

# Banks Wary of Family Trusts' Large 'Gifts' to NRI Members

Several lenders block transfer of earnings & shares suspecting violation of rules

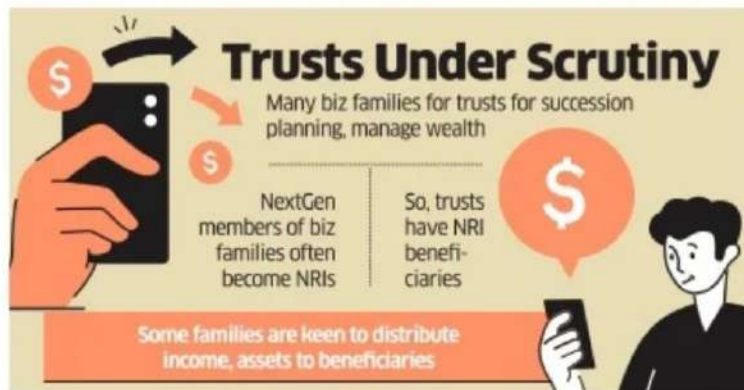
Sugata Ghosh

**Mumbai:** Several banks are blocking transfer of earnings and shares by family trusts, set up for succession planning, to the NextGen members who have settled abroad, distancing themselves from family businesses in India to chase their own dreams.

Banks suspect that some trusts are acting as a subterfuge for the patriarch in India to overcome the limits laid down by the Reserve Bank of India (RBI) on the amount of cash and stock that a resident can give as gifts to a non-resident.

Under the regulations, gift of money is typically capped at \$250,000 a year—the maximum that a resident individual can annually invest abroad—while transfer of securities is allowed up to \$50,000.

Since a trust is not a separate legal entity under the law, some of the families have been taking an aggressive interpretation of rules to use trust entities to make large gifts that are well beyond the maximum amounts permitted to transfer individually. Banks, which on-



ce took a comparatively lenient stance on such transfers, are objecting to these transactions amid changing rules and a closer vigil by RBI and central agencies on fund outflows.

"RBI has always emphasised the view that any transaction which is not permitted directly should not be carried out through the trust structure with the intention to circumvent provisions of FEMA... This essentially means that the trust structure should not be used in any manner to bypass the gifting limit of \$250,000 under the Liberalised Remittance Scheme (LRS)," said Harshal Bhuta of CA firm PR Bhuta & Co.

Banks are raising questions

when funds (from incomes like dividend and rent as well sale of stocks) move from the trust accounts opened in the name of trustees to the non-resident ordinary (NRO) accounts of NRI family members who are beneficiaries of the trust. Sometimes the urgency to execute transfers is driven by necessity to distribute money and assets during the lifetime of the patriarch and minimise the chances of wills being challenged.

According to Rutvik Sanghvi, partner at CA firm Rashmin Sanghvi & Associates, "Gift of shares of an Indian company between a resident and a non-resident is capped to a value of \$50,000 and that too with prior

permission from RBI. Unfortunately, there are views that such a transfer can still take place if the transfer is done through a trust or if it is within LRS limit. Such a transfer, even if allowed by custodians, would lead to a violation of FEMA. Further, following such views can lead to issues, especially when the non-resident eventually tries to remit the sale proceeds of such shares and is not allowed to do so without permission from RBI, which in some cases does not come for a very long time. Residents should be careful before undertaking such transfers."

Over the past few decades, many members of business families, particularly the younger generation who studied abroad, took residency in foreign countries. The numbers went up post Covid with some settling abroad, buying properties and jumbo life insurance covers.

"So, trusts often have non-resident beneficiaries. Of late, banks have become very vigilant when it comes to distribution of income or assets from trusts to non-resident beneficiaries," said Deepesh Chheda, partner at Dhruva Advisors LLP.