

- **Doctrine of Ultra-vires**

Doctrine of ultra vires has been developed to protect the investors and creditors of the company. This doctrine prevents a company to employ the money of the investors for a purpose other than those stated in the objects clause of its memorandum. Thus, the investors and the company may be assured by this rule that their investment will not be employed for the objects or activities which they did not have in contemplation at the time of investing their money in the company. It enables the investors to know the objects in which their money is to be employed.

The object clause of the Memorandum of the company contains the object for which the company is formed. An act of the company must not be beyond the objects clause, otherwise it will be ultra vires and, therefore, void and cannot be ratified even if all the members wish to ratify it. This is called the doctrine of ultra vires.

The word 'ultra' means beyond and 'vires' means powers. Thus the expression ultra vires means an act beyond the powers. Here the expression ultra vires is used to indicate an act of the company which is beyond the powers conferred on the company by the objects clause of its memorandum.

The application of the doctrine of ultra-vires was first demonstrated by the House of Lords in *Ashbury Railway Carriage & Railway Co. v. Riche*, where the mem of a co defined its objects: 1) to manufacture and sell railway carriages etc; 2) to carry on the business of mechanical engineers and general contractors. The company contracted with Riche to finance the construction of a railway line in Belgium and subsequently repudiated it as one beyond its powers. Riche brought an action for breach of contract. The House of Lords held that the contract was ultra vires and void. They were of the opinion that general terms like general contractors must

be taken in reference to the main objects of the company which otherwise would authorize every kind of activity making the memorandum meaningless.

In the next leading case of Attorney General v. Great Eastern Railway Co, this doctrine was made clearer. The House of Lords held that the doctrine of UV as explained in Ashbury case should be maintained but reasonably understood and applied. Thus, an act which is incidental to the objects authorized ought not to be held as UV, unless it is expressly prohibited. Thus in Evans v. Brunner, Mond & Co, a chemicals manufacturing company was allowed to donate 1,00,000 pounds to universities and scientific institutions for research as this would be conducive for the progress of the company.

In India the Supreme Court has affirmed the doctrine in A Lakshmanaswami Mudaliar v. LIC, where the donation made as charity was held ultra vires and the directors were held personally liable to compensate the money.

Thus an act of the company is ultra vires if it is not

- a) Essential for the fulfillment of the objects stated in the memorandum;
- b) Incidental or consequential to that attainment of its objects
- c) Which the company is authorized to do by the Company's Act, in course of its business.

Present position

In England the doctrine of ultra vires has been restricted by the European Communities Act, 1972. Thus, as against a third person acting in good faith, the company can no longer plead that the contract was ultra-vires.

In India, the principles laid down in Ashbury case are still applied without restrictions and modifications. Thus, in India the ultra vires act is still regarded, as void and it cannot be validated by ratification.

Consequences

- 1) Injunction- whenever an ultra vires act has been or is about to be done, any member of the company can get an injunction to restrain the co from proceeding further.
- 2) Personal liability of the directors- it is the duty of the directors to see that the funds of the company are used only for legitimate business of the company. If the funds of the company are used for a purpose foreign to its memorandum, the directors will be personally liable to restore it.
- 3) Breach of warranty of authority- an agent who acts beyond the scope of his authority will be held personally liable. The directors of a company are its agents. If they induce an outsider to contract in a matter the company does not have power to act, they will be personally liable to him.
- 4) Ultra vires acquired property- if a company's money has been spent ultra vires in purchasing some property, the company's right over that property must be held secure. For that asset, though wrongfully acquired, represents corporate capital.
- 5) Ultra vires contracts- an ultra vires contract being void ab initio, cannot become intra vires by reason of estoppel, lapse of time, ratification, acquiescence or delay. No performance of either side can give an unlawful contract any validity or right of action upon it.
- 6) Ultra vires torts- a company can be made liable for an ultra vires tort committed, provided, it is shown that
 - a) The activity in the course of which it has been committed falls within the scope of the mem.
 - b) That the servant committed the tort.

It can be concluded that an UV act is void and cannot be ratified. It prevents the wrongful application of the company's assets likely to result in the insolvency of the company and thereby protects creditors. It also prevents directors from departing the object for which the company has been formed and, thus, puts a

check over the activities of the directions. However, it has sometimes led to injustice of third parties acting in good faith.