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Study Notes

Companies Act, 2013

Chapter 21A -

PRODUCER COMPANIES

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INTRODUCTION

- Companies Act, 2013 in India, a Producer Company is a **type of company that is specifically designed to cater to the needs of primary producers.**
- It is formed by individuals **engaged in the production, procurement, or marketing of primary produce or related activities.**
- **The primary produce includes** the products of farmers or agriculture, horticulture, animal husbandry, fisheries, dairy, beekeeping, or any other primary produce that is specified by the central government.

SECTION 378A - DEFINITIONS

- Section 378A (c) “**Inter-State co-operative society**” means a multi-State co-operative society as defined section 3(p) of the Multi-State Co-operative Societies Act, 2002 and includes any co-operative society registered under any other law for the time being in force, which has, subsequent to its formation, extended any of its objects to more than one State by enlisting the participation of persons or by extending any of its activities outside the State, whether directly or indirectly or through an institution of which it is a constituent.
- Section 378A (d) “**Limited return**” means the maximum dividend as may be specified by the articles.
- Section 378A (j) “**Primary produce**” means:
 - ✓ *produce of farmers, arising from agriculture (including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products), or from any other primary activity or service which promotes the interest of the farmers or consumers; or*
 - ✓ *produce of persons engaged in handloom, handicraft and other cottage industries; or*
 - ✓ *any product resulting from any of the above activities, including by-products of such products; or*
 - ✓ *any product resulting from an ancillary activity that may assist or promote any of the aforesaid activities or anything ancillary thereto; or*
 - ✓ *any activity which is intended to increase the production of anything as mentioned above or improve the quality.*
- Section 378A (k) “**Producer**” means any person engaged in any activity connected with or relatable to any primary produce.
- Section 378A (l) “**Producer Company**” means a body corporate having objects or activities specified in section 378B and registered as Producer Company under this Act or under the Companies Act, 1956.
- Section 378A (m) “**Producer Institution**” means a Producer Company or any other institution having only producer or producers or Producer Company or Producer Companies as its member whether incorporated or not having any of the objects referred to in section 378B and which agrees to make use of the services of the Producer Company or Producer Companies as provided in its articles.

- Section 378A (n) “**Withheld price**” means part of the price due and payable for goods supplied by any Member to the Producer Company; and as withheld by the Producer Company for payment on a subsequent date.

➤ INCORPORATION OF PRODUCER COMPANIES AND OTHER MATTERS

SECTION 378B - OBJECTS OF PRODUCER COMPANY

- The **objects of the Producer Company** shall relate to all or any of the following:
 - ✓ *production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit: may carry on any of the activities either by itself or through other institution;*
 - ✓ *processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its members;*
 - ✓ *manufacture, sale or supply of machinery, equipment or consumables mainly to its members;*
 - ✓ *providing education on the mutual assistance principles to its members and others;*
 - ✓ *rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its members;*
 - ✓ *generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;*
 - ✓ *insurance of producers or their primary produce;*
 - ✓ *promoting techniques of mutuality and mutual assistance;*
 - ✓ *welfare measures or facilities for the benefit of Members as may be decided by the Board;*
 - ✓ *any other activity, ancillary or incidental to any of the activities or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner;*
 - ✓ *financing of procurement, processing, marketing or other activities which include extending of credit facilities or any other financial services to its members.”*

SECTION 378C - FORMATION OF PRODUCER COMPANY AND ITS REGISTRATION

- A **Producer Company may be formed by:**
 - ✓ *ten or more individuals, each of them being a producer or*
 - ✓ *any two or more Producer Institutions, or*
 - ✓ *a combination of ten or more individuals and Producer Institutions,*

desirous of forming a Producer Company **having its objects specified in section 378B** and otherwise complying with the requirements in respect of registration.

- Registrar shall, **within thirty days of the receipt of the documents required** for registration, register the Memorandum, the Articles and other documents, if any, and **issue a certificate of incorporation.**
- **Liability of Members:**
 - ✓ shall be limited by the memorandum to the amount, if any, unpaid on the shares held by the members and
 - ✓ **be termed a company limited by shares.**
- It may **reimburse to its promoters all other direct costs associated with** the promotion and registration of the company including registration, legal fees, printing of a memorandum and articles and the payment thereof shall be **subject to the approval at its first general meeting of the Members.**
- On **registration the Producer Company** shall become:
 - ✓ *a body corporate as if it is a private limited company, without, however, any limit to the number of Members, and*
 - ✓ the Producer Company shall not, under any circumstance, whatsoever, become or be deemed to become a public limited company.

SECTION 378D - MEMBERSHIP AND VOTING RIGHTS OF MEMBERS OF PRODUCER COMPANY

- In a case where the **membership consists:**
 - ✓ *solely of individual Members*, the voting rights shall be based on a *single vote for every Member*, irrespective of his shareholding or patronage of the Producer Company.
 - ✓ *Producer Institutions only*, the voting rights of such Producer Institutions shall be *determined on the basis of their participation in the business of the Producer Company in the previous year*, as may be specified by articles:
 - during the first year of registration of a Producer Company, the voting rights shall be determined on the basis of the shareholding by such Producer Institutions.
 - ✓ In a case where the *membership consists of individuals and Producer Institutions*, the voting rights shall be *computed on the basis of a single vote for every Member.*
- **The Articles may provide for the conditions**, subject to which:
 - ✓ *a member may continue to retain his membership*, and
 - ✓ *the manner in which voting rights shall be exercised* by the Members.
- Producer Company may, if so, authorised by its Articles, **restrict the voting rights to active Members, in any special or general meeting.**
- **No person, who has any business interest which is in conflict with business** of the Producer Company, shall become a Member of that Company.
- A Member, who acquires any business interest which is in conflict with the business of the Producer Company, shall **cease to be a Member of that Company and be removed as a Member in accordance with the articles.**

SECTION 378E - BENEFITS TO MEMBERS

- Every Member shall, subject to the Article, **initially receive:**
 - ✓ *only such value for the produce or products pooled and supplied as the Board of Producer Company may determine, and*
 - ✓ *the withheld price may be disbursed later in cash or in kind or by allotment of equity shares, in proportion to the produce supplied to the Producer Company during the financial year as may be decided by the Board.*
- Member shall, on the share capital contributed, **receive only a limited return and may be allotted bonus shares** in accordance with the provisions contained in section 378ZJ.
- The surplus if any, remaining after making provision for payment of limited return and reserves, **may be disbursed as patronage bonus, amongst the Members, in proportion to their participation in the business of the Producer Company**, either:
 - ✓ *in cash or*
 - ✓ *by way of allotment of equity shares, or*
 - ✓ *both, as may be decided by the Members at the general meeting.*

SECTION 378F - MEMORANDUM OF PRODUCER COMPANY

- The **Memorandum of association shall state:**
 - ✓ *the name of the company with "Producer Company Limited" as the last words of the name of such Company;*
 - ✓ *the State in which the registered office of the Producer Company is to situate;*
 - ✓ *the main objects of the Producer Company shall be one or more of the objects specified in section 378B;*
 - ✓ *the names and addresses of the persons who have subscribed to the memorandum;*
 - ✓ *the amount of share capital with which the Producer Company is to be registered and division into shares of a fixed amount;*
 - ✓ *the names, addresses and occupations of the subscribers being producers, who shall act as the first directors as per section 378J (2);*
 - ✓ *that the liability of its members is limited;*
 - ✓ *against the subscriber's name, the number of shares each subscriber takes: no subscriber shall take less than one share;*
 - ✓ *that in case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.*

SECTION 378G - ARTICLES OF ASSOCIATION

- There shall be **presented, for registration to the Registrar of the State to which the registered office of the Producer Company is, stated by the memorandum of association, to be situate:**
 - ✓ *memorandum of the Producer Company;*
 - ✓ *its articles duly signed by the subscribers to the memorandum.*
- The **mutual assistance principles to be contained in the Articles** are:

- ✓ the *membership shall be voluntary and available, to all eligible persons who, can participate or avail of the facilities or services of the Producer Company, and are willing to accept the duties of membership;*
- ✓ *each member shall have only a single vote irrespective of the shareholding;*
- ✓ *shall be administered by a Board consisting of persons elected or appointed as directors and the Board shall be accountable to the Members;*
- ✓ *particulars on limited return on share capital;*
- ✓ *the surplus arising out of the operations shall be distributed in an equitable manner by:*
 - *providing for the development of the business of the Producer Company;*
 - *providing for common facilities; and*
 - *distributing amongst the Members, as may be admissible in proportion to their respective participation in the business;*
- ✓ *provision for the education of Members, employees and others, on the principles of mutuality and techniques of mutual assistance;*
- ✓ *shall actively co-operate with other Producer Companies (and other organisations following similar principles) at local, national or international level so as to best serve the interest of their Members and the communities it purports to serve.*
- Further, apart from the above **the Articles shall contain:**
 - ✓ *the qualifications for membership, the conditions for continuance or cancellation of membership and the terms, conditions and procedure for transfer of shares;*
 - ✓ *the manner of ascertaining the patronage and voting right based on patronage;*
 - ✓ *the manner of constitution of the Board, its powers and duties, the minimum and maximum number of directors, manner of election and appointment of directors and retirement by rotation, qualifications for being elected or continuance as such and the terms of office of the said directors, their powers and duties, conditions for election or co-option of directors, method of removal of directors and the filling up of vacancies on the Board, and the manner and the terms of appointment of the Chief Executive;*
 - ✓ *the election of the Chairman, term of office of directors and the Chairman, manner of voting at the general or special meetings of Members, procedure for voting, by directors at meetings of the Board, powers of the Chairman and the circumstances under which the Chairman may exercise a casting vote;*
 - ✓ *the circumstances under which, and the manner in which, the withheld price is to be determined and distributed;*
 - ✓ *the manner of disbursement of patronage bonus in cash or by issue of equity shares, or both;*
 - ✓ *the contribution to be shared and related matters under section 378ZI (2);*
 - ✓ *the matters relating to issue of bonus shares out of general reserves as per section 378ZJ;*
 - ✓ *the basis and manner of allotment of equity shares of the Producer Company in lieu of the whole or part of the sale proceeds of produce or products supplied by the Members;*

- ✓ the *amount of reserves, sources from which funds may be raised, limitation on raising of funds, restriction on the use of such funds and the extent of debt that may be contracted and the conditions thereof;*
- ✓ the *credit, loans or advances which may be granted to a member and the conditions for the grant of the same;*
- ✓ the *right of any Member to obtain information* relating to general business of the company;
- ✓ the *basis and manner of distribution and disposal of funds* available after meeting liabilities in the event of dissolution or liquidation of the Producer Company;
- ✓ the *authorisation for division, amalgamation, merger, creation of subsidiaries* and the entering into joint ventures and other matters connected therewith;
- ✓ *laying of the memorandum and articles* of the Producer Company before a special general meeting to be held within ninety days of its registration;
- ✓ *any other provision*, which the Members may, by special resolution recommend to be included in the articles.

Section 378H AMENDMENT OF MEMORANDEM & ARTICLES Section 378I

- A Producer Company may, **by special resolution**, not inconsistent with section 378B, **alter its objects** specified in its Memorandum.
 - ✓ *copy of the amended memorandum, together with a copy of the special resolution duly certified by two directors, shall be filed with the Registrar within thirty days* from the date of adoption of any resolution:
 - in the case of transfer of the registered office of a Producer Company from the jurisdiction of one Registrar to another, *certified copies of the special resolution certified by two directors shall be filed with both the Registrars within thirty days, and each Registrar shall record the same, and the Registrar from whose jurisdiction the office is transferred, shall forthwith forward to the other Registrar all documents relating to the Producer Company.*
 - alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall *not take effect unless it is approved by the Central Government on an application.*
- **Any amendment of the articles shall be proposed by:**
 - *not less than two-thirds of the elected directors or*
 - *by not less than one-third of the Members, and*
 - *adopted by the Members by a special resolution.*
- A **copy of the amended articles together with the copy of the special resolution, both duly certified by two directors, shall be filed with the Registrar within fifteen days** from the date of its adoption.

SECTION 378J - OPTION TO INTER-STATE CO-OPERATIVE SOCIETIES TO BECOME PRODUCER COMPANIES

- Any inter-State co-operative society **with objects not confined to one State** may make an application to the Registrar for registration as Producer Company.
- **Application be accompanied by:**
 - ✓ a *copy of the special resolution*, of not less than two-thirds of total members of inter-State co-operative society, for its incorporation as a Producer Company;
 - ✓ a *statement showing*:
 - names and addresses or the occupation of the directors and the Chief Executive, if any, by whatever name called, of such co-operative; and
 - list of members of such inter-State co-operative society;
 - ✓ a *statement indicating* that the inter-State co-operative society is engaged in any one or more of the objects specified in section 378B;
 - ✓ a *declaration by two or more directors* of the inter-State co-operative society certifying that the above-mentioned particulars are correct.
- When an inter-State co-operative society is registered as a Producer Company, the words **“Producer Company Limited” shall form part of its name.**
- Registrar shall, **within a period of thirty days of the receipt of application**, certify that the inter-State co-operative society applying for registration is registered and hereby incorporated as a Producer Company.
- **A co-operative society formed by** producers, by federation or union of co-operative societies of producers or co-operatives of producers, registered under any law for the time being in force which has extended its objects outside the State, either directly or through a union or federation of co-operatives of which it is a constituent, as the case may be, and any federation or unions of such co-operatives, which has so extended any of its objects or activities outside the State, shall **be eligible to make an application and to obtain registration as a Producer Company.**
- The inter-State co-operative society shall, upon registration, stand transformed into a Producer Company.

SECTION 378K - EFFECT OF INCORPORATION OF PRODUCER COMPANY

- Every shareholder of the inter-State co-operative society immediately before the date of registration of Producer Company (date of transformation) shall **be deemed to be registered on and from that date as a shareholder of the Producer Company to the extent of the face value of the shares held by such shareholder.**

SECTION 378L - VESTING OF UNDERTAKING IN PRODUCER COMPANY

- The **following relating to the inter-State co-operative society shall, as on the date of transformation, vest in the Producer Company:**
 - ✓ all properties and assets, movable and immovable;
 - ✓ all the rights, debts, liabilities, interests, privileges and obligations;
 - ✓ all debts, liabilities and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the society;
 - ✓ all sums of money due y immediately before the date of transformation;

- **Every organisation**, which was:
 - ✓ being managed;
 - ✓ getting financial, managerial or technical assistance from the inter-State co-operative societyimmediately before the date of transformation by the inter-State co-operative society shall be managed by the Producer Company for such period, as the circumstances may require
- The amount representing the capital of the erstwhile inter-State co-operative society shall **form part of the capital of the Producer Company**.
- If, on the date of transformation, there is pending any suit, arbitration, appeal or other legal proceeding of whatever nature by or against the inter-State co-operative society, the same shall **not abate, be discontinued or be in any way prejudicially affected by reason of the incorporation of the Producer Company or transformation of the inter-State co-operative society as a Producer Company**, as the case may be, but the suit, arbitration, appeal or other proceeding, may be continued, prosecuted and enforced by or against the Producer Company in the same manner and to the same extent as it would have, or may have been continued, prosecuted and enforced by or against the inter-State co-operative society as if the provisions contained in this Chapter had not come into force.

SECTION 378M - CONCESSION, ETC., TO BE DEEMED TO HAVE BEEN GRANTED TO PRODUCER COMPANY

- From the date of transformation, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the inter-State co-operative society in connection with the affairs and business under any law for the time being in force shall **be deemed to have been granted to the Producer Company**.

SECTION 378N - PROVISIONS IN RESPECT OF OFFICERS AND OTHER EMPLOYEES OF INTER-STATE CO-OPERATIVE SOCIETY

- All the directors in the inter-State co-operative society before the incorporation of the Producer Company shall **continue in office for a period of one year** from the date of transformation.
- Every officer or other employee of the inter-State co-operative society (except a director of the Board, Chairman or Managing Director) serving in its employment immediately before the date of transformation shall, in so far as such officer or other employee is employed in connection with the inter-State co-operative society which has vested in the Producer Company, **become, as from the date of transformation, an officer or, as the case may be, other employee of the Producer Company and shall hold his office or service** by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, leave travel concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the erstwhile inter-State co-operative society if its undertaking had not

vested in the Producer Company and shall continue to do so as an officer or, as the case may be, other employee of the Producer Company.

- Where an officer or other employee of the inter-State co-operative society **opts not to be in employment or service of the Producer Company**, shall **be deemed to have resigned**.
- The **transfer of the services** of any officer or other employee of the inter-State co-operative society to the Producer Company shall **not entitle such officer or other employee to any compensation** and no such claim shall **be entertained by any court, tribunal or other authority**.
- The **trusts of the provident fund or the gratuity fund** of the inter-State co-operative society and any other bodies created for the welfare of officers or employees **shall continue to discharge functions in the Producer Company** as was being done previously in the inter-State co-operative society and any tax exemption granted would continue to be applied to the Producer Company.
- **No director of the Board, Chairman, Managing Director or any other person** entitled to manage the whole or substantial part of the business and affairs of the inter-State co-operative society shall **be entitled to any compensation** against the inter-State co-operative society or the Producer Company for the loss of office or for the premature termination of any contract of management entered into by him with the inter-State co-operative society.

➤ MANAGEMENT OF PRODUCER COMPANY

SECTION 378-O NUMBER OF DIRECTORS

- **Every Producer Company shall have:**
 - ✓ *at least five and*
 - ✓ *not more than fifteen directors:*
 - in the case of an inter-State co-operative society incorporated as a Producer Company, *may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company.*

SECTION 378P - APPOINTMENT OF DIRECTORS

- The Members who sign the memorandum and the articles **may designate the Board of Directors, not less than five, who shall govern the affairs of the Producer Company** until the directors are elected.
 - ✓ election of directors shall be conducted *within a period of ninety days* of the registration of the Producer Company:
 - in the case of an inter-State co-operative society which has been registered as a Producer Company under section 378J (4) in which at least five directors including the directors continuing in office under section 378N (1) hold office as such on the date of registration of such company, the election of directors shall be conducted *within a period of three hundred and sixty-five days* of the registration of the Producer Company.

- **Tenure** of director:
 - ✓ shall hold office for a period not less than one year but not exceeding five years as per the Articles;
 - ✓ shall be eligible for re-appointment;
 - ✓ shall be elected or appointed by the Members in the Annual General Meeting;
 - ✓ Board may co-opt one or more expert directors or an additional director not exceeding one-fifth of the total number of directors or appoint any other person as additional director for such period as the Board may deem fit:
 - the expert directors shall not have the right to vote in the election of the Chairman but shall be eligible to be elected as Chairman, if so, provided by its articles: they shall hold office for a maximum period not exceed such period as may be specified in the Articles.

SECTION 378Q - VACATION OF OFFICE BY DIRECTORS

- The **office of the director of a Producer Company shall become vacant if:**
 - ✓ he is convicted by a court of any offence involving moral turpitude and sentenced to imprisonment for not less than six months;
 - ✓ the Producer Company, in which he is a director.
 - has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days;
 - has not filed the annual accounts and annual return for any continuous 3 financial years; or
 - has failed to, repay its deposit or withheld price or patronage bonus or interest on due date, or pay dividend and such failure continues for 1 year or more;
 - ✓ he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director;
 - ✓ default is made in holding election for the office of director, in the Producer Company in which he is a director, as per the provisions of this Act and articles;
 - ✓ the annual general meeting or extraordinary general meeting of the Producer Company, in which he is a director, is not called in accordance with the provisions of this Act except due to natural calamity or such other reason.
- The above provisions **shall apply to the director of a Producer Institution** which is a member of a Producer Company.

SECTION 378R - POWERS AND FUNCTIONS OF BOARD

- The **Board of Directors of a Producer Company shall exercise all such powers and to do all such acts and things, as that Company is authorised so to do**, such powers may include:
 - ✓ determination of the:
 - dividend payable;

- *quantum of withheld price and recommend patronage to be approved at general meeting;*
- ✓ *admission of new Members;*
- ✓ *pursue and formulate the organisational policy, objectives, establish specific long-term and annual objectives, and approve corporate strategies and financial plans;*
- ✓ *appointment of a Chief Executive and such other officers of the Producer Company, as may be specified in the articles;*
- ✓ *exercise superintendence, direction and control over Chief Executive and other officers appointed by it;*
- ✓ *cause proper books of account to be maintained; prepare annual accounts to be placed before the annual general meeting with the report of the auditor and the replies on qualifications, if any, made by the auditors;*
- ✓ *acquisition or disposal of property of the Producer Company in its ordinary course of business;*
- ✓ *investment of the funds of the Producer Company in the ordinary course of its business;*
- ✓ *sanction any loan or advance, in connection with the business activities of the Producer Company to any Member, not being a director or his relative;*
- ✓ *take such other measures or do such other acts as may be required in the discharge of its functions or exercise of its powers.*

SECTION 378S - MATTERS TO BE TRANSACTED AT GENERAL MEETING

- The Board of Directors of a Producer Company shall exercise the following powers on behalf of that Company, and it shall do so only **by means of resolutions passed at the annual general meeting of its Members**:
 - ✓ approval of:
 - budget and adoption of annual accounts of the Producer Company;
 - patronage bonus;
 - any transaction of the nature as is to be reserved in the articles for approval by the Members;
 - ✓ issue of bonus shares;
 - ✓ declaration of limited return and decision on the distribution of patronage; and
 - ✓ specify the conditions and limits of loans that may be given by the Board to any director.

SECTION 378T - LIABILITY OF DIRECTORS

- When the directors vote for a resolution, or approve by any other means, they shall be **jointly and severally liable to make good any loss or damage suffered** by the Producer Company.
- **Producer Company shall have the right to recover from its director**:
 - ✓ where such director has made any profit as a result of the contravention, *an amount equal to the profit so made*;

- ✓ where the Producer Company *incurred a loss or damage as a result of the contravention, an amount equal to that loss or damage.*
- The liability imposed shall **be in addition to and not in derogation of a liability imposed on a director** under this Act or any other law for the time being in force.

SECTION 378V - MEETINGS OF BOARD AND QUORUM

- A **meeting of the Board shall be held:**
 - ✓ *not less than once in every three months and*
 - ✓ *at least four such meetings shall be held in every year.*
- **Notice** of every meeting shall be:
 - ✓ given in writing to every director for the time being in India, and
 - ✓ *at his usual address.*
- The Chief Executive shall give **notice as aforesaid not less than seven days prior to the date of the meeting of the Board and if he fails to do so, he shall be liable to a penalty of five thousand rupees:**
 - ✓ a meeting of the Board *may be called at shorter notice* and the reasons shall be recorded in writing by the Board.
- **Quorum for a meeting shall be one-third of the total strength** of directors, subject to a **minimum of three.**
- Directors including the co-opted director, **may be paid fees and allowances for attendance at the meetings of the Board**, as may be decided by the Members in the general meeting.

SECTION 378W - CHIEF EXECUTIVE AND HIS FUNCTIONS

- Producer Company shall have a **full time Chief Executive**, by whatever name called, to **be appointed by the Board** from amongst persons other than Members.
- **Chief Executive** shall:
 - ✓ *be ex officio director of the Board and*
 - ✓ *not retire by rotation;*
 - ✓ *possess qualifications, experience and the terms and conditions of service of the as may be determined by the Board;*
 - ✓ *be entrusted with substantial powers of management as the Board may determine.*
- Chief Executive **may exercise the powers and discharge the functions** as follows:
 - ✓ *do administrative acts of a routine nature* including managing the day-to-day affairs of the Producer Company;
 - ✓ *operate bank accounts or authorise any person*, subject to the general or special approval of the Board in this behalf, to operate the bank account;
 - ✓ *make arrangements for safe custody* of cash and other assets of the Producer Company;
 - ✓ *sign such documents as may be authorised by the Board*, for and on behalf of the company;

- ✓ *maintain proper books of account*, prepare annual accounts and audit thereof; place the audited accounts before the Board and in the annual general meeting of the Members;
 - ✓ *furnish Members with periodic information* to apprise them of the operation and functions of the Producer Company;
 - ✓ *make appointments to posts* in accordance with the powers delegated to him by the Board;
 - ✓ *assist the Board in the formulation* of goals, objectives, strategies, plans and policies;
 - ✓ *advise the Board with respect to legal and regulatory matters* concerning the proposed and ongoing activities and take necessary action;
 - ✓ *exercise the powers as may be necessary in the ordinary course of business*;
 - ✓ *discharge such other functions, and exercise such other powers*, as may be delegated by the Board.
- Chief Executive shall **manage the affairs of the Producer Company under the general superintendence, direction and control of the Board** and **be accountable for the performance** of the Producer Company.

SECTION 378X - SECRETARY OF PRODUCER COMPANY

- **A Producer Company** having:
 - ✓ *an average annual turnover exceeding five crore rupees* or such other amount as may be prescribed *in each of three consecutive financial years shall have a whole-time secretary*:
 - *who shall possess membership of the Institute of Company Secretaries of India* constituted under the Company Secretaries Act, 1980.
- If a Producer Company **fails to comply with the above provisions**:
 - ✓ *the Company and every officer in default, shall be liable to a penalty of*:
 - *one hundred rupees for every day during which the default continues subject to a maximum of rupees one lakh*:
 - in any proceedings against a person in respect of a default, no penalty shall be imposed if it is shown that all reasonable efforts to comply with the provisions were taken or that the financial position of the Company was such that it was beyond its capacity to engage a whole-time secretary.

SECTION 378Y - QUORUM

- **One-fourth of the total membership** shall constitute the quorum at a general meeting.

SECTION 378Z - VOTING RIGHTS

- Every Member shall have **one vote** and **in the case of equality of votes, the Chairman or the person presiding shall have a casting vote** except in the case of election of the Chairman.

➤ GENERAL MEETINGS

SECTION 378ZA - ANNUAL GENERAL MEETINGS

- **A Producer Company shall:**
 - ✓ in each year, hold, in addition to any other meetings, a general meeting, as *its annual general meeting* and
 - ✓ shall *specify the meeting as such* in the notices calling it, and
 - ✓ *not more than fifteen months shall elapse between the date of one annual general meeting and that of the next;*
 - Registrar may, for any special reason, permit extension of the time for holding any annual general meeting (not being the first annual general meeting) by *a period not exceeding three months.*
 - ✓ shall hold its *first annual general meeting within a period of ninety days from the date of its incorporation.*
- The Members shall **adopt the Articles** and **appoint directors of its Board** in the annual general meeting.
- The **notice calling the annual general meeting shall be accompanied by:**
 - ✓ the *agenda* of the annual general meeting;
 - ✓ the *minutes of the previous* annual general meeting or the extraordinary general meeting;
 - ✓ the *names of candidates for election*, if any, to the office of director including a statement of qualifications in respect of each candidate;
 - ✓ the *audited balance-sheet and profit and loss accounts* of the Producer Company and its subsidiary, if any, *together with a report of the Board of Directors* of such Company with respect to:
 - the state of affairs of the Producer Company;
 - the amount proposed to be carried to reserve;
 - the amount to be paid as limited return on share capital;
 - the amount proposed to be disbursed as patronage bonus;
 - the material changes and commitments, if any, affecting the financial position of the Producer Company and its subsidiary, which have occurred in between the date of the annual accounts of the Producer Company to which the balance-sheet relates and the date of the report of the Board;
 - any other matter of importance relating to energy conservation, environmental protection, expenditure or earnings in foreign exchanges;
 - any other matter which is required to be, or may be, specified by the Board;
 - ✓ the *text of the draft resolution* for appointment of auditors;
 - ✓ the *text of any draft resolution proposing amendment to the Memorandum or Articles* to be considered at the general meeting, along with the recommendations of the Board.

- The Board of Directors **shall on the requisition** made in writing, duly signed and setting out the matters for the consideration, **made by one-third of the Members entitled to vote in any general meeting**, proceed to call an extraordinary general meeting as per Chapter VII.
- Every **Annual General Meeting shall be called:**
 - ✓ for a time *during business hours*,
 - ✓ on a day that is *not a public holiday* and
 - ✓ shall *be held at the registered office* or at some other place within the city, town or village in which the registered office of the Company is situate;
 - ✓ shall *be called by giving not less than fourteen days prior notice in writing* and shall:
 - ✓ *indicate the date, time and place* of the meeting
 - ✓ *be sent to every Member and auditor* of the Producer Company.
- Unless the articles provide for a larger number, **one-fourth of the total number of members of the Producer Company shall be the quorum** for its annual general meeting.
- The proceedings of every annual general meeting along with the report of the Board of Directors, the audited balance-sheet and the profit and loss account shall **be filed with the Registrar within sixty days of the date on which the annual general meeting is held**, with an annual return along with the filing fees as applicable.
- In the case where a Producer Company is formed by Producer Institutions, such Institutions shall **be represented in the general body through the Chairman or the Chief Executive** who shall be competent to act on its behalf.

➤ SHARE CAPITAL AND MEMBERS RIGHTS

SECTION 378ZB – SHARE CAPITAL

- The share capital of a Producer Company shall **consist of:**
 - ✓ *equity shares only*,
 - ✓ shall *be in proportion to the patronage* of that company.

SECTION 378ZC.SPECIAL USER RIGHTS

- The producers, who are active Members may, if so, provided in the articles, **have special rights** and the Producer Company **may issue appropriate instruments to them** in respect of such special rights.
- The instruments of the Producer Company issued shall, after obtaining approval of the Board in that behalf, **be transferable to any other active Member** of that Producer Company.
- **Special right** means **any right relating to supply of additional produce by the active Member or any other right relating to his produce** which may be conferred upon him by the Board.

SECTION 378ZD. TRANSFERABILITY OF SHARES AND ATTENDANT RIGHTS

- **The shares of a Member of a Producer Company:**
 - ✓ shall *not be transferable*;
 - ✓ a member *may, after obtaining the previous approval of the Board, transfer the whole or part of his shares along with any special rights, to an active Member at par value*;
 - ✓ a member shall *within three months of his becoming a Member nominate, in the manner specified in articles, a person to whom his shares shall vest in the event of his death:*
 - the nominee shall, on the death of the Member, become entitled to all the rights in the shares of the Producer Company and
 - the Board of that Company shall transfer the shares of the deceased Member to his nominee:
 - in a case *where such nominee is not a producer, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.*
- **Where the Board of a Producer Company is satisfied** that any Member has:
 - ✓ *ceased to be a primary producer, or*
 - ✓ *failed to retain his qualifications to be a Member as specified in articles, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board:*
 - the Board shall not direct such surrender of shares unless the Member has been served with a written notice and given an opportunity of being heard.

➤ FINANCE, ACCOUNTS AND AUDIT

SECTION 378ZE. BOOKS OF ACCOUNT

- Every Producer Company shall **keep at its registered office proper books of account** with respect to:
 - ✓ all sums of money received and expended and the matters in respect of which the receipts and expenditure take place;
 - ✓ all sales and purchase of goods;
 - ✓ the instruments of liability executed by or on behalf of the Producer Company;
 - ✓ the assets and liabilities;
 - ✓ in case of a Producer Company engaged in production, processing and manufacturing, the particulars relating to utilisation of materials or labour or other items of costs.
- The balance-sheet and profit and loss accounts shall **be prepared, as far as may be, as per section 129.**

SECTION 378ZF. INTERNAL AUDIT

- A Producer Company shall have internal audit of its accounts carried out, at such interval and in such manner **as may be specified in Articles, by a chartered accountant** as defined under section 2(1)(b) of the Chartered Accountants Act, 1949.

SECTION 378ZG. DUTIES OF AUDITOR UNDER THIS CHAPTER

- The Auditor shall report on the following additional matters, apart from the provisions contained under section 143, relating to the Producer Company:
 - ✓ the amount of debts due along with particulars of bad debts, if any;
 - ✓ the verification of cash balance and securities;
 - ✓ the details of assets and liabilities;
 - ✓ all transactions which appear to be contrary to the provisions of this Chapter;
 - ✓ the loans given by the Producer Company to the directors;
 - ✓ the donations or subscriptions given by the Producer Company;
 - ✓ any other matter as may be considered necessary by the auditor.

SECTION 378ZH. DONATION OR SUBSCRIPTION BY PRODUCER COMPANY

- A Producer Company may, **by special resolution**, make donation or subscription to any institution or individual for the purposes of:
 - ✓ *promoting the social and economic welfare* of Producer Members or producers or general public; or
 - ✓ *promoting the mutual assistance principles*:
 - the aggregate amount of all such donations and subscriptions in any financial year shall *not exceed three per cen. of the net profit* in the financial year immediately preceding the financial year in which the donation or subscription was made:
 - no Producer Company shall make directly or indirectly to any political party or for any political purpose to any person any contribution or subscription or make available any facilities including personnel or material.

SECTION 378Z-I. GENERAL AND OTHER RESERVES

- Every Producer Company shall **maintain a general reserve in every financial year**, in addition to any reserve maintained by it as may be specified in Articles.
- In a case there is no sufficient funds in any financial year for transfer to maintain the reserves as may be specified in Articles, **the contribution to the reserve shall be shared amongst the Members in proportion to their patronage in the business** of that Company in that year.

SECTION 378ZJ. ISSUE OF BONUS SHARES

- Any Producer Company may:
 - ✓ upon *recommendation of the Board* and
 - ✓ *passing of resolution in the general meeting*,

issue bonus shares by capitalisation of amounts from general reserves referred to in section 378Z-I in proportion to the shares held by the Members on the date of the issue of such shares.

➤ **LOANS TO MEMBERS AND INVESTMENTS**

SECTION 378ZK. LOAN, ETC., TO MEMBERS

- The **Board may, subject to the provisions made in Articles**, provide financial assistance to the Members of the Producer Company by way of:
 - ✓ *credit facility*, to any Member, in connection with the business of the Producer Company, for a period not exceeding six months;
 - ✓ *loans and advances, against security* specified in articles to any Member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances:
 - any loan or advance to any director or his relative shall be granted only after the approval by the Members in general meeting.

SECTION 378ZL. INVESTMENT IN OTHER COMPANIES, FORMATION OF SUBSIDIARIES, ETC.

- The **general reserves shall be invested to secure** the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government or co-operative or scheduled bank or in such other mode as may be prescribed.
- Any Producer Company:
 - ✓ *may for promotion of its objectives acquire the shares* of another Producer Company.
 - ✓ *may subscribe to the share capital of, or enter into any agreement or other arrangement*, whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the Producer Company by special resolution in this behalf;
 - ✓ *either by itself or together with its subsidiaries, may invest*, by way of subscription, purchase or otherwise, shares in any other company, other than a Producer Company, specified in the above two clauses, for an amount not exceeding thirty per cent of the aggregate of its paid-up capital and free reserves:
 - a Producer Company may, by special resolution passed in its general meeting and with prior approval of the Central Government, invest in excess of the limits specified in this section.
- The **Board may, with the previous approval of Members by a special resolution**, dispose of any of its investments referred above.
- Every Producer Company shall:
 - ✓ *maintain a register containing particulars of all the investments*, showing the names of the companies in which shares have been acquired, number and value of shares; the date of acquisition; and the manner and price at which any of the shares have been subsequently disposed of;

- ✓ the register shall *be kept at the registered office* and the same shall *be open to inspection by any Member* who may take extracts therefrom.

➤ **PENALTIES**

SECTION 378ZM. PENALTY FOR CONTRAVENTION

Contravention	Penalty
If any person, other than a Producer Company registered, carries on business under any name which contains the words “Producer Company Limited”	fine which may extend to Rs. 10000 for every day during which such name has been used by him
Director or an officer, who wilfully fails to furnish any information relating to the affairs of the Producer Company required by a member or a person duly authorised in this behalf	imprisonment for a term which may extend to 6 months and with fine equivalent to 5% of the turnover of that Company during the preceding financial year
Director or officer fails to: <ul style="list-style-type: none"> • hand over the custody of books of account and other documents or property in his custody to the Producer Company of which he is a director or officer • convene annual general meeting or other general meetings 	fine which may extend to Rs. 1 lakh, and in the case of a continuing default or failure, with an additional fine which may extend to Rs. 10000 for every day during which such default or failure continues

➤ **AMALGAMATION, MERGER OR DIVISION**

SECTION 378ZN. AMALGAMATION, MERGER OR DIVISION, ETC., TO FORM NEW PRODUCER COMPANIES

- A Producer Company may, **by a resolution passed at its general meeting**:
 - ✓ *decide to transfer its assets and liabilities, in whole or in part*, to any other Producer Company, which agrees to such transfer by a resolution passed at its general meeting, for any of the objects specified in section 378B;
 - ✓ *divide itself into two or more new Producer Companies*.
- Any two or more Producer Companies may, **by a resolution passed at any general or special meetings of its members**, decide to:
 - ✓ *amalgamate and form a new Producer Company*; or
 - ✓ *merge one Producer Company* (“merging company”) with another Producer Company (“merged company”).
- Every resolution shall:

- ✓ *be passed at its general meeting by a majority of total Members, with right of vote not less than two-thirds of its members present and voting and*
- ✓ *contain all particulars of the transfer of assets and liabilities, or division, amalgamation, or merger, as the case may be.*
- Before passing a resolution, the Producer Company shall **give notice in writing together with a copy of the proposed resolution to all the Members and creditors** who may give their consent.
- Any Member, or any creditor not consenting to the resolution shall, **during the period of one month of the date of service of the notice on him, have the option:**
 - ✓ *in the case of any such Member, to transfer his shares with the approval of the Board to any active Member thereby ceasing to continue as a Member of that Company; or*
 - ✓ *in the case of a creditor, to withdraw his deposit or loan or advance, as the case may be.*
 - any member or creditor, who does not exercise his option within the specified period shall be deemed to have consented to the resolution.
- A resolution passed by a Producer Company shall **not take effect until the expiry of one month or until the assent of all the Members and creditors** has been obtained, **whichever is earlier.**
- The **resolution shall provide for:**
 - ✓ the regulation of conduct of the affairs of the Producer Company in future;
 - ✓ the purchase of shares or interest of any Members of the Producer Company by other Members or by the Producer Company;
 - ✓ the consequent reduction of its share capital, in case of purchase of shares of one Producer Company by another Producer Company;
 - ✓ termination, setting aside or modification of any agreement, howsoever arrived between the company on the one hand and the directors, secretaries and manager on the other hand, apart from such terms and conditions as may, in the opinion of the majority of shareholders, be just and equitable in the circumstances of the case;
 - ✓ termination, setting aside or modification of any agreement between the Producer Company and any person not referred to in the above clause:
 - no such agreement shall be terminated, set aside or modified except after giving due notice to the party concerned:
 - no such agreement shall be modified except after obtaining the consent of the party concerned.
 - ✓ the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property, made or done by or against the Producer Company within three months before the date of passing of the resolution, which would if made or done against any individual, be deemed in his insolvency to be a fraudulent preference;
 - ✓ the transfer to the merged company of the whole or any part of the undertaking, property or liability of the Producer Company;

- ✓ the allotment or appropriation by the merged company of any shares, debentures, policies, or other like interests in the merged company;
 - ✓ the continuation by or against the merged company of any legal proceedings pending by or against any Producer Company;
 - ✓ the dissolution, without winding up, of any Producer Company;
 - ✓ the provision to be made for the Members or creditors who make dissent;
 - ✓ the taxes, if any, to be paid by the Producer Company;
 - ✓ such incidental, consequential and supplemental matters as are necessary to secure that the division, amalgamation or merger shall be fully and effectively carried out.
- When a resolution passed by a Producer Company takes effect, the resolution shall be a **sufficient conveyance to vest the assets and liabilities in the transferee.**
 - The Producer Company shall **make arrangements for meeting in full or otherwise satisfying all claims of the members and the creditors** who exercise the option, within the specified period, not to continue as the member or creditor, as the case may be.
 - The **amalgamation, merger or division of companies shall not** in any manner whatsoever **affect the pre-existing rights or obligations and any legal proceedings** that might have been continued or commenced by or against any erstwhile company before the amalgamation, merger or division, may be continued or commenced by, or against, the concerned resulting company, or merged company, as the case may be.
 - The **Registrar shall strike off the names of every Producer Company deemed to have been dissolved.**
 - Any member or creditor or employee aggrieved by the transfer of assets, division, amalgamation or merger **may, within thirty days of the passing of the resolution, prefer an appeal to the Tribunal:**
 - ✓ the Tribunal shall, after giving a reasonable opportunity to the person concerned, pass such orders thereon as it may deem fit;
 - ✓ if an appeal has been filed than the transfer of assets, division, amalgamation or merger of the Producer Company shall be subject to the decision of the Tribunal.

➤ RESOLUTION OF DISPUTES

SECTION 378Z-O DISPUTES

- **A dispute shall include:**
 - ✓ a claim for any debt or other amount due;
 - ✓ a claim by surety against the principal debtor, where the Producer Company has recovered from the surety amount in respect of any debtor or other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or amount due be admitted or not;
 - ✓ a claim by Producer Company against a Member for failure to supply produce as required of him;

- ✓ a claim by a Member against the Producer Company for not taking goods supplied by him.
- Where any **dispute relating to the formation, management or business of a Producer Company arises**:
 - ✓ *amongst Members, former Members or persons claiming to be Members or nominees of deceased Members; or*
 - ✓ *between a Member, former Member or a person claiming to be a Member, or nominee of deceased Member and the Producer Company, its Board of Directors, office-bearers, or liquidator, past or present; or*
 - ✓ *between the Producer Company or its Board, and any director, office-bearer or any former director, or the nominee, heir or legal representative of any deceased director of the Producer Company,*
 such dispute shall **be settled by conciliation or by arbitration** as per the Arbitration and Conciliation Act, 1996 **as if the parties to the dispute have consented in writing** for determination of such disputes by conciliation or by arbitration.
- If any question arises whether the dispute relates to formation, management or business of the Producer Company, **the question shall be referred to the arbitrator, whose decision thereon shall be final.**

➤ MISCELLANEOUS PROVISIONS

SECTION 378ZP. STRIKE OFF NAME OF PRODUCER COMPANY

- Grounds for striking off the name of the Producer Company:
 - ✓ *if it fails to commence business within one year of its registration or ceases to transact business with the Members or if the Registrar is satisfied, after making inquiry, that the Producer Company is no longer carrying on any of its objects specified in section 378B, and it shall cease to exist forthwith:*
 - no such order cancelling the registration shall be passed *until a notice to show cause has been given by the Registrar to the Producer Company with a copy to all its directors on the proposed action and reasonable opportunity to represent its case has been given.*
 - ✓ *Registrar has reasonable cause to believe that a Producer Company is not maintaining any of the mutual assistance principles specified, he shall strike its name off the register in accordance with the provisions contained in section 248.*
- Any Member of a Producer Company, who is aggrieved by an **may appeal to the Tribunal within sixty days of the order.**
- Where an appeal is filed **the order of striking off the name shall not take effect until the appeal is disposed of.**

SECTION 378ZR. APPLICATION OF PROVISIONS RELATING TO PRIVATE COMPANIES

- All the limitations, restrictions and provisions of the Companies Act, other than those specified in this Chapter, **applicable to a private company, shall, as far as may be, apply to a Producer Company, as if it is a private limited company** in so far as they are not in conflict with the provisions of this Chapter.
- **RE-CONVERSION OF PRODUCER COMPANY TO INTER-STATE CO-OPERATIVE SOCIETY**

SECTION 378ZS. RE-CONVERSION OF PRODUCER COMPANY TO INTER-STATE CO-OPERATIVE SOCIETY

- Any **Producer Company, being an erstwhile inter-State co-operative society**, formed and registered under this Chapter, may make an application:
 - ✓ *after passing a resolution in the general meeting by not less than two-thirds of its members present and voting;* or
 - (b) on request by its creditors representing three-fourths value of its total creditors, to the Tribunal for its re-conversion to the inter-State co-operative society.
- The Tribunal shall, on the application **direct holding meeting** of its Members or such creditors, as the case may be.
- If a **majority in number representing three-fourths in value of the creditors, or Members, as the case may be, present and voting in person at the meeting conducted** agree for re-conversion, if sanctioned by the Tribunal, be binding on all the Members and all the creditors, as the case may be, and also on the company which is being converted:
 - ✓ no order sanctioning re-conversion shall be made by the Tribunal unless the Tribunal is satisfied that the company or any other person by whom an application has been made has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest report of the auditor on the accounts of the company, the pendency of any investigation proceedings in relation to the company under Chapter XIV, and the like.
- An order made by the Tribunal shall have **no effect until a certified copy of the order has been filed with the Registrar.**
 - ✓ if default is made the company, and every officer of the company who is in default, shall *be punishable with fine which may extend to one hundred rupees*, for each copy in respect of which default is made.
- A **copy of every such order shall be annexed to every copy of the Memorandum** of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, **to every copy so issued of the instrument** constituting or defining the constitution of the company.
- The Tribunal may, at any time after an application has been made to it **stay the commencement or continuation of any suit or proceeding against the company** on such terms as the Tribunal thinks fit, until the application is finally disposed of.
- Every Producer Company, which has been sanctioned re-conversion by the Tribunal, shall **make an application under the Multi-State Co-operative Societies Act, 2002** or any

other law for the time being in force for its registration as multi-State co-operative society or co-operative society, as the case may be, **within six months of sanction by the Tribunal and file a report** to the Tribunal and the Registrar of Companies and to the Registrar of the Co-operative Societies under which it has been registered as a multi-State co-operative society or co-operative society, as the case may be.

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