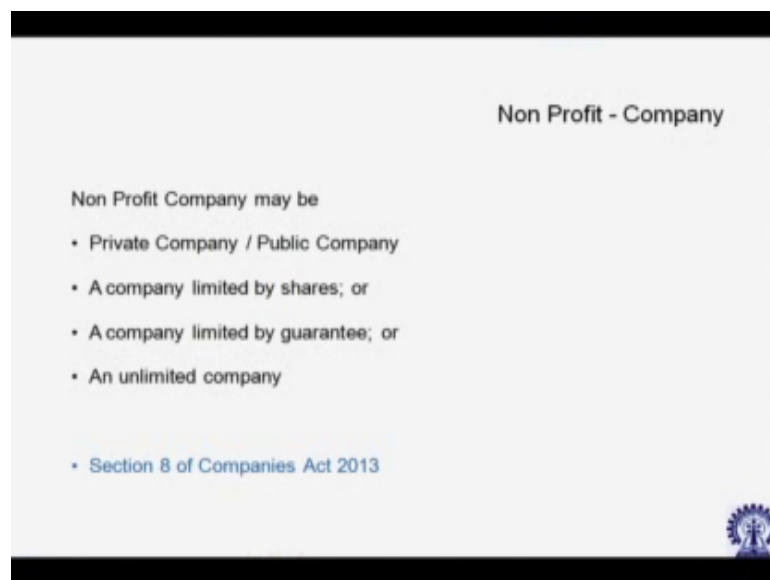


Legal Compliance for Incorporating Startup
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Lecture – 14
Law Relating to Non-Profit Company

I welcome you in the 14th lecture, regarding legal compliance for incorporating startup. And I am in the module on incorporation of One Person Company, private limited, public limited company. And now I am specifically talk, law relating to non-profit company.

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Now, you might wondering, why I am discussing with you relating to law relating to non-profit company. Or what is this particular company all about. Now you might have interest to develop your business, or to start to startup to address some of the social cause. Or you might be interested to address, I mean might be interested to address some of the scientific innovation, or carry forward the research in a particular area. So, in these circumstances, it is advisable that you incorporate your startup as a non-profit company. And when we are talking about the non-profit company, it can be a private limited company or it can be a public limited company, but only thing, which you get in of a

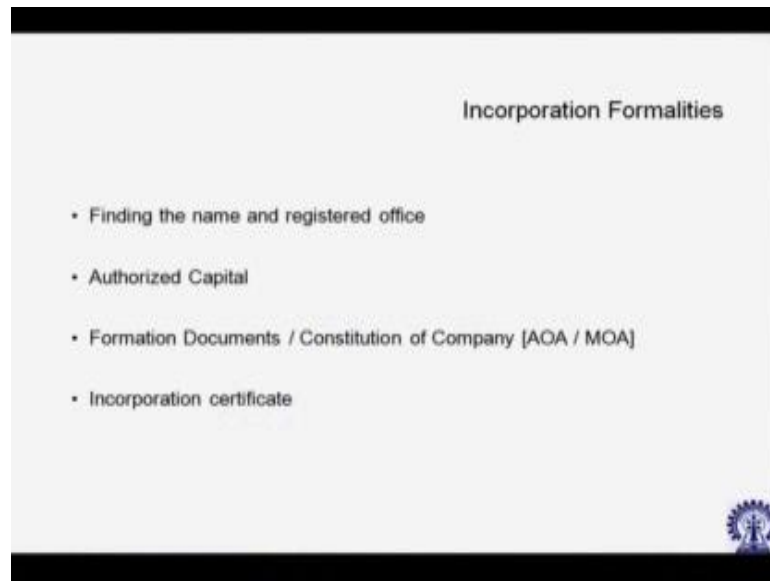
non-profit company is that, it can drop the name of the limited, which I am about to discuss with you little later.

Now, if it is a private limited company or public limited company, it can have a similar kind of structuring. Like can be limited by share or it can be limited by guarantee, or it can be unlimited. And you will find most of the provision, or all the provision relating to a non-profit company, is provided under section a of companies act 2013. Now previously in companies' act 1956, non-profit company is provided in section 25. So, if you talk with many people, or commonly you will find people talk about this section 25 of company. Section 25 of company means they are basically non-profit company.

But please remember non-profit company do not mean, that they cannot do the business, or they cannot pay the salary to worker. They can do all the function which is normally required for doing the business, but what is bar here, is that, to distribution of the profit if you in any profit, or you know, you should not participate in the commercial venture to make the profit. So, in case of a non-profit company, you keep some kind of a special from the company, from the government, and this particular non-profit company enjoys the different kind of assumptions under the different law.

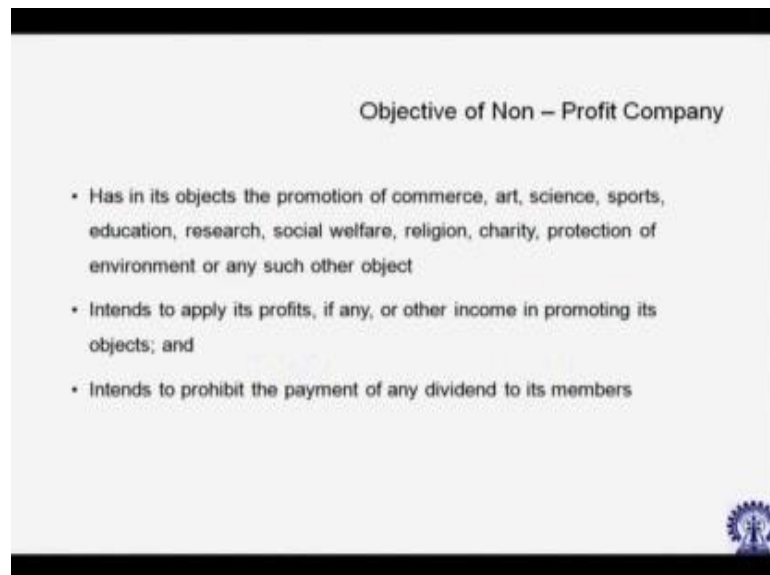
So, it can be a tax assumption, it can be receiving the donation, and while you are receiving the donation, you might you know, the people who are donating they might also enjoy the tax assumption, they can also get kind of concession, for you know using the different infrastructure facility, you need to talk about the formation document, what are the matters to be incorporated in the formation document and please to note, if it is a non-profit making organization, then in that case the formation document is differs from the private limited company, or a public limited company ordinarily. So, there is this special provision you need to corporate into these memorandum or article of the association, and the percipient memorandum and the article of association is provided, as the schedule in the companies act itself.

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Then again whenever you are going for this non-profit organization, you generally get a certificate of the incorporation from the registrar.

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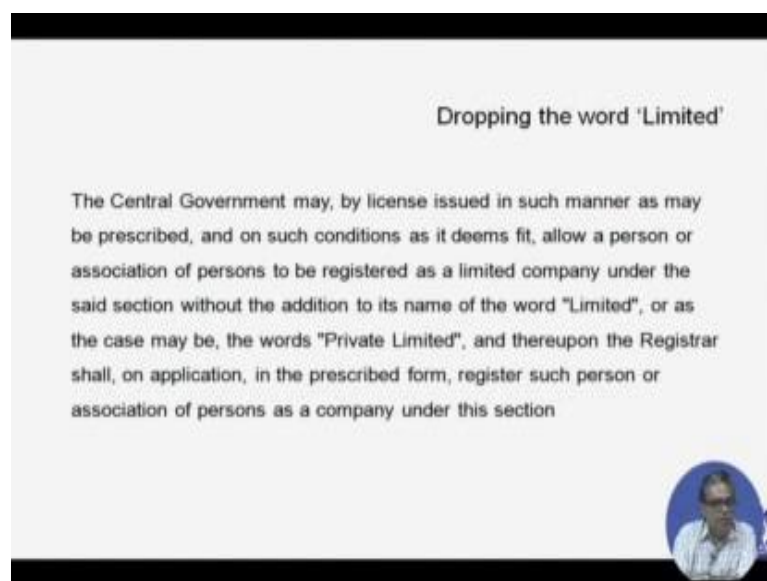


So, to be more specific, relating to the objective of a non-profit making organization, it can be promoted for promotion, of the commerce, arts, science, sports, education,

research, social welfare, religion, charity, protection of the environment and any such other objective. So if you describe broad based, and for a different purposes you can do, if your startup is fall with any of these particular objective, and you wanted to address any of the cause, then in that case you can incorporated your company as a non-profit making organization or non-profit making company

Now, as I have told you that it intends to apply it is profit, or other income for promoting this particular object. So, you do not distribute the profit, which you are making in this particular company, but you wanted to use it, for the purpose or the objective, with which you have incorporated with this particular company. And as I have told you that, it is not encouraged to distribute the dividend to it is member.

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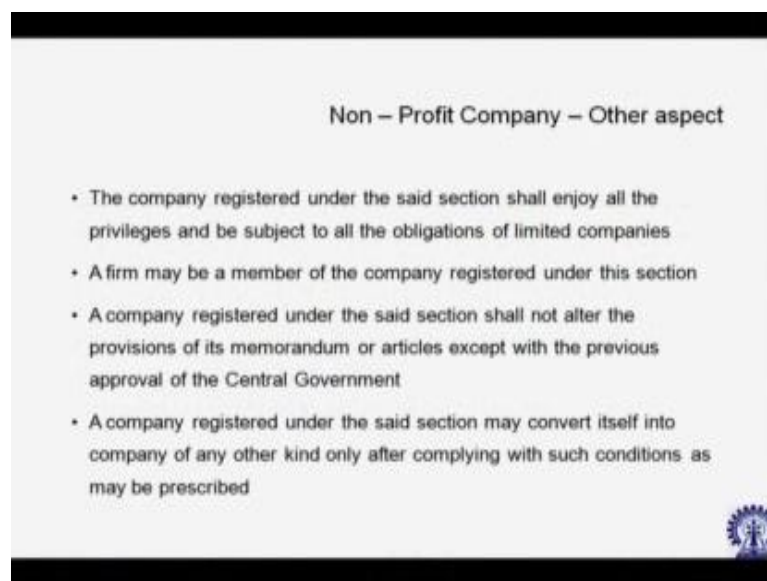


Now, let me, take you in the next issue, now these rules relating to I mean, when you are going for a non-profit company in addition to applying to the registrar of this particular company, any association of the person or anybody or any number of people should apply, to the registrar of the company, while they are incorporating this particular company, and state it very clearly that application, then what is the purpose for which you want to incorporate this. Similarly when you are drafting your objectives in the

memorandum of association, you need to justify these particular objectives in the objective clause itself.

Now, if you are, doing some work, which is, not prescribed or not as per the condition, which has been provided under these under this concession, then in that case, you can, you cannot continue, using this particular I mean you cannot continue dropping this particular name of the limited, but if you are fulfilling the condition, then in that case you can drop the word private limited, as well as the limited, from the name of this particular company. So, if you want to if you want to remove this particular thing then in that case you need to drop this particular name.

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But please let me tell you, that you know, whatever the law which is applied, either in case of private limited company, or a public limited company, those laws do apply for on profit making companies.

So, if it is relating to filing of the return, if it is relating to administration management administration of the company, if it is relating to the annual meeting, and the procedure which need to be followed in the annual meeting, what are matter need to be reported in the annual report, or whatever the matter need to be reported in the financial statement,

or the appointment of the auditors, or you know if you wanted to issue the shares for acquisition of capital, whatever you want to do, in every time you have to follow, whatever the standard condition has been prescribed, for a particular firm of the company, either it is a public limited company, or it is a private limited company, and if it is public limited company, then in that case you have to follow, whatever has been prescribed for unlisted, as well as listed company.

Now a company registered under these particular sections, shall enjoy all the privilege, and this subject to all obligations of a limited companies so; that means, you enjoy all the privilege, but there the limitation also; that means, what I was talking about, whatever law applies to all these particular companies also applies to you

Now, in case of this non-profit company, the firm can also be a member of these particular companies. So, many of the time, even you will find the company, or number of companies promote a non-profit company, like a company which is a holding company, and it is subsidiary company can promote another non-profit company, for doing the research, which they are you know going to use in their business. So, may be the R&D division of the company or a group companies can be promoted as a non-profit making organization. So, the moment we are using the word firm, it is basically having a wider connotation. So, it can be even the LLP, it can be even a registered partnership firm, it can be the society, it can be a cooperatives, it can be other you know private limited company or public limited company, they can all promote this non-profit organization in addition to a individual, you can promote this particular organization

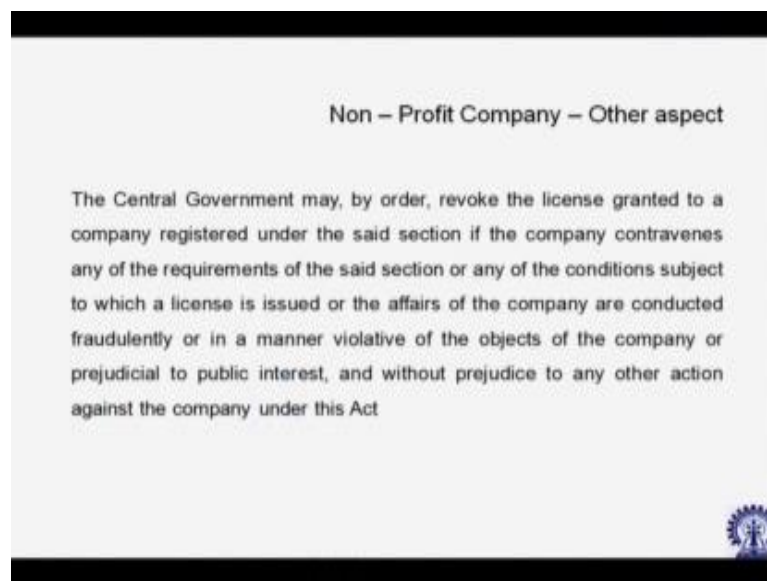
A company registered under the said sections, shall not alter the provisions or not alter the provision of the memorandum of article, except with the provision of previous approval of the Central Government.

So, as I have told you before that this kind of company, having a specific structure prescribed in the companies act itself, as a memorandum and article of association. So, whenever you are filing the memorandum and article of association, for non-profit company, the government is going to scrutinize. The government means here the registrar of company going to scrutinize that it is according to the non-profit companies

MOA and AOA, and he should get satisfied that. And then the subsequently in the general meeting if you wanted to change the any of this particular provision which has been mentioned in the AOA and MOA, then in that case, you need to have a prior permission from the government, itself otherwise you cannot do that.

Now, a company which is registered under the said section may convert itself into any other kind, after complying whatever the condition is required or may be prescribed. So, non-profit company which is a private limited company, or non-profit company, which is the public limited company, can convert itself to a public limited company, or a private limited company or maybe they can convert it into a LLP, or may be any other business form. So, whatever they do then, will be subject to that particular provision of conversion, whatever has been prescribed under the different law, for the conversion of that kind of organization.

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Now, let me come into another aspect. Central Government may at any point of time revoke the license which is granted to the company. If it is find that the affair of the companies are conducted fraudulently, or in the manner violative to the objects of the company or prejudicial to the public interest, and without prejudice to any other action, against the company in this particular Act.

Now, if you look into these particular three things, that is you know conducted fraudulently, or violative the objects of the company, or prejudicial to the public interest, these are a very broad construction. Mainly when we are talking about prejudice to the public interest, whatever the, what prejudice to public interest is depending on a particular time, particular societal norms, or it might be the norms, which are of good convenience norms, which has been prescribed for a particular, you know segment or particular issues, by the government from time to time. Or it might be even against the interest of general public, like you know, they these particular company is a research company, who are carrying on some kind of a, you know experimentation on the animals, and because of that, there is some kind of the local disturbance happening, in the local community.

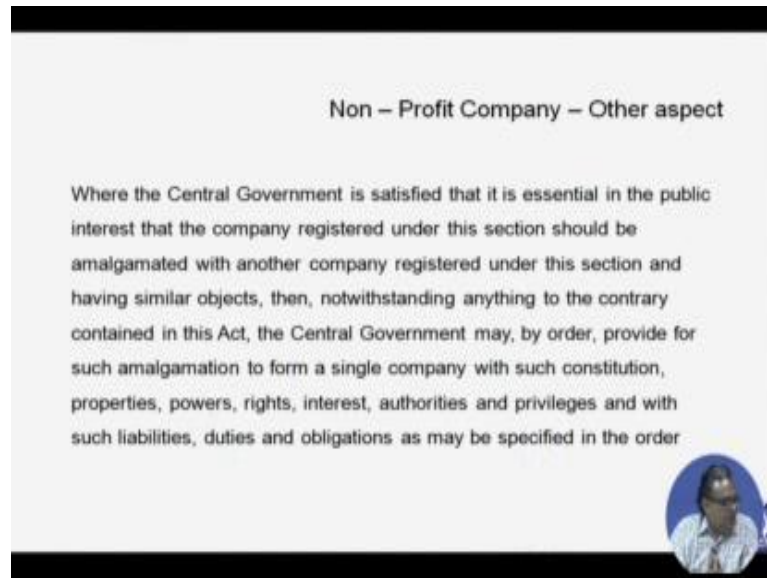
So, it will go against the public interest. It might be relating to or the matter of the health. Because, you know, because of the activity of this particular company, or the experimentation of the company, the local environments are getting affected. So, it would be against the public interest. Now when you are talking about the fraudulent, fraudulent means you are basically making a profit, and then those people who are carrying forward these particular business, they are one or other way around rewarding themselves, even though they are not distributing the profit, but they are trying to getting the benefit out of that.

Let me give you some example, like you know possibly the chairman of the company, did not get any money out of that, but he has purchased a private jet for him, through the money of this particular, you know research company, or maybe he has financing his vehicle, or car by this particular company, and then he is possibly building the facilities, by the money of this particular company, and which he is enjoying by his own. So, these are the fraudulent activity. Basically you are on the; it is a research organization, or a research company, but you are actually utilizing the proceeds of these particular company for your own benefit.

Similarly, when we are talking about violating the objectives; that means, you have possibly incorporated for a social cause or promoting the art, but you have actually involved in a business of antique art, and then you wanted to get certain exemptions of

these particular antique goods, preservation and then you are possibly exporting this particular antique stuff in the other country. So, it might be again the violation of you know the public policy which is at that time. So, if you are doing all these things, then in that case you have been your license will be withdrawn, as a non-profit company.

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Then the Central Government is to satisfied, that it is essential in the public interest that the company registered under this section, should be amalgamated. So, it might so, happen that you have been given the license, to operate as a non-profit company, but over the years your financial conditions, or the operation mismanagement has gone in such as level, that you are no more able to carry out as a good organization set up, or good company. Or it will be good if you are going to amalgamate it or merge with any existing company, of the similar nature. Hence Central Government can give the direction relating to that. And in that circumstance the company will be merged. So, there is every possibility of merging of this particular company, with the similar object with the company of the similar objective, which are actually incorporated for non-profit making or a non-profit making company.

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Penal Provision

A company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both



Now, there is the penal provision. If there is a, the contravention of any of this particular provision, who are managing this particular company, then in that circumstances there can be a fine from 10 lakhs, and it might be extend up to a 1 crore of rupees, and the director and every officer of the company, shall be punishable with imprisonment. So, this is a quite estrangement provision, if you are violating the grant which has given to you then in that case those people who are the office barriers, or the members of the company will be subjected to the imprisonment.

So, if you are if you think, that well your startup, is somewhere going to address some of the issues, which you have discussed in the objectives of the company, and it is going to solve some of the social problem. So, instead and you have a very less capital, you wanted to incorporate the startup for addressing the social need, then instead of incorporating your startup profit making company, or profit making organization, you can even decide to incorporate your startup, as a non-profit making company.

Please do remember, when I have discussed with you relating to cooperatives, I said that cooperatives also have some kind of social objectives, if you wanted to incorporate. But these particular organization, non-profit companies, are more structured than of a cooperatives, and as because they need to have they need to maintain a structure

information, relating to their finance, relating to their capital, relating to their business transition, many of the time, it is easy for this particular company, to raise the capital from different financial institutions, even you can access the market also for raising the capital.

But this particular flexibility might not have in case of the cooperatives. Again the cooperatives are governed by state laws. So, if you wanted to do the business beyond or if you wanted to carry forward your transaction beyond the state boundary, there might be difficulty, but if it is a non-profit company, then in that case you can carry forward your business, or you can carry out your business in any part of the country or in any state. So, depending on your business objective, or depending upon your objective startup, you might even choose between the cooperatives or non-profit company.

Thank you.