

M.COM Sem II

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Topic: Binding Effects of A/A

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Binding Effects of the Articles of Association:

Regarding the binding force or legal effect of the Articles of Association.

Companies Act provides:—

"Subject to the provisions of this Act, the Memorandum and Articles shall, when required, bind the company and the members thereof to the same extent as if they respectively have been signed by the company and by each member, and contained covenant (agreement) on its and his part to observe all the provisions of the Memorandum and of the Articles".

Thus, the Articles bind the company to its members, the members to the company and the members to each other.

1. Company is bound to its members:

The company is bound to the members to observe and follow its Articles. As a result each member can restrain the company from committing a breach of the articles which would affect his rights as a member, by bringing an injunction against it. Thus, an individual can enforce his rights such as his right to vote or his right to recover dividend which has been declared or his right to receive notice of any general meeting, etc., in presence to the articles, if he

defined any of these rights by the company.

2. Each member is bound to the company:

Articles of Association is a contract of ^{of most} sacred character, between company and each member binding the members to the company under the statutory agreement. All money payable by any member to the company under the Articles shall be a debt due from him to the company (see 36). Articles constitute a contract between each member and the company.

Now we conclude that a company can sue its members for the enforcement of its articles as well as restraining their breach. Thus, if Articles provide to refer any dispute between the company and its members to arbitration the court will stay an action by the member, in such a dispute on application made by the company. For the sake of another illustration the facts of *Brookland Trustees vs Steel Brothers & Co Ltd.* may be seen.

The articles of the defedant company provided that the shares of any members who became bankrupt should be sold to certain other persons at certain price to be fixed by the directors.

3. Each member is bound to others in exceptional case only: Articles of Association does not create an internal agreement between members of the company *inter se*. In general way Act does not allow to individual members to sue against the companies. The action must be brought

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by the company it satisfies if it is in liquidation by the liquidator. If a shareholder defaults in making payment only company may sue against default shareholders. If there were right to sue of all members number of petitions should be filed against the default member which would be very absurd.

There are the only exceptional cases where articles form a contract between individual members *quo members* and where an individual member in his personal capacity, may sue other member or member directly without joining the company as a party to the action, is when the person against whom relief is sought control the majority of shares and will not allow an action to be brought in the name of the company and the act complained of one either fraudulent or *ultra vires*.

(4) Neither the company nor the members are bound to outsiders: An outsider cannot stake claim of advantage of these documents. The company and its members, even though his name may have been mentioned in the articles for such a person is not a party to the contract constituted by the articles. These documents bind the company to members and vice-versa in respect of their membership rights only and not contractual rights of others kinds.
