

**SUGGESTED ANSWERS for TEST 1 - Ch I of Co.s Act, 2013**

**Answer all the questions. Each question carries 5 marks each. Duration – 45 Mins**

1. The paid up share capital of Advanced Castings Pvt. Ltd is Rs.1,00,00,000 consisting of 8,00,000 Equity shares of Rs.10 each fully paid up and 2,00,000 cumulative Preference shares of Rs.10 each fully paid up. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are holding 3,00,000 Equity shares and 1,50,000 Equity shares respectively in Advanced Castings Pvt. Ltd. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd are the subsidiaries of Unique Machineries Pvt. Ltd. Examine whether Advanced Castings Pvt. Ltd. is a subsidiary of Unique Machineries Pvt. Ltd. Will your answer be different, if Unique Machineries Pvt. Ltd. Controls composition of Board of Directors of Advanced Casting Pvt. Ltd.?

**Answer:**

**As per the provisions of Sec 2(87) of The Companies Act 2013**, 'Subsidiary Company' or 'Subsidiary', in relation to any other company (that is to say the holding company), means a company in which the holding company –

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total **voting power** either at its own or together with one or more of its subsidiary companies.

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

**In the given case,**

Total ESC of Advanced Castings Pvt. Ltd. is Rs.80,00,000

ESC held by Quality Forgings Pvt. Ltd. in Advanced Castings Pvt. Ltd. is Rs.30,00,000

ESC held by Supreme Engineering Pvt. Ltd. in Advanced Castings Pvt. Ltd. is Rs.15,00,000

ESC held by Unique Machineries Pvt. Ltd. in Advanced Castings Pvt. Ltd. is Rs.45,00,000 since for the purpose of determining holding-subsidiary relationship, ESC held in Advanced Castings (Private) Ltd. by its Subsidiaries Quality Forgings Pvt. Ltd. (viz. Rs.30,00,000) and Supreme Engineering Pvt. Ltd. (viz. Rs.15,00,000) shall be considered.

Advanced Castings Pvt. Ltd. is a subsidiary of Unique Machineries Pvt. Ltd. Since Unique Machineries Pvt. Ltd. holds more than one-half of ESC of Advanced Castings Pvt. Ltd.

**Answer would not be different** Even if Unique Machineries Pvt. Ltd. controls the composition of Board of Directors of Advanced Castings Pvt. Ltd.

2. Explain lifting of corporate veil and state the circumstances under which lifting of corporate veil is done?

**Answer:**

Corporate Veil means Corporate personality. Normally, Courts are reluctant to lift the **CORPORATE VEIL** to see the person behind curtain since after incorporation the company has a distinct personality of its own.

However, under some exceptional circumstances, the law disregards the principle of corporate personality.

The circumstances under which lifting of corporate veil is done is broadly divided into **TWO**:-

- a. Under Statutory Provisions
- b. Under Judicial interpretations

The consequences of lifting the corporate veil are as follows:

- (a) Liability of the members of a limited company are made unlimited.
- (b) Directors of the company are made personally liable for the acts done by them on behalf of the company.
- (c) Legal entity concept is disregarded removing the separate existence of the company from that of its members.

#### Statutory Lifting Of Corporate Veil

- ✓ If the number of members falls below the statutory minimum
- ✓ Consolidation of books of accounts
- ✓ Conducting investigation of related companies etc.,

#### Judiciary Lifting of Corporate Veil

- ✓ Company mere sham or fraud
- ✓ Prevention of Fraud or improper conduct
- ✓ Company acting as mere agents or trustees of its Shareholders
- ✓ Determining enemy character of company
- ✓ Protection of Revenue
- ✓ Company avoiding legal obligations or welfare legislations etc.,

3. A Hindu Undivided Family consisting of 51 persons carries on banking business with a view to acquire profit for itself for its members without being registered. Will your answer be different if 2 HUFs join together and consists of 51 persons to carry on the banking business?

#### **Answer:**

Sec.464 of The Companies Act, 2013 prohibits carrying on of business by any association or partnership if the number of members of such association or partnership exceeds the prescribed number.

The prohibition U/s.464 is attracted if the following conditions are satisfied:

- a) The association or partnership consists of more than such number of persons as may be prescribed (provided that the number of persons which may be prescribed, shall not exceed 100). The number of members prescribed for this purpose is 50 (Rule 10 of the Companies (Miscellaneous) Rules, 2014).
- b) The association or partnership is formed for the purpose of carrying on any business.
- c) The object of the association or partnership is the acquisition of gain by the association or partnership or by the individual members thereof.
- d) The association or partnership is not registered as a company under the Companies Act, 2013 and is not formed under any law for the time being in force.

The prohibition contained in Sec.464 shall not apply to:

- a) a Hindu undivided family carrying on any business; or
- b) an association or partnership, if it is formed by professionals who are governed by special Acts.

**In the given case,** A HUF consisting of 51 persons carries on banking business with a view to acquire profit without being registered.

**Question involved is** whether it is an illegal association or not.

**Applying the above provision in the given case,** we understand that a single HUF is not required to get registered as a company even if the number of members exceed the maximum prescribed (50).

**However,** the answer would be different if 2 HUFs join together as only a single HUF is an exception and not when 2 HUFs join together.

4. Explain the terms Key Managerial Person, Officer, Manager, Managing Director and Whole time

Director.

**Answer:**

**Refer Notes/Material**

5. Answer the correct option:

1. Angel Infrastructures Pvt. Ltd. with a paid up capital of Rs.45 Lakhs and annual turnover of Rs.175 Lakhs, is a wholly owned subsidiary of Almighty Infrastructure Development Ltd. a listed company. Can Angel Infrastructures be called a small company?
- (a) Yes. The paid up capital and annual turnover of Angel Infrastructure Pvt. Ltd. is not exceeding the limit as specified under the definition of Small company.
- (b) No. Because Angel Infrastructure Pvt. Ltd. is a wholly owned subsidiary company.
- (c) No. Because Angel Infrastructure Pvt. Ltd. is not a subsidiary of a listed company.
- (d) No. Because the paid up capital is Rs. 45 lacs less than prescribed limit of Rs. 50 Lacs but its turnover is exceeding Rs.100 Lacs.

**Answer: (b)**

2. Seema Bulbs Ltd. is desirous of having significant influence in Shaukeen LED Bulbs and Tubes Ltd. so that the latter becomes its 'associate company'. For exercising 'significant influence' one of the options available to Seema Bulbs is to control at least twenty per cent of total voting power of Shaukeen LED Bulbs and Tubes. What is the other option available?
- (a) To control or participate in the recruitment decisions relating to appointment of middle management personnel of Shaukeen LED Bulbs and Tubes under an agreement.
- (b) To control or participate in the dividend decisions of Shaukeen LED Bulbs and Tubes under an agreement.
- (c) To control or participate in the business decisions of Shaukeen LED Bulbs and Tubes under an agreement.
- (d) To control or participate in the export decisions of Shaukeen LED Bulbs and Tubes under an agreement.

**Answer: (c)**

3. Arun along with his wife Arunima is running successfully a trading business. His friend Akash has suggested him to form a 'One Person Company (OPC)' whose striking feature is 'limited liability'. Arun is all convinced to get incorporated OPC but he is in a dilemma as to how to depict the name of such OPC in the Memorandum. Select the best option for him.
- (a) Aru-&-Aru (One Person Company) Trading Private Limited
- (b) One Person Company - Aru-&-Aru Trading & Co.
- (c) Aru-&-Aru Trading (One Person Company)
- (d) Aru-&-Aru Trading Private Limited (One Person Company)

**Answer: (d)**

4. What is the commencement date for The Companies Act, 2013?

- (a) Aug 30, 2013      (b) Aug 29, 2013      (c) Aug 31, 2013      (d) Sep 12, 2013

**Answer: (a)**

5. The reading of Law requires study of:

- (a) Bare Act      (b) Other Acts      (c) Statement of Objects & Reasons      (d) All of these

**Answer: (d)**