

Mr. Aakash had for many years carried on a prosperous business as an Electronic goods supplier merchant. In 2020, he decided to convert it into a Public Limited company and for that purpose Skyline & Co. Ltd. was formed with Mr. Aakash as Managing Director who holds 20% of shares.

Being the promoter of the company, Mr. Akash, at the pre-incorporation stage, on behalf of the company, promised to invest in Apex Limited (a software development company), after its incorporation in return for their services relating to developing the enterprise resource planning software. The investment was to be to the tune of 120 crores. This promise was duly executed by the board of directors after the incorporation of the company.

Shareholders strongly aggrieved with his unilateral decision and investment made in Apex Limited. They planned to sue Mr. Aakash as he was a major shareholder and promoter of the company for using the company's capital for personal interest. The shareholders also claim that such investments are invalid as they are ultra vires. Further, they also claimed that promoter is duty bound to disclose to company and its shareholders regarding any contracts that they have entered into at the time of incorporation.

Shareholders urged the board to restore the fund that company invested stating that they did not have any authority to invest such a huge amount without the approval of the shareholders.

Promoter is citing an exception to Doctrine of Ultra Vires as he has worked in the interest of the company. Additionally, Mr. Akash states that the promise to invest was made for that service of Apex Ltd. at a time when he did not have the means to pay for the services.

On this response, shareholders plan to approach National Company Law Tribunal on account of Doctrine of Ultra Vires claiming that the investment in Apex Limited was an Ultra Vires Act and that the Promoter has not exercised his rights in a responsible manner. The shareholders also claimed that the act of the company violates due process as mentioned in the Companies Act, 2013.

Issues Involved

1. Whether the shareholders can sue Mr. Akash for being the promoter, major shareholder and for having acted out of personal interest?
2. Whether the company has acted ultra vires by investing in Apex Limited?