

## Key Observations of Delhi HC ruling on IEPF provisions under Cos. Act, 2013:

In an interesting development, which will have an impact on India Inc., the Delhi HC<sup>1</sup> interpreted provisions relating to 'Unpaid Dividend Account' under Cos. Act, 2013 & Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

India Awake for Transparency ('Petitioner') writ petition under Article 226 of the Constitution. The Petitioner seeks directions for strict enforcement of the IEPF Rules by every company transferring shares to the IEPF. The Petitioner seeks to ensure that officials transferring the shares are made responsible for due certification of compliance with IEPF Rules.

### **Foll. are the Key Observations of the HC:**

1. At the heart of the controversy is operationalisation of Sec. 124(6) of Cos. Act, 2013 which statutorily transfers shares – which are valuable property – to the Fund in the eventuality of dividends lying unclaimed for over 7 years. What is of significance is that such shares are merely transferred for safekeeping by the Fund and do not become the property nor do they vest in the Central Govt.;
2. Shareholder continues to retain title but loses agency. The company concerned is relieved of the responsibility of holding the shares or reflecting it in its list of shareholders;
3. At the same time, it is not as if the existence of such shares (which are to be accounted for other purposes) is entirely obliterated. The only consequence spelt out in Sec. 126 of Cos. Act, 2013 is transfer of dividends in relation to such

shares to the Fund and keeping in abeyance any offer of rights shares and any issue of fully paid-up bonus shares;

4. Proviso to Sec. 126 of Cos. Act, 2013 very carefully enacts that claimants of shares so transferred "*shall be entitled to claim transfer of shares from Fund in accordance to such procedure and submission of such documents such as may be prescribed.*"
5. HC opined that the net result of Sec. 124(6) of Cos. Act, 2013 is that whilst it introduces a new regime of not merely transferring the amounts lying in the Unpaid Dividend Account (referred to as 'UDA' in the judgment copy), but also directs the transfer of shares which yield unclaimed dividend for 7 years or more, it also enables the provision of a mechanism for reclamation of such shares. This aspect is to be necessarily factored in to understand the mechanics of the transfer sought to be achieved through the IEPF Rules;
6. As far as the non-compliance with requirement of notice by various cos. goes, HC opined that in public interest proceedings, those violations and non-compliances cannot be gone into. HC stated that "*What is clear is that the combined effect of the first and second amendments to the Rules, results in companies becoming aware adequately in advance of their obligations, especially towards notifying the shareholders about the transfer. This appears to be the main grievance of the petitioner.*"
7. HC ruled that Sec. 124(6) of Cos. Act, 2013 does not result in a statutory vesting of any property; it merely transfers through transmission of shares in companies which have yielded dividends for seven years that have not been claimed. Such shares are then transferred to the Fund which then holds them as a custodian – in whichever manner one would wish to say it;

<sup>1</sup> India Awake for Transparency Vs Union of Indi. W.P.(C) NO. 10589 OF 2017, dated December 5, 2017.

8. HC directed Central Govt. to devise appropriate procedures to enable shareholders to reclaim their property in the shares;
9. As far as the operationalisation of provision relates, the IEPF Rules, had the effect of giving cos. adequate time to notify and comply with the 3 month public notice period to their shareholders about the event of transfer. On this the HC noticed that the transfer of such shares or classes of shares is not a one-time measure but an ongoing event given the obligation of each company to identify such shares after the holding of every AGM;
10. It is imperative that the Central Govt. gives publicity to the transfer of shares, by virtue of the provisions (not of individual companies) to inform the public, and ensures a simple as well as compact form with attendant procedure is notified, for reclaiming them.

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#### **Analysis & Conclusion:**

The Delhi HC ruling will have an impact on all the companies and more specifically – listed companies. HC has clarified that the shareholder continues to retain ‘title’ of the shares but loses ‘agency’.

Interesting (and very rightly), the HC has held that Sec. 124(6) of Cos. Act, 2013 does not result in a ‘statutory vesting’ of any property;

Considering certain observations of the HC, the Ministry of Corporate Affairs will again amend (*for third and final time, maybe*) the IEPF Rules, 2016 and incorporate necessary changes.

As directed by the HC, the MCA will simplify the procedure & documentation for reclaiming the shares from the Fund.

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