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Whether Dividend can be paid in kind

I. WHETHER DIVIDEND CAN BE PAID IN KIND?

Provision:

As per Section 123(5) of Companies Act, 2013 Dividend not be payable except in cash.

Dividend: Section 2(35) of the Companies Act, 2013 simply states that "D*ividend Includes Any Interim Dividend"*. Thus, the definition of dividend under the Companies Act is an inclusive definition.

Note:

It is clearly prohibits distribution of dividend in kind under Companies Act, 2013.

HON'BLE HIGH COURT OF BOMBAY HAD DECIDED FOLLOWING ISSUES IN CASE OF INDIAN SEAMLESS ENTERPRISES LTD.,

Two questions were answered in the case of Seamless Enterprises Limited:

(i) Whether gift of shares to shareholders would be considered as payment of dividend in kind?

(ii) Whether a company can gift shares to its shareholders by Scheme of arrangement?

A. Whether gift of goods to shareholders would be considered as payment of dividend in kind?

No, Gift of goods to shareholder would not be considered as payment of dividend in kind.

Even the definition provided in the Section 2(35) of the Companies Act, 2013 is an inclusive definition and hence the distribution of property of a company to its shareholders is amount to payment of dividend. BUT, "Subsection 5 of section 123 of the Act, prohibits payment of dividend in any manner otherwise than by cash."

Therefore, Company gift of Goods to shareholders will not consider as Dividend.

B. **Whether a company can gift shares to its shareholders by Scheme of arrangement?**

- ***Regional Director Argument:*** According to the Regional Director, every scheme of compromise or arrangement under sections 391 to 394 of the Companies Act, 1956 is required to *comply with each provisions of all laws*. So, in any scheme framed under sections 391 to 394 of Companies Act, 1956 was also required to comply with the provisions of the Companies Act, 1956 as well as the provisions of the Companies Act, 2013.

- ***Companies Argument:***
  - The company urged that Section 391 to 394 of the Companies Act, 1956 provides a wide power to a company to undertake any kind of scheme of compromise or arrangement with its shareholders, creditors etc. including a scheme of distribution of shares to shareholders.
  - According to the company, when a company has more than one mode available for corporate actions, the choice lies with the company to select appropriate one.
  - So, if a company undertakes any compromise or arrangement scheme as per Section 391 to 394 of the Companies Act, 1956, then compliance with other sections of the Companies Act, 1956 or Companies Act, 2013 is not required.
  - Therefore, the company had the option to make gift of shares held by it in another company to its shareholders by following the procedures given in Section 391 to 394 of the Companies Act, 1956

- ***Conclusion:***
  - Any scheme of arrangement or compromise framed under sections 391 to 394 of the Companies Act, 1956 must comply with the provisions of all laws.
  - The scheme must not be contrary to any of the provisions of any law.
  - Hence, any scheme in accordance with provisions of sections 391 to 394 of 1956 Act, should comply with the other provisions of the 1956 Act and 2013 Act, including provisions of Section 123(5) of the 2013 Act.

DECISION:

The Hon'ble High Court of Bombay considered that whether the gifting of shares of A Ltd. by the company to its shareholders was volatile of Section 123 of the Companies Act, 2013. Subsection 5 of section 123 of the Act, prohibits payment of dividend in any manner otherwise than by cash. So, a company can pay dividend only in cash, not in kind. Therefore, the scheme of arrangement of the company in the present case to gift shares of A Ltd. held as investment by the company to its shareholders is contrary to the provisions of Section 123 of the Companies Act, 2013.

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