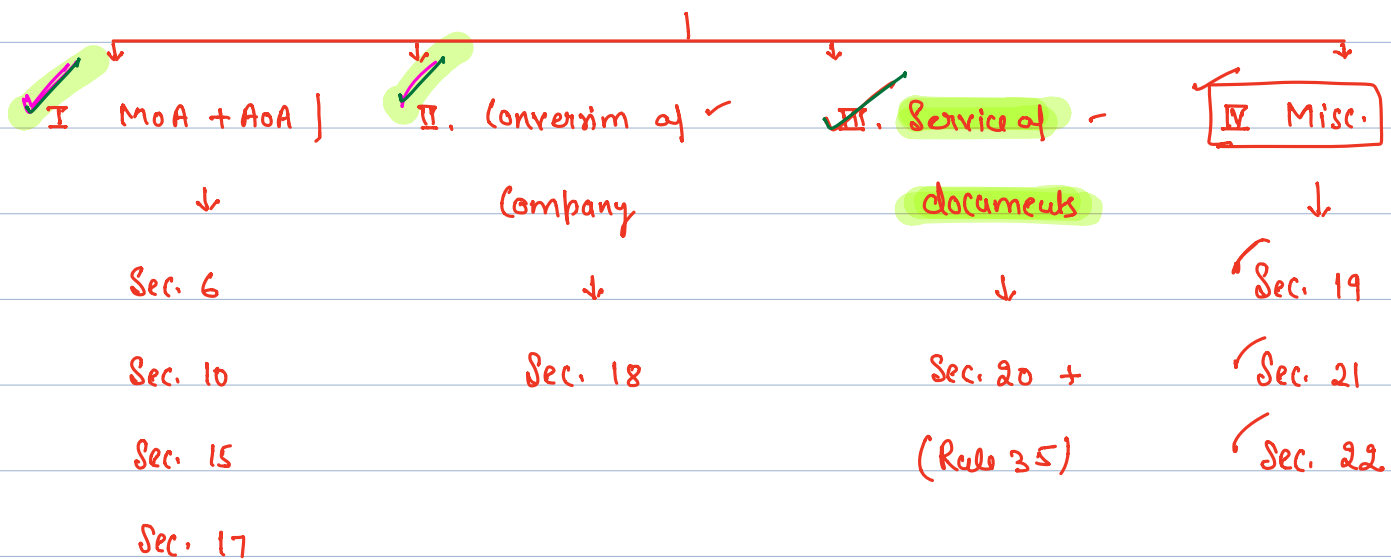


Lecture No. 6 - Chapter No. 2



(i) Common Provisions as to the MoA and AoA:

(A) Sec. 6: (i) Provisions of Companies Act, 2013 shall have Overriding effect on provisions contained in

(a) Memorandum or Articles

(b) any agreement entered into by the Company;

(c) any resolution passed in General Meeting or Board Meeting.

(ii) Any provision contained in these documents shall be Void to the extent to which it is inconsistent to the provisions of Companies Act, 2013.

(B) Sec. 10: - Memorandum and Articles when Regd. shall bind the Company and the members.

- Members are bound to observe all the provisions of the Memorandum and Articles.

- All monies payable by members to the Company under the MoA/AoA shall be a debt due from him to the Company.

(C) Sec. 15: - Every alteration made in the MoA and AoA shall be noted in Every copy of the MoA and AoA.

- Penalty for default:

Company and Every Officer in default are liable to a penalty of ₹ 1,000 for every copy issued without such alteration.

(D) Sec. 17: - On request of a member, Company shall send within 7 days a copy of - MoA

- AoA

- Every agreement and resolution, if not embodied in the MoA/AoA

on payment of prescribed fees.

- Penalty for default:

Company and Every Officer in default are liable to a penalty of ₹ 1,000 per day during which such default continues, not exceeding ₹ 1 Lakh, in aggregate.

(ii) Conversion of Companies: Sec. 18

(1) A Company of any class may convert itself into any other class of Company subject to provisions of this Act.

For Example: Sec. 3 → OPC cannot be converted into Sec. 8 Company.

(2) Conversion of company from one class to another requires alteration of MoA/AoA.

(3) Company shall apply to Registrar for conversion in prescribed manner.

(4) Registrar, after satisfying himself that provisions applicable for registration have been complied with, shall:

- Register the required documents;
- close the former regn; and
- issued a fresh Certificate of Incorporation.

Note: Registration u/s 18 shall not affect any debt, liability, obligations or contracts incurred or entered into by the company before conversion.

(iii) Service of Documents: (Sec. 20)

↓
↙ To the Company or its Officers ↓

↓
↘ To the Registrar or Members ↓

Documents may be served by sending at regd. office by - Regd. Post

- Speed Post

- Courier

- leaving at regd. offic.

- Electronic or Other Mode

- Documents may be served by sending it by - Post / Regd. Post / Speed Post

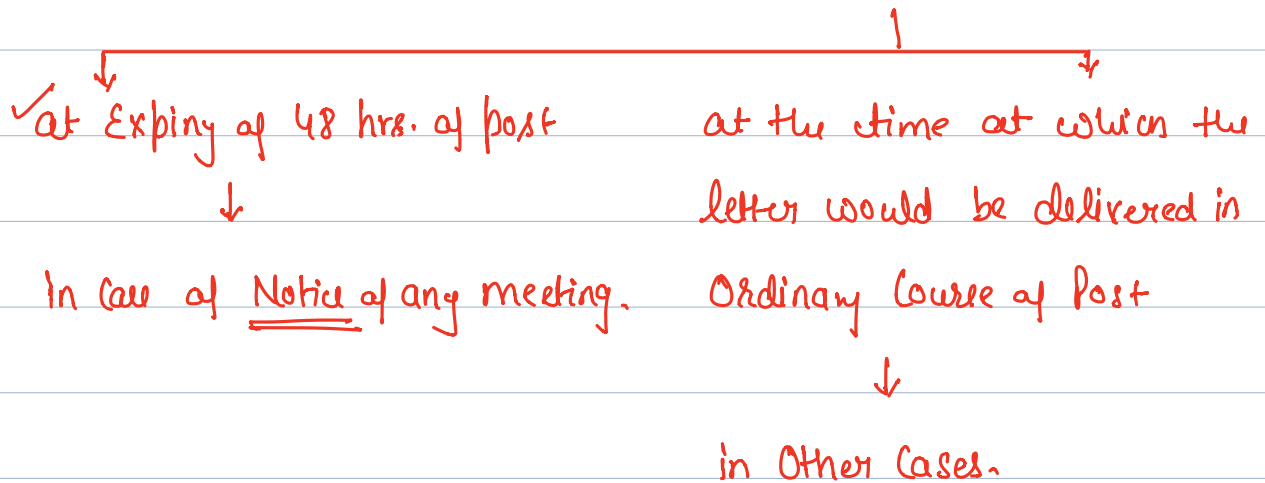
- Courier

- delivery at office / address

- Electronic or other Mode.

Note: A member may request the company for delivery of any document through a particular mode, on payment of such fees as determined by company.

Note: As per Rule 35 of Company (Incorporation) Rules, 2014, delivery by post shall be deemed to have been effected



Example: Nidhi Company!

I Paid up Capital = 25 Lacs
2.5 Lacs Shares of ₹ 10 each.

1% of Paid up Capital = 25000 [or 1000]

Mr. X : 70 Shares of ₹ 10 each : 700 → No.
as < 1000

II Paid up Capital = 80000/-
8000 Shares of ₹ 10 each.

1% of Paid up Capital = 800/- (80 Shares of ₹ 10)

Mr. X. = 82 Shares : F.V. = 820. → Yes
as > 800

(H.W: Written Practice - Case Study - Nov. 20 RTP)

(iv) Miscellaneous : (Sec. 19, 21, 22)

(A) Sec. 19 : Subsidiary Co. not to hold shares in holding company:

(i) No company shall by itself or through its nominee

↓

hold any shares in the holding company.

(ii) No holding co shall allot or transfer its shares to any of its subsidiary and any such allotment or transfer shall be considered void.

Exception! (i) Sub. Co. can hold shares of holding co. as legal rep. of deceased member of holding co.

Ex. Mr. X is a director of S Ltd. and hold 20% shares in H Ltd. Mr. X dies and after death of Mr. X shares of H Ltd. transfer to S Ltd. as Mr. X appoint S Ltd. as its legal rep through will. S Ltd. is sub. co. of H Ltd.

(ii) Sub. Co. can hold shares of holding company as a trustee.

(iii) Sub. Co. is a shareholder even before it became a sub. co. of holding co.

Ex. S Ltd. holds 15% shares of H Ltd. as on 31.03.2020.

H Ltd. acquired 70% shares of S Ltd. in the year 20-21.]

Can S Ltd. hold shares in H Ltd. → YES

Note.
Voting rights available
only in (i) and (ii)

(B) Authentication of documents, proceedings and contracts: (Sec. 21)

A document or proceedings requiring authentication by a Company

Or

Contracts made by or on behalf of a Company

↓

may be signed by

↓

any KMP [Sec. 2(51)] Or an officer - Sec. 2(59)

Or

Employee of Co.

↓

duly authorised by Board in this behalf.

H.W. - Revision of Definition of term officer - 2(59)

(C) Sec. 22: Execution of Bills of Exchange, deeds etc.

- (i) Bills of Exchange, Hundi or Promissory Notes shall be deemed to have been made, accepted, drawn or endorsed on behalf of Co.

↓

if made, accepted, drawn or endorsed in name of Co.

Or on behalf of Company

↓

by a person acting under its authority (Express or implied)

✓(ii) A company may by writing under its common seal, if any

↓

authorise any person, either generally or in respect of a specified

↓

matter

as its attorney to execute Other deeds.

(whether in India or outside India)

(iii) In case, company does not have a common seal, authentication shall be made by → two directors

or

a director and Company Secretary (if appointed)

Note! A deed signed by attorney shall bind the company.

