impact.

Milton Friedman, Nobel Laureate in Economics and author of several books wrote in 1970 in the New York Times Magazine that "the social responsibility of business is to increase its profits" and "the business of business is business". This represented an extreme view that the only social responsibility a law-abiding business has is to maximize profits for the shareholders, which were considered the only stakeholders for the company. However, time has given the term 'stakeholder' wider connotations.

Edward Freeman defines, 'a stakeholder in an organization is any group or individual who can affect or is affected by the achievement of the organization's objectives.' Thus, the term stakeholder includes (apart from shareholders), but not limited to, customers, employees, suppliers, community, environment and society at large.

These and a host of other such ideas have given rise to the concept of Corporate Social Responsibility (CSR). The concept of CSR goes beyond charity or philanthropy and requires the company to act beyond its legal obligations and to integrate social, environmental and ethical concerns into its business process. Business for Social Responsibility defines CSR as "achieving commercial success in ways that honor ethical values and respect people, communities, and the environment.

It means addressing the legal, ethical, commercial and other expectations that society has for business and making decisions that fairly balance the claims of all key stakeholders. In its simplest terms it is: “what you do, how you do it, and when and what you say.” A widely quoted definition by the World Business Council for Sustainable Development states that “Corporate social responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large”.

Though, there is no universal definition of CSR but the common understanding amongst most of these definitions concern with how the profits are made and how they are used, keeping in mind the interests of all stakeholders. The concept of Corporate Social Responsibility is constantly evolving.

The emerging concept of CSR goes beyond charity and requires the company to act beyond its legal obligations and to integrate social, environmental and ethical concerns into company’s business process. What is generally understood by CSR is that the business has a responsibility – towards its stakeholders and society at large – that extends beyond its legal and enforceable obligations.

The triple bottom line approach to CSR emphasizes a company’s commitment to operating in an economically, socially and environmentally sustainable manner. The emerging concept of CSR advocates moving away from a ‘shareholder alone’ focus to a ‘multi-stakeholder’ focus. This would include investors, employees, business partners, customers, regulators, supply chain, local communities, the environment and society at large.

The key components of CSR would therefore include the following:

Corporate

Governance: Within the ambit of corporate governance, major issues are the accountability, transparency and conduct in conformity with the laws. Good corporate governance policy would enable the company to realize its corporate objectives, protect shareholder rights, meet legal requirements and create transparency for all stakeholders.

Business Ethics

Relates to value-based and ethical business practices. ‘Business ethics defines how a company integrates core values – such as honesty, trust, respect, and fairness – into its policies, practices,

and decision making. Business ethics also involves a company's compliance with legal standards and adherence to internal rules and regulations.'1

Workplace and labour relations

Human resources are most important and critical to a company. Good CSR practices relating to workplace and labour relations can help in improving the workplace in terms of health and safety, employee relations as well as result in a healthy balance between work and non-work aspects of employees' life. It can also make it easier to recruit employees and make them stay longer, thereby reducing the costs and disruption of recruitment and retraining.

Affirmative action/good practices

Equal opportunity employer, diversity of workforce that includes people with disability, people from the local community etc., gender policy, code of conduct/guidelines on prevention of sexual harassment at workplace, prevention of HIV/AIDS at workplace, employee volunteering etc. are some of the good practices which reflect CSR practices of the company.

Supply Chain

The business process of the company is not just limited to the operations internal to the company but to the entire supply chain involved in goods and services. If anyone from the supply chain neglects social, environmental, human rights or other aspects, it may reflect badly on the company and may ultimately affect business heavily. Thus, company should use its strategic position to influence the entire supply chain to positively impact the stakeholders.

Customers

The products and services of a company are ultimately aimed at the customers. The cost and quality of products may be of greatest concern to the customers but these are not the only aspects that the customers are concerned with. With increased awareness and means of communication, customer satisfaction and loyalty would depend on how the company has produced the goods and services, considering the social, environmental, supply-chain and other such aspects.

Environment

Merely meeting legal requirements in itself does not comprise CSR but it requires company to engage in such a way that goes beyond mandatory requirements and delivers environmental benefits. It would include, but not limited to, finding sustainable solutions for natural resources, reducing adverse impacts on environment, reducing environment-risky pollutants/emissions as well as producing environment-friendly goods.

Community

A major stakeholder to the business is the community in which the company operates. The involvement of a company with the community would depend upon its direct interaction with the community and assessment of issues/risks faced by those living in the company surrounding areas. This helps in delivering a community-focused CSR strategy – making positive changes to the lives of the people and improving the brand-image of the company. Involvement with the community could be both direct & indirect – through funding and other support for community projects implemented by local agencies.

Now Corporate Social Responsibility (CSR) is well accepted among shareholders as well as with various other stakeholders of society in India. The term CSR is new normal for Indian organisations. CSR tends to focus on what is done with profits after they are made. Larger corporations understand that CSR is an integral part of business framework for sustainable development. Companies also consider that CSR is an approach towards sustainable development and focus on the triple bottom line of Economic, Environmental and Social performance.

In India, the term Corporate Social Responsibility (CSR) is widely being used even though related concepts and terms, such as business responsibility, sustainable development, philanthropy, sustainability, corporate citizenship, responsible business, triple bottom line, shared value, value creation, business ethics, socio-economic responsibility, bottom of pyramid, stakeholder management, corporate responsibility, and corporate social performance.

The CSR activities of Indian companies are in line with the provisions of Section 135 with Schedule VII to the Companies Act, 2013. The CSR initiatives of companies thrust on creating value in the lives of the communities around its areas of business and manufacturing operations.

CSR has become an effective tool to work in the line of Sustainable Development Goals (SDGs) with a strong focus on social performance indicated in the CSR projects of the organizations. The SDGs, otherwise known as the Global Goals, are a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity.

Most of the businesses consider community as one of its apex stakeholders and believes in inclusive growth. This year most of the organisations continued its CSR initiatives in the realm of Education, Health, Livelihood, Rural Development and Social Entrepreneurship.

Organisation's diverse projects and operations touch lives of people in many ways and create value by helping in overall and holistic development of communities within multiple geographies. Through its various initiatives, Companies endeavour to play a relevant role by serving communities and projects that address gaps in basic societal requirements.

Conscious business decisions by the Companies have directly and indirectly created value for multiple stakeholders and helped in improving lives of the people and species. Businesses in India believed in creating societal value by providing affordable products and services which have assisted in the growth of relevant and allied industries. Across all its areas of operations of Business, there are inherent linkages and interconnections with the immediate and long term societal impact.

Most of the business have a practice of reporting the CSR performance not only in Annual Report but also in dedicated Annual CSR Report and Sustainable Development Report. These reports are externally verified and are in accordance with the Global Reporting Initiative (GRI) guidelines and Business Responsibility Report, mandated by the law and competent authorities.

CSR initiatives are conceptualized and implemented through Corporate Foundations, Non-Government Organisation (NGOs) and Agencies and not-for-profit organisations. Most of the organisations worked on 4P model (Public-Private-People-Partnership) for empowering communities and stakeholders. Businesses have positively impacted lives particularly of several hundreds of thousand underprivileged people through various CSR activities and approaches.

It has been observed that for Indian Companies, Corporate Social Responsibility (CSR) is the commitment of businesses to contribute to sustainable economic development by working with the employees, their families, the local community, experts and the society at large to improve lives in ways that are good for business and for its development.

In the broad manner, CSR segment of the organisation is guided by the Board of Governance, Business DNA, CSR and Sustainability Mission of the Companies. In compliance with the provisions of Section 135 of the Companies Act, 2013 with the Companies (Corporate Social Responsibility Policy) Rules, 2014, Companies have taken measures and steps to ensure improvement and betterment.

Most of the businesses seek to continue its contribution to the society through its distinct value proposition that meets the needs of millions of people, enhancing their lives through education, healthcare, improving quality of living by providing attitude, means and enabling livelihoods by

creating employment opportunities through and for the Business, By the Business and Beyond the Business.

For the Business, value is being created for the society through business including employment generation, market growth and opportunity creation. By the Business- value is also being created through Corporate Social Responsibility (CSR) interventions across different operating facilities with appropriate linkages to local communities in which businesses operate and Beyond Business- value is being created through interventions for the societies in diverse geographies across India through creation of demand and services.

At public sector business organisations in India, CSR has been also looked upon as closely linked with the principle of sustainable economic development, which demand that organisations should make decisions and act based not only on financial factors but also on immediate and long term social and environmental consequences of their operations and activities.

Businesses in India have been sensitive towards the concerns of society and is committed to operating its core business in a socially responsible way by taking into consideration the wider interests of the community and the environment.

Seven pillars of CSR strategy

1. Need of partnership in CSR
2. Cross learning
3. Supplementing and nurturing CSR
4. Per beneficiary cost reduction and maximizing the impact while reaching more people
5. Knowledge management and documentation
6. Use and reuse of resources for better CSR
7. Capacity building of the CSR workforce and re-skilling

Need of partnership in CSR

Business organisations now recognise Corporate Social Responsibility (CSR) as a great opportunity to significantly strengthen their businesses – while building, strengthening and renewing human, social and natural resources and wealth. Finding the right kind of partners is absolutely important to the success of a CSR strategy. We are in connected world.

All issues are connected to the other issues, perspective and environment. Working alone is good but working together is great. Working alone yields lesser benefits as compared to the working together always. CSR world should explore togetherness by partnering with other entities.

Togetherness in addressing the social and environmental issues is good for all. CSR world should encourage partnership to execute the mega social projects.

To fulfil the corporate social responsibility (CSR) goals businesses have to realise and act in partnership. Formation of partnerships has played a very significant role in progress and prosperity across the world. Partnership brings companies, businesses, people and society together and then pool their resources together in order to achieve the set goals. Partnerships is CSR is need of hour. Partnership opens doors for cross learning of knowledge and experiences.

Cross learning in CSR

Cross learning is key to CSR strategies. Learning improves performance and minimise risks. Effective partnership among likeminded organisations for CSR execution ensures cross learning in Corporate Social Responsibility. CSR leaders from different organisations must visit specific CSR locations of other organisation where CSR projects are being implemented and meanwhile they should meet the beneficiaries to gain new insights. CSR leaders must build a deep understanding of the socio-economic issues and they must be open enough to understand issues both from a business and a societal perspective. Learning from others in CSR can save time and resources. Concentrate on your CSR efforts but same time CSR leaders must learn from variety of successful CSR programmes. The greatest opportunities will come from areas where the business significantly interacts with society. Cross learning in CSR is immensely helpful in supplementing and nurturing CSR programme and projects.

Supplementing and nurturing CSR

Good CSR strategy and projects must be encouraged and supplemented. Opportunities for complementing and supplementing ongoing social projects and initiatives, programmes must be explored. Supplementing CSR emphasises on the sustainability of projects and programmes to ensure they remain relevant and viable even upon disengagement at the end of the project period. Every organisation explore possibilities for collaborating and co-operating with other corporations in order to synergise its efforts and increase both financial and social resources as well as outcomes and impact. Businesses may consider in supplementing even in smaller well defined CSR projects. Supplementing the CSR projects by the smaller or larger organisations matter in order to ensure optimal utilisation of the CSR budget and resources.

Per beneficiary cost reduction in CSR

Per beneficiary cost reduction and maximizing the impact while reaching more beneficiaries in CSR is key to success. Business organisations have a variety of motives for being attentive to CSR and run a CSR projects. Leaders can increase impact and reduce costs when they understand the role of Corporate Social Performance (CSP) in driving CSR Performance (CP). Business should think of reaching more people by using less money and resources. Reduction in per beneficiary cost can be achieved by the partnership, collaboration, cross learning and reuse of resources.

Knowledge management and documentation

CSR reporting practices strengthen organizations. The process of documenting and communicating CSR practices provides benefits to corporations, including the ability to formalize their position on CSR, identify organisational strengths and weaknesses, and manage stakeholder relationships and expectations. In India, any shortfall in spending in CSR shall be explained in the financial statements and the Board of Directors shall state the amount unspent and reasons for not spending that amount. As per the CSR Law, the CSR Committee of organisation shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

Documentation, reporting and communication of the CSR performance in crucial to the CSR strategy. Documentation of the CSR must be organised and structured and should be accessible. Companies can explore the new way of documentation, reporting and communications.

Use and reuse of resources for better CSR

Effective use and reuse of resources can improve the CSR performance. Awareness on use and reuse of resources among across the stakeholders can help in achieving the desired goals of CSR sustainability. Sustainable CSR can be achieved through community and beneficiaries engagement. CSR is a process oriented task.

Recycling and reuse often are the easiest places to start. CSR leaders should take the essential steps to recycle the commonly recyclable materials, and look for easy opportunities to replace disposable or recyclable items with reusable ones. CSR leaders also should look for partners to help with more challenging to recycle or exotic materials, as well as for opportunities to introduce reusable packaging. And of course, look upstream to design new idea, services and programmes.

Capacity building of the CSR workforce and re-skilling

In the fast changing world, capacity building of CSR workforce and re-skilling them are always relevant and are key to CSR performance. Human resource are fundamental requirement. CSR leaders must empower their subordinates by providing them right attitude, knowledge, information and trainings. Same time, CSR managers also be open to learn new things. Developing soft skill, professional skill, project management skill and leadership skill among CSR workforce is continuous process. Rigorous training, development and re-skilling of the CSR manners can save time, efforts and resources.