DOCTRINE OF ULTRA VIRES

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MEANING OF DOCTRINE OF ULTRA VIRES

• The expression ‘ultra vires’ means beyond the powers.
• The doctrine of ultra vires is related to objects clause in memorandum of association of the company.
• The doctrine of ultra vires ensures that the company devotes itself to the objects mentioned in it’s memorandum pf association.
• It confines the corporate activities within a specified field only.
• According to LCB Gower, the doctrine of ultra vires ensures that the shareholder who has invested his money in gold business doesn’t found that it is being used in fish market.
ASHBURY CASE (1875)

• The application of doctrine of ultra vires was first demonstrated in the landmark English case Ashbury Railway & Carriage company vs Richie (1875) 44 LJ Exch 185.

• The objects of Ashbury Railway company were to make and sell, or lend on hire railway carriages and wagons and all kinds of railway plants, etc. To carry on the business of mechanical engineers and general contractors.

• The Ashbury company entered into a contract with Riche, a firm in Belgium to finance construction of a railway line. But subsequently the company repudiated the contract as it was ultra vires. Riche contended that financing comes within the expression ‘general contactors’. But by applying ejusdem generis rule House of Lords held that the said contract was beyond the powers of company and hence ultra vires.
ATTORNEY GENERAL VS. GREAT EASTERN RAILWAY CO. (1880) AND AFTERMATH

• In the above case the House of Lords again considered the doctrine of ultra vires.
• The Court observed that the doctrine of ultra vires shall be retained but it should be reasonably applied so as to allow incidental objects also.
• Hence the company can pursue necessary as well as incidental objects.
• In Cotman vs. Brougham 1918 AC 514, a company had stated in its memorandum of association that it will have a main object and almost 30 other objects.
• In Bell Houses Ltd. Vs. City Wall Properties Ltd. (1966), company’s object clause authorized the company to carry on any other trade or business which in the opinion of Board of directors could be undertaken advantageously by the company. It resulted into dilution of the doctrine of ultra vires.
ABOLITION OF DOCTRINE OF ULTRA VIRES IN ENGLAND

• The doctrine of ultra vires was strictly applied in England after the ruling in Ashbury Railway Company case.
• However, the business community in England was not happy about strict application of this doctrine as it was interfering with freedom of business. Hence the doctrine was diluted by invoking incidental objects clause.
• On the basis of recommendations of Cohen Committee the doctrine was abolished from England on the ground that it has outlived it’s utility.
• However in Companies Act, 2013 the doctrine is still retained in section 4(1)(c) read with section 245(1)(b). In India the time is still not ripe for abolition and in view of the need of investors’ protection.
APPLICATION OF DOCTRINE IN INDIA

- In India the doctrine of ultra vires has been applied in some cases.
- In A.L. Mudliar vs. LIC AIR 1963 SC 1185, a company was registered for a particular business and it was taken over by another company conducting business of insurance. The Board of Directors of previous company had allowed a donation of Rs. 2 lacs for promotion of technical and business knowledge. But the Sup. Ct. Held that this donation is ultra vires the object of the company.
CONSEQUENCES

• Injunction: It is a preventive relief. It may be asked for by members of company when ultra vires act has been done or about to be done.

• Personal liability of directors: Of the directors have spent company’s money for some ultra vires act, the directors become personally liable to pay for it.

• Breach of warranty of authority: The agent has to act within the scope of his authority. Hence if a director who is an agent of the company acts beyond the scope of authority, he will be personally liable to make good the loss suffered by the third party.

• Ultra vires acquired property: If company’s funds have been spent for ultra vires acquisition of property still company’s title is not affected.

• Ultra vires torts: If the tortious act is committed by a servant of the company and it is within the scope of memorandum, such servant shall become personally liable to make good the loss.
CONCLUSION

• The doctrine of ultra vires is very important and hence it’s retention in Companies Act, 2013 is very much justified.

• In India the doctrine has not outlived it’s utility and it gives a sense of security to the investors.

• It doesn’t seem to be a possibility that the doctrine of ultra vires will be abolished in India in near future.
REFERENCE MATERIAL

• Taxman on Company Law
• R. Bank, ‘Is The Doctrine of Ultra Vires Dead’, 20 ICLQ 301