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UNIVERSITY**

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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: BBALLB-Vth Sem

SUBJECT: EQUITY AND TRUST

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NAME OF FACULTY: DR. ANKUR SRIVASTAVA

Lecture-36





LECTURE-36

THE INDIAN TRUST ACT, 1882

Who is a Trustee?

A Trustee is a person appointed under a Trust to administer the Trust property. A trustee should be a person who is capable of holding property and who is competent to contract. A company, being an artificial person created by law, can be a trustee as well. A Trustee is specifically required to accept or disclaim the trust entrusted upon him, either expressly or by way of

his actions. There can be more than one trustees in a single Trust.

Duties/Liabilities of a Trustee

The Indian Trusts Act, 1882 provides for certain duties/liabilities of a Trustee, we shall see each one of them in brief detail.

- **Execution of Trust**

The trustee is required to actually carry out the purpose of the trust as laid out in the Trust deed. The trustee is also required to follow the directions of the Author of the Trust at the time of creation of the trust. However, the trustee is not required to follow such directions if they are impractical or illegal.

- **Acquaintance of Trust Property**

The trustee is required to know about the details, whereabouts and current condition of the trust

property and also to take appropriate measures to secure the trust property.

- **Protection of Title of Trust Property**

The trustee is required to defend all the claims against the title of the Trust property and to take adequate measures to assert and protect the title of the property.

- **Not to set up Title adverse to the beneficiary**

As the trustee is entrusted with the trust property to maintain it for the benefit of the beneficiaries, it is expected and required of the trustee to not set up any title adverse to the beneficiary.

A good example explaining this point would be, suppose the trustee is entrusted with an immovable property and is required to apply the rents and profits of such property for the benefit of the beneficiaries. The trustee is also given the rights to sell such property.

It is expected of the trustee that the trustee would not sell such property to himself or anyone of his relatives or friends or a person of like nature, as such an action on the Trustee's part would be adverse to the beneficiaries, and the trust factor upon which the foundation of the trust is built, would cease to exist.

- **Take care of the Trust Property**

The trustee is required to provide adequate safeguard and required to apply such prudence to the trust property, as that of an ordinary man would apply to his own property.

However, the Act provides that the Trustee would not be responsible for any loss caused to the trust property or the benefits arising thereof, if he had applied such prudence as would an ordinary man would apply to his own property.

- **Convert perishable property**

If the trust property is of such nature, that with time, it would keep on deteriorating and keep losing value, the trustee is required to convert, i.e. sell and convert such property into cash proceeds and apply such proceeds for the benefits of the beneficiaries. This duty is especially required of a trustee when the trust is created for the benefit of several persons in succession.

- **Be impartial among the beneficiaries**

When the trust is created for the benefit of several beneficiaries, the trustee is required to apply the benefits received from the trust property equally among the beneficiaries, without being partial to anyone or any group among the beneficiaries.

- **Protect the trust property from adverse beneficiary**

When there are several beneficiaries of a trust, and one or more of such beneficiaries commit, or threaten to

commit an act, which would be adverse to the interest of other beneficiaries and the trust in general, the trustee is required to take measures to stop such act of such beneficiary/beneficiaries.

- **To maintain and keep books and accounts**

The trustee is required to keep a clear and accurate account of the trust property and at all times, provide the same to the beneficiary upon the request of the beneficiary.

- **Investment of Trust money**

The Act specifically provides that when the trust property consists of money, and such money is not required to be immediately applied for the benefit of the beneficiaries, the trustee is required to invest such money in such instruments as provided for in the Act. The Act provides for instruments such as promissory notes and other securities of the Central Government; in stock or debentures of the Railways or other

government companies; in Units issued by the Unit Trust of India, etc.

Powers/Rights of a Trustee

Certain rights/powers are conferred upon the Trustee under the Indian Trusts Act, 1882. They are discussed in detail in the following paragraphs.

- **Right to Title deed**

The trustee is entitled to possess the trust deed or any other instrument by which the trust is created, and the title documents of the trust property.

- **Right to reimburse expenses incurred for trust purposes**

The trustee has the right to be reimbursed for the expenses incurred by him for the purpose of the trust, like expenses incurred for the execution of the trust, for the preservation of the trust property, for the protection or support of the beneficiary, etc.

- **Right to re-collect overpayment**

If a trustee has mistakenly made a payment over and above the required amount to a beneficiary, the trustee has the right to collect such excess amount from the beneficiary. Such collection might be made from the interest of the beneficiary in the trust property, and if not possible, then even from the beneficiary personally.

- **Right to indemnity from breach of trust, by a gainer**

If a person has committed a breach of trust and has gained from such breach, the trustee has the right to indemnify himself against such gain by the person who has committed such a breach.

However, if the trustee himself is also guilty of fraud in committing such a breach, then he loses the right to indemnify himself in such a situation.

- **Right to seek Court's opinion in managing trust property**

The trustee has the right to apply to the Court, by way of a petition, to seek the Court's opinion, advice, opinion or direction with regards to the management of the trust property.

- **Right to Settle accounts**

When the duties of a trustee are complete, the trustee is entitled to have the accounts of the administration of the trust property examined and settled, and when no benefit is due to any beneficiary under the trust after the completion of the trustee's duties, the trustee is also entitled to receive an acknowledgement to that effect.

- **Right to sell trust property, along with power to convey**

The trustee has the power to sell the trust property as per the instructions laid out in the trust deed, and if no

such instructions are laid out, then by way of public auction or private contract, in any way the trustee deems fit.

- **Right to vary or rescind the sale of trust property, and re-sell the same**

The trustee has the power to vary the conditions of the sale of trust property or even rescind such sale. He also has the power to re-sell the same property. If in such recession and re-sale, if any loss occurs, the trustee is not liable for the same.

- **Power to manage investments**

The Trustee has the power to sell any existing investment of the Trust property and invest the same into any other instrument, as he deems fit.

However, if there is a beneficiary who is competent to contract, then such power cannot be exercised by the trustee without such beneficiary's consent in writing.

- **Power to apply property of Trust for maintenance of minor beneficiaries**

In case the beneficiary is a minor, the Trustee has the power to apply, i.e. use the income for the Trust property for the maintenance of the minor. Maintenance of the minor may include functions such as food and clothing, Education, Religious worship, marriage, funeral, etc.

- **Power to compound**

This power may also be called as power to settle disputes. When there is any dispute related to any of the trust property, the trustees, when there are two or more trustees appointed, or the sole trustee, may settle the dispute in the manner they think fit. For example, they may compromise, compound, abandon the dispute or may even submit the dispute to arbitration. In the doing of such settlement, the sole

trustee or the trustees may enter into any agreement, or instruments, as they deem fit.

- **Trustees to continue with trust if one of several trustees dies or disclaims**

When there are two or more than two trustees appointed, and one of them disclaims the trust or dies, the remaining trustees shall have the power to deal with the trust property, as provided in the Trust deed.

However, such power would not be exercisable, if the Trust deed specifically requires a specific number or more of trustees to execute the authority provided for in the trust, and after the death or disclaimer, such specific number is not satisfied.

Conclusion

It is said that the relation of Trust is like a glass. Once broken, it is never the same as before. By a prima facie observation of the Indian Trust Act, it can be seen that apart from the legal aspects, the duties and powers provided in the Act intend to preserve the delicate relation of trust, so that the trust may be kept, and the intention with which the trust is formed may be fulfilled. Therefore, here we may conclude with the duties and powers of a Trustee as provided for in the Indian Trust Act, 1882.

MCQs

- 1. A Trustee is a person appointed under a Trust to administer the Trust property.**
 - i. True**
 - ii. False**
 - iii. Cannot say**
 - iv. None of these**

2. It is said that the relation of Trust is like a glass. Once broken, it is never the same as before.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

3. When there are two or more than two trustees appointed, and one of them disclaims the trust or dies, the remaining trustees shall have the power to deal with the trust property, as provided in the Trust deed.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

4. The trustee has the power to sell the trust property as per the instructions laid out in the trust deed, and if no such instructions are laid out,

**then by way of public auction or private contract,
in any way the trustee deems fit.**

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

**5. The trustee is required to actually carry out the
purpose of the trust as laid out in the Trust deed.**

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**
