

amalgamated with another company registered under Section 8. But no such order shall be made under Section 8(7) unless the company is given a reasonable opportunity of being heard.

2.8.6 Amalgamation without winding up [Section 8(8)]

Where the Central Government has revoked the licence of a company, it may order in the public interest, to amalgamate the company with another company registered under Section 8 and having similar object, to form a single company.

The order may specify the constitution, properties, powers, rights, interest, authorities and privileges and liabilities, duties and obligations for that company.

2.8.7 Consequences of winding up of a company on revocation

[Section 8(9)]

If on the winding-up or dissolution of a company registered under Section 8, there remains any asset after the satisfaction of its debts and liabilities, those may be transferred to another company registered under Section 8 and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and the proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under Section 269 for the purpose of rehabilitation, revival and liquidation of the sick companies.

2.8.8 Amalgamation with another company [Section 8(10)]

A company registered under this section may amalgamate with another company registered under this section and having similar objects.

2.8.9 Penalty [Section 8(11)]

In case of any default, a company shall be punishable with fine which shall not be less than one lakh rupees extendable to one crore rupees. The director and every officer of the company shall be punishable with imprisonment for three years or with fine for not less than twenty five thousand rupees extendable to twenty five lakh rupees.

2.9 Listed Company [Section 2(52)]

Listed company means a company which has any of its securities listed on the recognised Stock Exchange. ✓

2.10 Body Corporate [Section 2(11)]

As defined by Circular no. 8/48/2(7)/63-PR dt. 24.11.62 and Circular no. 8(26)/2(7)63-PR dt. 13.03.63 of the Central Government —

Body Corporate means "any corporate body, i.e., a body which has been or is incorporated under some Statute and which has a perpetual succession, a common seal and is a legal entity apart from the members consisting it, will come within the definition of the term body corporate"

"Body Corporate" or "Corporation" includes a company incorporated outside India, but does not include —

- (i) a co-operative society registered under any law relating to co-operative society; and
- (ii) any other body corporate (not being a company as defined in this Act), which the Central Government by notification specify in this behalf.

Relevant Case Law**(i) Vibank Housing Finance Ltd., In re (2006) 130 Comp. Cas. 705 (Ker.)**

The term "body corporate" is wider than the expression "Company". It includes a corporation formed under any special law of India or a foreign country except as expressly excluded by the definition. It includes all public financial institutions mentioned in Section 4A of the 1956 Act corresponding to Section 2(72) of the Companies Act, 2013 as well as the nationalised banks incorporated under Section 3(4) of the Banking Companies (Acquisition and Transfer of undertaking) Act, 1970. It also includes a body corporate other than those which the Central Government may by notification in the official gazette, specify.

2.11 Holding Company [Section 2(46)]

Holding Company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

As newly inserted by Companies Amendment Act, 2017, explanation — For the purposes of this clause, the expression "company" includes any body corporate.

It would be proper to say that the parent company and the subsidiary form one unity which is called enterprise unity but from the operational point of view there is corporate diversity between the holding company and the subsidiary company despite such enterprise unity. A subsidiary is not an agent of holding company nor an extended branch or department of holding company. Both are group companies with enterprise unity but are deemed to have corporate diversity.

The important point is the control over the composition of the subsidiary's Board of Directors which would arise from the voting rights enjoyed by the holding company by virtue of shares in the subsidiary held by it or by its nominees or from the provisions of the subsidiary's memorandum or articles or from a contract with the subsidiary which empowers the holding company to appoint directors to the subsidiary's board — [*Oriental Industrial Investment Corpn. Ltd. v. Union of India (1981) 51 Comp. Cas. 487 (Delhi)*]. Whether the parent company has the power or control over the subsidiary depends upon the fact of each case. For example, take the case of a One Person Company where one person is the shareholder holding perhaps 25% shares in which case power or control shall be different.

There are six points to determine whether the business of the subsidiary company is the business of the parent company —

- (i) were the profits treated as the profits of the parent company?
- (ii) were the persons conducting the business appointed by the parent company?
- (iii) was the parent company the head and brain of the trading venture?
- (iv) did the parent company governs the adventure, decide what should be done and what capital should be embarked on the venture?
- (v) did the parent company make the profits by its skill and direction?
- (vi) was the parent company in effectual and constant control?

All such questions were raised in — [*Smith, Stone and Kinght v. Birmingham Corpn. (1939) 4 AllER 116 (KB)*].

2.12 Subsidiary Company or Subsidiary [Section 2(87)]

Subsidiary Company or Subsidiary, in relation to a holding company, means a company in which the holding company —

- (i) controls the composition of the Board of Directors; or
- (ii) as modified by Companies Amendment Act, 2017, exercises or controls more than one-half of the *total voting power* either at its own or together with one or more of its subsidiary companies :

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation — For the purpose of this clause :

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression "company" includes any body corporate;
- (d) layer in relation to a holding company means its subsidiary or subsidiaries.

2.13 Foreign Company [Section 2(42)]

2.13.1 Definition

Foreign Company means —

- (i) any company or body corporate
- (ii) incorporated outside India.
- (iii) which has a place of business in India whether by itself or through an agent, either physically or through electronic mode.
- (iv) which conducts any business activity in India in any other manner.

As spelt out in Companies (specification of Definitions Details) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not including, but not limited to —

- (i) business-to-business and business-to-consumer transactions, data interchange and other digital supply transactions;
- (ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions or securities, in India or from citizens of India;
- (iii) financial statements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
- (iv) online services, such as, telemarketing, telecommunicating, information research etc.
- (v) all related data communication services whether conducted by e-mail, mobile device or social media, cloud computing, document management, voice or data transmission or otherwise.