MISCELLANEOUS PROVISIONS

LEARNING OUTCOMES

After reading this chapter, you will be able to:

- Know the provisions regarding Removal of names of companies from the Register of Companies
- Understand about the companies authorized to register under this Act and Winding up of unregistered companies
- Identify the Government companies and their Annual Reports
- Know the provisions related to Registration offices and fees
- Analyzing the concept of Nidhis and many more miscellaneous provisions
1. INTRODUCTION

Ministry of Corporate Affairs vide Notifications dated 7th of December & 26th of December, 2016 notified various sections of the Companies Act, 2013. Besides, with the enforcement of the Insolvency and Bankruptcy Code, 2016, many consequential changes have also bring in the Companies Act, 2013.

This chapter contains Chapter XVIII: Removal of names of companies from the register of companies, Chapter XXI- Part I: Companies authorized to register under this Act, Part II: Winding up of unregistered companies, Chapter XXIII: Government companies, Chapter XXIV: Registration offices and fees, Chapter XXV: Companies to furnish information or statistics, chapter XXVI: Nidhis and chapter XXIX: Miscellaneous.

2. REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

Provision related to removal of names of companies from the register of companies is covered in Chapter XVIII of the Companies Act, 2013. This chapter comprises of five sections being covered from Section 248 to 252.

Important aspect of this chapter are as follows:

(i) Registrar has suomoto powers to remove the name of companies after compliance with desired requirements as prescribed in this chapter.

(ii) Company has a right to apply for the striking off its name from the register of companies on the grounds specified in this chapter.

(iii) With the publish of notice in the official gazette related to striking of name, the respective company shall stand dissolved.

(iv) This chapter also ensures that the liabilities and obligations of the company are met and even after the striking name of the company, assets are made available for meeting the liabilities of the company.

(v) Chapter prescribes the conditions on making of an application under section 248 which entitles a company to apply for its removal from the registrar of companies. This restriction have been devised to protect the public interest.

(vi) Chapter also enumerates effect of company on being notified as dissolved. Such type of company cease to operate and certificate of incorporation is deemed to be cancelled from the date on which notice was issued. However, for the purpose of realising the amount due to the company and for payment or discharge of its liabilities/obligations, company continued in existence.
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(vii) This chapter also discusses on the issue where the company fraudulently apply for the striking off its name to evade the liabilities or to deceive its creditors or any persons.

(viii) Provision has been incorporated with respect to filing of appeal to tribunal by any aggrieved person.

[I] Power of Registrar to Remove Name of Company from Register of Companies [Section 248]

(1) **Power of registrar:** Where the Registrar has reasonable cause to believe that—

   (a) a company has failed to commence its business within one year of its incorporation, or;

   (b) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

   - he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(2) **Filing of application to registrar by company for removal of name:** A company may, after extinguishing all its liabilities, by-

   - a special resolution, or

   - consent of seventy-five per cent. members in terms of paid-up share capital,

   - file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

   **Approval of the regulatory body, in case of a company regulated under a special Act:** Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

(3) **Exemption to section 8 companies:** Nothing in sub-section (2) shall apply to a company registered under section 8.

(4) **Publishing of notice for general public:** A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

(5) **Strike off of names from register of companies:** At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official
Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(6) **Provisions for realisation of amount:** The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

(7) **Persistence of the liability:** The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

(8) **Not affecting on the power of tribunal:** Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

[II] **Restrictions on making application under section 248 in certain situations [Section 249]**

(1) An application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—

(a) has changed its name or shifted its registered office from one State to another;

(b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.
(2) **Violation of above conditions on filing of application:** If a company files an application in violation of restriction as given in sub-section (1) as given above, it shall be punishable with fine which may extend to one lakh rupees.

(3) **Rights of registrar on non-compliance of conditions by the company:** An application filed under sub-section (2) of section 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.

[III] **Effect of Company Notified as Dissolved [Section 250]**

Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice –

- cease to operate as a company, and
- the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date.

For the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company, this sub-section shall not effect. The company shall be continued in existence.

[IV] **Fraudulent Application for Removal of Name [Section 251]**

(1) **Intention of filing application:** Where it is found that an application by a company has been made with the-
-the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved—

(a) be **jointly and severally liable** to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and

(b) be **punishable for fraud** in the manner as provided in section 447.

(2) **Recommendation for prosecution:** The Registrar may also recommend prosecution of the persons responsible for the filing of an application.

[V] **Appeal to Tribunal [Section 252]**

(1) **Aggrieved person to file an appeal against the order of registrar:** Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:

**Reasonable opportunity of representations given to registrar:** Before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to

- the Registrar,
- the company and
- all the persons concerned.
Restoration of name of company: If the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

(2) Order of tribunal to be filed with register: A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

(3) Order of tribunal as it may deem just: If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by

- the company,
- member,
- creditor or
- workman

before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies,

- order the name of the company to be restored to the register of companies,
- and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.
3. COMPANIES AUTHOURISED TO REGISTER UNDER THIS ACT

Provision related to the Companies which are authorized to registered under this Act is given in Chapter XXI of the Companies Act, 2013.

This chapter is divided into two parts. Part I deals with the companies authorised to register under this Act. It contains 9 sections. Whereas Part II deals with the winding up of unregistered companies. It comprises of 4 sections. This chapter covers sections from 366- 378 of the Companies Act, 2013.

Part I — Companies Authorised to Register Under this Act

[I] Companies capable of being registered [Section 366]

1. Meaning of company: For the purposes of this Part, the word “company” includes the following entities which applies for registration under this Part.-
(2) **Registration of companies:** With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of seven or more members, may at any time register under this Act -

- as an unlimited company, or
- as a company limited by shares, or
- as a company limited by guarantee,

in such manner as may be prescribed and the registration shall not be invalid by reason only that it has taken place with a view to the company’s being wound up:

Provided that—

(i) **Company registered under the previous company law:** a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of this section;

(ii) **Limited liability of member:** a company having the liability of its members limited by any Act of Parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(iii) **Company can be registered as a company limited by shares only:** a company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons;

(iv) **Companies can be registered with the assent of the majority:** a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;

(v) **Company to register as a limited company requires majority to assent:** where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;

(vi) **Company is about to register as a company limited by guarantee, assent to be accompanied by resolution:** where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a
resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(3) **Computation of majority:** In computing any majority required for the purposes of subsection (1), when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the Company.

[II] **Certificate of registration of existing companies [Section 367]**

On compliance with the requirements of this Chapter with respect to registration, and on payment of such fees, if any, as are payable under section 403,-

- the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and
- in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

[III] **Vesting of property on registration [Section 368]**

All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall,

- on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

[IV] **Saving of existing liabilities [Section 369]**

The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

[V] **Continuation of pending legal proceedings [Section 370, except the Proviso]**

All suits and other legal proceedings taken by or against-
which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place.

Provided that execution shall not issue against the property or persons of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company in accordance with the provisions of this Act or of the Insolvency and Bankruptcy Code, 2016.

[VI] Effect of registration under this Part [Section 371]

(1) When a company is registered in pursuance of this Part, sub-sections (2) to (7) shall apply.

(2) All provisions contained in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) Application of the provisions of this Act: All the provisions of this Act shall apply to the-

- company and the members,
- contributories and creditors thereof,

in the same manner in all respects as if it had been formed under this Act, subject as follows:—

(a) table F in Schedule I shall not apply unless and except in so far as it is adopted by special resolution;
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(b) **the provisions of this Act relating to the numbering of shares shall not apply** to any company whose shares are not numbered;

c) **in the event of the company being wound up, every person shall be a contributory,** in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

d) **in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company,** in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(4) **Application of the provisions of this Act:** The provisions of this Act with respect to—

(a) the registration of an unlimited company as a limited company;

(b) the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called-up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called-up except in the event of winding up,

shall apply, notwithstanding anything in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company.

(5) **No alteration of any provisions contained in the instrument:** Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) **Powers of altering the constitution or regulations as vested in the company:** None of the provisions of this Act (apart from those of section 242) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company.

(7) In this section, the expression **“instrument”** includes deed of settlement, deed of partnership, or limited liability Partnership.
[VII] Power of Court to Stay or Restrain Proceedings [Section 372]

The provisions of this Act or of the Insolvency and Bankruptcy Code, 2016, as the case may be with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

[VIII] Suits Stayed on Winding Up Order [Section 373]

Where an order has been made for winding up, or a provisional liquidator has been appointed for, a company registered in pursuance of this Part,

- no suit or other legal proceeding shall be proceeded with or commenced against the company or any contributory of the company in respect of any debt of the company, except by leave of the Tribunal and except on such terms as the Tribunal may impose.

[IX] Obligation of Companies registering under this Part [Section 374]

Every company which is seeking registration under this Part shall,—

(a) **Consent given by secured creditors to company's registration**: ensure that secured creditors of the company, prior to its registration under this Part, have either consented to or have given their no objection to company's registration under this Part;

(b) **Publication of notice of registration**: publish in a newspaper, advertisement one in English and one in vernacular language in such form as may be prescribed giving notice about registration under this Part, seeking objections and address them suitably;

(c) **Affidavit of the submission of necessary documents**: file an affidavit, duly notarised, from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be.

(d) **comply with such other conditions** as may be prescribed.
Part II—Winding Up of Unregistered Companies

[I] Winding Up of Unregistered Companies [Section 375]

(1) **Application of provisions of winding up on unregistered companies:** Subject to the provisions of this Part, any unregistered company may be wound up under this Act, in such manner as may be prescribed, and all the provisions of this Act, with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in subsections (2) to (4).

(2) **No voluntary winding up of unregistered companies:** No unregistered company shall be wound up under this Act voluntarily.

(3) **Circumstances of winding up of unregistered companies:** An unregistered company may be wound up under the following circumstances, namely:—

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

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

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

(4) **When unregistered company is unable to pay debts:** An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one lakh rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Tribunal may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character as a member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Tribunal may approve or direct, the company has not, within ten days after service of the notice,—

(i) paid, secured or compounded for the debt or demand;
(ii) procured the suit or other legal proceeding to be stayed; or

(iii) indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(c) if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;

(d) if it is otherwise proved to the satisfaction of the Tribunal that the company is unable to pay its debts.

Explanation.—For the purposes of this Part, the expression "unregistered company"—

(a) shall not include—

(i) a railway company incorporated under any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom;

(ii) a company registered under this Act; or

(iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden, Pakistan immediately before the separation of that country from India; and

(b) save as aforesaid, shall include any partnership firm, limited liability partnership or society or co-operative society, association or company consisting of more than seven members at the time when the petition for winding up the partnership firm, limited liability partnership or society or co-operative society, association or company, as the case may be, is presented before the Tribunal.

[II] Power to Wind Up Foreign Companies, Although Dissolved [Section 376]

Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate 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.

[III] Provisions of Chapter Cumulative [Section 377]

(1) The provisions of this Part, with respect to unregistered companies shall be in addition to and not in derogation of, any provisions hereinbefore in this Act contained with respect to the winding up of companies by the Tribunal.

(2) The Tribunal or Official Liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the Tribunal or Official Liquidator in winding up of companies formed and registered under this Act:
Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

[IV] Saving and Construction of Enactments Conferring Power to Wind Up Partnership Firm, Association or Company, etc., in Certain Cases [Section 378]

Nothing in this Part, shall affect the operation of any enactment which provides for any partnership firm, limited liability partnership or society or co-operative society, association or company being wound up, or being wound up as a company or as an unregistered company, under the Companies Act, 1956, or any Act repealed by that Act.

Provided that references in any such enactment to any provision contained in the Companies Act, 1956 or in any Act repealed by that Act shall be read as references to the corresponding provision, if any, contained in this Act.

4. GOVERNMENT COMPANIES

[I] Annual reports on Government companies [Section 394]

As per section 2(45) of the Companies Act, 2013, “Government Company” means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

Section 394 of the Companies Act, 2013 provides for Annual reports on Government companies.

It provides for Annual reports on Government companies in the cases where the central government and the state Government is a member of the Government Company. According to this section:

1. Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—
   (a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report are placed under the proviso to sub-section (6) of section 143; and
   (b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

2. Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred above.
Example:

(i) Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company.

Examine with reference to the provisions of the Companies Act, 2013 whether MN Limited and PQ Limited can be considered as Government Company.

Answer

According to section 2(45) of the Companies Act, 2013, “Government company” means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

(i) The Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

   In this case, MN Limited is not a Government company because the holding of the Central Government and Government of Maharashtra is 40% which is less than the 51% prescribed under the definition of Government Company. The holding of the government company in MN Limited of 20% cannot be taken into account while counting the prescribed limit of 51%.

(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company.

   In this case, PQ Limited is a government company as the definition of Government Company clearly specifies that a Government Company includes a company which is a subsidiary company of a Government company. Whether the subsidiary should be a wholly owned subsidiary or not is not clearly mentioned under the definition of the Government company under section 2(45).

[II] Annual reports where one or more State Governments are members of companies [Section 395]

Section 395 of the Companies Act, 2013 seeks to provide that one or more state governments who is a member of a company where no Central government is a member shall prepare annual reports on the working and affairs of the company. According to this section:

(1) Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—

   (a) Prepared within the time specified in sub-section (1) of section 394; and
as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section.

(2) **Application of the provisions to the Government Company in liquidation:** The provisions of this section and section 394 shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.

### 5. REGISTRATION OFFICES & FEES

[I] Registration offices [Section 396]

Section 396 of the Companies Act, 2013 provides for Registration offices. According to this section:

(i) **Establishment of offices:** For the purposes of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under the rules made thereunder and for the purposes of registration of companies under this Act, the Central Government shall, by notification, establish such number of offices at such places as it thinks fit, specifying their jurisdiction.

Rule 4 of the *Companies (Registration Offices and Fees) Rules, 2014* shall apply in relation to Registration offices:

(a) The Central Government shall establish such number of offices at such places as it thinks fit, specifying their jurisdiction for the purpose of exercising such powers and discharge of such functions as are conferred on the Central Government by or under this Act or under the rules made thereunder and for the purposes of registration of companies under the Act.

(b) The office of the Registrar shall observe such normal working hours as may be approved by the Central Government and shall be open for the transaction of business with the public on all days except Saturday, Sunday and public holidays during working hours between 10.30 a.m. and 3.30 p.m.

(c) The offices other than the office of the Registrar shall observe such normal working hours as may be approved by the Central Government.

(ii) (a) **Appointment of officers:** The Central Government may appoint such Registrars, Additional, Joint, Deputy and Assistant Registrars as it considers necessary for the registration of companies and discharge of various functions under this Act.

(b) **Powers and duties of officers:** The powers and duties that may be exercisable by such officers shall be such as may be prescribed.

According to Rule 5 of *the Companies (Registration Offices and Fees) Rules, 2014*, the following powers and duties have been prescribed:
(1) The Registrars shall exercise such powers and discharge such duties as are conferred on them by the Act or the rules made there under or delegated to them by the Central Government, wherever the power or duty has been conferred upon the Central Government by the Act or the rules made there under.

(2) Whenever according to the Act, any function or duty is to be discharged by the Registrar, it shall, until the Central Government otherwise directs, be done by the Registrar, or in his absence, by such person as the Central Government may for the time being authorize.

However, in the event of the Central Government altering the constitution of the existing registry offices or any of them, any such function or duty shall be discharged by such officer and at such place, with reference to the local situation of the registered offices of the companies concerned, as the Central Government may appoint.

(iii) Terms & conditions of Salaries payable to officers: The terms and conditions of service, including the salaries payable to persons appointed, shall be such as may be prescribed.

(iv) Seal for authentication: The Central Government may direct a seal or seals to be prepared for the authentication of documents required for, or connected with, the registration of companies.

According to Rule 6 of the Companies (Registration Offices and Fees) Rules, 2014, the Registrar shall have a seal and such seal shall bear the words “Registrar of Companies, ________(Place and State)”.

[II] Admissibility of certain documents as evidence [Section 397]

Section 397 of the Companies Act, 2013 provides for admissibility of certain documents as evidence. According to this section:

Notwithstanding anything contained in any other law for the time being in force, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central Government in such manner as may be prescribed, shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof or production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence is admissible.

[III] Provisions relating to filing of applications, documents, inspection, etc., in electronic form [Section 398]

Section 398 of the Companies Act, 2013 provides for Provisions relating to filing of applications, documents, inspection, etc., in electronic form. According to this section:
(i) Notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may make rules so as to require from such date as may be prescribed in the rules that—

(a) such applications, balance sheet, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or document as may be required to be filed or delivered under this Act or the rules made thereunder, shall be filed in the electronic form and authenticated in such manner as may be prescribed;

(b) such document, notice, any communication or intimation, as may be required to be served or delivered under this Act, in the electronic form and authenticated in such manner as may be prescribed;

(c) such applications, balance sheet, prospectus, return, register, memorandum, articles, particulars of charges, or any other particulars or document and return filed under this Act or rules made thereunder shall be maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be prescribed;

(d) such inspection of the memorandum, articles, register, index, balance sheet, return or any other particulars or document maintained in the electronic form, as is otherwise available for inspection under this Act or the rules made thereunder, may be made by any person through the electronic form in such manner as may be prescribed;

For details, refer the Companies (Registration Offices and Fees) Rules, 2014, Rule 8: Authentication of documents.

(e) such fees, charges or other sums payable under this Act or the rules made thereunder shall be paid through the electronic form and in such manner as may be prescribed; and

According to the Companies (Registration Offices and Fees) Rules, 2014, the fees, charges or other sums payable for filing any application, form, return or any other document in pursuance of the Act or any rule made thereunder shall be paid by means of credit card; or internet banking; or remittance at the counter of the authorised banks or any other mode as approved by the Central Government.

(f) the Registrar shall register change of registered office, alteration of memorandum or articles, prospectus, issue certificate of incorporation, register such document, issue such certificate, record the notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or the rules made thereunder or perform duties or discharge functions or exercise powers under this Act or the rules made thereunder or do any act which is by this Act directed to be performed or discharged or exercised or done by the Registrar in the electronic form in such manner as may be prescribed.
Explanation—It is clarified that the rules made under this section shall not relate to imposition of fines or other pecuniary penalties or demand or payment of fees or contravention of any of the provisions of this Act or punishment therefor.

(ii) The Central Government may, by notification, frame a scheme to carry out the provisions of section 398(1) through the electronic form.

For details, refer the Companies (Registration Offices and Fees) Rules, 2014.

[IV] Inspection, production and evidence of documents kept by Registrar [Section 399]

Section 399 of the Companies Act, 2013 provides for Inspection, production and evidence of documents kept by Registrar. According to this section:

(i) Save as otherwise provided elsewhere in this Act, any person may—

(a) inspect by electronic means any documents kept by the Registrar in accordance with the rules made, being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of such fees as may be prescribed;

(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment in advance of such fees as may be prescribed.

(ii) The rights conferred as mentioned above shall be exercisable—

(a) in relation to documents delivered to the Registrar with a prospectus in pursuance of section 26 (Matters to be stated in the prospectus), only during the 14 days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and

(b) in relation to documents so delivered in pursuance of clause (b) of subsection (1) of section 388 (Provisions as to expert's consent and allotment), only during the 14 days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.

(iii) According to section 399(2) of the Companies Act, 2013, no process for compelling the production of any document kept by the Registrar shall issue from any court or the Tribunal except with the leave of that court or the Tribunal and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court or the Tribunal.

(iv) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy by the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.
According to Rule 14 of the *Companies (Registration Offices and Fees) Rules, 2014*, the inspection of the documents maintained in the electronic registry so set up in pursuance of rule 9 of the Companies (Registration Offices and Fees) and which are otherwise available for inspection under the Act or rules made thereunder, shall be made by any person in electronic form.

**Inspection of documents** - Rule 15 of the *Companies (Registration Offices and Fees) Rules, 2014*, provides that any person may-

(a) inspect any document kept by the Registrar, being documents filed or registered by him in pursuance of this Act or the Companies Act, 1956 (1 of 1956) or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of fee.

(b) require a certificate of incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment of fee.

Provided that no person shall be entitled under section 399 to inspect or obtain copies of resolutions passed in pursuance of section 179(3) as referred to in clause (g) of sub-section (3) of section 117 of the Act.

[V] Electronic form to be exclusive, alternative or in addition to physical form [Section 400]

Section 400 of the Companies Act, 2013 provides for Electronic form to be exclusive, alternative or in addition to physical form. According to this section:

The Central Government may also provide in the rules made under section 398 and section 399 that the electronic form for the purposes specified in these sections shall be exclusive, or in the alternative or in addition to the physical form, therefor.

[VI] Provision of value added services through electronic form [Section 401]

Section 401 of the Companies Act, 2013 provides that the Central Government may provide such value added services through the electronic form and levy such fee thereon as may be prescribed under Rule 12 of the *Companies (Registration Offices and Fees) Rules, 2014*.

[VII] Application of provisions of Information Technology Act, 2000 [Section 402]

Section 402 of the Companies Act, 2013 provides that all the provisions of the Information Technology Act, 2000 relating to the electronic records, including the manner and format in which the electronic records shall be filed, in so far as they are not inconsistent with this Act, shall apply in relation to the records in electronic form specified under section 398.
[VIII] Fee for filing, etc. [Section 403]¹

According to this section any documents may be filed with the registrar with the specified fees in the following conditions:

(i) **Submission within time:** Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed.

(ii) **Submission after the time specified in relevant provision:** Any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of 270 days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed as per the rule 12 and 13 of the Companies (Registration Offices and Fees) Rules, 2014.

(iii) **Submission after the expiration of above 270 days also:** Any such document, fact or information may, without prejudice to any other legal action or liability under the Act, be also submitted, filed, registered or recorded, after the first time specified in the expiration of above mentioned 270 days, on payment of fee and additional fee specified under this section.

(iv) **Penalty or punishment on submission after the expiration of above 270 days also:** Where a company fails or commits any default to submit, file, register or record any document, fact or information within 270 days from the date by which it should have been submitted, filed, registered or recorded, as the case may be under sub-section (1) before the expiry of the period specified in the first proviso to that sub-section with additional fee, the company and the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

[IX] Fees, etc., to be credited into public account [Section 404]

Section 404 provided that all fees, charges and other sums received by any Registrar, Additional, Joint, Deputy or Assistant Registrar or any other officer of the Central Government in pursuance of any provision of this Act shall be paid into the public account of India in the Reserve Bank of India.

¹ In case of Nidhis, section 403 shall apply, with the modification that the filing fees in respect of every return of allotment made under sub-section 9 of section 42 shall be calculated at the rate of one rupee for every one hundred rupees or parts thereof on the face value of the shares included in the return but shall not exceed the amount of normal filing fee payable.
6. COMPANIES TO FURNISH INFORMATION OR STATISTICS

Power of Central Government to direct companies to furnish information or statistics [Section 405]

Section 405 of the Companies Act, 2013 provides for Power of Central Government to direct companies to furnish information or statistics. According to this section:

(i) The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

(ii) Every above order shall be published in the Official Gazette and may be addressed to companies generally or to any class of companies, in such manner, as the Central Government may think fit.

(iii) The date of such publication shall be deemed to be the date on which requirement for information or statistics is made on such companies or class of companies, as the case may be.

(iv) For the purpose of satisfying itself that any information or statistics furnished by a company or companies in pursuance of any above order is correct and complete, the Central Government may by order require such company or companies to produce such records or documents in its possession or allow inspection thereof by such officer or furnish such further information as that Government may consider necessary.

(v) If any company fails to comply with an order made above or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees 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 shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both.

(vi) Where a foreign company carries on business in India, all references to a company in this section shall be deemed to include references to the foreign company in relation, and only in relation, to such business.

7. NIDHIS

Power to modify Act in its application to Nidhis (Section 406 of the Companies Act, 2013)

Section 406 of the Companies Act, provides Power to the Central Government to modify Act in its application to Nidhis. According to this section:

(i) **Definition:** Here, “Nidhi” means a company which has been incorporated as a Nidhi with the object of:
(a) cultivating the habit of thrift and savings amongst its members,
(b) receiving deposits from, and lending to, its members only, for their mutual benefit, and
(c) which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

(ii) The Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any Nidhi or Nidhis of any class or description as may be specified in that notification.

(iii) A copy of every notification proposed to be issued under point (ii), shall be laid in draft before each House of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

The Nidhi Rules, 2014, shall apply in relation to the following:

(i) **Application:** These rules shall apply to-

(a) every company which had been declared as a Nidhi or Mutual Benefit Society under sub-section (1) of Section 620A of the Companies Act, 1956,
(b) every company functioning on the lines of a Nidhi company or Mutual Benefit Society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under sub-Section (1) of Section 620A of the Companies Act, 1956; and
(c) every company incorporated as a Nidhi pursuant to the provisions of Section 406 of the Act.

(ii) **Incorporation and incidental matters.—**

(a) A Nidhi to be incorporated under the Act shall be a public company and shall have a minimum paid up equity share capital of 5 lakh rupees.
(b) On and after the commencement of the Act, no Nidhi shall issue preference shares.
(c) If preference shares had been issued by a Nidhi before the commencement of this Act, such preference shares shall be redeemed in accordance with the terms of issue of such shares.
(d) Except as provided under the proviso to sub-rule (e) to rule 6, no Nidhi shall have any object in its Memorandum of Association other than the object of cultivating the habit of thrift and savings amongst its members,
thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.

Exception as provided under the proviso to sub-rule (e) to rule 6: Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

(e) Every Company incorporated as a “Nidhi” shall have the last words ‘Nidhi Limited’ as part of its name.

(iii) General restrictions or prohibitions

No Nidhi shall—

(a) carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate;

(b) issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever;

(c) open any current account with its members;

(d) acquire another company by purchase of securities or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi;

Explanation.—For the purposes of this sub-rule, “control” shall have the same meaning assigned to it in section 2(27) of the Act;

(e) carry on any business other than the business of borrowing or lending in its own name:

However Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

(f) accept deposits from or lend to any person, other than its members;

(g) pledge any of the assets lodged by its members as security;

(h) take deposits from or lend money to any body corporate;

(i) enter into any partnership arrangement in its borrowing or lending activities;

(j) issue or cause to be issued any advertisement in any form for soliciting deposit.
However private circulation of the details of fixed deposit Schemes among the members of the Nidhi carrying the words “for private circulation to members only” shall not be considered to be an advertisement for soliciting deposits.

(k) pay any brokerage or incentive for mobilising deposits from members or for deployment of funds or for granting loans.

(iv) **Membership—**

(a) A Nidhi shall not admit a body corporate or trust as a member.

(b) Except as otherwise permitted under the rules, every Nidhi shall ensure that its membership is not reduced to less than 200 members at any time.

(c) A minor shall not be admitted as a member of Nidhi:

However, deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of Nidhi.

(v) **Rules relating to Directors—**

(a) The Director shall be a member of Nidhi.

(b) The Director of a Nidhi shall hold office for a term up to 10 consecutive years on the Board of Nidhi.

(c) The Director shall be eligible for re-appointment only after the expiration of 2 years of ceasing to be a Director.

(d) Where the tenure of any Director in any case had already been extended by the Central Government, it shall terminate on expiry of such extended tenure.

(e) The person to be appointed as a Director shall comply with the requirements of sub-section (4) of Section 152 of the Act and shall not have been disqualified from appointment as provided in section 164 of the Act.

(vi) **Dividend—** A Nidhi shall not declare dividend exceeding 25% or such higher amount as may be specifically approved by the Regional Director for reasons to be recorded in writing and further subject to the following conditions, namely:—

(a) an equal amount is transferred to General Reserve;

(b) there has been no default in repayment of matured deposits and interest; and

(c) it has complied with all the rules as applicable to Nidhis.

(vii) **Auditor—**

(a) No Nidhi shall appoint or re-appoint an individual as auditor for more than one term of 5 consecutive years.
(b) No Nidhi shall appoint or re-appoint an audit firm as auditor for more than 2 terms of 5 consecutive years:

Provided that an auditor (whether an individual or an audit firm) shall be eligible for subsequent appointment after the expiration of 2 years from the completion of his or its term:

Explanation: For the purposes of this proviso:

1. in case of an auditor (whether an individual or audit firm), the period for which he or it has been holding office as auditor prior to the commencement of these rules shall be taken into account in calculating the period of 5 consecutive years or 10 consecutive years, as the case may be;

2. appointment includes re-appointment.

(viii) Auditor’s certificate—The Auditor of the company shall furnish a certificate every year to the effect that the company has complied with all the provisions contained in the rules and such certificate shall be annexed to the audit report and in case of non-compliance, he shall specifically state the rules which have not been complied with.

(ix) Penalty for non-compliance—If a company to which the Nidhi Rules, 2014 applies contravenes any of the provisions of the prescribed rules, the company and every officer of the company who is in default shall be punishable with fine which may extend to 5,000 rupees, and where the contravention is a continuing one, with a further fine which may extend to 500 rupees for every day after the first during which the contravention continues.

8. MISCELLANEOUS PROVISIONS

[I] Punishment for fraud [Section 447]

Section 447 of the Companies Act, 2013 provides for Punishment for fraud. According to this section:

(i) Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud.

(ii) Where the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.

Explanation.— For the purposes of this section—

(a) “fraud” in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person
with the connivance in any manner, with intent to deceive, to
gain undue advantage from, or to injure the interests of, the
company or its shareholders or its creditors or any other
person, whether or not there is any wrongful gain or wrongful
loss;

(b) “wrongful gain” means the gain by unlawful means of
property to which the person gaining is not legally entitled;

(c) “wrongful loss” means the loss by unlawful means of property to which the person losing is
legally entitled.

[II] Penalty for false statements [Section 448]
According to section 448 of the Companies Act, 2013, save as otherwise provided in this Act, if in
any return, report, certificate, financial statement, prospectus, statement or other document
required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder,
any person makes a statement,—

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

Example
Mr. Z, a director of Southern Highway Tolls Private Limited, is duly authorized by the Board of
directors to prepare and file returns, report or other documents to the Registrar of Companies on
behalf of the company. Though he filed all the required documents to Registrar in time, however,
subsequently it was found that the filed documents were false and inaccurate in respect to material
particulars (knowing it to be false) submitted to the Registrar. State the penal provision under the
Companies Act, 2013?

Answer
According to section 448 of the Companies Act, 2013, save as otherwise provided in this Act, if in
any return, report, certificate, financial statement, prospectus, statement or other document
required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder,
any person makes a statement,

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

In the present case, Mr. Z, a director of Southern Highway Tools Private Limited filed returns,
report or other documents to Registrar in time, however, subsequently it was found that the filed
documents were false and inaccurate in respect to material particulars (knowing it to be false) submitted to the Registrar.

Hence, Mr. Z shall be liable under section 447 for false statements.

**Penal Provisions:** As per Section 447, any person who is found to be guilty under this section shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud, provided that, where the fraud involves public interest, the term of imprisonment shall not be less than 3 years.

Hence Mr. Z a director of Southern Highway Tools Private Limited shall be punishable with imprisonment and fine prescribed as aforesaid.

**[III] Penalty for false evidence [Section 449]**

According to section 449 of the Companies Act, 2013, save as otherwise provided in this Act, if any person intentionally gives false evidence—

(a) upon any examination on oath or solemn affirmation, authorised under this Act; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,

he shall be punishable with imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and with fine which may extend to 10 lakh rupees.

**[IV] Punishment where no specific penalty or punishment is provided [Section 450]**

(i) **Applicability of section 450:** The penalty under this section applies only in those cases where penalty or punishment is not provided elsewhere in this Act.

(ii) **Penalty under this section:** The company and every officer of the company who is in default or such other person:

(a) shall be punishable with fine which may extend to 10,000 rupees, and

(b) Where the contravention is continuing one, with a further fine which may extend to 1,000 rupees for every day after the first during which the contravention continues.

(iii) **List of contraventions:** If a company or any officer of a company or any other person contravenes:

(a) any of the provisions of this Act; or

(b) the rules made thereunder; or

(c) any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted.
MISCELLANEOUS PROVISIONS

[V] Punishment in case of repeated default [Section 451]

As per the section, if a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of 3 years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

[VI] Penalty for wrongful withholding of property [Section 452]

Section 452 of the Companies Act, 2013 provides for Penalty for wrongful withholding of property. According to this section:

(i) If any officer or employee of a company—
   (a) wrongfully obtains possession of any property, including cash of the company; or
   (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

   he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.

(ii) The Court trying an offence may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to 2 years.

Example:

An officer of a company was allotted one room for two years in a guest house owned by the Company at some other city where he used to stay while on tour. It came to notice of the company that he had not vacated the said room after the expiry of two years and is holding the unauthorized possession of that room and has been permitting to stay outsiders in the said room, at a rent of ` 500 per day. The record shows that he had permitted the outsider for 45 days and collected ` 22,500 and retained the said amount with him. As per the letter of allotment, there was no such clause which can be invoked against him for making any recovery on account of such wrongful occupation. The Manager of the company seeks your advice as to whether the recovery can be made from him under any of the provisions of his employment or Companies Act.

Answer

Penalty for wrongful withholding of property: Section 452 of the Companies Act, 2013 provides for Penalty for wrongful withholding of property. According to the section:
(i) If any officer or employee of a company -

(a) Wrongfully obtains possession of any property, including cash of the company; or

(b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorized by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.

(ii) The Court trying an offence may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to 2 years.

Hence as per the provisions of the Companies Act, 2013 and not giving any emphasis on the terms of employment, the manager of the company can recover possession of the room and the cash wrongfully obtained and the benefits that have been derived from such property or cash.

[VII] Punishment for improper use of "Limited" or "Private Limited" [Section 453]

Section 453 of the Companies Act, 2013 provides for Punishment for improper use of "Limited" or "Private Limited". According to this section:

If any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words “Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than 500 rupees but may extend to 2,000 rupees for every day for which that name or title has been used.

[VIII] Dormant company [Section 455]

A new section 455 of the Companies Act, 2013 provides for Dormant Company. According to this section:

(i) **Status as a dormant company**: Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

*Explanation.*—For the purposes of this section,—

(a) “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two
financial years, or has not filed financial statements and annual returns during the last two financial years;

(b) “significant accounting transaction” means any transaction other than—

(1) payment of fees by a company to the Registrar;

(2) payments made by it to fulfill the requirements of this Act or any other law;

(3) allotment of shares to fulfill the requirements of this Act; and

(4) payments for maintenance of its office and records.

According to the Rule 3 of the Companies (Miscellaneous) Rules, 2014, a company may make an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).

A company shall be eligible to apply under this rule only, if—

(a) no inspection, inquiry or investigation has been ordered or taken up or carried out against the company;

(b) no prosecution has been initiated and pending against the company under any law;

(c) the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;

(d) the company is not having any outstanding loan, whether secured or unsecured:
However if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form MSC-1;

(e) there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1;

(f) the company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.;

(g) the company has not defaulted in the payment of workmen’s dues;

(h) the securities of the company are not listed on any stock exchange within or outside India.

(ii) **Certificate of status of dormant company:** The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.

According to the Rule 4 of the *Companies (Miscellaneous) Rules, 2014*, the Registrar shall, after considering the application filed in Form MSC-1, issue a certificate in Form MSC-2 allowing the status of a Dormant Company to the applicant.

(iii) **Register of dormant company:** The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

According to the Rule 5 of the *Companies (Miscellaneous) Rules, 2014*, the Register maintained under the portal maintained by the Ministry of Corporate Affairs on its web-site www.mca.gov.in or any other website notified by the Central Government, shall be the register for dormant companies.

(iv) **Consequences of non filing of annual returns or financial statements:** In case of a company which has not filed financial statements or annual returns for 2 financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

According to the Rule 7 of the *Companies (Miscellaneous) Rules, 2014*, a dormant company shall file a “Return of Dormant Company” annually, *inter alia*, indicating financial position duly audited by a chartered accountant in practice in Form MSC-3 along with such annual fee as provided in the *Companies (Registration Offices and Fees) Rules, 2014* within a period of 30 days from the end of each financial year.

The company shall also continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.

(v) **Directors of dormant company:** A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an
application made in this behalf accompanied by such documents and fee as may be prescribed.

According to Rule 6 of the Companies (Miscellaneous) Rules, 2014, a dormant company shall have a minimum number of 3 directors in case of a public company, 2 directors in case of a private company and 1 director in case of a One Person Company.

**Rotation of auditors:** According to Rule 6 the Companies (Miscellaneous) Rules, 2014, the provisions of the Act in relation to the rotation of auditors shall not apply on dormant companies.

**Application for seeking status of an active company:** According to the Rule 8 of the Companies (Miscellaneous) Rules, 2014,

(a) An application for obtaining the status of an active company shall be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed:

However, the Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive 5 years.

(b) The Registrar shall, after considering the application filed for obtaining the status of an active company, issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.

(c) Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form MSC-1 submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within 7 days from such event, file an application for obtaining the status of an active company.

(d) Where the Registrar has reasonable cause to believe that any company registered as ‘dormant company’ under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

(vi) **Striking off the name by the Registrar:** The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.
[IX] Protection of action taken in good faith [Section 456]

According to the section no suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer, of any report, paper or proceedings.

[X] Non-disclosure of information in certain cases [Section 457]

Section 457 says that-

Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of the Government or any other person shall not be compelled to disclose to any court, Tribunal or other authority, the source from where he got any information which—

(a) has led the Central Government to order an investigation under section 210; or

(b) is or has been material or relevant in connection with such investigation.

[XI] Delegation by Central Government of its powers and functions [Section 458]

Section 458 of the Companies Act, 2013 provides for delegation of its powers and functions by Central Government. According to this section:

(i) The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification.

However, the powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to SEBI for listed companies or the companies which intend to get their securities listed.

In such case, any officer authorised by the SEBI shall have the power to file a complaint in the court of competent jurisdiction.

(ii) A copy of every notification issued under point (i) shall, as soon as may be after it is issued, be laid before each House of Parliament.

[XII] Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications [Section 459]

Section 459 of the Companies Act, 2013 provides for Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications. According to this section:

(i) Where the Central Government or the Tribunal is required or authorised by any provision of this Act—
(a) to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter; or

(b) to give any direction in relation to any matter; or

(c) to grant any exemption in relation to any matter,

then, the Central Government or the Tribunal may in the absence of anything to the contrary contained in that provision or any other provision of this Act, accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of a contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(ii) Every application which may be, or is required to be, made to the Central Government or the Tribunal under any provision of this Act—

(a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or the Tribunal to, or in relation to, any matter; or

(b) in respect of any direction or exemption to be given or granted by that Government or the Tribunal in relation to any matter; or

(c) in respect of any other matter,

shall be accompanied by the prescribed fees which have been specified in the Rule 9 of the Companies (Registration Offices and Fees) Rules, 2014.

(iii) Different fees may be prescribed in Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014 for applications in respect of different matters or in case of applications by different classes of companies.

[XIII] Condonation of delays in certain cases [Section 460]

Notwithstanding anything contained in this Act,—

(a) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay; and

(b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

[XIV] Annual report by Central Government [Section 461]

Section 461 says that the Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before each House of Parliament within one year of the close of the year to which the report relates.
Section 462 of the Companies Act, 2013 provides for Power to exempt class or classes of companies from provisions of this Act. According to this section:

(i) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,—

(a) shall not apply to such class or classes of companies; or

(b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

(ii) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

(iii) In reckoning any such period of thirty days as is referred to in point (ii), no account shall be taken of any period during which the House referred to as above, is prorogued or adjourned for more than four consecutive days.

(iv) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

Section 463 of the Companies Act, 2013 provides for power of court to grant relief in certain cases. According to this section:

(i) If it appears to the court hearing the case that an officer of a company is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust but he has acted honestly and reasonably, he ought fairly to be excused having regard to all the circumstances of the case, including those connected with his appointment, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit.

(ii) In a criminal proceeding, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

(iii) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought.
(iv) No court shall grant any relief to any officer unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

[XVII] Prohibition of association or partnership of persons exceeding certain number [Section 464]

Section 464 of the Companies Act, 2013 provides for Prohibition of association or partnership of persons exceeding certain number. According to this section:

(i) **Maximum number of persons:** According to section 464(1) of the Companies Act, 2013, no association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force.

However, the number of persons which may be prescribed shall not exceed one hundred.

Rule 10 of the *Companies (Miscellaneous) Rules, 2014,* provides that no association or partnership shall be formed, consisting of more than 50 persons for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or partnership or by individual members thereof, unless it is registered as a company under the Act or is formed under any other law for the time being in force.

Thus, the above provision can be read as under:

No association or partnership consisting of more than 50 persons (as provided under the Rules) shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force.

Further, the Act has put a cap of maximum 100 persons. Thus, the number of persons as provided in the Rule 10 cannot exceed the maximum cap of 100 persons.

(ii) **Exceptions:** The above provision is not applicable 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.

(iii) **Penalty:** Every member of an association or partnership carrying on business in contravention of section 464(1) shall be punishable with fine which may extend to 1 lakh rupees and shall also be personally liable for all liabilities incurred in such business.
Dissolution of Company Law Board and Consequential Provisions [Section 466]

(i) **Dissolution of CLB:** Notwithstanding anything contained in section 465, the Board of Company Law Administration constituted under the Companies Act, 1956 (hereafter in this section referred to as the Company Law Board) shall stand dissolved on the constitution of the Tribunal and the Appellate Tribunal.

(ii) **Appointment of Chairman, Vice Chairman and members of CLB in Tribunal:** It is also provided that until the Tribunal and the Appellate Tribunal is constituted, the Chairman, Vice-Chairman and Members of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal, who fulfil the qualifications and requirements provided under this Act regarding appointment as President or Chairperson or Member of the Tribunal or the Appellate Tribunal, shall function as President, Chairperson or Member of the Tribunal or the Appellate Tribunal.

(iii) **Officer or other employee of CLB on deputation basis:** Every officer or other employee, who had been appointed on deputation basis to the Company Law Board, shall, on such dissolution,—

   (i) become officer or employee of the Tribunal or the Appellate Tribunal, if he fulfils the qualifications and requirements under this Act; and

   (ii) stand reverted to his parent cadre, Ministry or Department, in any other case

(iv) **Rights of employees of CLB on regular basis:** Every officer and the other employee of the Company Law Board, employed on regular basis by that Board, shall become, on and from such dissolution the officer and other employee, respectively, of the Tribunal or the Appellate Tribunal with the same rights and privileges as to pension, gratuity and other like benefits as would have been admissible to him if he had continued to serve that Board and shall continue to do so unless and until his employment in the Tribunal or the Appellate Tribunal is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Tribunal or the Appellate Tribunal, as the case may be.

(v) **No compensation:** Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, any officer or other employee who becomes an officer or other employee of the Tribunal or the Appellate Tribunal under the preceding proviso shall not be entitled to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(vi) **Transfer of employee’s funds from CLB To Tribunal:** Where the Company Law Board has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of the officers and other employees employed in that Board, the monies relatable to the officers and other employees who have become officers or employees of the Tribunal or the Appellate Tribunal shall, out of the monies standing to the credit of such provident fund,
superannuation fund, welfare fund or other fund, stand transferred to, and vest in, the Tribunal or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the Tribunal or the Appellate Tribunal in such manner as may be prescribed.

(vii) Vacation of office by officers of CLB not covering above: The persons holding the offices of Chairman, Vice-Chairman and Members, and officers and other employees of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal who are not covered under proviso to sub-section (1) shall vacate their respective offices on such constitution and no such Chairman, Vice Chairman and Members and officers or other employees shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service, if any.

[XIX] Power of Central Government to amend Schedules [Section 467]

Section 467 of the Companies Act, 2013 provides for Power of Central Government to amend Schedules. According to this section:

(i) The Central Government may, by notification, alter any of the regulations, rules, Tables, forms and other provisions contained in any of the Schedules to this Act.

(ii) Any alteration notified as above shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs.

(iii) No such alteration in Table F of Schedule I shall apply to any company registered before the date of such alteration.

(iv) Every alteration made by the Central Government shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

[XX] Power of Central Government to make rules relating to winding up [Section 468]

Section 468 provides for Power of Central Government to make rules relating to winding up. According to this section:

(i) The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.
(ii) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) as to the mode of proceedings to be held for winding up of a company by the Tribunal under this Act;
(b) for the holding of meetings of creditors and members in connection with proceedings under section 230;
(c) for giving effect to the provisions of this Act as to the reduction of the capital;
(d) generally for all applications to be made to the Tribunal under the provisions of this Act;
(e) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
(f) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;
(g) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
(h) the making of calls; and
(i) the fixing of a time within which debts and claims shall be proved.

(iii) All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of this Act and in force at such commencement, shall continue to be in force, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.

[XXI] Power of Central Government to make rules [Section 469]

Section 469 of the Companies Act, 2013 provides for Power of Central Government to make rules. According to this section:

(i) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(ii) The Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.

(iii) Any rule made as above may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

(iv) Every rule made under this section and every regulation made by Securities and Exchange Board under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in
one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

[XXII] Power to remove difficulties [Section 470]

According to this section:

(i) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty.

(ii) No such order shall be made after the expiry of a period of 5 years from the date of commencement of section 1 of this Act.

(iii) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.
TEST YOUR KNOWLEDGE

Question 1

Mr. Atharva, a director of Northway highway Tolls Private Limited, authorised by board of directors to prepare and file return, report or other documents to registrar on behalf of the company. He timely filed all the required documents to Registrar; however, subsequently it is found that the filed documents are false in respect to material particulars (knowing it to be false) submitted to registrar. Explain the penal provision under the Companies Act, 2013.

Answer

According to section 448 of the Companies Act, 2013, if any person makes a statement which is false in any material particulars, knowing it to be false or omits any material facts, knowing it to be material, such person shall be liable under section 447. As per Section 447, any person who is found to be guilty under this section shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud. Provided that, where the fraud involves public interest, the term of imprisonment shall not be less than 3 years.

Hence, Mr. Atharva, a director of Northway highway Tolls Private Limited shall be punishable with imprisonment and fine prescribed as aforesaid.

Question 2

Gulmohar Ltd., a company registered under Indian law owns a factory in Calcutta, wherein it manufactures jute products. By a notification of the State Government, issued during October, 2013, due to a strike and lock-out, it was declared a relief undertaking. After four months, in February, 2014, the lock-out was lifted. However, during the said period the company’s directors defaulted in payment of Provident Fund (PF) and other ancillary dues. During the month of December, 2013, the Regional PF Commissioner initiated criminal proceedings against the company and its directors under the Employees PF and Miscellaneous Provisions Act, 1952, for default and delay in payment of PF dues.

Immediately the directors of the company applied to the High Court for relief under Section 463 of the Companies Act, 2013, praying for relief from liability under the PF law. The petition is now pending before a single judge. The company desire to know from you, as to the tenability of their claim for relief at the High Court, and as to whether they would be excused and exonerated by the High Court, in respect of the contraventions committed under the PF law.

Briefly discuss the law on the subject and state whether the petition filed by the directors would be admitted or not under the Companies Act, 2013.
**Answer**

The crux of the matter involved in the above case, is whether under section 463 (1) the words “any proceeding” against an officer of a company, would mean only a proceeding under the Companies Act or any Criminal proceeding under any other law. The provisions of the Companies Act, define “officer” and “officer in default” but there is no definition for the word “proceeding”. In the present case, the proceeding has not resulted from or has not been brought about as a consequence of default, refusal, contravention, non-compliance or failure under the Companies Act, 2013, but has come about as a result of certain acts and omissions committed by the directors of Gulmohar Ltd., under the Employees PF and Misc. Provisions Act, 1952.

It should be noted that the Court has powers under Section 463 to grant relief only to a director/officer of a company, and is not applicable to the company. Hence, the company cannot claim relief under section 463 of the Companies Act, 2013.

The significance of the words “in any proceeding” at the beginning of Section 463(1) require to be understood.

The facts of the case, bear resemblance to those which came up before their Lordships of the Supreme court in *Rabindra Chamaria and Others Vs Registrar of Companies, West Bengal and others, 1992 (73) Comp. Cas. 257 (SC).*

Going by the tenor of section 463 of the Companies Act, 2013 and the Supreme Court ruling the directors of Gulmohar Ltd., cannot avail of relief under Section 463 of the Companies Act, 2013 and their Petition is not likely to succeed. It is liable to be dismissed.

**Question 3**

*It is apprehended by the Directors of a Public Company that they are likely to be prosecuted for an offence under the Companies Act, 2013 which is not compoundable. Explain the provisions of the Companies Act, 2013 under which the Directors can seek relief from the liability for offence. What will be the position in case prosecution has already been launched?*

**Answer**

**Relief under Section 463:** Under section 463(1) of the Companies Act, 2013 if in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such terms, as it may think fit.

Provided that in a criminal proceeding under this sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.
In the given case, the offence is not compoundable i.e. it carries imprisonment as a punishment either alone or with a fine. In either case, it would indicate that a criminal liability is indicated. Hence, the court will not have the power to grant relief under section 463. However, the nature of the offence will have to be examined.

Question 4

BUI Limited had filed certain documents with the Registrar of Companies. The said documents were authenticated by the ROC and kept on record. In a suit against the company the ROC produced the said documents in the court of law. BUI Limited intends to raise objection on the said documents on the ground that the documents need to be authenticated with further proof or production of the original document as evidence. Advise BUI Limited.

Answer

Admissibility of certain documents as evidence: Section 397 of the Companies Act, 2013 provides for admissibility of certain documents as evidence. According to the provisions of that section, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central government in such manner as may be prescribed, shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof or production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence is admissible.

On the grounds stated above, BUI Limited cannot validly raise any objection on the documents already filed by it with the Registrar.

Question 5

Explain the meaning of ‘Fraud’ in relation to the affairs of a company and the punishment provided for the same in Section 447 of the Companies Act, 2013.

Answer

As per the explanation given to section 447 of the Companies Act, 2013, ‘Fraud’ in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

“Wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled.

“Wrongful loss” means, the loss by unlawful means of property to which the person losing is legally entitled.
Punishment:

(i) Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months, but which may be extended to 10 years and shall also be liable to fine, which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud.

(ii) Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Question 6

JKL Research Development Limited is a registered Public Limited Company. The company has a unique business idea emerging from research and development in a new area. However, it is a future project and the company has no significant accounting transactions and business activities at present. The company desires to obtain the status of a 'Dormant Company'. Advise the company regarding the provisions of the Companies Act, 2013 in this regard and the procedure to be followed in this regard.

Answer

The provisions related to the Dormant companies is covered under section 455 of the Companies Act, 2013. According to provisions-

1. a company is formed and registered under this Act for the purpose of a future project or to hold an asset or intellectual property and has no significant accounting transaction.

2. Such company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

3. The Registrar shall allow the status of a dormant company to the applicant and issue a certificate after considering of the application.

4. The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Register shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. However, the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

Thus, JKL Research Development Limited may follow the above procedure to obtain the status of a 'Dormant Company'.