Q.1 Define Company under Company Law.
Ans.: In terms of Section 3(2)(i) of the Companies Act, 1956, a company means "A company formed and registered under company Act 1956 or an existing company. An existing company means a company formed and registered under any of the former companies Act."

Q.2 What is Body Corporate?
Ans.: According to Section 2(7), Body Corporate or Corporation includes a company incorporated outside of India but does not include as follows:

(i) A corporate sole.
(ii) A cooperative society registered under any law relating to co-operative societies.
(iii) Any other body corporate declared by Central Govt. in its gazette.

Q.3 What do you mean by holding company?
Ans.: According to section 4(4) a company shall be deemed to be holding company of another if but only if that other is its subsidiary. Hence, a company has control over another company, the controlling company is known as holding company and the company is known as holding company and the other company is known subsidiary company.

Q.4 What is a Government Company?
Ans.: According to Section 617 "a Govt. company means any company in which not less than 51% of the paid up share capital is held by the following:

(i) By the Central Govt;
(ii) By any State Govt. or Governments; or
(iii) Partly by Central Govt. And partly by one or more State Governments."
A subsidiary of a Government Company is an also Government Company.

Q.5 Foreign companies?
Ans.: According to Section 591(1) "A foreign company is the company which is or has been incorporated outside India but establish or has established a place of business within India."

Q.6 What is one man company?
Ans.: It is also known as family company. The one man holds entire share capital of the company. Other person holds only the minimum or negligible number of shares in the company.

Q.7 Who is a promoter?
Ans.: A promoter is a person or group of persons who conceives an idea regarding the formation of a company for the first time. He also takes necessary steps for formation of a company and takes other essential steps for its incorporation, raising of capital and making it a going concern.

Q.8 What is commencement of business certificate?
Ans.: A public company cannot start business without it. Hence, a public company before start of business must get a certificate that is called Commencement of Business Certificate. At the same time a public as well as private company must also commence its business within one year of its incorporation.

Q.9 What is Ultra Vires?
Ans.: It is composed of two Latin words i.e. Ultra and Vires. Ultra means beyond and vires means power. Hence ultra vires means beyond one’s power. In the context of company law, ultra vires means the acts beyond the legal powers or objects of the company. If a company acts/contracts beyond the memorandum either expressly or impliedly, it is null and void.

Q.10 How doctrine of Constructive notice is opposed to the doctrine of indoor management?
Ans.: This is against the principle of constractive notice which protects the company against outsiders for notice given to all due to public documents on the other hand doctrine of indoor management believes that internal management of the company and rules are according to memorandum and Articles. In case of irregularity and mismanagement, then the company will be held liable.

Q.11 What is abridged prospectus?
Ans.: Abridged means which is in brief and it is a memorandum containing such salient features of a prospectus prescribed.

Q.12 What is Statement in lieu of prospectus? Explain the varying conditions of issue of it.
Ans.: If a company requires to get shares or debentures amount from the public. The private company is restricted but the public company is required to issue prospectus. But some time the company privately managed the funds in such a case statement in lieu of prospectus must be filed at least three days before the allotment of shares or debentures; so it is substitute to prospectus.
Q.13 Define a Director?
Ans.: The Supreme Court of India defines "A person who guides policy and superintends the working of a company, is a director". The name by which he is called is immaterial. The term includes a Managing Director.

Q.14 How many directorships can be held by an individual?
Ans.: No person shall hold office at the same time as director in more than fifteen companies. If he does work more than this limit, he has to resign more than fifteen companies.

Q.15 Define Company Secretary?
Ans.: According to Section 2(45) of the Company Secretaries Act 1980 includes any individual possessing the prescribed qualifications and appointed to perform the duties which may be performed as Secretary under the act and any other ministerial or administrative duties.

According to Section 2(1)(C) of the Company Secretaries Act "Company Secretary means a person who is a member of the Institute of Company Secretaries of India."

Q.16 What is stock of a company?
Ans. Stock is the total of fully paid up shares of a company.

Q.17 What is Debenture?
Ans. Debenture means a document which either creates a debt or acknowledges the debts company has taken it from the debenture holder.

Q.18 What is allotment of share?
Ans. The term allotment of share means allotment is the acceptance by the company of the application (offer) made by an individual to take shares in a company. It does not include re-issue of forfeited shares.

Q.19 What do you mean by member of a company?
Ans. Member is a person whose names has been entered in the register of members because he has subscribed to the memorandum of the company or he agreed in writing to become member of the company or his name has been entered in the records of the register of members shall be the number of the company (sec. 41). If a person agrees to become director of a company and promises to take qualification shares, he may also becomes a member of a company.

Q.20 Can a minor become member of a company?
Ans. A minor cannot become member of the company because he is incompetent to enter into contract, hence any agreement made by him is ab-initio void. When the shares are fully paid up them a minor through his lawful guidance, apply for registration of a transfer of
shares in the name of minor but a minor can be transfer of fully paid shares.

Q.21 What is qualification share?
Ans. Accordingly to clause 66 of table 'A' provides that atleast one share in a company should be taken by the director that is called the minimum qualification.

Q.22 What do you mean by Director?
Ans. A Director is a person or one of the persons through whom the company acts, who guides the policy, manages and controls or superintendents the affairs of the company.

Q.23 What is the maximum number of directorship can be held by an individual?
Ans. According to section 275, No person shall hold office at the same time as director in more than fifteen companies. If any person hold more than 15 companies immediately before the commencement of the companies (amendment) Act, 2000 shall, within two months from such commencement shall have to resign from more than fifteen posts.

Q.24 What is share warrant?
Ans. A share warrant is a document issued by a public company to its shareholders under its common seal by converting the share certificates issued narrating that the bearer of the warrant is entitled to the shares which are fully paid up and which are mentioned therein under common seal.

Q.25 What is Share Certificate?
Ans. A share certificate is a document of title of share issued by a company under company's common seal which declares that the person whose name written therein is a bon a fide holder of company's share specified in it.

Q.26 What is irregular allotment?
Ans. Irregular allotment has been made when -
(i) Without receiving the minimum subscription under section 69 or 
(ii) Without finding the prospectus /in lieu for registration under section 70.

Q.27 How much donation may be contributed by a company to the national fund? Ans. Companies can contribute the donation as much as amount desired to the National defence fund. There is no limit for it.

Q.28 What is the maximum limit of managerial remuneration in a company?
Ans. In cash of public company or its subsidiary the maximum managerial remuneration in a year shall not exceed 11 per cent of the net profit of the company.

Q.29 How much donation may be company contribute to the political parties?
Ans. The maximum limit of managerial remuneration which may be paid by a public company or its subsidiary in respect of a financial year shall not exceed 11 per cent of the net profit of a company.

Q.30 What is meant by 'Manager' under Companies Act, 1956?
Ans. According to section 2(24) "Manager means an individual (not being the managing agent) who subject to the superintendence, control and direction of the Board of directors, has the management of the whole or substantially the whole of the affairs of a company and includes a director or any other person occupying the position of a manager, by whatever name called and whether under a contract of service or not".

Q.31 What do you mean by Managing Director?
Ans. According to section 2(26) defines that "managing direction" means a director who by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its articles of association, entrusted with substantial powers of management which would not otherwise be exercisable by him and includes a director occupying the position of a managing director, by whatever name called."

Q.32 What do you mean by oppression?
Ans. Oppression is any act exercised in a burdensome, harsh and wrongful manner. In relation to companies it implies unjust or unfair dealing in the affairs of a company which is harshly, burdensome or prejudice to some portion of the members of the company. In brief, oppression takes place when the affairs of a company are bring conducted in a manner which is harsh, burdensome or unfair or prejudicial to the interest some portion of members of the company or to public interest.

Q.33 What do you mean by winding up of a company?
Ans. The term winding up is a process by which the dissolution of a company is brought about. Under this process a liquidator is appointed to realize the assets, pay the debts of the company out of assets so realized and to distribute the balance, if any among the members of the company.
Q.34 What are the various modes of winding up?
Ans. A company may be winding up in any of the following ways:
   i) Winding up by the tribunal
   ii) Voluntary winding up. This may be of two types:
       (a) Members' voluntary winding up and
       (b) Creditors' voluntary winding up.

Q.35 Which party may apply for winding up?
Ans. The following may apply for winding up as an individual or collectively-
   (i) The Company  (ii) Creditors
   (iii) Registrar     (iv) Central Government
   (v) Any contributory  (vi) Liquidator

Q.36 When winding up process commences?
Ans. i) The winding up process is deemed to commence from the date a resolution is passed by the company for winding up by the court.
   iii) In all other cases from the time of the presentation of the position for winding up.

Q.37 What is mismanagement?
Ans. Mismanagement exists in the following cases:
   i) When the affairs or the company are being conducted in a manner prejudicial to public in trust or to the company's interest.
   ii) When by reason of a material change in the management or control of a company are likely to be conducted in a manner prejudicial to public interest or to the company's interest or to the company's interest.

Q.38 What is member's voluntary winding up of a company?
Ans. When members voluntary wish to wind up a company and the majority of the director at a meeting of the board makes a declaration of solvency of the company and deliver it to the registrar within the definite period of time. It is called members voluntary winding up.

Q.39 What is creditors' voluntary winding up?
Ans. When a company passes a resolution for winding up of the company without making declaration of solvency by its directors or directors make such declaration and company
fails to pay its debts within the definite period mentioned in the declaration, such winding up is called as creditors' voluntary winding up.

Q.40 What is renunciation of allotment?
Ans. It is situation when an allottee of shares in a public company renounces all or a certain number of shares allotted to him in favour of another person, it is called renunciation of allotment of shares but is requires and permits by its articles of association.

Q.41 What is splitting of allotment?
Ans. When shares are allotted in large numbers to an allottee by one allotment letter. It becomes difficult to sell and transfer the shares in the market. In such a case, the allottee requests the company to letter into a number of allotment letters in market lot or other desired lot. Therefore, when company issues such multiple allotment letters or requested by the allottee, it is to be splitting of allotment.

Q.42 What is meant by calls on shares?
Ans. A call on shares is a demand made by the Directors of a company on the holders of shares to a part or whole of the amount.

Q.43 What is calls in arrears?
Ans. Calls in arrears means a sum called in respect is not paid before or on the day fixed for payment the person from whom the sum is due shall pay interest thereon from the day fixed for payment to the day of actual payment. The person is liable to pay a definite rate of interest specified in the articles or at lower rate fixed by the directors is called calls in arrears. The board shall be at liberty to waive payment of any such interest, wholly or in part.

Q.44 Does shareholder making payment of calls in advance entitle to any voting right?
Ans. No, the shareholder made payment of calls in advance does not entitle to any voting rights until the same becomes payable by virtue of a call made by the company.

Q.45 What is surrender of shares?
Ans. When a shareholder is unable to pay the call due on his shares, he gives up the shares and rights attached thereto by a shareholder to the company.

Q.46 What is meant by forfeiture of shares?
Ans. It means confiscation of shares and termination of membership of a member by the Board
of Directors (B.O.D.) by way of penalty for non-payment of any call over due on such shares.

Q.47 What is balance ticket?
Ans. It is a certificate which certifies that the shareholder whose name therein has delivered a share certificate for transfer of certain number of shares and shareholders is still entitled to the balance of shares as specified in it.

Q.48 What is blank transfer?
Ans. In a blank transfer a shareholder takes a transfer deed and fills in it the name of the company, number of shares sold his name and sign it and deliver to the same to the subsequent buyer; it is called Blank transfer.

Q.49 Clearly explain forged transfer of share.
Ans. When a transfer of shares founded upon forged transfer deed on the transfer does not sign the transfer deed but his signatures are forged on the deed, such transfer is called forged transfer.

Q.50 What is Transmission of shares?
Ans. When the shares of a member are transferred to another person by operation of law, it to be the transmission of shares. It happens generally, on the death of a member, insolvency and lunacy.

Q.51 What is dividend?
Ans. Dividend is that part of corporate profit which is used for distribution amongst the shareholders by the general meeting to be distributed among the shareholders of the company on the recommendation of its board of Directors.

Q.52 Explain Interim dividend?
Ans. Declaration of dividend by the director's in the anticipation of profit before the close of the year to which it is declared and paid shall apply to any interim dividend.

Q.53 What is meant by meeting of the company?
Ans. A meeting is a gathering or assembly of two or more persons at a pre-decided date, time and place for transacting certain lawful business of the company concern.

Q.54 What is meant by Agenda of meeting?
Ans. Agenda means a statement of the business to be transacted at meeting.

Q5.55 What do you mean by quorum?

Ans. The term quorum means the presence of certain minimum member of members which is required at a meeting for transacting its business. Without quorum, the proceedings of the meeting are invalid.

Q5.56 What is Amendment motion?

Ans. If any alteration proposed by any member in the main motion before it is voted upon and adopted is called amendment motion.

Q5.57 Who is a proxy? To whom can be appointed as proxy?

Ans. A proxy is a person who is authorized by a member of a company to attend and vote at a meeting on his behalf. A proxy is also an instrument authorizing a person to attend the meeting and cast vote. The instrument appointing a proxy must be in writing and must be signed by the appointer.

Q5.58 What is meant by "Minutes of meeting"?

Ans. Minutes refers to the official record of the proceedings of a company meeting or the business transacted at a meeting. It's main purpose is to maintain official record and preserve it as decision reached at a meeting in brief.

Q5.59 What do you mean by motion?

Ans. A motion is a definite proposal submitted for discussion and decision before a general meeting. It is consideration and adoption.

Q5.60 What is resolution and what are kinds of resolutions?

Ans. A resolution is a formal decision of a meeting on any proposed presented for vote and passed by majority, it becomes resolution.

There are three types of resolutions as follows:

i) Ordinary resolution

ii) Special resolution and

iii) Resolution requiring special notice

Q5.61 What is meant by ordinary and special resolution?

Ans. Ordinary resolution means which is passed by ordinary majority i.e. member of votes is in yes is more than no. On the other hand special resolution is passed by three fourth
majority.

Q.62 What is meant by statutory meeting?

Ans. Section 165(1) of the companies act lays down that every company limited by shares and by guarantee and having share capital must hold a general meeting of its shareholders within a period of six months but not earlier than one month from the date on which the company is entitled to commence is called the statutory meeting. It is held only once in the life time of the company. Private companies exempted from holding this meeting.

Q.63 What do you mean by Annual General Meeting?

Ans. Every company is mandatory to held at least one meeting of its member during a calendar year is called AGM.

Q.64 What is meant by extra-ordinary General Meeting?

Ans. All general meeting other than the statutory General Meeting and annual general meeting is called all extra-ordinary general meeting. It is to be held during the period between two general meetings.

CHAPTER-II

Meaning and Nature of a Company

Q.1. "A company is an artificial person created by law, having a separate entity with a perpetual succession and common seal". Explain the above statement and briefly describe the characteristics of a company.

Ans.: Meaning of Company : The term company is a voluntary association of persons formed and registered for certain common persons under the present provisions of company law. It exists in the contemplation (eye) of law. It is an artificial person having separate entity from its members with perpetual succession and common seal. The liability of the members is limited. The capital of the company is divided into transferable shares and shareholders are called members.

Definition of the Company : Company may be defined under three main heads :

A) Definition given under law
B) Definition given by professors/prolific writers
C) Definition given by judges

(A) Definition according to Law : According to the companies Act 1956, a company
means "A company formed and registered under the companies Act 1956 or an existing company.: [Section 3(1)(i)]. An existing company means a company formed and registered under any of the former Companies Acts."

This definition is not clear about the elements of a company. Hence definitions given by Professors can be explained.

(B) Definitions by Famous Writers: Professor Haney defined ....., "A company is an artificial person created by law", having separate entity, with a perpetual succession and common seal.

(C) Definition: Definition given by Judges. According to Justice (C.J) Marshall "A company is an artificial person created by law, having separate entity, with a perpetual succession and common seal."

To conclude, a company may be defined as an incorporated association of persons, which is an artificial legal person in the eye of law, having an independent legal entity, with a perpetual succession, a common seal, a common capital comprising transferable shares and carrying limited liability. Sometimes it is also called Corporation.

Characteristics of a Company:

(1) Voluntary Incorporated Association: For the formation of a company registration is compulsory under the Company Act otherwise it will become illegal association of persons. It is voluntary and statutory association; hence it is also called body corporate. It is formed by consensus.

(2) Number of Members/Subscribers: For incorporation/registration of a company, minimum seven persons in case of public company and two in case of private are required. The maximum number of members in case of private company may be 50 but for a public company, no limit of members.

(3) Artificial Personality: A company is an artificial, invisible and intangible person, it exists in the eye of law. It is not natural person because it has no physical body, no soul and no conscience.

(4) Separate Legal Entity: A decision is given in case of Soloman v. Soloman & Co.(1877) that a company has distinct legal entity from its members. It has its own legal existence independent of its members. It has its own name, can sue and be sued by its members and even by outsiders. A member can enter into contract with his company in the same manner as other individuals.

(5) Perpetual Succession: Company is created and wind up by law alone. It’s existence is not affected by the lanacy, retirement, death or lunacy of its members. Man may come, man may go but company goes on for ever like water of river may change but the river like the Ganga is still existing.

(6) Common Seal: Company is an artificial person, hence cannot sign like a natural person, thus the common seal which is engraved should be affixed on any documents for authentication and legally binding on the company.

(7) Limited Liability: The Principle of limited liability for business debts is one of the
principal advantages of doing business under the corporate form of business organization. In case of a company limited by shares, the liability of a member is limited to the nominal value of the shares held by him. In case of company limited by guarantee will be liable to pay the amount at the time of winding up of the company.

(8) Share Capital: Every company have to require share capital according to law Section 3(1) of Indian Company - a public company is required to have a minimum paid up capital of Rs.5 lakh and a private company must have Rs. One lakh. But, in case of companies engaged in promotion of commerce, art, science, religion, etc. need not require to have minimum paid up capital.

(9) Transferability of Shares: Section 82 of the companies Act, 1956, provides that "the shares; or other interest of any member shall be movable property, transferable in a manner provided for in the articles of the company. Therefore, a member may - (A) sell his shares in the open market, or (B) transfer his shares to anybody he likes in a public Limited company as per conditions laid down in the articles of the company. However, there are certain restrictions on the transfer of shares in respect of private limited companies as the very nature of the company indicates, namely private

(10) Separation of Ownership and Management: A company has a right to own and transfer property since it is a legal entity. A shareholder has no proprietary right in the property of the company but merely to their shares. Therefore, the claims of the company’s creditors will be against the company’s property and not that of the shareholders. A Company can sue and is being sued for enforcement breach of legal rights as the case may be. The decision was given in the case of Gramophone & Typewriter Co Ltd., vs. Stanley (1908),

(11) A Company is not a Citizen: A company on incorporation assumes a legal personality distinct from its members, but it cannot claim to be a citizen of a country under the constitution of India or the citizenship Act, 1955. Hence, the company cannot claim the fundamental rights guaranteed under the constitution. However, it has certain rights protected under our constitution as a legal entity which is guaranteed to all persons whether holding the citizenship or not. The company is mere abstraction or creation of law on the other hand, the company is deprived of citizenship, has a nationality, domicile and residence. Its domicile is the place of its registration and it is attached to it as long as it is in existence. This establishes the residence of a company at that place where central control and Management of its business is located or exercised. This residence business is located or exercised. This residence of the company gives jurisdiction to the taxation.

(12) Separate Property: The property of the company is not the property of share holders. It can acquire and keep it in its own name. No member has either individually or jointly a right to the assets of a company during its life or on its winding up. If all the shares be taken by one man, the man cannot insure the property of a company because he does not have insurable interest.

(13) Act within Intra Vires: A company cannot work beyond the scope of memorandum of association. Acts made beyond the scope of memorandum result into ultra vires.
Democratic Management: It is managed by the board of directors, elected by the members of the company. Day to day decisions is taken by the concerned Managers. The shareholders cannot take part in the decision process directly.

Governance by Majority: Company is managed by rule of majority decision is taken by simple or special majority.

Statutory Obligations: A company is required to comply with various statutory obligations regarding management. For instance, filling balance sheets, maintaining proper accounts books, registers and filing annual return and P & LA/CS duly audited are statutory obligations of a company.

Separate Name: Every company must have specific name which must be registered. Once company's name is registered. It must be painted or affixed on the outside of every officer or place of business.

Raising of Capital on a Large Scale: A company can raise the capital on the large scale by selling its shares to the public at large.

Shareholders are not the Agents of Company: Shareholders have only invested capital in the company but their entity is different from that for their company. The company is not bound by its shareholders.

May Assume Enemy Character: Company exists in the eye of law as legal person hence it cannot become a friend nor an enemy. A company may be regarded as enemy company if the persons in control of its affairs are residents in the enemy country or are acting in accordance with directions or instructions of the enemy.

Q.2. What is lifting of corporate veil? Explain the circumstances under which the corporate veil of a company may be lifted.

Ans.: "Corporate veil" here refers to the 'partition' or 'curtain' between the company and its members. A company being given a legal status, all dealings with the company will be in the name of the company and men behind the company are disregarded. Lifting of corporate veil is a fiction of law, which means disregarding the separate legal entity of a company and identifying the realities which lay behind the legal facade. In applying this doctrine, the court ignores the company and concern itself directly with the members or directors.

This doctrine of lifting the corporate veil is understood as identification of a company with its members when individual member may be held liable for its acts or titles to property. The corporate veil may be lifted when the directors or members use the legal entity of the company for any fraudulent or dishonest purpose or to defeat provisions of the law, public interest or to defeat crime.

The corporate entity is disregarded in exceptional cases which are categorized into:

1. Excess or Violation of Statutory Provisions
2. Judicial Interpretation
(1) Excess Statutory Provisions:

(i) Reduction of Membership below Statutory Minimum: Under section 45 of companies Act, 1956, a company is privileged to carry on its business with a limited liability for six months when the member is reduced below seven in case of a public company and below two in case of a private company. Beyond this period of six months, the members will be held individually liable for debts contracted by the company.

(ii) Prevention of Fraud or Improper Conduct: The legal personality of a company is disregarded when registration is used for fraudulent purposes like defrauding creditors, defeating or circumventing law. In such cases, the court may declare those who are responsible for such conduct, personally liable for all the debts of the company without any limitation of liability (See 542). In such a situation the court is empowered to fine. The corporate veil and identify the persons who defrauded to the creditors or any other persons.

(iii) Misstatement in Prospectus: Every person who is responsible to issue the prospectus will be held liable in case of misstatement in prospectus. He will be held liable to pay compensation to every person who bought the shares on the honesty and faith of the prospectus. For any loss or damages, the aggrieved party can claim from such person who believed on the prospectus (See 62(ii).

(iv) Mis-description of a Company: Each company is required that its name must be fully and properly mentioned on the documents, contract or negotiable instruments like cheque, Bill of exchange and promissory note. This is mentioned under section 147, failing which the person who has committed the act or made a contract is held personally liable for it. Hence, the court lifts the 'veil' where a company is merely a cloak, or a sham.

(v) Holding and Subsidiary Companies: Both these are having separate legal existence. But for establishing a proper relationship of a holding and subsidiary company, the court may lift the corporate veil and probe behind it to fix up the persons who control the companies. This is necessary to determine how far a subsidiary company is independent. It is quite possible that subsidiary company may be only a branch of the holding company depending upon how the board of directors is constituted and how the profits, the control and conduct of the subsidiary is conducted.

(vi) Investigation of the Affairs of the Company: Section 239 empowers the appointment of an inspector to investigate into the affairs of a company. He will also investigate the affairs of anybody corporate in the same management or group of control. The object is to investigate the affairs of some companies which are so related that it is necessary or if it is felt necessary to bring the affairs of these companies under investigation.

(vii) Investigation of Ownership of a Company: A company may be investigated by the
Company Law and Secretarial Practice Notes

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