

## **Query No. 16**

**Subject:** *Accounting treatment under Ind AS of Employee Welfare Trust where shares of the Settlor are held by the Trust.*<sup>1</sup>

### **A. Facts of the Case**

1. A company (hereinafter referred to as ‘the Company’) is registered with the Securities and Exchange Board of India (SEBI) as a Category I – Merchant Banker and is the ultimate holding company of ‘E’ Group of companies. The equity shares of the Company are listed on Bombay Stock Exchange and National Stock Exchange. The Company is principally engaged in providing investment banking services and holding company activities comprising of development, managerial and financial support to the business of ‘E’ group entities which cater services to credit, capital & wealth management and insurance business segments.

2. The Company had set up Employee Welfare Trust (Trust) with an objective to provide for the welfare of, incentivize and reward its employees (‘beneficiaries’). The employees of Company and its subsidiaries are beneficiaries of the Trust. The key features and characteristics of EWT are outlined in Annexure 1.

3. The Company has from time to time (from 2007 to 2011), formulated various employee stock option plans (ESOP) schemes to grant stock options to eligible employees of the Company/ its subsidiaries. Under the ESOP schemes so formulated, there was an option to issue shares under ESOP either directly by the Company or through the Trust. However, no shares under any of the ESOP schemes have been issued to eligible employees through the Trust (i.e. the shares have been issued directly by the Company to the respective eligible employees upon exercise of the option under an ESOP scheme). Further attention is invited to paragraph 5 below.

4. The Company has advanced a loan to the Trust, which was utilized by the Trust for purchase of shares of the Company in open market.

5. The Securities and Exchange Board of India (‘SEBI’) had notified the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 (‘SEBI ESOP Regulations 2014’) on 28<sup>th</sup> October 2014. As per the SEBI ESOP Regulations 2014, the ESOP scheme can be implemented either by the Company itself or through the Trust, i.e., the option to implement it through either of the routes is now available.

6. Subsequently, Trust deed was amended to provide that the Trust shall, going forward, only function for the general employee benefit schemes and not for implementing any of the ESOP schemes of the Company i.e. Trust to operate as General Employee Benefit Scheme (GEBS). As such, the Trust in the present case is not ESOP Trust but Employees Welfare Trust (EWT).

7. Therefore, *EWT is not an ESOP Plan Trust but is an Employee Welfare Trust.* (Emphasis supplied by the querist.) Attention is invited to the Deed of Indenture dated 26<sup>th</sup> Oct 2015 (herein after called the ‘Trust Deed’, a copy of which has been separately provided by the querist for the perusal of the Committee). The applicable covenants including purpose of the operating Trust Deed is laid out therein including the definition of Incentive and Welfare Benefits in its Article 1- Definitions and Interpretation, which provides as under:

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<sup>1</sup> Opinion finalised by the Committee on 4.8.2020 and 5.8.2020.

**“Incentive and Welfare Benefits** means the direct or indirect benefits, incentives, including performance bonuses in cash or kind and/or any perquisites / amenities conferred on the Employees of the Company and companies within the E Group, under and in accordance with this Deed and/or through Incentives and Welfare Plans through various means/programmes, including but not limited to any of the following purposes:

- Medical assistance/healthcare benefits for their own and /or their dependents;
- Financial assistance to spouse / children in the event of death of the Beneficiary;
- Loans to the beneficiaries for their own and/or their dependent(s) wedding;
- Scholarships for the Beneficiaries and /or their dependent children / wards (not exceeding two in number) for higher education in India and / or abroad;
- Financial Assistance to a Trust created for the benefits of the Employees”

8. The Trust is independently managed by professional Trustees. Trustees of the Trust under consideration are independent third-party professionals, i.e. there is no common control in terms of board of directors / key managerial personnel (KMP) of Company and Trustees of the Trust. Thus, it can be observed that control of the investments/ assets under Trust is with the Trustees, who act independently in accordance with the Trust Deed.

9. The querist has stated that there has been no employee benefit disbursement done from the EWT since inception. Further such benefits from EWT do not form part of post-employment benefit plan / other long-term employee benefit plan under Ind AS 19, ‘Employee Benefits’. The rationale for the same is provided by the querist in Annexure 2.

10. Mainly the asset side of the EWT represents Equity Shares of the Company (also referred to as ‘Settlor’ (which is listed entity)) at cost and other current assets and the liability side of EWT represents corpus with retained earnings from dividend earned from shares and the amount of loan repayable to the Settlor.

11. The Company has treated EWT as an extension of the Company in its separate financial statements and basis that, the same has been included in the consolidated financial statement (CFS) of the Group. The EWT holds equity shares of the Company. These have been adjusted from the equity of the Company when preparing and presenting separate and consolidated financial statements.

12. The Company is evaluating the accounting treatment in its Standalone Financial Statements (‘SFS’) and Consolidated Financial Statements (‘CFS’) of the Group to be prepared as per Ind AS on sale of shares by the Trust and subsequent distribution of surplus proceeds to the beneficiaries. *Presently, the Company understands that as and when shares of the Settlor, held by the Trust are sold by the Trust, the gain may have to be accounted for in equity in Settlor’s books and distribution of incentive and benefits out of the same may have to be accounted for in profit or loss (P/L) in Settlor’s books, upon consolidation. This results in distortion of P/L of the Settlor and hence the submission by the querist in further part of the query is that even the distribution of incentive and benefits and gain both should be accounted for in equity, being the payment to employees from the proceeds of sale of share which in substance represent the assets (investment) that were held by the EWT and which were solely for the employee welfare benefit (i.e. it is earmarked), and therefore, it is appropriate to offset payments / distribution made against the gain in line with matching and offsetting concept written in Ind AS. (Emphasis supplied by the querist.)*

13. *Issue in consideration – 1:*

Whether profit on sale of investment and distribution to employees should be accounted for in equity or P&L.

**Response:**

The Company is of the view that the Company is neither obligated to fund any deficit or for any reduction in the assets of the EWT nor can take any advantage for any upside in the asset of the EWT. Therefore, the accounting treatment with respect to sale of equity shares of the Company held by the Trust and its subsequent distribution by the EWT to employees of the Group should not distort the profit or loss of the Settlor.

Based on this principle, the Company is proposing following alternatives of accounting treatment with an example for the ease of understanding:

Accounting for sale and distribution of proceeds:

View 1 – Settlement in Equity

Assuming Rs.250 is realized on sale of investment in equity shares of the Company held by EWT and cost of investment was Rs.100, the impact in the consolidated financial statements of the Settlor (Company) is as follows.

<b>Particulars</b>	<b>Dr.</b>	<b>Cr.</b>
Cash	250	
To share capital of Settlor (to reinstate shares earlier reduced)		100
To Equity (representing profit/gain on sale of investments)		150

The EWT wants to make payment to the employees from the resultant accretion, i.e. from 150 (see above). Assuming a part amount, say, Rs.60 is to be distributed from the aforesaid accretion to the employees of the Settlor Company /Group companies as incentive/bonus, employee welfare benefits etc., then the accounting treatment in consolidated financial statements of the Group is as under:

<b>Particulars</b>	<b>Dr.</b>	<b>Cr.</b>
Equity (distribution towards employee benefit measures etc.)	60	
To cash / provision		60

In summary, the accounting will look as under from consolidated financials of the Group:

<b>Particulars</b>	<b>Balance Sheet (BS)/PL</b>	<b>Debit / Credit</b>	<b>Amount</b>	<b>Remarks</b>
Equity	BS Equity	– Credit	150	Profit on sale of investment being gain realised by Trust from selling shares of the Settlor
Equity	BS Equity	– Debit	60	Representing benefits to employees expensed out of profits from sale of investments held by Trust

Particulars	Balance Sheet (BS)/PL	Debit / Credit	Amount	Remarks
Net increase / (decrease) in total equity			90	Being undistributed
Net P&L attributable to Settlor Company			Nil	No impact on Consolidated P&L

The Company has set up EWT to have a separate independent structure in place on a self-serving basis for providing incentives and general welfare benefits to employees of the Company / group companies and where under any given circumstance (i.e. during the Trust period or on its termination), the Trust property/surplus shall never come back to the Settlor Company / group companies, either directly or indirectly, for utilization for its own purpose and there is no obligation for the Settlor Company towards the beneficiaries for any amounts to be paid beyond the net assets of the Trust.

Hence, on the aforesaid background, the accounting treatment with respect to sale of equity shares of the Company held by the Trust and its subsequent distribution by the EWT to employees of the Group should not distort the profit or loss of the Settlor just because the holdings of the shares in the Trust represents the equity shares of the Settlor.

Further, the payment to employees from the proceeds of sale is nothing but a payment to beneficiaries of the Trust and hence, the said payment / provision should appropriately be debited to equity and reflected as a reduction to equity from where the appropriation is made for such payment. Since in substance, the assets (investment) that were held by the EWT were solely for the employee welfare benefit (i.e. it is earmarked), it is appropriate to offset payments made against the same source / objective.

*Thus, as a result of the above accounting treatment, the EWT's economic value will be neutral to the consolidated financial statements of the Settlor Company. (Emphasis supplied by the querist.)*

#### **Arguments:**

- a. In a situation where the surplus / proceeds from the sale of shares in open market by Trust is routed through Statement of Changes in Equity (SOCE) of Settlor, based on the application of paragraph 33 of Ind AS 32, 'Financial Instruments: Presentation', the corresponding disbursement from the same should also be recorded as movement in SOCE itself as an extension of the same rationale.
- b. Reference is made to Ind AS 102, 'Share-based Payment', which provides for recognition of goods or services received in a share-based payment transaction as expenses in the P&L Account if the share-based payment transaction does not qualify for recognition as assets (Paragraph 8). The disbursement to employees in the extant situation ought not to be governed by Ind AS 102 for it to be routed through the P&L Account on account of the following arguments:
  - Share based arrangement has been defined as an agreement where a party (i.e. employee) is entitled to receive share-based payments (i.e. based on the value of the

underlying equity instrument) on fulfilment of applicable vesting conditions. In the present case, the following aspects are relevant:

- *EWT is not an ESOP Plan Trust but is an Employee Welfare Trust.*
  - Share based arrangements entitle the recipient to receive cash/ other assets that are based on the value of shares of an entity. The distribution of surplus funds by the Trust which is created for general welfare benefit to some employees, currently or over a period of time or any utilization out of such funds for general welfare schemes, should not be considered as ‘share-based payments arrangement’ in the present case.
  - The share-based arrangement inter-alia covers stock option to employees. Under the General Benefit Employee Schemes of the Employee Welfare Trust, no stock options / cash settled options have been granted to employees i.e. benefits are in terms of incentives and welfare benefits.
  - There is no agreement entered into between the Company and the employees for providing such benefits in return of services provided by the employees to the company and its subsidiaries. The Company does not have an obligation in respect of a specified employee; employees in large also have no rights; and are not entitled to receive any benefits unless it is conferred by the independent Trustees of the Trust in accordance with the objective of the Trust.
  - No such vesting conditions are applicable to the beneficiaries of the Trust in the present case.
  - The Trust is entitled to own / hold / monetize any assets (including shares of Company) and distribute the surplus proceeds to beneficiaries, and thus there is no basis that only shares can be held for the remuneration to be linked with the value of equity shares, so as to fall within the share-based arrangement and hence the disbursement to employees in the current situation should not be considered for it to be routed through the P&L Account.
- c. In addition to the above, the disbursement can be shown as movement from the surplus recorded in SOCE based on the following arguments:
- By taking guidance from Ind AS 1, paragraph 33, where offset is permitted when such offsetting reflects the substance of the transaction or other event, detracts from the ability of users both to understand the transactions, other events and conditions that have occurred and to assess the entity’s future cash flows. Paragraph 33, inter alia, states as follows:  
  

*“... except when offsetting reflects the substance of the transaction or other event, detracts from the ability of users both to understand the transactions, other events and conditions that have occurred and to assess the entity’s future cash flows...”*
  - The surplus of the Trust always belonged to the employees at large (being the beneficiaries of the Trust). The disbursement by Trust of its Trust fund (including the sale proceeds) to the beneficiaries is the mere utilization of the funds as per the objects of Trust. It can be contended that the disbursement has happened to the ‘economic beneficiary’ of the Trust funds which always belonged to them. Accordingly, it cannot be treated as an outgo from the Company (Settlor) for it to be recorded in its Profit and Loss Account (P&L A/c).
  - But for the availability of surplus as a part of Trust funds, the disbursement could not have happened to the eligible employees as beneficiaries. Accordingly, considering the matching principle, it shall be appropriate to reflect it as a movement from the

surplus sale proceeds (recorded under SOCE) from which the disbursement has happened.

- There shall be accounting mismatch if the disbursement is reflected in P&L A/c as against movement in SOCE (where gains from sale of shares are reflected). The concept of matching principle/accounting mismatch is well recognised even under Ind AS.

*In view of the above, the accounting treatment of gains and disbursement by the Company Settlor) to employees can be provided in SOCE and not in the P&L Account.*

(Emphasis supplied by the querist.)

### **View 2 – Settlement in P&L**

In the case in hand, since the shares have been acquired by a Trust and not the Company, it is evident that these cannot be construed as ‘treasury shares’, given that the gain or loss on such instruments does not belong to the entity but belongs to the beneficiaries of the Trust. Hence, basis the normal accounting, the gain on sale of shares and expense on employee welfare benefits out of the same, both should be appropriately reflected in consolidated P&L akin to line by line reflection of Trust accounts.

Assuming Rs.250 is realized on sale of investment held by EWT and cost of investment was Rs.100.

<b>Particulars</b>	<b>Dr.</b>	<b>Cr.</b>
Cash	250	
To Investment		100
To Profit on Sale of investment (in P/L)		150

While presenting the Consolidated Statement of P&L, the Settlor’s Group may offset the income on sale of investment and expense towards incentive, bonus, employee welfare benefits etc. paid to beneficiary employees out of the same by taking guidance from Ind AS 1, paragraph 33.

Taking the example further, assuming Rs.60 is to be distributed to employees of the Settlor Company / Group companies as incentive, bonus, employee welfare benefits etc.

<b>Particulars</b>	<b>Dr.</b>	<b>Cr.</b>
Employee benefit expense (in P&L)	60	
To Cash		60

Further, in this case, the EWT would have a net P&L of 90 on consolidation which belongs to the NCI (beneficiaries). Thus, the entire consolidated P&L of 90 will be attributed to NCI (beneficiaries) since no economic benefit can be availed by the owners of the Settlor.

In summary, the accounting will look as under from consolidated financials of Settlor:

<b>Particulars</b>	<b>BS/PL</b>	<b>Debit/Credit</b>	<b>Amount</b>	<b>Remarks</b>
Profit on Sale of Investments	P/L	Credit	150	Profit on sale of investment
Employee benefits expense	P/L	Debit	60	Representing benefits paid
<b>Consolidated P&amp;L</b>			<b>90</b>	
<b>Attribution of Consolidated P&amp;L:</b>				

Profit attributable to owners of Settlor			Nil	Since no benefit can come to Settlor from the sale of shares and distribution of proceeds thereof
Profit attributable to NCI			90	Since the remaining surplus belongs to beneficiaries (NCI)

*Thus, as a result of the aforesaid accounting treatment, the Trust's economic value will be neutral to CFS of the Settlor. (Emphasis supplied by the querist.)*

**Arguments:**

- a. SEBI ESOP Regulations 2014 neither prescribes any accounting treatment for transactions undertaken by an employee stock option nor does it provide guidance as to whether such a Trust has to be consolidated with listed company, unlike the erstwhile guidelines notified by SEBI in 1999. It simply states that a listed company shall follow the Guidance Note issued by the Institute of Chartered Accountants of India (ICAI). Furthermore, where the Guidance Note does not prescribe the accounting treatment, the company shall comply with relevant accounting standards issued by the ICAI from time to time.
- b. Reference is made to paragraph 33 of Ind AS 32, 'Financial Instruments: Presentation', which provides for accounting treatment in respect of treasury shares, i.e. where an entity reacquires its own shares. In such a case, no gain or loss has to be recognized in profit or loss on the purchase, sale, issue or cancellation of an entity's own equity instruments. Furthermore, paragraph 4(f)(ii) of Ind AS 32 dealing with the scope of said Ind AS states that paragraph 33 of Ind AS 32 shall be applicable to treasury shares purchased, sold, issued or cancelled in connection with employee share option plans, employee share purchase plans, and all other share-based payment arrangements.
- c. The surplus / proceeds from the sale of company's shares in open market by the Trust should not be considered as shares reacquired by company on its own account and hence should not qualify as a treasury share. Thus, treatment prescribed for treasury shares in Ind AS 32 [i.e. to route gains on transfer through Statement of Changes in Other Equity ('SOCE')] should not be applicable considering the facts of present case as discussed in detail below. Accordingly, the gain on transfer / surplus has to be routed through the P&L Account of the Company:
  - Shares are held by the Trust on behalf of / benefit of employees and not on behalf of the Company (or any of its consolidated members). Just because it happens to be equity shares of the Settlor held by the Trust, it is not appropriate to bring extension of treasury shares accounting where the Company has set up Employee Welfare Trust to have a separate independent structure, independently managed by independent Trustees on a self-serving basis for providing incentives and general welfare benefits to employees of the Company /group companies.
  - The Company is not entitled to any benefit from the shares held by the Trust (i.e. it cannot vote in respect of these shares / it is not directly or indirectly entitled to any dividends, as employees are beneficiaries).
  - Sale proceeds shall accrue to the Trust on account of sale of shares in the open market.

- Shares are not being re-acquired by the Company in the present case, but it proposed to sell them in the open market by the Trust i.e. sale of shares by the Trust and subsequent distribution of proceeds should not be considered as reacquisition of own equity instruments as mentioned under Ind AS 32.
  - Treasury shares have not been defined under Ind AS 32 or Companies Act, 2013 – reference may be made to Section 19 and Section 232(3)(b) of Companies Act, 2013 – which prohibit a subsidiary to hold shares of its holding company and a transferee company from holding its own shares pursuant to amalgamation, respectively – condition prescribed in Companies Act, 2013 not present in the present case.
  - Paragraph 4(f)(ii) of Ind AS 32 provides that paragraph 33 thereof shall apply in respect of treasury shares sold in connection with ESOP or any other share-based payment arrangements:
    - In the present case, Trust does not implement any ESOP scheme / employee share purchase plans – even holding under General Employee Benefit Scheme of the Trust, the shares shall not be distributed to eligible employees but surplus proceeds on sale by the Trusts shall be utilized for various implementation of incentives and welfare schemes for the eligible employees.
    - The distribution of surplus funds by the Trust to some employees, currently or over a period of time or any utilization out of such funds for general welfare schemes, should not be considered as ‘share-based payments arrangements’ in the present case.
- d. Consequently, the gain and the distribution of proceeds to employees, currently or over the period of time, out of such amounts should optionally and logically be allowed to be reflected in P&L account of the Company.
- While the gain and actual disbursement during the current year under consideration will both be recorded in P/L, the Company may also consider to create a provision for the balance undistributed / unutilized amount as there is a certain liability / present obligation to discharge the amount to employees where the quantum of such liability is determinable, though merely the timing of disbursement is deferred.
- e. Based on the above, it could be contended that proceeds from sale of shares by the Trust and corresponding disbursement to eligible employees or provision thereof, as the case may be, both to be recognized in P&L Account of the Company.

14. *Issue in consideration – 2*

Whether employee welfare Trust is required to be consolidated or considered as extension in SFS of Company.

**Response:**

Trusts’ account should not be consolidated / merged into SFS

The issue pertaining to consolidation / merger of accounts of an ESOP Trust in the SFS of a company was considered by the Expert Advisory Committee (EAC) of the Institute of Chartered Accountants of India (‘ICAI’) (published in March 2014 journal of ICAI).

The EAC interpreted and took a view that Trust’s accounts shall be consolidated / merged with the SFS of the Company after taking into consideration the provisions of SEBI

(Employee Stock Option Scheme (ESOS) and Employee Stock Purchase Scheme (ESPS)) Guidelines, 1999 ('SEBI ESOP Regulations 1999') and ICAI Guidance Note in this regard:

- The aforementioned ICAI Guidance Note did not suggest the consolidation of Trust's account with that of the SFS of the company.
- However, SEBI ESOP Regulations 1999 stated that if ESOP is administered through a Trust, the accounts of the company shall be prepared as if the company is itself administering the ESOP, i.e., it required consolidation of accounts of an ESOP Trust with that of the listed company.
- The EAC concluded that the provisions of SEBI ESOP Regulations 1999 shall prevail over ICAI Guidance Note i.e. the accounting treatment prescribed by SEBI should be adhered by a listed company while preparing its SFS.

SEBI ESOP Regulations 2014 (superseding the erstwhile SEBI ESOP Regulations 1999) provides that accounting treatment to be as per accounting standards / Guidance Note prescribed by ICAI, i.e., neither prescribes consolidation of ESOP Trust with listed company nor any accounting treatment for such an ESOP Trust.

The querist understands that, considering the approach of substance over form to be adopted from Ind AS perspective, it is believed that where the ESOP Trust is set up only to administer the ESOP Scheme of the Company, its independent status for the purpose of Ind AS accounting purpose is ignored and the same is treated as a part/unit/ branch of the Company itself. Accordingly, its accounts are merged with the SFS of the Company as if the Company is itself administering the ESOP Scheme.

However, the aforesaid reasoning may not be applicable in respect of EWTs (similar to the Trust under consideration in this query) where following aspects are applicable, and consequently, there is no requirement to merge its account with SFS of the Ind AS compliant entity:

- Unlike the ESOP Trust discussed above, EWT stands on a much different footing –
  - EWT's purpose and scope is much wider in terms of implementation of various schemes for general employment benefit as compared to merely administration of ESOP scheme in case of ESOP Trust.
  - EWT is independently managed by professional Trustees. Trustees of the Trust under consideration are third party professionals. Thus, the Trust cannot be said to be under the 'control' of the Company.
  - The pool of assets under the Trust is much larger as compared to the assets handled by ESOP Trust (which essentially comprises investing in assets like Shares, MF etc. for the purpose of achieving the objective of the Trust which is general employee benefits). There is no bar on the Trust to acquire hold / shares of the Company as a part of Trust property – it is entitled to acquire / hold any asset other than shares of the Company as well.
- The Company is neither eligible nor entitled to receive any benefits / return from the Trust's fund.
- The mere fact that the Trust utilized funds received from the Company for investments, being in shares of the Company itself, and the benefits / return of which shall be utilized for welfare of the employees, is not a relevant factor for consolidation of Trust's accounts in the SFS of the Company.
- The likely reasons for other Ind AS companies for consolidating employee Trust in SFS could be on account of reliance placed on the EAC opinion. However, the EAC opinion was issued considering the erstwhile SEBI ESOP Regulations 1999 which specifically required the consolidation of the ESOP Trust. Considering that the SEBI

ESOP Regulations 2014, applicable to Company, requires no such requirement, it can be contended that EAC opinion should not be applied in the present case. On the contrary, EAC opinion did allude to the then applicable ICAI Guidance Note which did not require consolidation of EWTs / ESOP Trusts in the SFS of the Companies.

Considering the above, underlying theme that is emerging, as per the querist, is that there should not be any impact in the SFS of the Company due to sale of shares of Settlor / other assets held by the Trust and subsequent disbursement of the surplus proceeds by it to the beneficiaries as per Trust Deed.

## **B. Query**

15. On the basis of the above, the querist has sought the opinion of the Expert Advisory Committee on the following issues:

- (i) Whether profit on sale of investment in company's shares held by EWT and distribution to employees should be accounted for in equity or P&L.
- (ii) Whether employee welfare Trust established by the company for the purpose of welfare of its employees is required to be consolidated or considered as an extension in SFS of Company.

## **C. Points considered by the Committee**

16. The Committee notes that the basic issues raised by the querist relate to accounting for the Employee Welfare Trust (EWT) (established by the Company for the purpose of welfare of its employees), in the financial statements of the Company, viz., whether the same should be consolidated or treated as an extension of the Company; and accounting for the gain arising on sale of investments in the equity shares of the Company held by the EWT and the distribution of the gain by the EWT amongst the employees of the Company or group companies. The Committee has restricted the opinion only to these issues and has not examined other issues that may arise from the Facts of the Case, such as, classification of the employee benefits provided to the employees of the Company/ group companies as post-employment benefit plan or other long-term employee benefit plan under Ind AS 19; accounting for the benefits provided by the Company to the employees of other group companies in its separate financial statements; accounting treatment in the books of account of the EWT; accounting treatment of the initial contribution and the loan given by the Company to the EWT; etc. Further, the Committee wishes to point out that its assessment of the issue under Ind AS is purely from an accounting perspective. This opinion shall neither affect the assessment under Income-tax Act or any other law or regulations, such as, Companies Act, 2013, SEBI Regulations, etc.; and as such, the Committee has not assessed any legal and tax implications or issues related to the matter.

At the outset, the Committee notes from the Facts of the Case that it has been stated by the querist that there has been no employee benefit disbursement done from the EWT since inception, whereas while illustrating the accounting treatment through example, the querist has mentioned about distribution towards employee benefit measures, etc.; thus there is an apparent contradiction. However, for the purpose of expressing opinion, the Committee presumes that there has been no employee benefit disbursement by the EWT to the employees of the company who are also beneficiaries of EWT since inception and the mention of distribution towards employee benefit measures from gain from sale of shares is only to illustrate the transaction and accounting implication for the ease of understanding only.

17. The Committee notes, based on the facts provided by the querist, the following salient features of the EWT in the extant case:

- The EWT was formed/settled by the Company with an objective of providing incentives/welfare benefits/financial support to the employees of the Companies or employees of the group companies. (Clause 2.3 of the Trust Deed)
- Employees of the Company/ group companies are the beneficiaries of the EWT. The Company has been empowered by the Trust deed (a copy of which has been supplied by the querist for the perusal of the Committee) to appoint or remove any of the Trustees. A Trustee who ceases to be an employee of the Company automatically vacates the office as a Trustee. (Clause 6.2 of the Trust Deed)
- The EWT has acquired shares of the sponsoring entity from open market, funded by the initial contribution from the Company and the loan from the Company.
- The EWT is bound to take to the directions of the Compensation Committee of the Company with regard to the manner in which the incentives and welfare benefits/ schemes are to be conferred on the beneficiaries (employees of the Company/ group companies). (Clause 2.11 of the Trust Deed)
- The incentives and welfare benefits means the direct or indirect benefits, incentives, including performance bonuses in cash or kind and/ or any perquisites/ amenities conferred on the Employees of the Company and Companies within the Group, under and in accordance with this Deed and/ or through Incentives and Welfare Plans through various means/ programmes, including but not limited to any of the following purposes: (i) Medical assistance/ healthcare benefits for their own and/ or their dependents; (ii) Financial assistance to spouse/ children in the event of death of the Beneficiary; (iii) Loans to the Beneficiaries for their own and/ or their dependent(s) wedding; (iv) Scholarship for Beneficiaries and/ or their dependent children/ wards (not exceeding two in number) for higher education in India and/or abroad; (v) Financial assistance to a Trust created for the benefit of the Employees; ... (xii) Financing life insurance policies; etc. (Clause 1.1 of the Trust Deed)
- The Board of Directors of the Settlor (which is the Company itself) may at any time revoke or terminate EWT created (i) on determination that the fulfilment of the purpose and objects of the Trust has been achieved and completed or it has become impossible to carry on or fulfil the objects of the EWT; or (ii) if for any other reason the EWT should be revoked or terminated. (Clause 7.1 of the Trust Deed)
- In the event of termination or revocation of EWT, the EWT properties shall be dealt with and applied in such manner as the Board of Directors of the Settlor (which is the Company itself) may determine being a manner which will shall in consistent with the general object and purpose of the EWT and the applicable Regulations. (Clause 7.2 of the Trust Deed)

On a reading of the last two clauses reproduced from the Trust Deed, the Committee is of the view that the Board of Directors of the Company has the power to terminate or revoke the Trust. Further, based on the above features and other facts mentioned by the querist, the Committee is of the view that it seems that the EWT has been established as a means of remunerating employees of the Company/ group companies and has been specifically designed to serve the purpose of the Company. Also, the Committee is unable to find any persuasive economic rationale as to for what purposes other than the rendering of the services by the employees, the Company intends to provide incentives or benefits to its employees, who are the beneficiaries of Trust (EWT).

18. The Committee notes that in order to determine the appropriate accounting treatment of the EWT and of the transaction of sale of shares by the EWT in the financial statements of

the company, it is necessary to consider whether the benefits given by the EWT to employees are within the scope of Ind AS 19. In this context, the Committee notes the following requirements of Ind AS 19, ‘Employee Benefits’ as follows:

“2 **This Standard shall be applied by an employer in accounting for all employee benefits, except those to which Ind AS 102, *Share-based Payment*, applies.”**

“6 Employee benefits include benefits provided either to employees or to their dependants or beneficiaries and may be settled by payments (or the provision of goods or services) made either directly to the employees, to their spouses, children or other dependants or to others, such as insurance companies.”

“8 ...

***Employee benefits are all forms of consideration given by an entity in exchange for service rendered by employees or for the termination of employment.***

...”

“26 Post-employment benefits include items such as the following:

- (a) retirement benefits (eg pensions and lump sum payments on retirement); and
- (b) other post-employment benefits, such as post-employment life insurance and post-employment medical care.

Arrangements whereby an entity provides post-employment benefits are post-employment benefit plans. An entity applies this Standard to all such arrangements whether or not they involve the establishment of a separate entity to receive contributions and to pay benefits.”

From the above, the Committee notes that Ind AS 19 is applicable to all forms of consideration given by an entity in exchange for service rendered by employees. The Committee is of the view that the words “all forms of consideration given” used in the definition of ‘Employee Benefits’ cover all such consideration regardless of the nature of consideration given (monetary or non-monetary assets), the timing of payment of the consideration (whether short-term or long-term) and the arrangement through which consideration is paid (i.e. whether direct or through a Trust or other similar arrangement) and also the benefits paid to employees dependents. Thus, so long as a *payment* represents consideration for employee services, it is an employee benefit to be accounted for as per the Standard (except those to which Ind AS 102, ‘Share-based Payment’, applies). Further, paragraph 6 of Ind AS 19 recognises that the Standard also applies to arrangements in which, instead of paying the benefits directly to the employees concerned, the enterprise makes the payment to others, which in turn pays the benefits to the employees or their dependents or beneficiaries. The above position is further reinforced in paragraph 26 of Ind AS 19 dealing with post-employment benefits which clarifies that the Standard applies to all post-employment benefits “whether or not they involve the establishment of a separate entity to receive contributions and to pay benefits.”

Further, the Committee notes that Ind AS 19 states the following:

“4 The employee benefits to which this Standard applies include those provided:

- (a) under formal plans or other formal agreements between an entity and individual employees, groups of employees or their representatives;

- (b) under legislative requirements, or through industry arrangements, whereby entities are required to contribute to national, state, industry or other multi-employer plans; or
- (c) by those informal practices that give rise to a constructive obligation. Informal practices give rise to a constructive obligation where the entity has no realistic alternative but to pay employee benefits. An example of a constructive obligation is where a change in the entity's informal practices would cause unacceptable damage to its relationship with employees."

**“Accounting for the constructive obligation**

**61 An entity shall account not only for its legal obligation under the formal terms of a defined benefit plan, but also for any constructive obligation that arises from the entity's informal practices. Informal practices give rise to a constructive obligation where the entity has no realistic alternative but to pay employee benefits. An example of a constructive obligation is where a change in the entity's informal practices would cause unacceptable damage to its relationship with employees.**

62 The formal terms of a defined benefit plan may permit an entity to terminate its obligation under the plan. Nevertheless, it is usually difficult for an entity to terminate its obligation under a plan (without payment) if employees are to be retained. Therefore, in the absence of evidence to the contrary, accounting for post-employment benefits assumes that an entity that is currently promising such benefits will continue to do so over the remaining working lives of employees.”

The Committee notes that under Ind AS 19, the employee benefits to which this Standard applies include those provided under formal plans/agreements; under legislative requirements or through industry arrangements; or by those informal practices that give rise to a constructive obligation. Further, informal practices give rise to a constructive obligation where the employer has no realistic alternative but to pay those employee benefits, for example, where a change in the employer's informal practices would cause unacceptable damage to its relationship with employees. The Committee notes that the term, ‘constructive obligation’ is not defined by Ind AS 19. However, Ind AS 37 provides the following definition:

**“A *constructive obligation* is an obligation that derives from an entity's actions where:**

- (a) by an established pattern of past practice, published policies or a sufficiently specific current statement, the entity has indicated to other parties that it will accept certain responsibilities; and**
- (b) as a result, the entity has created a valid expectation on the part of those other parties that it will discharge those responsibilities.”**

The Committee notes from the above, that to give rise to a constructive obligation, there should be an established past practice, published policies, sufficiently specific current statement etc., by which the company has indicated to the other party (employees in the extant case) that it will accept certain responsibilities; and as a result, the entity has created a valid expectation on the part of that other party that it will discharge those responsibilities. The Committee also notes that the Company in its latest general purpose financial statements (Note 1.7 of Annual Report for the financial year 2018-19) states as follows: “The company is a sponsor to two Trusts namely: (i) Employees' Welfare Trust; and (ii) Employees' Incentives

and Welfare Trust. These Trusts have been formed exclusively to provide benefits to employees of the company and its subsidiaries and associates ...”

However, in this context, the Committee notes from the Facts of the Case that there has been no employee benefit disbursement done from the EWT since inception. Further, there has neither been any announcement of the nature of benefits to be provided nor any formal plan announced. Thus, the conditions to give rise to a legal or constructive obligation for the company are not satisfied. Therefore, the Committee is of the view that as long as the company/EWT does not announce or decide/formalise any welfare plan/scheme so as to create an obligation (legal or constructive) for the company as per the above-mentioned requirements, Ind AS 19 will not be applicable.

Further, in this context, the Committee also notes the following requirements of Ind AS 19 relating to recognition and measurement:

#### **“Recognition and measurement**

##### **All short-term employee benefits**

**11 When an employee has rendered service to an entity during an accounting period, the entity shall recognise the undiscounted amount of short-term employee benefits expected to be paid in exchange for that service:**

**(a) as a liability (accrued expense), after deducting any amount already paid. If the amount already paid exceeds the undiscounted amount of the benefits, an entity shall recognise that excess as an asset (prepaid expense) to the extent that the prepayment will lead to, for example, a reduction in future payments or a cash refund.**

**(b) as an expense, unless another Ind AS requires or permits the inclusion of the benefits in the cost of an asset (see, for example, Ind AS 2, *Inventories*, and Ind AS 16, *Property, Plant and Equipment*).”**

#### **“Profit-sharing and bonus plans**

**19 An entity shall recognise the expected cost of profit-sharing and bonus payments under paragraph 11 when, and only when:**

**(a) the entity has a present legal or constructive obligation to make such payments as a result of past events; and**

**(b) a reliable estimate of the obligation can be made.**

**A present obligation exists when, and only when, the entity has no realistic alternative but to make the payments.”**

**“21 An entity may have no legal obligation to pay a bonus. Nevertheless, in some cases, an entity has a practice of paying bonuses. In such cases, the entity has a constructive obligation because the entity has no realistic alternative but to pay the**

bonus. The measurement of the constructive obligation reflects the possibility that some employees may leave without receiving a bonus.

- 22 An entity can make a reliable estimate of its legal or constructive obligation under a profit-sharing or bonus plan when, and only when:
- (a) the formal terms of the plan contain a formula for determining the amount of the benefit;
  - (b) the entity determines the amounts to be paid before the financial statements are approved for issue; or
  - (c) past practice gives clear evidence of the amount of the entity's constructive obligation."

Drawing an analogy from the guidance given for short-term profit-sharing and bonus plan, the Committee is of the view that an entity can recognise the expected cost of employee benefit only when a reliable estimate of the obligation can be made and a reliable estimate of its legal or constructive obligation can be made by an entity when, and only when: (a) the formal terms of the plan contain a formula for determining the amount of the benefit; (b) the entity determines the amounts to be paid before the financial statements are approved for issue; or (c) past practice gives clear evidence of the amount of the entity's constructive obligation.

Further, the Committee notes the following requirements of Ind AS 19 in relation to post-employment benefits and other long-term employee benefits:

- "27 Post-employment benefit plans are classified as either defined contribution plans or defined benefit plans, depending on the economic substance of the plan as derived from its principal terms and conditions."

**"Post-employment benefits: defined contribution plans**

...

**Recognition and measurement**

- 51 **When an employee has rendered service to an entity during a period, the entity shall recognise the contribution payable to a defined contribution plan in exchange for that service:**
- (a) **as a liability (accrued expense), after deducting any contribution already paid. If the contribution already paid exceeds the contribution due for service before the end of the reporting period, an entity shall recognise that excess as an asset (prepaid expense) to the extent that the prepayment will lead to, for example, a reduction in future payments or a cash refund.**
  - (b) **as an expense, unless another Ind AS requires or permits the inclusion of the contribution in the cost of an asset (see, for example, Ind AS 2 and Ind AS 16).**

**"Post-employment benefits: defined benefit plans**

...

## **Recognition and measurement**

- 56 Defined benefit plans may be unfunded, or they may be wholly or partly funded by contributions by an entity, and sometimes its employees, into an entity, or fund, that is legally separate from the reporting entity and from which the employee benefits are paid. The payment of funded benefits when they fall due depends not only on the financial position and the investment performance of the fund but also on an entity's ability, and willingness, to make good any shortfall in the fund's assets. Therefore, the entity is, in substance, underwriting the actuarial and investment risks associated with the plan. Consequently, the expense recognised for a defined benefit plan is not necessarily the amount of the contribution due for the period.
- 57 Accounting by an entity for defined benefit plans involves the following steps:
- (a) determining the deficit or surplus. This involves:
    - (i) using an actuarial technique, the projected unit credit method, to make a reliable estimate of the ultimate cost to the entity of the benefit that employees have earned in return for their service in the current and prior periods (see paragraphs 67–69). ...
    - (ii) discounting that benefit in order to determine the present value of the defined benefit obligation and the current service cost (see paragraphs 67–69 and 83–86).
    - (iii) deducting the fair value of any plan assets (see paragraphs 113–115) from the present value of the defined benefit obligation.
  - (b) determining the amount of the net defined benefit liability (asset) as the amount of the deficit or surplus determined in (a), adjusted for any effect of limiting a net defined benefit asset to the asset ceiling (see paragraph 64).
  - (c) determining amounts to be recognised in profit or loss:
    - (i) current service cost (see paragraphs 70–74 and paragraph 122A).
    - (ii) any past service cost and gain or loss on settlement (see paragraphs 99–112).
    - (iii) net interest on the net defined benefit liability (asset) (see paragraphs 123–126).
  - (d) determining the remeasurements of the net defined benefit liability (asset), to be recognised in other comprehensive income, comprising:
    - (i) actuarial gains and losses (see paragraphs 128 and 129);
    - (ii) return on plan assets, excluding amounts included in net interest on the net defined benefit liability (asset) (see paragraph 130); and
    - (iii) any change in the effect of the asset ceiling (see paragraph 64), excluding amounts included in net interest on the net defined benefit liability (asset).

Where an entity has more than one defined benefit plan, the entity applies these procedures for each material plan separately.”

## **“Other long-term employee benefits**

...

- 154 The measurement of other long-term employee benefits is not usually subject to the same degree of uncertainty as the measurement of post-employment benefits. For this reason, this Standard requires a simplified method of accounting for other long-term employee benefits. Unlike the accounting required for post-employment benefits, this method does not recognise remeasurements in other comprehensive income.

### **Recognition and measurement**

- 155 In recognising and measuring the surplus or deficit in an other long-term employee benefit plan, an entity shall apply paragraphs 56–98 and 113–115. An entity shall apply paragraphs 116–119 in recognising and measuring any reimbursement right.”**

In the extant case, the company/EWT has neither formulated any plan containing the formula for determination of benefit nor determined any amount to be paid and even there is no past practice in this regard. Therefore, it is also impractical to apply the various requirements regarding classification of employee benefits intended to be provided through this Employee Welfare Trust into specified categories of Ind AS 19 and the recognition and measurement requirements prescribed therein. As a result, the above facts and circumstances of the company result into inability to make a reliable estimate so as to even recognize the expected cost of employee benefit. Thus, until the company/EWT formulates such plan or determines the amount of benefits to be provided in the extant case, Ind AS 19 cannot be applied in the extant case.

Accordingly, it is only when the company/ EWT announces or decides/formalises any welfare plan/ scheme, the same will be recognised and provided for as per the requirements of Ind AS 19. Once the Company or the EWT formalizes an employee benefit plan, the same shall be appropriately classified and dealt with under Ind AS 19; and as per the requirements of Ind AS 19, the charge arising from obligations towards employee benefits under Ind AS 19 shall be recognised in the Statement of Profit and Loss or Other Comprehensive Income (unless another Ind AS requires or permits its inclusion in the cost of an asset). Therefore, directly recognizing such employee benefit incentives/ pay-outs in equity without routing through the Statement of Profit and Loss/Other Comprehensive Income would not be permissible under Ind AS 19. The actual pay-out to the beneficiaries (employees) by the EWT does not represent a transaction with the owners of the Company in their capacity as owners. Rather, this will be treated as an obligation to the beneficiaries (employees) as per the employee benefit plan framed.

19. The Committee now considers whether the transactions are covered by Ind AS 102, ‘Share-based Payment’. In this regard, the Committee evaluates this aspect with reference to the objective of the Standard and the definition of transactions covered by this Standard which are reproduced below:

### **“Objective**

- 1 The objective of this Standard is to specify the financial reporting by an entity when it undertakes a share-based payment transaction. In particular, it requires an

entity to reflect in its profit or loss and financial position the effects of share-based payment transactions, including expenses associated with transactions in which *share options* are granted to employees.”

*Appendix A Defined terms*

<b>“share-based payment arrangement</b>	<p>An agreement between the entity (or another group<sup>2</sup> entity or any shareholder of any group entity) and another party (including an employee) that entitles the other party to receive</p> <p>(a) cash or other assets of the entity for amounts that are based on the price (or value) of <b>equity instruments</b> (including shares or <b>share options</b>) of the entity or another group entity, or</p> <p>(b) <b>equity instruments</b> (including shares or <b>share options</b>) of the entity or another group entity,</p> <p>Provided the specified <b>vesting conditions</b>, if any, are met.</p>
<b>share-based payment transaction</b>	<p>A transaction in which the entity</p> <p>(a) receives goods or services from the supplier of those goods or services (including an employee) in a <b>share-based payment arrangement</b>, or</p> <p>(b) incurs an obligation to settle the transaction with the supplier in a <b>share-based payment arrangement</b> when another group entity receives those goods or services.”</p>

From the above, the Committee observes that transactions will be within the scope of Ind AS 102 provided those meet the requirements of the term, ‘share-based payment transaction’. As can be seen from the definition of share-based payment transaction, reproduced above, it must be based on an agreement between the entity (or another group entity) and another party (including an employee). However, in the absence of any formal plan or agreement between the Company and its employees or the Trust, the employee welfare transactions envisaged under the Trust deed are not within the scope of Ind AS 102, ‘Share-based Payment’.

20. The Committee further proceeds to evaluate whether the Employee Welfare Trust referred to in previous paragraphs meets the requirements of exemption from consolidation requirements of Ind AS 110, ‘Consolidated Financial Statements’ and notes the following requirements of Ind AS 110:

“4A This Ind AS does not apply to post employment benefit plans or other long-term employee benefit plans to which Ind AS 19, *Employee Benefits*, applies.”

Ind AS 110 excludes post-employment benefit plans or other long-term employee benefit plans to which Ind AS 19 applies. In the extant case, the Company/EWT does not have a post-employment or other long-term benefit plan in place at present and, therefore, the above scope exclusion is not applicable unless such a post-employment or other long-term benefit plan is formalized by the Company/EWT, as aforesaid. Once the Company/EWT formalizes an employee benefit plan, the same (comprising of any charge/expense, any income/return, etc.) and the assets of the EWT (which may include shares of the company held by the EWT)

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<sup>2</sup> A ‘group’ is defined in Appendix A of Ind AS 110, Consolidated Financial Statements, as ‘a parent and its subsidiaries’ from the perspective of the reporting entity’s ultimate parent.

identified and allocated for the formalised employee benefit plan shall be accounted for as per the requirements of Ind AS 19. For example, in case of defined benefits, the company shall only recognize the defined benefit plan liability (asset) in its separate financial statements. Further, in addition, the company shall also disclose its investment in own shares held by the EWT as per paragraph 143 of Ind AS 19, which provides as follows:

“143 An entity shall disclose the fair value of the entity’s own transferable financial instruments held as plan assets, and the fair value of plan assets that are property occupied by, or other assets used by, the entity.”

21. However, as long as Ind AS 19 is not applicable, as aforesaid, with regard to the question of whether the EWT shall be treated as an extension of the Company, the Committee notes that the issue of whether an ESOP Trust is an extension of the sponsoring company was dealt with in a past EAC Opinion (published in March 2014 issue of the journal of ICAI and as Query No. 2, Volume No. XXXIII of the Compendium of Opinions), which was raised under the framework of Accounting Standards notified under the Companies (Accounting Standards) Rules, 2006<sup>3</sup>, wherein it was concluded that the ESOP Trust set up to administer the ESOP Scheme of the Company is treated as a part / unit / branch of the Company itself.

In the extant case, the querist has put forth an argument that the EWT is not an ESOP Trust. The Committee notes that, as per the facts mentioned above, the EWT is set up with an objective to administer the provision of incentives/welfare benefits/financial support to the employees of the Company or group companies on its behalf. As can be seen from the key features of the EWT enunciated in paragraph 17 above, the EWT does not, as such, have its own independent status and is dependent on the Company for several important activities.

Further, the Committee observes that under ‘The Conceptual Framework for Financial Reporting, issued by the International Accounting Standards Board (IASB), a reporting entity is described as “an entity that is required, or chooses, to prepare financial statements. This can be a single entity or a portion of an entity or comprise more than one entity. A reporting entity is not necessarily a legal entity. Therefore, a company may consider its branch/ unit as a part of the reporting entity for the purpose of separate financial statements, even if, legally, the branch/unit is a separate legal entity”.

Furthermore, considering the principle of ‘Substance over Form’, the Committee is of the view that the EWT is specifically designed to serve the purposes of the company in providing incentives and welfare benefits to the employees of the company, as per the directions of the Company with regard to the manner in which the incentives and welfare benefits/ schemes are to be conferred on the beneficiaries of EWT.

Based on the above, the Committee is of the view that EWT should be treated as a part of the Company as if the company itself is undertaking the activities of the EWT. The financial statements of the EWT should be incorporated/ merged in the separate financial statements of the Company. For the purpose of incorporation or merger of financial statements of EWT into SFS of the Company, the Committee is of the view that it shall follow the same procedures as followed for consolidated financial statements as per the applicable Accounting Standards.

Further, with regard to shares of the Company held by EWT and the transaction of sale of such shares, the Committee notes the following requirements of Ind AS 32:

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<sup>3</sup> Subsequently, in respect of accounting periods commencing on or after April 1, 2021, Companies (Accounting Standards) Rules, 2006 (as amended from time to time) have been superseded by Companies (Accounting Standards) Rules, 2021.

**“4 This Standard shall be applied by all entities to all types of financial instruments except:**

**(a) ...**

**(b) employers’ rights and obligations under employee benefit plans, to which Ind AS 19, Employee Benefits, applies.**

**...”**

**“33 If an entity reacquires its own equity instruments, those instruments (‘treasury shares’) shall be deducted from equity. No gain or loss shall be recognised in profit or loss on the purchase, sale, issue or cancellation of an entity’s own equity instruments. Such treasury shares may be acquired and held by the entity or by other members of the consolidated group. Consideration paid or received shall be recognised directly in equity.”**

From the above, the Committee notes that till the time Ind AS 19 is not applicable to the Company, the requirements of Ind AS 32 will be applicable in respect of the financial instruments. Therefore, in the extant case, considering the EWT as a part of the company as if the company itself is undertaking the activities of EWT, the shares of the company held by EWT shall be treated as ‘treasury shares’ and any gain that is arising from the sale of such shares of the Company by the EWT shall be recognised directly in equity without routing through Statement of Profit and Loss. However, the shares of the Company held by the EWT shall be treated as ‘treasury shares’ till the time the Company starts applying the requirements of Ind AS 19, as discussed above. Further, in order to faithfully represent the transaction and events and for better understanding from the perspective of users of financial statements, adequate and appropriate disclosures with regard to treasury shares should also be provided by the Company.

#### **D. Opinion**

22. As discussed in paragraph 17 to 19 above, as long as the company does not announce or decide/formalise any welfare plan/ scheme, the same will not create an obligation (legal or constructive) for the company and accordingly, Ind AS 19 shall not be applicable.

Further, as long as Ind AS 19 is not applicable, as discussed in paragraph 21 above, the EWT shall be treated as a part of the company as if the company itself is undertaking the activities of EWT. The financial statements of the EWT shall be incorporated /merged with the financial statements of the Company as if the transactions of the Trust were undertaken by the Company itself. Accordingly, the shares of the company held by EWT shall be treated as ‘treasury shares’ and any gain that is arising from the sale of such shares of the Company by the EWT shall be recognised directly in equity without routing through Statement of Profit and Loss. Further, in order to faithfully represent the transaction and events and for better understanding from the perspective of users of financial statements, adequate and appropriate disclosures with regard to treasury shares should also be provided by the Company.

However, once the Company and the EWT formalizes an employee benefit plan, it shall be appropriately classified and dealt with as per the requirements of Ind AS 19; and the same (comprising of any charge/expense, any income/return, etc.) and the assets of the EWT (which may include shares of the company held by the EWT) identified and allocated for the formalised employee benefit plan shall be accounted for as per the requirements of Ind AS 19.

## Annexure 1 – The key features and characteristics of EWT

Parameter	Particulars
<b>Objects of EWT</b>	<p>a. The main and only object of the EWT (<b><u>an irrevocable Trust</u></b>) is to provide incentives and welfare benefits or financial support to employees of the Company through the implementation of incentive and welfare schemes.</p> <p>b. EWTs are different to an Employee Stock Option Plan (“ESOP”) Trust. Under EWTs, incentives to employees can be given in any manner which may not be related/restricted through a share-based mechanism as is under ESOP Trust.</p>
<b>Beneficiaries to EWT</b>	<p>c. Employees of the Company are beneficiaries to the EWT.</p> <p>d. Qualifying employees are determined based on an Employee Incentive and Welfare Scheme/Plan (“Incentive Scheme”) which could be recommended by the Settlor.</p>
<b>Trustees</b>	<p>e. Consists of independent person(s) of repute.</p> <p>f. Each of the Trustees acts in his/her personal and independent capacity and not as a representative of the respective firm/organisation to which they belong</p>
<b>Trust Property</b>	<p>g. Trust Property can comprise of any asset, investment, deposits, etc., including and not limited to the shares of the Settlor including and any income earned thereon.</p> <p>h. Trust property/surplus (after meeting all expenses/obligations) shall be utilised only for the benefit/in the interest of beneficiaries. <i>The Company does not have any risk, exposure, right, eligibility, or entitlement to receive any benefits/returns from the Trust Property(ies) either directly or indirectly.</i></p>
<b>Manner/modalities of providing incentives</b>	<p>i. The incentives shall be provided only out of surplus funds of EWTs (i.e. after meeting all its obligations/expenses). Further, the incentives can be provided in any manner, monetary or otherwise.</p> <p>For example; where the Trust Property comprises of say shares of the Company, the surplus (generated out of dividend, gains on sale of shares etc.) can be utilised for providing monetary emoluments to identified employees or for providing non-monetary incentives, viz, medical benefit, residential accommodation etc.</p>
<b>Role of Trustees</b>	<p>j. Trustees shall have full authority power, and discretion to carry out the administration of EWT for the purpose of its objectives, including and not limited to the implementation of any Incentive Scheme as recommended by the Company.</p> <p>k. Trustees shall ensure that Trust Property is utilised exclusively for the benefits of beneficiaries (and not for any other purpose).</p>
<b>Role of the Company</b>	<p>l. The Company, as a Settlor, shall formulate the Incentive Scheme suggesting the manner and direction in which such plans/schemes shall be conferred to the beneficiaries (identification of eligible employees, evaluation criteria, rationale for such evaluation, etc.) and recommend it to the Trustees for its implementation as per the Trust deed.</p>

Parameter	Particulars
	m. This is mindful of the fact that the Company/its Board or Compensation ESOP Committee would have oversight over the Company's employees; in terms of framing appropriate welfare schemes/plans in the best interest of the Beneficiaries, vis-à-vis the Trustees who are independent.
<b>Power of Trustees</b>	<p>n. Manage and supervise the Trust Property/surplus (including the decision to dispose of any of the Trust Property) and utilise it for the EWT's objectives, i.e., for the benefits and in the interest of beneficiaries.</p> <p>o. Evaluate, identify, support, monitor, and audit the Incentive Schemes as recommended by the Company while implementing it.</p> <p>p. Formulate rules and regulations for executing the provisions of Trust deed.</p> <p>q. Decisions on the implementation of the Incentive Scheme shall be done only by unanimous decision of all Trustees.</p>
<b>Termination of EWT</b>	<p>r. EWT may be terminated on fulfilment of its objects or for any other reason, in the event of which the Trust Property/surplus (if any) shall be utilised as per the objects of EWT, i.e., for the benefits and in the interest of the beneficiaries.</p> <p>Thus, under any given circumstance (i.e. during the Trust period or on its termination), the Trust Property/surplus shall never come back to the Company/Settlor, either directly or indirectly, for utilisation for its own purpose.</p>

## **Annexure 2: Why the benefits from Employee Welfare Trust (EWT) do not get covered under IND AS 19?**

### **Reason 1: It falls outside the Scope defined in paragraph 4 of Ind AS 19**

There is no formal plan or arrangement formulated and communicated to employees that envisages any obligation to be fulfilled towards the employees out of the surplus or proceeds of the Trust or nor any such entitlement can be claimed by any employee on the Trust. Further, the activities of the Trust are independent of the entity and does not give rise to even any constructive obligation for the independent Trustees to utilize the surplus of the Trust for meeting the obligation that exist between the entity vis a vis its employees or for meeting any rights or even the legally enforceable rights that an employees may enjoy under employment contract with the entity.

Employer obligations which are contractually committed e.g. fixed salary/assured bonus agreed between the entity and its employee is the responsibility of the entity. These are outside the objectives of the Trust. The Trust has never fulfilled any of these responsibilities in the past, nor it intends to do so in future.

There is no formal practice established or intended to be established where if such programmes under the Trust whether are made available or not it would cause unacceptable damage to the relationship between the entity and its employees.

The benefits from the Trust are discretionary and undefined and can be paid only if there is surplus with the Trust and not otherwise. Nor the Trust surplus is meant to fulfil any statutory obligation of the entity.

**Reason 2: It falls outside the scope of paragraph 5 of Ind AS**

The independent Trustees of EWT administer the fulfilment of the objectives of the Trust towards general welfare benefits to the beneficiaries in such manner and circumstances as they deem fit which can be even without linkage with the services / any obligation for 'past' or 'future' service rendered by the employees and such general welfare benefits from the Trust are discretionary in nature. Further, since inception there has been no instances or pattern which can be construed as providing either short term or post retirement or other long term or termination benefits to the employees in lieu of services rendered. The Trust is managed by independent professional Trustees who have the control of the investments / assets of the Trust and has sole rights of administration of the Trust to fulfill the objectives set under the Trusts without any compulsion. Unlike where for an entity it ought to recognize expenses / liability against the services received from its employees.

The objective of the Trust is to set programmes in the nature of general welfare benefits which inter alia includes Medical assistance/healthcare benefits for their own and /or their dependents; Financial assistance to spouse / children in the event of death of the Beneficiary; Loans to the beneficiaries for their own and/or their dependent(s) wedding; Scholarships for the Beneficiaries and /or their dependent children / wards (not exceeding two on number) for higher education in India and / or abroad; Financial Assistance to a Trust created for the benefits of the Employees etc. [few of the above activities are beyond the preview of paragraph 5]. The Trust is a self-serving separate independent structure managed by independent Trustees where the Trustees shall form rules and regulation for implementation of the provision of the Trust deed and prescribe conditions under which general welfare benefits may vest in the Beneficiaries which may be episodic and which are not only wider but also much different then what is there in the category of Short Term Benefits or Long Term Benefits or Other Long Term Benefits or Termination Benefits mentioned in Clause 5.

Basis the above, Trust activities for its beneficiaries cannot be covered under the ambit of Ind AS 19. The position remains the same under AS 15 as well, historically.