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Companies Act

Shares held in the name
of a private trust – View
Point

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SHARES HELD IN THE NAME OF A PRIVATE TRUST – VIEW POINT

In the current matter, the director of Company A and his relatives are the beneficiaries of a private family trust (Trust B). In this regard, the following queries arise:

1. Can Trust B hold membership of a company in its name?
2. If yes, then how will the company record the name of Trust B in its Register of Members?
3. Company A is desirous of seeking loan from Trust B. Is such a transaction possible under Companies Act, 2013 (Act, 2013)? If yes, what will be the necessary compliances?

Provisions of law

Definition of 'Member' as per section 2(55) of Act, 2013:

member, in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;(emphasis supplied)

Point 4 of Table F of Schedule I of Act, 2013 pertaining to 'Articles of Association of a Company Limited by Shares' reads as follows:

Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by, or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share, or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

Section 153 of Companies Act, 1956 ('Act, 1956') pertaining to 'Trusts Not to be Entered on Register' read as follows:

No notice of any trust, express, implied or constructive, shall be entered on the register of members or of debenture holders.

The real intention behind section 153 of Act, 1956 has been discussed in *Peeyush Agarwa lvs Sanjiv Bhavnani & Ors.*¹ as follows:

*The reason behind this section is twofold: firstly, **to relieve the company from any obligation to take notice of equitable interests in its shares**, that is to say, to take notice of third party rights in respect of the shares registered in the names of any members and secondly, **to preclude any person claiming an equitable interest in the shares from the treating the company as trustee in respect thereof**. The effect is that a beneficiary who is not entered as a holder of shares has no connection with the company and does not enjoy any rights in the company in which any shares are held in trust for him. This does not, however, prevent a company from recognizing a trust of which it actually has taken notice of, though it must not enter it on the register. The provision will equally apply to debentures. (emphasis supplied)*

It is trite law that a trust does not have legal existence². It can take a legal action only through its trustees³. It is not a legal person since it is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner⁴. Further, in the case of *Arya Ayurvedic Trust, Machhodari ... vs Board Of Revenue, U.P., Allahabad*⁵, the Allahabad High Court held that even if the suit was instituted in the name of the Trust, in effect the real person suing was the Honorary Secretary. This judicial pronouncement outlines that in the case of a trust, it is the trustee or a person so authorised who can institute a case in the name of the trust. With the creation of trust, mere confidence is reposed by the settlor of the trust on the trustee and no legal entity is created.

Hence a trust cannot hold shares in its own name. It is the trustee who will hold the shares in his name and the same will be recorded in the Register of Members.

Reply to queries 1 and 2

In light of the above, the following can be deduced in the absence of an equivalent provision of section 153 of Act, 1956 in Act, 2013:

Point 4 of Table F of Schedule I	
If incorporated in the Articles of Association of the company	If not been incorporated in the Articles of Association of the company

¹<https://indiankanoon.org/doc/87257880/> .

²Refer the case of *Duli Chand vs Mahabir Pershad Trilok Chand* (AIR 1984 Delhi 144).

³<http://www.cwrmbsettlement.com/docs/907.pdf>

⁴Section 3 of Indian Trusts Act, 1882.

⁵<https://indiankanoon.org/doc/1349864/>

The company only takes record of the name of the member (trustee) in its Register of Members and does not have to take notice of the trust.

The company takes note of the registered owner of shares (trustee) in its Register of Members and provisions of section 89 of Act, 2013 will apply. The shares can anyway not be held in the name of the trust.