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NAVIGATING THE NEXUS: A COMPREHENSIVE EXPLORATION OF COMPANY VS TRUST REGISTRATION FOR EDUCATIONAL INSTITUTIONS IN INDIA

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ABSTRCT

India's business landscape is characterized by dynamism and is evolving with the changing needs of the day. In this background, the choice of form of business plays a pivotal role in deciding its sustainability. The study meticulously examines the divergent legal framework, mechanisms of governance, funding strategies, and tax implications and provides a comprehensive evaluation of the pros and cons of two particular forms of business – company and trust, for registering an educational institution. Delving into pertinent case laws, this paper sheds light on the delicate equilibrium between profit aspirations and the noble objective of providing education. It thus forges a path for informed decision-making and management of such institutions, as these are the bedrock of societal progress in India.

KEYWORDS: Educational Institution, Not-for-Proft Organization, Trust, Section-8 Companies, Registration.

INTRODUCTION

Education has become the key driver of social development in this globalized world. Educational institutions, as beacons of knowledge dissemination play a pivotal role in molding the trajectory of India's development. The juxtaposition of Company and Trust forms of business weaves together a complex web of legal intricacies, financial dynamics, and societal resonances. While company registration promises financial flexibility and opens up a plethora of commercial opportunities, a trust establishment resonates with charity and potential tax benefits.

RESEARCH METHODOLOGY

The selection of sources for this research paper was made after carefully selecting the area of research – **Comparative Analysis of Registering an Educational Institution as a Company or a Trust.** This being a form of **doctrinal research**, secondary sources have been used to corroborate relevant legislations and case laws. Credible legal databases such as Hein Online, JSTOR and Taxmann have been sued to extract articles that provide extremely valuable content.

LITERATURE REVIEW

"Forms of Business Organizations", the article is structured in such a way as to give a synopsis of each type of business structure, which helps a new reader to easily grasp the concept. It is presented in a concise form and is a good start to anyone who is new to the subject.

The authors of the article titled "An Analysis of Section 8 Companies in India (A move towards better survival of CSR Practices)" begin by highlighting the commendable introduction of Section 135 of the Companies Act, 2013, which provides that companies are required to allocate a certain percentage of profits towards CSR. This provides a context for understanding the rationale for registering an educational institution under Section 8 of the Act. The paper then outlines initiatives by Section 8 companies such as Advitya and Educate Girls in the field of education. [2696]

In the article titled "Comparative Analysis of Trusts, Societies and Section 8 Companies" published in Taxmann, the author first gives a bird's eye view of the forms of business structures and follows it with a detailed comparison. This provides a composite picture and helps readers to clearly weigh differences between the aforementioned business forms.

MEANING AND PURPOSE

The Hon'ble Supreme Court of India in several eminent judicial precedents has highlighted the importance of education in driving societal progress and the need for educational institutions to move away from the motive of profiteering. Thus, by far, the way to start an educational institution is vide a Trust, Society, or a Section 8 Company, with the prerequisite that it must be of not-for-profit nature. In simple terms, an **NPO** can be defined as an organization that is established for a charitable purpose or to promote public good, rather than earning profits and is therefore exempted from paying taxes. Their surplus is channelized towards the attainment of goals for which they were set up and are not distributed to the owners. The analysis forthwith compares two business structures for registering an educational institution, on various

COMPARATIVE ANALYSIS

From ***T.M.A. Pai v. State of Karnataka*** [2697] till present day judgments such as ***M/s New Noble Educational Society v. The Chief Commissioner of India***[2698] the Supreme Court has laid emphasis on the point that the motive of educational institutions should be to provide quality education to all rather than profiteering. These rulings emphasize the importance of maintaining educational institutions with a not-for-profit nature. In fact, big players often undertake the establishment of educational institutions as a Section-8 company as a part of their Corporate Social Responsibility.

Nature and Objective - A Trust is basically an arrangement between parties whereby one party holds property on behalf of another party. All private trusts are governed by the **Indian Trust Act, of 1882**[2699], while for a public trust, general law, applies unless state-specific laws exist, such as in Gujarat and Maharashtra. A Section 8 Company is established with the vision to promote commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such subject where they apply the profits into achieving the objective The **Companies Act, 2013** is the governing legislation.[2700] Both Trust and Section 8 Companies are registered as NPO/NGO, with the difference that the latter enjoys an added advantage of being a limited company without adding the suffix Pvt./Pvt. Ltd. and instead words like Chamber, Association, Institution, Foundation and Federation are used. A trust is not a separate legal entity while a section 8 company is.

Registration - Trusts are constituted by executing a Trust Deed by a minimum of 2 trustees while a Section 8 Company is formed by Memorandum of Association and Articles of Association entered into by a minimum of 2 directors and 2 shareholders. In ***Uday Daniel Khare v Nasik Diocesan Trust***,[2701] the authorities of registration were demarcated in the manner that The Deputy Registrar of the State registers a Trust, while Registrar of Companies or Regional Directors register a Section 8 Company. The time period to register a trust is about 20 days while for a company, it takes about 75 days. Economically, it is easier to set up a trust than a company given the low amount of funding required.

Fundraising - Companies can raise funds in several ways such as by issuing shares and

2696 Nishant Sharma & Ruchita Dang, Analyzing Companies Act; A move towards better Governance, IOSR Journal of Business and Management (IOSR-JBM), e-ISSN: 2278-487X, P-ISSN: 2319-7668, vol. 16, Issue 5, (2014).

2697 (2002) 8 SCC 481.

2698 (2022) SCC OnLine 1458.

2699 The Indian Trusts Act, 1882, No.2 of 1882, Imperial Legislative Council, (India).

2700 The Companies Act, 2013, No. 18 of 2013, Acts of Parliament, (India).

2701 CP No. 28/241-242. NCLT/MB/2016.

attracting equity investors, securing loans and debentures. This financial flexibility allows for quicker access to funds for diversification and infrastructure development. Trusts primarily rely on donations, grants, and income from assets, which might make it slightly difficult to ensure financial stability. Moreover, fundraising options are also limited as compared to companies.

Community-Perception - Building a reputation of being charitable and community-oriented might be challenging for educational companies compared to a trust. Trusts involve local communities, stakeholders, and beneficiaries in the decision-making processes. This sort of nexus fosters a sense of ownership and belonging, encourages community participation and strengthens the institution's ties with its surroundings.

Tax Benefits - The trust must apply for a PAN card after registration to claim tax benefits under Section 10(23C) of the Income Tax Act. Further, it can even apply for tax exemptions for owners under Section 80G for 100% deduction on the condition that it is an institution of national eminence. The educational institution has to fulfil certain criteria to claim exemption: as clarified in ***American Hotel and Lodging Association v CBDT***[2702]. Often, Section 8 companies enjoy comparatively fewer tax benefits as compared to educational trusts.

1) the property should be held as a trust or a legal entity

2) Must be for charitable purposes as defined under Section 2(15) of the Income Tax Act[2703] and no part of its income can be assigned towards the satiation of needs of a particular individual [2704]

Remuneration - The Companies Act explicitly provides that the shareholders are not entitled to receive profits as divided. Hence, the directors may choose to be remunerated for their services instead of profits, since there is no ban on that. A trustee is not prohibited from being remunerated either. Generally, since trusts are formed with the aim of charity, they tend to avoid private remuneration.

Governance - Trust is managed by trustees while a company is managed by a whole governing body comprising of organs such as a management committee, council, governors, etc. One of the striking differences is that in a company, management is separated from ownership. Trustees hold the trust's assets in a fiduciary capacity and are not permitted to utilize them against the interest of beneficiaries. The management of the company holds assets on behalf of other members.

Dissolution - Trusts are generally irrevocable in nature and even if the trust's object ceases to exist, the funds will be applied towards fulfilling the nearest possible object by invoking ***"Doctrine of Cy-pres".*** On the other hand, section 8 companies formed with a particular purpose can be dissolved and the property will be siphoned off to any other organization having the same objectives. Perhaps the strongest trait of a company is perpetual existence as it guarantees the operation of an institution even if the management changes. This is especially beneficial for long-term educational programmes and commitments.

CONCLUSION AND SUGGESTIONS

The study shows that both the organizations, i.e., Trusts and Section 8 Companies are created with the purpose of providing social benefits, and their surplus is allocated towards the furtherance of the objectives, thus making them Not-for-profit organizations. While Section-8 Companies have flexible fundraising and a concrete governance structure, Trusts have a good community-perception and huge tax benefits. Each of them has their own pros and cons and while registering an educational institution, they must be weighed against one another to arrive at the most suitable structure. Besides the Trusts and Section-8 Companies, educational institutions can also be registered

[2702] (2008) 10 SCC 509.

[2703] Section 2(15), The Income Tax Act, No. 43 of 1961, Acts of Parliament, (India).

[2704] CS Dipa Agarwal, Comparative Analysis of Trusts, Societies and Section 8 Companies, https://taxguru.in/company-law/comparative-analysis-trusts-societies-section-8-companies.html.

as Societies under the Societies Registration Act but this is beyond the scope of this article. There is thus no watertight framework that one is required to follow while starting an educational institution.

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