

- **Pre-incorporation Contracts**

Sometimes contracts are made on behalf of a company even before it is duly incorporated. These are called as pre-incorporation contracts. Two consenting parties are necessary to a contract, whereas a company before incorporation is a non-entity. Therefore, following are the effects of pre-incorporation contracts.

Company cannot be sued on pre-incorporation contracts- A company, when it comes into existence, cannot be sued on pre-incorporation contracts. In *English and Colonial Produce Co, Re*, a solicitor on the request of promoters prepared a company's documents and spent time and money in getting it registered. But the company was not held to be bound to pay for those services and expenses.

Company cannot sue on pre-incorporation contracts- A company cannot by adoption or ratification obtain the benefit of a contract made on its behalf before the company came into existence. In *Natal Land and Colonization Co v. Pauline Colliery Syndicate*, the promoters of a proposed company obtained an agreement from a landlord that he would grant lease of coal mining rights to the company. The company could not, after incorporation, enforce this contract.

Agents may incur personal liability- The agents who contract for a proposed company may sometimes incur personal liability. In *Kelner v. Baxter*, the promoters of a projected hotel company purchased wine from the plaintiff on behalf of the company. The company came into being but, before paying the price went into liquidation. They were held personally liable to the plaintiff.

## Ratification of a pre-incorporation contract

So far as the company is concerned it is neither bound by nor can have the benefit of a pre-incorporation contract. But this is subject to the provisions of the Specific Relief Act, 1963.

Section 15 of the Act provides that where the promoters of a company have made a contract before its incorporation for the purposes of the company, and if the contract is warranted by the terms of incorporation, the company may adopt and enforce it.

Vali Pattabhirama Rao v. Ramanuja Ginning and Rice Factory, a promoter of a company acquired a leasehold interest for it. He held it for some time for a partnership firm, converted the firm into a company which adopted the lease. The lessor was held bound to the company under the lease.

Section 19 of the Specific Relief Act provides that the other party can also enforce the contract if the company has adopted it after incorporation and the contract is within the terms of incorporation.

- **Certificate of Incorporation (sec 34 and 35)/(now section 9 of companies act 2013)**

Certificate of Incorporation is the certificate issued by the Registrar of Companies on registration of a company. It brings the company into existence as a legal person. It marks the birth of the company, and the date mentioned on it is conclusive, even if wrong.

Certificate of Incorporation is the conclusive evidence that all the requirements under the Act in respect of registration and matters precedent and incidental thereto have been complied with and that the association is a company authorized to be registered and duly registered under the Act(s 35).

This is illustrated by the Privy Council in *Moosa Goolam Ariff v. Ebrahim Goolam Ariff*, in which the memorandum of a company was signed by two adult members and by a guardian on behalf of the other five members, who were minors. The Registrar, however, registered the company. The plaintiff's contention that the Certificate of Incorporation should be declared void was rejected as the certificate is conclusive for all purposes.

However, the illegal objects of the company do not become legal by the issue of the certificate. The certificate is subject to judicial review where it happens to be issued to a company which on account of illegal objects should not have been registered. This is so because a company cannot be registered for illegal purposes.

Section 9 of companies act 2013 states--- Effect of registration ---- From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name. And section 35 of old act is omitted in new act ,So same is to be written .