CHAPTER-1

Companies (Declaration and payment of Dividend) Rules, 2014 – 31.03.2014

(ORIGINAL)

Companies (Declaration and payment of Dividend) Amendment Rules, 2014 - 12.06.14

Declaration and Payment of Dividend

Companies (Declaration and payment of Dividend) Amendment Rules, 2015- 24.02.15

Companies (Declaration and payment of Dividend) Second Amendment Rules, 2015-29.05.15

<u>Sections Covered</u> – 2(35), 123 to 127,205A+205B+205C+208(only notified is given and in place of non-notified sections, The Companies Act 1956 is incorporated where ever necessary. So students may note this before start of this chapter).

<u>Table: -</u> F, Regulation 80 TO 88 covers about Dividends and Reserves.

- Section 124 not notified and hence Section 205A+205B of Companies Act, 1956 is given in respective places.
- Section 125 partially notified along with rules and relevant section 205C of Companies Act 1956 is incorporated.
- Some of the sections and provisos are not applicable as per the relevant notifications issued, and the same is incorporated under relevant sections and provisos.

Section 2(35) **"dividend"** includes any interim dividend;

FINAL DIVIDEND
Dividend is said to be a final dividend if it is declared at the annual general meeting of the company. Final dividend once declared becomes a debt enforceable against the company. Final Dividend can be declared only if it is recommended by the Board of Directors of the Company. In accordance with Section 134(3)(k), Board of directors must state in the Directors' Report the amount of dividend, if any, which it recommends to be paid.
INTERIM DIVIDEND
Dividend is said to be an interim dividend, if it is declared by the Board of Directors between two annual general meetings of the company. All the provisions relating to the payment of dividend shall be applicable on the interim dividend also.

123. Declaration of dividend

(*1*) No dividend shall be declared or paid by a company for any financial year **except—**

(*a*) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (*2*),

or

out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed,

or

out of both; or

(*b*) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:

Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed (Rule-3) in this behalf:

RULE-3. Declaration of dividend out of reserves. - In the event of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves subject to the **fulfilment of the following conditions,** namely: —

(1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year:

Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the 3 preceding financial year.

(2) The total amount to be drawn from such accumulated profits shall not exceed 1/10TH of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

(3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

(4) The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

~~(5) No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company of the current year. the loss or depreciation, whichever is less, in previous years is set off against the profit of the company for the year for which dividend is declared or paid.~~ **(omitted w.e.f.29-05-2015)**

This **2nd proviso** Shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments. (Notification No. **G.S.R. 463(E)** dated 05.06.2015)

Provided also that no dividend shall be declared or paid by a company from its reserves **other than** free reserves.

Provided *also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.* ***(W.e.f.26-05-2015)***

(*2*) For the purposes of clause (*a*) of sub-section (*1*), depreciation shall be provided in accordance with the provisions of **Schedule II**.

(*3*) The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared:

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding 3 financial years.

(*4*) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within **5** days from the date of declaration of such dividend.

This **123(4)** Shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Government Company. **(w.e.f.05-06-2015)**

(*5*) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable **except in cash**:

This **123(5)** Shall apply to Nidhis company, subject to the modification that any dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend. **(w.e.f.05-06-2015)**

Provided that nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company:

Provided further that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.

(*6*) A company which fails to comply with the provisions of
Section 73 (prohibition of acceptance of deposits except in the manner provided) **and**
Section 74 (Repayment of deposits etc. accepted before commencement of Companies Act 2013)
shall not, so long as such failure continues, declare any dividend on its equity shares.

Section 51 of the Act, states that a company may, if so authorized by its articles, pay dividend in proportion to the amount paid up on each share.

205A. UNPAID DIVIDEND TO BE TRANSFERRED TO SPECIAL DIVIDEND ACCOUNT

(1) Where, a dividend has been declared by a company but has not been paid, or claimed, within thirty 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed within the said period of 30 days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called ***"Unpaid Dividend Account of... Company Limited/Company (Private) Limited".***

Explanation. - In this sub-section, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.

(4) If the default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the unpaid dividend account of the concerned company, the company shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of **12 per cent** per annum and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(5) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of 7 years from the date of such transfer shall be transferred by the company to the Fund established under sub-section (1) of section 205C.

(8) If a company fails to comply with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to 5000 rupees for every day during which the failure continues.

205B. PAYMENT OF UNPAID OR UNCLAIMED DIVIDEND

Any person claiming to be entitled to any money transferred under sub-section (5) of section 205A to the general revenue account of the Central Government, may apply to the Central Government for an order for payment of the money claimed ; and the Central Government may, if satisfied, whether on a certificate by the company or otherwise, that such person is entitled to the whole or any part of the money claimed, make an order for the payment to that person of the sum due to him after taking such security from him as it may think fit.

Provided that nothing contained in this section shall apply to any person claiming to be entitled to any money transferred to the Fund referred to in section 205C.

205C. ESTABLISHMENT OF INVESTOR EDUCATION AND PROTECTION FUND

(1) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the "Fund").

(2) There shall be credited to the Fund the following amounts, namely: -

(a) amounts in the unpaid dividend accounts of companies;

(b) the application moneys received by companies for allotment of any securities and due for refund;

(c) matured deposits with companies;

(d) matured debentures with companies;

(e) the interest accrued on the amounts referred to in clauses (a) to (d);

(f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and

(g) the interest or other income received out of the investments made from the Fund:

Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of 7 years from the date they became due for payment.

Explanation. - For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of **7 years** from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

(3) The Fund shall be utilised for promotion of investors awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

(4) The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(5) It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.

125. Investor Education and Protection Fund

(*5*) The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding 7 and a chief executive officer, as the Central Government may appoint.

(*6*) The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.

(*7*) The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed.

the Central Government hereby appoints the **13.01.2016** as the date on which the provisions of sub-section (5), sub-section (6) [except with respect to the manner of administration of the Investor Education and Protection Fund] and sub-section (7) of section 125 of the said Act shall come into force.

G.S.R. 26(E) dated 13.01.2016 notified *Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016.*

126. Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares

When can dividend be held in abeyance? (CMA PTP-1 DEC-14)

Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, **notwithstanding** anything contained in any other provision of this Act, —

(*a*) transfer the dividend in relation to such shares to the Unpaid Dividend Account referred to in section 124 unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and

(*b*) keep in abeyance in relation to such shares, any offer of rights shares under clause (*a*) of sub-section (*1*) of section 62 and any issue of fully paid-up bonus shares in pursuance of 1st proviso to sub-section (*5*) of section 123.

127. Punishment for failure to distribute dividends

Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, **every director of the company** shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to **2 years** and with fine which shall not be less than **Rs.1000** for every day during which such default continues and the company shall be liable to pay simple interest at the rate of **18%. per annum** during the period for which such default continues:

Provided that no offence under this section shall be deemed to have been committed: — (this proviso is treated as **exceptions**)

(*a*) where the dividend could not be paid by reason of the operation of any law;

(*b*) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;

(*c*) where there is a dispute regarding the right to receive the dividend;

(*d*) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(*e*) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

This **section** Shall apply to Nidhis company, subject to the modification that where the dividend payable to a member is **100 rupees or less**, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least 3 months. **(w.e.f.05-06-2015)**

208. POWER OF COMPANY TO PAY INTEREST OUT OF CAPITAL IN CERTAIN CASES

(1) Where any shares in a company are issued for the purpose of raising money to defray the expenses of the construction of any work or building, or the provision of any plant, which cannot be made profitable for a lengthy period, the company may –

(a) pay interest on so much of that share capital as is for the time being paid-up, for the period and subject to the conditions and restrictions mentioned in sub-sections (2) to (7); and

(b) charge the sum so paid by way of interest, to capital as part of the cost of construction of the work or building, or the provision of the plant.

(2) No such payment shall be made unless it is authorised by the articles or by a special resolution.

(3) No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Central Government. The grant of such sanction shall be conclusive evidence, for the purposes of this section, that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section.

(4) Before sanctioning any such payment, the Central Government may, at the expense of the company, appoint a person to inquire into, and report to the Central Government on, the circumstances of the case; and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry.

(5) The payment of interest shall be made only for such period as may be determined by the Central Government; and that period shall in no case extend beyond the close of the half-year next after the half-year during which the work or building has been actually completed or the plant provided.

(6) The rate of interest shall, in no case, exceed 4 per cent per annum or such other rate as the Central Government may, by notification in the Official Gazette, direct.

(7) The payment of the interest shall not operate as a reduction of the amount paid-up on the shares in respect of which it is paid.

PAST EXAM QUESTIONS/ MOCK TEST PAPER QUESTIONS/ PRACTICE TEST PAPERS QUESTIONS/REVISION TEST PAPER QUESTIONS.

1.ABC, a Government Company (100% paid up capital is held by a State Government) has been declaring dividend at the rate of 20% during the last 3 years. The Company has not made adequate profits during the year ended 31st March, 2016, but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. State in the light of the Companies Act, 2013 whether the ABC company can declare dividend for the year 2015-16. (RTP M-16)

As per the 2nd proviso to section 123(1) of the Companies Act, 2013, where a company, owing to inadequacy or absence of profits in any financial year, proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall be made only in accordance with prescribed rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Vide Notification No. G.S.R. 463(E), dated 5th June 2015 Central Government directed that this proviso to section 123(1), shall not apply to a Government Company where the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments.

Conclusion: - In the given case, therefore, the ABC, a Government Company cannot declare dividend out of accumulated Reserves in the financial year 2015-16

2.SOOPER-6 Limited did not have sufficient profits during the preceding financial year. The Board of Directors of the company propose to declare dividend out of the accumulated profits earned during the previous years which were transferred to some other reserves other than free reserves. Examine the validity of the above act referring to the provisions of the Companies Act, 2013. (RTP M-16)

As per 2nd proviso to section 123(1) of the Companies Act, 2013, where a company, owing to inadequacy or absence of profits in any financial year, proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall be made only in accordance with prescribed rules of the Companies (Declaration and Payment of Dividend) Rules, 2014. And as per 3rd proviso, such dividend shall be declared or paid by a company only from its free reserves. No other reserve can be utilized for the purposes of declaration of such dividend.

Conclusion: - Hence the decision of the Board of Directors of Sooper-6 Ltd. is not valid to declare dividend from any reserve other than free reserves.

3.Mr. R, had purchased shares from Mr. B on 30.06.2016. He applied to the company for the transfer of shares in his name but the company failed to register the shares in his name. On 01.08.2016, the company declared dividend. Referring to the provisions of the Companies Act, 2013, comment whether Mr. R is entitled to receive the dividends? (MTP S-15) (RTP M-16)

As per section 126 of the Companies Act, 2013 where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, the company shall transfer the dividend in relation to such shares to the Unpaid Dividend Account referred to in section 124 unless the company is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in such instrument of transfer.

Accordingly, in the given situation, Mr. R is entitled to receive the dividend. The company shall transfer the dividend in relation to Mr. R's share to the Unpaid Dividend Account unless the company is authorized by Mr. B, the registered holder of such shares, in writing to pay such dividend to Mr. R, the transferee, specified in the instrument of transfer.

4. The Board of Directors of GSP-HTC Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company`s Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investments for the company. As a result, dividend was paid to shareholders after 47 days. Examining the provisions of the Companies Act, 2013, state:

(i) Whether the act of directors is in violation of the provisions of the Act and also the consequences that shall follow for the above act of directors?

(ii) What would be your answer in case the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder? (MTP M-16) (PTP-1 D-14) (CA-FINAL NOV-2014).

According to section 127 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, is liable for the punishment under the said section.

In the present case, the Board of Directors of GSP-HTC Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. In the meantime, the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investment for the company. As a result, dividend was paid to shareholders after 47 days.

(i) The Board of Directors of GSP-HTC Company Limited is in violation of section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to their decision to divert the total dividend to be paid to shareholders for purchase of investment for the company.

Consequences: The following are the consequences for the violation of above provisions:

(a) Every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to **2 years** and shall also be liable for a fine which shall not be less than **Rs.1000** for every day during which such default continues.

(b) The company shall also be liable to pay simple interest at the rate of **18% p.a**. during the period for which such default continues.

(ii) If the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholder, then failure to pay dividend within 30 days shall not be deemed to be an offence under clause (d) of the **Proviso** to section 127 of the Companies Act, 2013.

5. G's Company Limited suffered loss in the first quarter of the financial year 2015-2016. In the second quarter of the year company has earned large amount of profits. In order to maintain credibility of the company, the Board of Directors declare an interim dividend at the rate of 25 % on the paid up equity share capital. The Managing Director of the company gives the Board the following information regarding the dividend declared, the final dividend in the previous 4 years:

Financial year ending 31st March:	Rate of dividend declared:
2012	15%
2013	15%
2014	15%
2015	30%

The Board of directors further decided not to transfer any amount of the profits to General Reserve for the financial year ended 31st March, 2016.

Examine the provisions of the Companies Act, 2013, decide:
(i) The validity of the Board's declaration of 25% interim dividend as stated above.
(ii) The validity of the Board's decision not to transfer any amount of profits to general reserve. (MTP F-16)

According to section 123(3), the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding 3 financial years.

The Board of directors may declare interim dividend and the amount of dividend including interim dividend, shall be deposited in a separate bank account within 5 days from the date of declaration of such dividend.

Transfer to reserves: A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is to be decided at the discretion of the company.

Taking into account the above provisions, the sub-sections as asked can be answered as under:

(i) The declaration of Interim dividend at the rate of 25% is violative of the provisions of the Act and therefore, invalid for the reasons that the rate of dividend so declared is in excess of the average profits of the preceding 3 years, which is 20%. The interim dividend proposed to be declared should not be more than 20%.

(ii) Regarding transfer of profits to general reserve, since it is at the discretion of the company to transfer certain profits to reserves or not, it is not mandatory for the company to transfer any amount to profits to reserve. Therefore, Board's decision not to transfer of profits to reserves is quite valid.

6. Tejaswini Limited in the Annual General Meeting declared a dividend at the rate of 30 percent payable on paid up share capital of the Company as recommended by Board of Directors on 30th April, 2016. The Company did not pay declared dividend to Mr. Hari, the shareholder. The Company finds that there was a dispute regarding the right to receive the dividend by Hari. Mr. Hari, filed a suit against the Tejaswini Ltd. for the payment of dividend. Examine the given situation in the light of provisions of the Companies Act, 2013, whether Mr. Hari would be entitled for the declared dividend? (MTP S-15)

Section 127 of the Companies Act, 2013 deals with the punishment for failure to distribute dividends within the prescribed time period. As per the Provision a dividend declared by a company has to be paid or the warrant in respect thereof has to be posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend.

However, proviso to section 127 list out the cases where a company is entitled to protection for its failure to pay dividend within the stipulated time period. Clause (c) of the **proviso** states that where there is a dispute regarding the right to receive the dividend, there no offence shall be deemed to have been committed by the company.

In the given case Tejaswini Ltd. finds the dispute with respect to right of Mr. Hari, to receive the dividend. **Conclusion:** Therefore, Mr. Hari will not succeed in his claim for payment of declared dividend.

7. SUDHIR Limited in the Annual General Meeting declared a dividend at the rate of 30 percent payable on paid up equity share capital of the Company as recommended by Board of Directors on 30-04-2016. But the Company failed to post the dividend warrant to Mr. Phani, an equity shareholder of the Company, up to 30-06-2016. Mr. Phani, filed a suit against the SUDHIR Ltd. for the payment of dividend along with interest at the rate of 20 percent per annum for default period.

Decide in the light of provisions of the Companies Act, 2013, whether Mr. Phani would succeed? Also state the directors' liability in this regard under the Act. (RTP N-15) (RTP N-14) (MTP S-14) (PTP J-15 S-3) (CA-FINAL NOV-13) (CMA-FINAL DEC-2015)

Section 127 of the Companies Act, 2013 lays down the penalty for non-payment of dividend within the prescribed time period. Under section 127 where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend:

a). every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to 2 years and with fine which shall not be less than Rs.1000 for every day during which such default continues; and

b). the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.

Conclusion: Therefore, in the given case Mr. Phani will not succeed in his claim for 20% interest as the limit under section 127 is 18% per annum.

8. The shareholders at an annual general meeting passed a resolution for payment of dividend at a rate higher than that recommended by the directors. Discuss the validity of the resolution under the Companies Act, 2013. (ICMAI MTP-2 JUNE 2016) (PTP D-14 S-3).

As per **Regulation 80** contained in Table F of Schedule I to the Companies Act, 2013, a company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. Following conclusions are worth noting:

(i) The power to declare dividend vests in the members, but the members can exercise such power only if the dividend is proposed/recommended by the Board.

(ii) The rate of dividend proposed/recommended by the Board may be reduced by the members.

(iii) The rate of dividend proposed/recommended by the Board cannot be increased by the members.

(iv) Any provision in the articles, which authorises the members to declare dividend higher than the rate recommended by the Board, is void.

Conclusion: Therefore, in the given case, the resolution passed at the Annual General Meeting declaring dividend at a rate higher than that recommended by the Board of directors is not valid.

9. The Board of Directors of Anushka Limited recommended dividend on 20-02-2016 and the same was approved and declared by the company in its Annual General Meeting held on 31-05-2016 and was paid to the shareholders on 15-06-2016. But dividend was not paid to Mr. Giridhar, a shareholder. The company adjusted the amount of dividend against a sum due to it from Mr. Giridhar. Decide, under the provisions of the Companies Act, 2013 the liability of the company in this regard?

Payment of dividend (Section 127 of the Companies Act, 2013): Section 127 of the Companies Act, 2013 lays down that dividend has to be paid within 30 days from the date of its declaration. Failure to pay or post dividend warrant within 30 days constitutes an offence under the Act and renders every director of the company, if he is knowingly a party to the default, punishable with simple imprisonment for a term which may extend to 2 years and also to a fine of Rs.1000 for every day during which such default continues and the company shall be liable to pay simple interest at the rate of 18 per cent per annum during the period for which such default continues.

The Section further provides that no offence shall be deemed to have been committed in the case where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder. **(clause (d) of proviso to section 127.)**

In the instant case, dividend was declared on 31-05-2016 and was paid on 15-06-2016 i.e. within 15 days. The time limit prescribed by section 127 of the said Act is 30 days so no offence is committed.

10.Manasa Ltd. made a loss of Rs.10 lakhs after providing for depreciation for the year ended 31st March, 2016 and as a result the company was not in a position' to declare any dividend for the said year out of profits. However, the Board of Directors of the company announced the declaration of dividend of 15% on the equity shares payable out of free reserves. The paid up share capital of the company and its free reserves as on 31st March, 2016 are Rs.5 crores and 10 crores respectively. The average dividend declared by the Company in the last 3 years is 25%. Examine the validity of declaration of dividend. (RTP M-14) (RTP M-11) (PTP J-15 S-2)

Owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed (Rule-3) in this behalf:

RULE-3. Declaration of dividend out of reserves. - In the event of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves subject to the **fulfilment of the following conditions,** namely: —

(1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year: (In this case it is 25%) I.e. Rs 5 Crore X 25% = 1.25Crore.

(2) The total amount to be drawn from such accumulated profits shall not exceed $1/10^{TH}$ of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement. (In this case it is Rs.15 Crores) i.e. Rs15Crore X 10% = 1.5 Crore

(3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared. (In this case Rs.1.5Crore – Rs.0.10Crore = Rs.1.4Crore and rate shall not exceed 1.4Crore/5Crore X 100 =28%)

(4) The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement. (In this case Rs.5Crore X 15% = 0.75Crore, viz. Rs.15 Crore – Rs.0.75Crore = Rs.14.25Crore (i.e. 14.25Crore/5crore X 100 and rate shall not exceed 285%).

Hence The proposed rate of 15% is valid as per the above Rule 3, but the same should not exceed 25%.

11.The agenda for the meeting of the Board of Directors of DAD & MOM Ltd. held on 20-6-2016 for adopting the annual accounts for the year ended 31-03-2016 included an item relating to payment of dividend. At the meeting it became apparent that the profits made during the year ended 31-03-2016 were inadequate to declare dividend. It is intended by the Board that the dividend be declared at the rate of 20%, whereas the dividend was declared by the company @ 10% in each of the past 3 financial years. The company has some accumulated profits earned in previous years, which were transferred to reserves. Advise the company as to how it should go about to achieve the objective to pay dividend at the rate of 20% on the equity shares. (RTP N-13) (RTP N-09) (CMA RTP J-15)

the dividend can be paid only out of the following sources: (i)Profits of current financial year

(ii) Undistributed profits of previous financial years, i.e., accumulated profits of previous years

(iii) Moneys provided by the Central Government or State Government in pursuance of a guarantee given by it.

RULE-3. Declaration of dividend out of reserves. - In the event of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves subject to the **fulfilment of the following conditions,** namely: —

(1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year:

Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the 3 preceding financial year.

(2) The total amount to be drawn from such accumulated profits shall not exceed $1/10^{TH}$ of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

(3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

(4) The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

As per 4th proviso to section 123(1), *no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year*

In the present case, the average rate of dividend declared by the company during the preceding 3 financial years is 10%. So, the company cannot distribute dividend at the rate of 20%. However, the company may declare dividend at the rate of 10% subject to fulfillment of all the conditions contained in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Payment of dividend by utilising credit balance of Profit and Loss Account

Carried forward profits which have not been transferred to the reserves (i.e. credit balance in the Profit and Loss Account) can be utilised for payment of dividend without any restriction. Such utilisation does not amount to declaration to dividend out of reserves.

Thus, the company may declare dividend @ 20% for the year 2015-2016 out of the accumulated profits retained in the Profit and Loss Account without any restriction, and without fulfilling any condition contained in the Companies (Declaration and Payment of Dividend) Rules, 2014.

12. A public company has been declaring dividend at the rate of 20% on equity shares during the last 3 years. The company has not made adequate profits during the year ended 31st March, 2016 but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the company as to how it should go about it if it wants to declare dividend at the rate of 20% for the financial year 2015-16. Would your answer be different if the company utilized only the profits made in the previous years and retained in the profit and loss account for the purpose of payment of dividend at the rate of 20% for the year 2015-16. (RTP N-12) (RTP N-11) (MTP O-13) (CMA PTP J-16) (CMA PTP J-14 S-1) (CMA PTP D-13 S-1) (CA-FINAL MAY-14)

Section 123(1) proviso-2 says, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed (Rule-3) in this behalf:

RULE-3. Declaration of dividend out of reserves. - In the event of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves subject to the **fulfilment of the following conditions,** namely: —

(1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year:

Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the 3 preceding financial year.

(2) The total amount to be drawn from such accumulated profits shall not exceed 1/10TH of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

(3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

(4) The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

In the present case, the above rate i.e.20% is possible only if the above conditions are satisfied.

Dividend out of accumulated profits

The limit regarding rate of dividend, as referred above, does not apply where dividend is paid out of accumulated profits but dividend at the rate of 20%. As per 4th proviso to section 123(1), *no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year i.e.* 2015-16 and also section 123(2) says, For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.

13. Board of Directors of DEEPTHI Limited in its meeting held on 29th May, 2016 declared an interim dividend payable on paid up Equity Share Capital of the Company. In the Board Meeting scheduled for 10th June, 2016, the Board wants to revoke the said declaration. You are required to state with reference to the provisions of the Companies Act, 2013 whether the Board of Directors can do so. (RTP M-12) (MTP F-14) (CMA RTP D-14) (CMA RTP D-13) (CMA PTP D-13 S-2)

- As per Section 2(35) of the Companies Act, 2013, dividend includes any interim dividend. Accordingly, interim dividend once declared cannot be revoked except the same circumstances in which the final dividend can be revoked.
- The Board of Directors may declare interim dividend and the amount of dividend including interim dividend shall have to be deposited in a separate bank account within 5 days from the date of declaration of such dividend.
- The provisions of Sections 123 and 127 of the Companies Act, 2013 have also become applicable to interim dividend.
- In view of the above legal position, the Board of Directors of DEEPTHI Limited must have deposited the amount of interim dividend declared on 29th May, 2016 into a separate bank account on or before 3rd June, 2016 i.e. within 5 days from 29th May, 2016 when the interim dividend was declared. As stated above, the amount once deposited into a separate bank account, can be used only for payment of interim dividend.
- As per provisions of the Companies Act, 2013, the Board of DEEPTHI Limited has no power to revoke the interim dividend declared on 29th May, 2016 and shall not have any power to use the interim dividend amount transferred to a separate bank account for any other purpose.
- In case the amount of interim dividend has not been transferred to a separate bank account and is not paid within the time, the company and its directors have exposed themselves to the applicable penal provisions of the said Act.

14. The shareholders at an annual general meeting unanimously passed a resolution for payment of dividend at a rate higher than that recommended by the directors. Discuss the validity of the resolution. (RTP M-10)

Articles of companies usually contain provisions with regards to declaration of dividend on the pattern of regulations 80 to 88 in Table F of Schedule I to the Companies Act, 2013. Under the regulation 80, the power to declare a dividend vests with the general meeting, but it has no power to declare a dividend exceeding the amount recommended by the Board of Directors.

15. A company wants to declare dividends out of past reserves instead of current year profits. Advise on the given situation as per the Companies Act, 2013. (MTP F-15)

Where a company, owing to inadequacy or absence of profits in any financial year, proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall be made only in accordance with prescribed rules. Such dividend shall be declared or paid by a company only from its free reserves. No other reserve can be utilized for the purposes of declaration of such dividend

The 2nd proviso to section 123 (1) of the Companies Act, 2013 permits a company to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves subject to the rules prescribed in this behalf. The Companies (Declaration and Payment of Dividend) Rules, 2014 provide for the rules for declaring dividends out of the reserves as under:

(i) The rate of dividend declared does not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year.
However, this sub-rule will not apply if a company has not declared any dividend in each of the 3 preceding financial year.
(ii) The total amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves does not exceed an amount equal to 1/10th of the sum of its paid -up capital and free reserves as appearing in the latest audited financial statement.
(iii) The amount so drawn must first be utilized to set off losses incurred in the financial year before any dividend in respect of equity shares is declared.
(iv) The balance of reserves after such drawl shall not fall below 15% of its paid-up capital as appearing in the latest audited financial statement.
The 4th proviso to section 123(1) of the Companies Act, 2013 ***says*** *that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.*

16. Dharma, an employee of M/s Karma Ltd. met with an accident and died. The accident occurred when Dharma was on Company's duty. He held 100 shares partly paid. Normally the Company has a first and paramount lien on the shares. The Board of Directors, however, relaxed the said provision with regard to the hundred shares held by Dharma as a goodwill gesture on the part of the Company. Is the action of the Company valid? State the reasons. Also state whether the Company's lien can be extended to dividend payable on such shares. (MTP S-13) (CMA RTP J-14)

A Company cannot have lien on shares unless provided in the Articles of Association. Therefore, provision to this effect should be in the articles. As per Regulation 9 of Table F of Schedule I to the Companies Act, 2013 (i) The company shall have a first and paramount lien—

(a) on every share (not being a fully paid share), for all monies (whether presently payable or not) called, or payable at a fixed time, in respect of that share; and
(b) on all shares (not being fully paid shares) standing registered in the name of a single person, for all monies presently payable by him or his estate to the company:
Provided that the Board of directors may at any time declare any share to be wholly or in part **exempt** from the provisions of this clause.

(ii) The company's lien, if any, on a share shall extend to all dividends payable and bonuses declared from time to time in respect of such shares.

Hence, the decision of the Board of Directors of M/s Karma Ltd to relax the provisions of lien in respect of shares held by Dharma is in order and valid (Vide Regulation 9 of Table F), as articles of the company are silent in this regard.

17. The Board of Directors of Nandi Hills Limited propose to transfer more than 10% of the profits of the company to the reserves for the current year. Advise the Board of Directors of the said company explaining the relevant provisions of the Companies Act and the rules thereunder. (CMA RTP D-15)

Sources of dividend
(i) Profits of the company for that financial year (after providing for depreciation)
(ii) Profits of the company for any previous financial year(s) and remaining undistributed (after providing for depreciation)
(iii) Moneys provided by the Central Government or State Government in pursuance of a guarantee given by it.
Provision for Depreciation
Depreciation shall be provided in accordance with the provisions of Schedule II.
Transfer to reserves
A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company.
Declaration of dividend out of reserves
(i) Where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such Rules as may be prescribed in this behalf.
(ii) No dividend shall be declared or paid by a company from its reserves other than free reserves
Prohibition on declaration of dividend
(i) A company shall not declare any dividend on its equity shares, if it has failed to comply with the provisions of-
I. Section 73 (Prohibition on acceptance of deposits from public); and
II. Section 74 (Repayment of deposits, etc. accepted before commencement of this Act).
(ii) The prohibition on declaration of dividend on equity shares shall continue so long as the failure to comply with sections 73 and 74 continue.
Payment of dividend to whom:
The dividend shall be paid to –

(i) the registered shareholder of shares; or (ii) the order of the registered shareholder; or (iii)the bankers of the registered shareholder.

Mode of payment

No dividend shall be payable except in cash, i.e. dividend shall be payable only in cash. However, payment of dividend by issue of a cheque or dividend warrant or payment of dividend in electronic mode is also permissible. However, issue of bonus shares or payment of a bonus call by capitalising the profits or reserves is permissible. In other words, where a company, instead of declaring dividend, issues bonus shares or makes a bonus call, it shall not be deemed to be a contravention of section 123. But, the issue of bonus shares in lieu of dividend declared is not permissible.

18. A resolution was passed by the shareholders in an annual general meeting approving final dividend @20% for the financial year 2015-16 and one month later the Board of Directors decided to pay further dividend @5% for the financial year 2015-16. (CMA RTP D-13)

Companies Act, 2013 requires that the declaration of the dividend should be shown as an ordinary business at an annual general meeting of a company and it is usually declared at an annual general meeting of the company. However, a company which could not declare dividend at an annual general meeting may do so at a subsequent general meeting. But if a dividend is so declared at the general meeting, neither the company nor the directors can declare a further dividend for the same year [Circular No. 22, issued by Department of Company Affairs, dated 25-10-1975). Also, there can be no declaration of dividend for past years, in respect of which the accounts have already been closed at previously held annual general meeting – **Raghu Nandan Neotia v. Swadeshi Cloth Dealers Ltd. (supra).**

Therefore, in the given case, the decision of the Board of Directors to pay a further dividend @5% for the same financial year is not valid.

19. Star Ltd. declared and paid dividend in time to all its equity holders for the financial year 2014-15, except in the following two cases:

(i) Mrs. Sheela, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela about this discrepancy.

(ii) Dividend amount of Rs. 1,00,000 was not paid to Mr. Mohan, deceased, in view of court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends. (CA Final Nov-15)

(i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her. In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.

(ii) Section 127, inter-alia, provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

20. (i) Referring to the provisions of the Companies Act, 2013, examine the validity of the following:

The Board of Directors of ABC Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.

(ii) WL Limited is facing loss in business during the current financial year 2015-16. In the immediate preceding three financial years, the company had declared dividend at the rate of 8%, 10% and 12% respectively. To maintain the goodwill of the company, the Board of Directors has decided to declare 12% interim dividend for the current financial year. Examine the applicable provisions of the Companies Act, 2013 and state whether the Board of Directors can do so? (CA-FINAL MAY-2015) (CMA-FINAL DEC-2015).

(i) **Prohibition on declaration of dividend:** Section 123(6) of the Companies Act, 2013, specifically provides that a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of ABC Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013. So according to the above provision, declaration of dividend by the ABC Limited is not valid.

(ii) Declaration of Interim Dividend: According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

However, in case the company has incurred loss during the current financial year up to the end of quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding 3 financial years.

In the given case the company is facing loss during the current financial year 2015-16. In the immediate preceding 3 financial years, the company declared dividend at the rate of 8%, 10% and 12%. As per the above mentioned provision, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding 3 financial years [i.e. 8+10+12=30/3=10%]. Therefore, decision of Board of Directors to declare 12% of the interim dividend for the current financial year is not tenable.

21. (a) Advise on the following situations as per the Companies Act, 2013:
(i) A company wants to transfer more percentage of profits to reserves.
(ii) A company wants to declare dividends out of past reserves instead of current year profits. (CMA MTP SET-1 JUNE 2016)

(a) (i) The first proviso to 123(1) of the Companies Act, 2013 provides that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company.

Therefore, under the Companies Act, 2013 the amount transferred to reserves out of profits for a financial year has been left at the discretion of the company acting vide its Board of Directors. Therefore, the company is free to transfer any part of its profits to reserves as it deems fit.

(ii) The second proviso to section 123 (1) of the Companies Act, 2013 permits a company to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves subject to the rules prescribed in this behalf. The Companies (Declaration and Payment of Dividend) Rules, 2014 provide for the rules for declaring dividends out of the reserves as under:

a) The rate of dividend declared does not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year. However, this rule will not apply if a company has not declared any dividend in each of the three preceding financial year.

b) The total amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves does not exceed an amount equal to 1/10th of the sum of its paid-up capital and free reserves as appearing in the latest audited financial statement.

c) The amount so drawn must first be utilized to set off losses incurred in the financial year before any dividend in respect of equity shares is declared.

d) The balance of reserves after such drawal shall not fall below 15% of its paid-up capital as appearing in the latest audited financial statement.

QUOTE: -

"There comes a time when you have to choose between turning the page and closing the book".

–Josh Jameson