

## **TopYug Educations**

### **CA – INTER – CORPORATE & OTHER LAWS**

#### **SUGGESTED ANSWERS for TEST 2 - Ch I & II of Co.s Act, 2013**

**Answer All the questions. Each question carries 5 marks each. Duration – 60 Mins**

1. BS & Co. Ltd. is registered as a Public Limited company. The shareholding pattern of the company is under:

<b>Category</b>	<b>No.</b>
Directors & their relatives	136
Employees	18
Ex-employees (shares were allotted when they were employees)	29
Six couples holding shares jointly in the names of husband and wife (6 x 2)	12
Others	06
<b>Total:</b>	<b>201</b>

The Board of directors of the company proposes to convert it into a private company. Referring the provisions of Companies Act, Advise the Board of directors about reduction in the numbers of members, if necessary apart from the steps to be taken for conversion.

#### **Answer:**

**As per the provisions of Sec 2(68) of The Companies Act 2013,** The number of members in a private company shall be limited to 200.

While computing the number of members for this purpose, following provisions shall apply:

- (i) Joint holders of shares shall be counted as one member only.
- (ii) The employees of the company who became members by virtue of their employment, shall not be considered while counting the limit of 200 members.
- (iii) The employees of the company who became members by virtue of their employment, shall not be counted, even though they have, as on date, ceased to be the employees of the company. In other words, ex-employees (or former employees) shall not be considered while counting the limit of 200 members.

**In the given case,** BS & Co. Ltd., a public company has a varied shareholding and proposes to convert it into a private company.

**Question involved is** whether reduction in number of members is necessary or not.

**Applying the above provisions in the given case,** we notice that the number of members which would be counted in the number of members would be 148 which is arrived by adding 136 (Directors & their relatives) + 6 (Couples) + 6 (others). The employees and ex-employees is not counted for the purpose. Also joint holders counted as ONE and hence 6 couple considered as 6 members.

The number 148 is within the limit of 200 members **and hence** reduction in number of members is not necessary for converting BS & Co. Ltd., into a private company.

2. 'A', a Chartered Accountant on the instructions of promoters of a company, prepared "Memorandum of Association and Articles of Association, paid the registration fee and got the company incorporated. 'A' claims his costs and charges from the company. The company refuses to pay. Will 'A' succeed?

#### **Answer/Hint:**

**Co.s Act, 2013** - A will not succeed as it is a pre-incorporation contract. However, promoters can be held personally liable.

**Specific Relief Act, 2013** – A can succeed subject to the conditions specified.

3. The number of members of a private limited company falls below 2 on 1-7-19. The Company continues to carry on its business with the reduced number till 1-11-2019. During the intervening period between 1-7-19 and 1-11-19, the company contracts a debt. If the company with the reduced number had continued business say upto 3-1-2020 and the said debt has been incurred during the period between 1-7-2019 and 1-11-2019. Referring the provisions of The Companies Act, 2013, answer who shall be liable for the said debt?

**Answer:**

**As per Sec 3A of The Companies Act, 2013** If the number of members falls below the statutory limit for any company i.e 7, 2, 1 in public, private and one person co., respectively and such company carries on business for more than 6 months while the number of members is so reduced, every person who is a member during such period of six months inspite of knowing the fact that it is carrying the business in contravention of the Act, then, all such members shall be severally liable for the payment of the whole of the debts of the company contracted during that time, and may be severally sued for the same.

**In the given case,** number of members of a private limited company falls below 2 on 1-7-19 and the company continues the business with reduced number upto 3-1-2020. During this period the company has contract a debt.

**Question involved is who shall be liable for the said debt.**

**Applying the above provision in the given case,** we understand that the contract of debt is incurred during the 6 months period from the reduction in number of members for which the company only will be held liable.

**Therefore,** the company shall be liable for the said debt.

4. A company was formed on the basis of a certificate of incorporation obtained by threatening the Registrar of Companies. Is the company legally formed?

**Answer/Hint:**

Yes but RoC can strike off the name of company [Sec 7(7)]

5. Explain the differences between Company Limited by Shares and Company Limited by Guarantee?

**Answer:** Refer Notes/Material

6. The objects clause of the Memorandum of Association of the ABC (Pvt.) Ltd., New Delhi, authorized to do trading in mangoes. The company, however, entered into partnership with Mr. A and traded in mangoes and incurred liabilities to Mr. A. The Company, subsequently, refused to admit the liability to

'A' on the ground of 'ultra vires' the Company'. Advise whether stand of the company is legally valid and if so, give reasons in support of your answer.

**Answer:**

**As per the doctrine of ultra vires**, the acts done beyond the power of company is void ab initio and has no legal effect.

**In the given case**, the objects clause of the MoA of ABC (Pvt.) Ltd., authorized to do trading in mangoes. The company, however, entered into partnership with Mr. A and traded in mangoes and incurred liabilities to Mr. A. The Company, subsequently, refused to admit the liability to 'A' on the ground of 'ultra vires' the Company'.

**Question involved is whether** stand of the company is legally valid.

**Applying the above doctrine to the given case we understand that** since the partnership agreement for trading in mangoes is beyond the scope of powers of the company making it an ultra vires contract, and an ultra vires contract is void ab initio, and is not binding on the company or the other party.

Since the power to enter into partnership is not an ancillary or incidental power as such power can be legally exercised by the company only if the object clause of memorandum expressly authorizes the company to enter into partnership

**Therefore**, The company ABC Pvt Ltd., is not liable to A.