PREFACE

“The doctrine of ultra vires under Companies Act 1956” is the Topic of this study which is very much concerned with the Corporate World and with the Companies or the so called corporations. As we are aware that these companies manage their corporate capital from different sources and which is to be spent only for those objects which are declared in the objects clause contained in the memorandum of association or any other charter. If the corporate capital is used by the directors or managers beyond the objects provided there-in, then the doctrine plays its roll.

It is pertinent to mention the meaning of the doctrine which is a Latin version. The word ‘Ultra’ means beyond and ‘Vires’ means power, hence the expression ultra vires means doing of an act which is beyond the power which are conferred on any particular entity by the objects clause of its memorandum or by any other instrument or the concerned law. An ultra vires act is void and cannot be even ratified by all the members who wish to ratify it. There are two kinds of acts on the part of the directors which are ultra vires the directors and ultra vires the company. The ultra vires acts of directors can be ratified in the general meeting but acts which are ultra vires the company cannot be ratified by the whole body of members.

This doctrine has been developed to protect the investors and creditors of the companies and corporations, and was firstly applied to statutory companies. Soon after the concept of limited liability made applicable in the year 1855, the doctrine was given due importance. The reason being that up to 1855 companies were in the form of enlarged partnerships and were governed by rules of partnership and the creditors and investor felt themselves fully secured, on account of unlimited liability of the members. But after introduction of this principle of limited liability, it became possible to make the liability of the members limited to certain extent only, and hence the creditors and investors felt themselves unsecured. Therefore an atmosphere favorable to doctrine of ultra vires was created.

Doctrine of constructive notice or knowledge is an important topic which is to be read with this doctrine, and which was basically evolved by the Courts in U.K. for the protection of companies against third parties dealing with the company by which they are presumed to have the knowledge of company’s documents filed with the Registrar, which are kept open to public
for inspection and obtaining copies etc. Similar provision is also contained in section 610 of our companies Act 1956.

The special feature of this doctrine of constructive notice is that every person dealing with the company is presumed to have notice of all documents filed with the Registrar of companies, which further means that they have read and understood the same in their true perspective. However the doctrine of constructive notice is subject to the following doctrines:


1. The doctrine of Indoor management entitles the outsiders dealing with the company to assume that the things have been done in accordance with the provisions contained in the documents filed with the Registrar there-in unless he has the knowledge of irregularity.

2. The doctrine of Holding out creates an exception to the doctrine of constructive notice, since if a person is held out by the company as its officer or director, then the act of such person falling within the ostensible authority of the officer will be binding on the company.

Further it has remained the tendency of the business people to evade the doctrine by drafting a so wide objects clause so as to cover every thing under the sun. To control this tendency, the courts adopted “Main Objects Rule” of construction. This rule owes its origin to the decision in Ashbury Railway Carriage & Iron Co. v Riche of 1875 where it was held that the words “general contractor” must be read in connection with the company’s main business only and not even otherwise, and the case of German Date Coffee Co. of 1882 is yet another example of the application of this rule.

Ultra vires acts or transactions are different from illegal acts or transactions although both are void. Unfortunately, the doctrine of ultra vires has often been used in connection with illegal and forbidden acts. This use should also be prevented.

In England the Doctrine of ultra vires has been restricted by the European Communities Act 1972. According to section 9 (1) of the Act in favor of a person dealing with the company in good faith, any transaction decided by its directors shall be deemed to be within the capacity of the company, and other party to the transaction is not required to enquire about the capacity of the company and thus such transaction may be enforced by the other party acting in good faith. It may be noted that this act merely restrict the application of the doctrine but it does not abolish it.
The above provision of the 1972 Act has been incorporated into section 35 of the English Companies Act 1985 and further the similar provision in section 35 of 1989 Act.

In India there are no similar enacted provisions as in England and the principles laid down in *Ashbury’s* case of 1875 and *Attorney General V Great Eastern Railway Co.* case of 1880 are still applied without restrictions and modifications. Hence in our country the *ultra vires* acts are still regarded void and these acts can not be ratified even if all the share-holders consent to such ratifications. Hence both the company and the third party can plead against each other that the act or transaction is *ultra vires.*