

Welcome students. Today we will be discussing module two of a company law.

Module 2 deals with advantages and disadvantages of the company. In this morning we will be discussing about the advantages of the company. In the advantages we will be discussing artificial legal person, voluntary Association, perpetual existence Legal entity transferability of shares, Limited liability capacity to Sue and be sued.

In the second part of the module we will be discussing about disadvantages of the company. Under the disadvantages we will be discussing about misuse of the corporate veil lifting or pushing the corporate way and instances of lifting the corporate veil. We will also discuss about second disadvantage that it is expensive and troublesome. And the third disadvantage is Company is not a citizen.

From this module, students will be able to understand what are advantages and disadvantages of the company. In this module, students will also be able to understand what is corporate veil and what are the instances of corporate veil under Companies Act of 2013.

First we will discuss the advantages of the company.

A Company in common means an **Artificial Person** created by law. The word artificial denotes that it has no body or soul. It is operated through its officials. Company is the **Voluntary Association** of person to carry on some business. A company has a **Perceptual Succession**.

Legal entity

Every joint stock company whether private limited or public limited must be registered. On registration or incorporation company is conferred legal personality. It acquires such rights and powers as human beings. In other words it gets separate legal entity

Transferability of shares

Any shareholder can easily transfer his shares in the open market without the consent of the other members.

Limited Liability

A company may be limited by shares or limited by guarantee. In a company limited by shares, the liability of members is limited to the unpaid value of the shares. The liability of the members is limited to the extent of unpaid capital on his shares.

Capacity to sue and be sued

A company can sue and be sued in its corporate name. It may also inflict or suffer wrongs. It can in fact do or have done most of the things, which may be done by or to a human being

Disadvantages of the company

- 1)Lifting of corporate veil
- 2)Expensive and troublesome
- 3)Company is not a citizen

Misuse of Corporate Veil

After incorporation, the veil of incorporation exists between the company and its members and the company is made distinct from its members.

In order to protect themselves from liabilities of the company, its members may take shelter of the corporate veil and may misuse the veil for their selfish ends.

Lifting or Piercing the Corporate Veil

Although the general rule is that a company has a separate legal identity from its members, there are exceptions to this rule when a court will not treat a company as a separate entity.

This is often referred to as "lifting the veil of incorporation". This is to prevent abuse of the principle of separate identity .The corporate veil will be lifted by the courts and legislatures in the interest of justice, equity and good conscience.

Instances of Lifting the Corporate Veil

- 1)To prevent fraud or improper conduct
- 2)When the company is cloak or sham
- 3)Evasion of Tax or avoiding welfare legislation
- 4)Under the authority of statute

Fraud and Improper Conduct

When the corporate personality is used as an instrument of fraud . The doctrine of piercing the corporate veil may be applied in the interest of justice.

P.N.B.Finance Ltd. V Shital Prasad Jain(AIR 1991 Delhi 13)

When the company is a mere cloak or sham

The corporate veil may be lifted by the courts, where corporate personality is being used as a cloak or sham for doing an unlawful act.

•**Gilford Motors Co. Ltd. V. Horne (1933 Ch 935)**

Evasion of Tax or Avoiding Welfare Legislation

Corporate veil is lifted by courts by ignoring the corporate entity/ personality, where corporate personality is misused for evasion of tax or avoiding welfare legislation.

•**Dinshaw Maneckjee Petit, Re Case (AIR 1927 Bom 371)**

•**Bacha F. Guzdar v C.I.T. Bombay (AIR 1955 SC 74)**

Statutory Authority

Corporate veil is lifted by the courts if it is necessary or permissible under the statute.

L.I.C of India v Escorts Ltd. (AIR 1986 SC 1370)

Expensive and Troublesome

Incorporation of a company involves a lot of formalities and is also expensive. Hence the promoter who is engaged in the task of incorporation will face many troubles.

Company is not a citizen

Though a company is a legal person, it is not a citizen under the constitution of India and under citizenship act 1955.

You may refer to the following references for the present module. Thank you.