COMPANY LAW

(For Under graduate Classes)

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UNIT - I
COMPANY

THE COMPANIES ACT,2013

Introduction :

Today, the various provisions relating to joint stock companies are as per the provisions of the companies Act, 2013. So, it is desirable to have a brief study of the new features or provisions of the companies Act, 2013, before taking up the discussion of various aspects of joint stock companies.

The various provisions of the Companies Act,2013 were made effective from different dates. However, the Act as a whole came into effect from 1st April, 2014.

Highlights or Salient Features of the Companies Act,2013 :

The salient features of the Companies Act, 2013 are as follows :

1. The companies Act, 2013 has dispensed with the prior approval of the Central Government on most of the matters of companies. These matters have now been left to be decided by the boards of Directors of companies and the share holders. The objective of this feature is promotion of a legal framework of responsible self-regulation in the corporate sector.

2. There is elaboration of the functions of statutory auditors in the companies Act, 2013. Further, there is threat of punishment with imprisonment of one year and heavy fine in case an auditor who has contravered any of the

provisions knowingly or usefully with the introduction to deceive the shareholders.

3. The companies Act, 2013 has introduced the concept of key managerial personnel which comprises of cheif Executive Officer (CEO), Company Secretary and Chief Financial Officer. It is also provided that it is mandatory for every company having paid - up share capital of ten crores of rupees or more to have whole - time key managerial personnel.

4. Under the companies Act, 2013 , the composition of the Board of certain class or classes of companies shall at least include one woman director. This provision will be applicable to all listed companies as well as certain big public companies.

5. The companies Act, 2013 has made is compulsory for listed companies as well as certain big public companies to have one-third of the Board as independent Directors.

6. The companies Act, 2013 provides for the constitution of the Corporate Social Responsibility (CSR) Committee of the Board to formulate the CSR policy for under taking the activities specified in large companies of the size prescribed Such companies are required to spend at least two percent of their profit in every financial year. The short fall if any, in spending such amount has to be disclosed in the Boards report with the reasons for not spending the amount.

7. The secretarial audit report provided an respect of listed companies has to be annexed to the board report, this will help in improving the compliance by the companies.

8. The companies Act, 2013 has introduced a new category of companies called one person persons company

Limited. This new category of companies will be private limited in nature. This category will enable sole proprietorships and partnerships to convernt themselves into one person companies to derive the benefits of incorporation under the companies Act.

9. The law of acceptance of deposits by companies has been rationalised with the objective of protecting the interest of deposits. This objective is proposed to be achieved by making it mandatory for companies accepting accepliry deposits to give the depository's insurance cover with guaranteed recovery of deposit up to Rs. 20,000 per depositor in case of default. The companies are also required to create a change on the assets of the company in favour of deposits as security for the repayment of balance money, if any. The Companies Act, 2013 restricts the option to invite deposits from public to fairly big public companies having net worth of rupee one hundred crores or turnover of rupees five hardened crore, while companies public or private are allowed to accept deposits up to 10% from their members.

10. Under the companies Act, 2013, transactions with related parties are subjected to greater disclosers.

11. The procedure regarding managerial remuneration in the companies Act, 2013 continues to be the same as it was under the provision companies Act, 1956.

12. The Companies Act, 2013 has included Nidhis which are small public companies formed to promote the habit of thrift amongest the members.

13. Under the Companies Act, 2013 there is no provision for statement lieu of prospectus.

14. Under the Companies Act, the maximum number of members in a private company is 200.
15. Under the Companies Act, 2013 no certificate of commencement of business is required from the registrar of companies for a public company.
16. Under the companies Act, 2013 there is no requirement for a public company to hold a statutory meeting .
17. Under the companies Act, 2013 a company shall not issue shares at a discount except the shreat equity shares. Any shares issued by a company at a discounted price shall be void.

Definition and Meaning of Joint Stock Company :

In common parlance the term " company" means an association of persons for some purpose, say, for purpose of conducting business or for the purpose of promoting art, science, religion, sports, education, etc. But, in the eyes of law, such an association is not recognised as a joint stock company unless it is incorporated under the companies Act.

Section 2(20) of the companies Act, 2013 defines a company as a company formed under this Act or under any previous company law.

This definition of company is not satisfactory, as it does not point out the meaning and nature of a company.

Lord Justice Lindley of England has given an elaborate definition of a joint stock company according to him," A joint stock company is a voluntary association or organisation of many persons who contribute money or money's worth to a common stock and employ it in some trade or business and who share the profit or loss arising there from. The common stock so contributed

is denoted in money and is the capital of the company. The persons who contribute it or to whom it belongs are the members of the company. The proportion of capital to which each members is entitled is his share. The shares are of fixed value and the whole capital of the company is divided into equal number of shares. The shares are , generally, transferable, although under certain special circumstances the right to transfer may be restricted."

To put it briefly, according to lord Justice Lindley, "A joint stock company is a voluntary association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business and share the profit or loss arising there from.

In the words of Haney, " A joint stock company is an corporate association, which is an artificial person created law, having a separate entity, with a perpetual succession and a common seal."

Chief Justice Marshall of the U.S.A has defined a joint stock company as " a person, artificial, invisible, intangible and existing only in contemplation of law."

From these definitions, it is clear that a joint stock company is a voluntary association of persons, formed for the purpose of some business for profit, registered under the company law, having an independent legal entity, a distinctive name, common seal and perpetual succession, with a joint stock (i.e., common capital) contributed by the members, divisible into transferable shares of fixed denomination and carrying limited liability. In short, it is an artificial person created by law with a perpetual succession and a common seal.

FEATURES OF A JOINT STOCK COMPANY

An analysis of the definition and meaning of a joint stock company reveals many distinctive characteristic features of a joint stock company. The main characteristic features of a joint stock company are:

1. Voluntary Association :

A joint stock company is a voluntary association or organisation of persons. No person can be compelled to become a member of a joint stock company. Similarly, no member can be compelled to give up his membership of a company.

2. Incorporated Association:

A joint stock company is an incorporated association. Incorporation or registration under the Companies Act is absolutely necessary for an association of persons or company to become a joint stock company. On incorporation, a company becomes a body corporate or corporation and becomes a separate person distinct from the individuals constituting it. If an association of persons or a company is not registered under the Companies Act, it cannot be called a joint stock company, and consequently, the liability of the members of such an unincorporated association will be unlimited (i.e., the private assets of the members will become liable for the payment of the debts of the association).

The significance of incorporation is as follows:

(a) Incorporation under the Indian Companies Act gives a joint stock company a separate legal existence quite distinct from the members.

(b) Incorporation gives the joint stock company perpetual succession or permanent or continuous existence.

(c) Incorporation provides for the limited liability of the members of the company.

(d) Incorporation provides for the transferability of shares, of course, subject to the restrictions specified in the articles of association.

(e) Incorporation facilitates dealings between the company and the members of the company.

(f) It helps a person to have control of a company through the acquisition of the majority of shares carrying voting power.

(g) It facilitates separation of ownership and management of a company, entrustment of management to a board of directors elected from amongst the members, and thereby, facilitates representative management.

3. Specific Objects :

A joint stock company is formed for specific objects only, and the specific objects for which it is formed are expressly stated in the constitution (i.e., the memorandum of association) of the company. As such, a company can undertake only those activities which are intended to achieve the specified objects and those which are incidental thereto, but nothing else. In short, there are restrictions on the activities of a joint stock company.

The restrictions on the activities of a company provide protection to the shareholders as well as the creditors. They provide protection to the shareholders by ensuring that the funds contributed by them for the attainment of some specific objects are used only for those activities which are designed to achieve those specific objects and not in any other activities. They provide protection to