

# COPYRIGHT

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## Section 63 in the Copyright Act, 1957

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## MOST IMPORTANT QUESTIONS FOR CA INTER CORPORATE & OTHER LAWS

### CHAPTER 8 - DECLARATION AND PAYMENT OF DIVIDEND

Five Star	Four Star	3 Star
✓ Section 123 - Declaration of dividend	✓ Section 127 - Punishment for failure to distribute dividends	✓ Section 124- Unpaid dividend account

#### Important sections

- ✓ Section 123 - Declaration of dividend
- ✓ Section 127 - Punishment for failure to distribute dividends
- ✓ Section 124- Unpaid dividend account

#### Declaration of dividend

#### Question 1A

PET Ltd., incurred loss in business upto current quarter of financial year 2017-18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediately preceding three years. In spite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of PET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013

#### Answer

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 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 three financial years.

In the instant case, Interim dividend by PET Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e.  $(12+15+18)/3 = 45/3 = 15\%$ ]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable

#### Question 1B

Alex limited is facing loss in business during the financial year 2018-2019. In the immediately preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year atleast to be in par with the immediately preceding year. Is the act of the Board of Directors valid?

#### Answer

As per 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:

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 three financial years.

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates  $(7+11+12=30/3)$  at which dividend was declared by it during the immediately preceding three financial years.

Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y 2018-2019 is not valid.

### **Question 1C**

MNP Ltd. has a paid-up share capital of Rs. 10 crore and free reserves of Rs. 50 crore, as on 31st March, 2019. The company made a loss of Rs. 40 lakh after providing for depreciation for the year ended 31st March, 2019 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 20% on the equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 25%. Referring to the provisions of the Companies Act, 2013, examine the validity of declaration of dividend.

### **Answer**

As per Second Proviso to Section 123 (1), in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration shall be subject to the following conditions as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014.

(i) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

As per facts of the question the present rate of dividend is 20% and average dividend declared in the last three years is 25%. So, this condition is fulfilled.

(ii) The total amount to be drawn from free reserves shall not exceed one-tenth i.e., 10% of its paid-up share capital and free reserves as per the latest audited financial statement.

Amount of dividend proposed: Rs. 2 Crores (20% of Rs. 10 Crore i.e on paid up capital)

10% of paid up share capital and free reserves: 10% of (10 crore + 50 crore) = Rs. 6 Crore.

This condition is fulfilled as amount of dividend is not exceeding 10% of its paid-up share capital and free reserves.

(iii) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

(iv) After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

Balance of reserves after payment of dividend: Rs. 48 crore (50 crore – 2 crore) 15% of paid up share capital: 1.5 crore (15% of 10 crore)

This condition is fulfilled.

Taking into account all the conditions, it can be said that declaration of dividend by MNP Limited is valid.

### Question 1D

AB Limited is a public company having its registered office in Coimbatore. The company has incurred a net loss of Rs. 20 lakhs in the Financial Year (FY) 2019-20. The Board of Directors (BOD) wants to declare dividend for the FY 2019-20. The balances of the company as per the latest audited financial statements are as follows:

1. Equity Share Capital (Rs. 10 each) - 100 lakhs
2. General Reserve - 150 lakhs
3. Debenture redemption Reserve - 50 lakhs

The company has not declared any dividend in the preceding three financial years. Decide whether AB Limited is allowed to declare dividend or not for the FY 2019-20 by explaining the relevant provisions of the Companies Act in this regard.

If allowed to declare dividend then state the maximum amount of dividend that can be paid by AB Limited as per the Section 123 of Companies Act 2013.

### Answer

In the given case, AB Limited has not made adequate profits during the current year ending on 31st March, 2020, but it still wants to declare dividend. Therefore, Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 will be applied.

According to the said rule, the required conditions are:

**Condition I:** The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the three years immediately preceding that year. Since the company has not declared any dividend in the preceding three financial years, hence condition I is not applicable in this case.

**Condition II:** The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.  
Paid-up capital + Free reserves = Rs. (100+150) Lakhs (General reserves are free reserves) = Rs. 250 Lakhs  
10% thereof = Rs. 25 Lakhs

**Condition III:** The amount so drawn shall first be utilized 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.

The amount drawn as stated above = Rs.25 Lakhs

Less: loss for the financial year 2019-2020 = Rs. 20 Lakhs

Amount available = Rs. 5 Lakhs

Hence, the quantum of dividend is further restricted to Rs. 5 lakhs.

**Condition IV:** 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.

Accumulated Reserves Rs. 150 Lakhs

Proposed withdrawal declaration of dividend 5 Lakhs

Balance of Reserves Rs. 145 Lakhs

This is more than 15% of paid-up capital (i.e. 15% of Rs. 100 Lakhs) i.e. Rs. 15 lakhs.

Thus, the company can declare a dividend of Rs. 5 lakhs.

Hence, by following above provisions, AB Limited is allowed to declare dividend for the FY 2019-2020 and the maximum amount of dividend that can be paid is Rs. 5 Lakhs.

### **Question 1E**

Sun Light Limited was incorporated on 22nd January 2019 with the objects of providing software services. The Company adopted its first financial year as from 22nd January 2019 to 31st March 2020. The financial statement for the said period, after providing for depreciation in accordance with Schedule II of the Companies Act, 2013 revealed net profit. The Board of Directors declared 20% interim dividend at their meeting held on 7th July 2020, before holding its first Annual General Meeting. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder:

- (i) Whether the Company has complied due diligence in declaring interim dividend?
- (ii) Whether the Company can declare dividend in case it was registered under Section 8 of the Companies Act, 2013?
- (iii) What are the penal consequences in case of failure to pay the interim dividend?

### **Answer**

(i) 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 or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

In the instant case, Sun Light Limited has complied due diligence in declaring interim dividend as the Interim Dividend was declared by Board of Directors at their meeting held on 7th July, 2020 before holding its first Annual General Meeting. Also, the financial statement revealed net profit so the interim dividend can be paid out of profits of the financial year ending 31st March, 2020.

(ii) According to section 8 (1) of the Companies Act, 2013, a company having licence under Section 8 (Formation of companies with charitable objects, etc.) is prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed.

(iii) **Penal consequences:** 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 thirty 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 two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

### **Question 1F**

The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2017-2018. The same was approved in the Annual general body meeting held on 24th October 2018. The Directors declared the approved dividends.

Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2018, but he transferred the shares to Mr. Mohan, whose name has been registered on 18th June, 2018. Who will be entitled to the above dividend?

### **Answer**

Payment of dividend: According to section 123(5) of the Companies Act, 2013, dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. As said in the question, East West Limited proposed dividend for Financial Year 2017- 2018. Mr. Binoy was

the holder of 2000 equity shares on 31st March, 2018. He transferred the shares to Mr. Mohan, whose name was registered on 18th June 2018 in the register of members.

Since, Mr. Mohan became the registered shareholder before the declaration of dividend in the Annual General Meeting of the company held on 24th October, 2018 he will be entitled to the dividend.

**Question 1G**

- (i) The Board of Directors of Anand Ltd. 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) Whether a Company can declare dividend for the financial year in which it incurred loss.

**Answer**

- (i) 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 Anand 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. Hence, according to the above provision, declaration of dividend by the Anand Limited is not valid.

- (ii) As per Second Proviso to Section 123 (1) of the Companies Act, 2013, in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves.

However, such declaration of dividend shall be subject to the conditions as prescribed under Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

**Question 1H**

A company has accumulated Free Reserves of Rs.75 lakhs during last five years. It has not declared any dividend during these years. Now, the company proposes to appropriate a part of this amount for making payment of dividend for current year in which it has earned a profit of Rs. 12 lakhs. The Board proposes a payment of dividend of Rs.30 lakhs i.e. 30% on the paid up capital. Examine, as per the provisions of the Companies Act, 2013, whether, the proposal of the company is valid?

**Answer**

In the given question, the company is intending to declare dividend out of current year profits and past year's profits. As per provisions of Section 123 of the Companies Act, 2013, where in any year, there are no adequate profits for declaring dividend, the company may declare dividend out of the profits of any previous year transferred by it to the free reserves only in accordance with the procedure laid down in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

**Conditions of Rule 3:**

**Condition 1:** The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.

**Condition 2:** The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

**Condition 3:** 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.

### Calculations For Each Condition

**Condition 1:** This condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

Thus, condition 1 shall not be applicable on the company in question as it has not declared dividend in last 5 years.

**Condition 2:** As per the facts, the Board proposes a payment of dividend of Rs. 30 lakhs i.e., 30% on the paid-up capital.

So, the Paid-up Share Capital of the company = Rs. 100 Lakh Paid-up Capital + Free Reserves = 100 + 75 = Rs. 175 Lakh 10% thereof = Rs. 17.5 Lakh

Hence the dividend to be declared is to be restricted to Rs. 17.5 Lakh.

### Condition 3:

Here, Free Reserves = Rs. 75 Lakh

Proposed withdrawal for declaration of dividend Rs. 17.5 Lakh Balance of Reserves = Rs.75 Lakh- 17.5 Lakh = Rs. 57.5 Lakh

This (balance of reserve) is more than 15% of paid-up capital (i.e 15% of Rs. 100 Lakh) i.e. Rs. 15 Lakh.

Thus, the company can declare a dividend of Rs. 17.5 lakh i.e. at a rate of 17.5% on its paid-up capital of Rs. 100 lakh.

Hence, the proposal of company for payment of dividend of Rs. 30 lakh i.e. 30% on the paid up capital in the current year in which it has earned a profit of Rs. 12 lakh, is invalid.

### Question 11

ESPN Heavy Engineering Ltd. is a listed entity engaged in the business of providing engineering solutions to clients across the country. The company followed consistent growth over the years. Rate of Declaration of dividend in immediately preceding three financial years were 15%, 20%, and 25%.

Unfortunately, due to obsolescence of a special part of machinery, company incurred losses in current financial year.

Even though, during the financial year 2021-22, the company declared interim dividend of 10% on the equity shares.

The Board of Directors of the company approved the financial result for the financial year 2021-22 in its meeting held on 5th August, 2022, and recommended a final dividend of @15% in this board meeting. The general meeting of the shareholders was convened on 31st August, 2022. The shareholders of the company demanded that since interim dividend @10% was declared by the company, so the final dividend should not be less than 20%. It was also submitted that Rate of Declaration of dividend in immediately preceding three years were 15%, 20% and 25%, but the Company Secretary emphasised that final dividend cannot be increased.

(i) Whether company can declare interim dividend, if company incurred losses during the current financial year? What should be correct rate interim dividend?

(ii) Do you think decision of Company Secretary is correct? What should be correct rate of final dividend?

Justify your answer with reference to provisions of the Companies Act. 2013.

**Answer**

Interim dividend: As per 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.

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 three financial years.

Final dividend: The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board. [Clause 80 of Table F in Schedule I]

Accordingly, following shall be the answers:

(i) Interim dividend: According to the given facts, ESPN Heavy Engineering Ltd. incurred losses in current financial year 2021-2022. In the immediately preceding three financial years, the company declared dividend at the rate of 15%, 20% and 25% respectively. Accordingly, the rate of dividend declared shall not exceed 20%, the average of the rates  $(15+20+25=60/3)$  at which dividend was declared by it during the immediately preceding three financial years.

Yes, as per law company can declare interim dividend, even if company incurred losses during current financial year. Dividend to be declared shall be given at the rate not exceeding 20%.

(ii) Final dividend: Board of Directors of the Company recommended a final dividend @15% for financial year 2021-2022 in the meeting held on 5th August 2022. It was approved in the general meeting. However, shareholders demanded that since Interim dividend was at the rate of 10%, so final dividend should not be less than 20%. The general meeting cannot declare the dividend at a rate higher than the rate of dividend recommended by the Board.

Yes, the decision of Company Secretary that final dividend cannot be increased beyond the rate of 15% as recommended in the Board Meeting, is correct.

**Question 1J**

YZ Ltd is a manufacturing company & has proposed a dividend @ 10% for the year 2017-18 out of the current year profits. The company has earned a profit of Rs. 910 crores during 2017-18. YZ Ltd. does not intend to transfer any amount to the general reserves of the company out of current year profit. Is YZ Ltd. allowed to do so? Comment.

**Answer**

Transfer to reserves (Section 123 of the Companies Act, 2013): 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 at the discretion of the company.

As per the given facts, YZ Limited has earned a profit of Rs. 910 crores for the financial year 2017-18. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of current year profit.

As per the provisions stated above, the amount to be transferred to reserves out of profits for a financial year is at the discretion of the YZ Ltd. acting vide its Board of Directors.

## Punishment for failure to distribute dividends

### Question 2A

The Board of Directors of ABC Limited at its board meeting declared 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 diverted the amount of total dividend to be paid to shareholders for purchase of investments for the company. Due to this dividend was paid to shareholders after 45 days declaration.

Examining the provisions of the Companies Act, 2013, state whether the act of directors is in violation of the provisions of the Companies Act, 2013. Also explain what are the consequences of the above act of directors.

### Answer

According to section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, 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 to a special account to be opened by the company in any scheduled bank to be called the Unpaid Dividend Account.

Further, 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 entitled shareholder, every director of the company shall, if he is knowingly a party to the default, be liable for punishment.

The Board of Directors of ABC Limited at its meeting recommended a dividend on its paid-up equity share capital which was later on approved by the shareholders at the Annual General Meeting. In the meantime, the directors diverted the total dividend to be paid to the shareholders for purchase of investments in the name of the company. As a result, dividend was paid to shareholders after 45 days.

1. Since, declared dividend has not been paid within 30 days from the date of the declaration to any shareholder entitled to the payment of 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 to the Unpaid Dividend Account.

2. The Board of Directors of ABC Limited has violated section 127 of the Companies Act, 2013 as it failed to pay dividend to shareholders within 30 days due to its decision to divert the total dividend to be paid to shareholders for purchase of investments in the name of the company.

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

(a) Every director of the company shall, if he is knowingly a party to the default, be punishable with maximum imprisonment of two years and shall also be liable for minimum fine rupees one thousand 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.

### Question 2B

The Annual General Meeting of ABC Bakers Limited held on 30th May, 2022, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder, up to 25th July, 2022. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of

default. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranian would succeed? Also, state the directors' liability in this regard under the Act.

**Answer**

Section 127 of the Companies Act, 2013 lays down the penalty for non-payment of dividend within the prescribed time period of 30 days. According to this section 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 of dividend to any shareholder entitled to the payment of dividend:

- (1) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment maximum up to two years and with minimum fine of rupees one thousand for every day during which such default continues; and
- (2) the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.

In the given question, the company was unable to post dividend warrant within 30 days from the date of declaration of dividend. Thus, the directors will be liable as per the above provisions and the company is liable to pay simple interest. However, Mr. Ranjan will not succeed if he claims interest at 20% per annum interest as the limit prescribed under section 127 is 18% per annum

**Question 2C**

Karan was holding 5000 equity shares of Rs. 100 each of M/s. Future Ltd. A final call of Rs. 10 per share was not paid by Karan. M/s. Future Ltd. declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive.

**Answer**

As per the proviso to section 127 of the Companies Act, 2013, no offence will be said to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member from the dividend as is declared by a company.

Thus, as per the given facts, M/s Future Ltd. can adjust the sum of Rs. 50,000 unpaid call money against the declared dividend of 10%, i.e.  $5,00,000 \times 10/100 = 50,000$ . Hence, Karan's unpaid call money (Rs. 50,000) can be adjusted fully from the entitled dividend amount of Rs. 50,000/-.

**Question 2D**

PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

**Answer**

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 the shareholder.

In the instant case, PQ Ltd. has failed to communicate to the shareholder Mr. Kumar about non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

**Question 2E**

ASR Limited declared dividend at its Annual General Meeting held on 31-12-2020. The dividend warrant to Mr. A, a shareholder was posted on 22nd January, 2021. Due to postal delay Mr. A received the warrant on 5th February, 2021 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under the provisions of the Companies Act, 2013?

**Answer**

Section 127 of the Companies Act, 2013, requires that the declared dividend must be paid to the entitled shareholders within the prescribed time limit of thirty days from the date of declaration of dividend. In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time. Once posted, it is immaterial whether the same are received within thirty days by the shareholders or not.

In the given question, the dividend was declared on 31.12.2020 and the dividend warrant was posted within 30 days from date of declaration of dividend (posted on 22nd January 2021). It is immaterial if Mr. A has received it on 5th February 2021 (i.e., post 30 days from 31.12.2020). Hence, Mr. A cannot initiate action against the company for failure to distribute the dividend within 30 days of declaration.

**Question 2F**

The Director of Lion Limited proposed dividend at 12% on equity shares for the financial year 2019-20. The same was approved in the annual general meeting of the company held on 20th September, 2020. Mr. A, holding equity shares of face value of 10 lakhs has not paid an amount of 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

**Answer**

The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of Rs. 10 Lakhs and has not paid an amount of 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get Rs. 1.20 lakh towards dividend, out of which an amount of Rs. 1 lakh can be adjusted towards call money due on his shares. Rs. 20,000 can be paid to him in cash or by cheque or in any electronic mode.

According to the above-mentioned provision, company can adjust sum of 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

**Question 2G**

Star Computers Limited declared and paid dividend in time to all its equity holders for the financial year 2018-19, except in the following two cases:

(i) Mrs. Sheela Bhatt, 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 Bhatt about this discrepancy

(ii) Dividend amount of 50,000 was not paid to the successor of Late Mr. Mohan, in view of the 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.

**Answer**

(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 could not be complied with but the non-compliance was not communicated to him.

In the given situation, the company has failed to communicate to the shareholder Mrs. Sheela Bhatt 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 case, 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.

**Question 2H**

The dividend amounts received or receivable on equity shares held by Mr. Vaibhav for the financial year 2021-22 was as follows:

<b>Name of the Company</b>	<b>Dividend Declaration Date</b>	<b>Dividend Amount</b>	<b>Remarks</b>
Suvaas Limited	25.08.2022	800	Dividend was paid on 23.10.2022.
Bhandol Nidhi Limited	04.09.2022	100	Dividend was not paid within the stipulated time period

Also, Mr. Vaibhav holds 100 cumulative preference shares of face value Rs. 1,00,000, in aggregate, of Jipanti Limited on which dividend payable is at the rate of 8% p.a. However, during financial year 2021-22, Jipanti Limited did not earn any profits. In the context of aforesaid case-scenario, please answer to the following question(s):- (a) What could be the punishment to the company(ies) aforesaid in the table, with respect to delayed payment of dividend amounts)? (b) Whether Jipanti Ltd. is required to pay dividend on cumulative preference shares for financial year 2021-22?

**Answer**

(a) According to Section 127 of the Companies Act, 2013

In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, then the company shall be liable to pay simple interest at the rate of 18% p.a. during the period for which such default continues.

Further, section 127 dealing with punishment shall apply to the Nidhis, subject to the following modification: In case the dividend payable to a member is Rs.100 or less, it shall be sufficient compliance of the provisions of section 127, if the declaration of the 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 Nidhi company for at least 3 months.

(i) In case of Suvaas Limited

Dividend was declared on 25.08.2022 but was paid on 23.10.2022 to Mr. Vaibhav, its share-

holder.

The dividend declared should have been paid or dividend warrants should have been posted, to each of its share-holder, within 30 days of dividend declaration i.e. by 24.09.2022.

Accordingly, the interest payable by Suvaas Limited would be calculated as follows: Dividend Amount (7) Dividend Declaration Date Interest @ 18% to be calculated from 25.09.2022 to 23.10.2022 Interest (?) 800 25.08.2022  $800 \times 18\% \times 29/365$  11

Dividend Amount	Dividend Declaration Date	Interest @ 18% to be calculated from 25.09.2022 to 23.10.2022	Interest (Rs)
800	25.08.2022	$800 \times 18\% \times 29/365$	11

In case of Bhandol Nidhi Limited

Here, Bhandol Nidhi Limited is a Nidhi company and the dividend payable to Mr. Vaibhav was Rs. 100.

So, in such a case, it would have been sufficient compliance of the provisions of section 127, if the dividend declared was announced by the company in local language in one local newspaper of wide circulation and announcement of the said declaration was also displayed on the notice board of the company for at least 3 months i.e. till 04. 12.2022 (3 months from 04.09.2022).

Accordingly, if the aforesaid compliances have been made by Bhandol Nidhi Limited then no punishment could be imposed upon it, otherwise, it would be liable for punishment.

(b) A cumulative preference share is one in respect of which dividend gets accumulated and any arrears of such dividend arising due to insufficiency of profits during the current year is payable from the profits earned in the later years.

Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.

Here, it is given that during financial year 2021-22, Jipanti Limited did not earn any profits and accordingly, in such case the company may accumulate such dividend for financial year 2021-22 to be carried forward to following financial years and such arrears of dividend would be payable from the following financial years) profits.

### Unpaid dividend account

#### Question 3A

RST Ltd. declared dividend at the rate of 20% for the financial year 2017-2018 in the AGM scheduled on 15th June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2 years in the UDA, some of the entitled shareholders made liable RST Ltd. for noncompliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders. State in the light of the given facts, whether the allegation marked by shareholders and claim for the divided amount, against RST Ltd. is justifiable?

#### Answer

As per section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, 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/unclaimed to the Unpaid Dividend Account.

The company shall, within a period of 90 days of making any transfer of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of section 124 of the Companies Act, 2013. Any person claiming to be entitled to any money transferred under section 124(1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. Since RST Ltd. failed to comply with the requirements of this section as to the preparing of a statement of unpaid dividend, so such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

**Question 3B**

Mr. R, holder of 1000 equity shares of ` 10 each of AB Ltd. approached the Company in the last week of September 2019 with a claim for the payment of dividend of Rs. 2000 declared @ 20% by the Company at its Annual General Meeting held on 31.08.2011 with respect to the financial year 2010-11. The Company refused to accept the request of R and informed him that his shares on which dividend has not been claimed till date, have also been transferred to the Investor Education and Protection Fund.

Examine, in the light of the provisions of the Companies Act, 2013, the validity of the decision of the Company and suggest the remedy, if available, to him for obtaining the unclaimed amount of dividend and re-transfer of corresponding shares in his name.

**Answer**

According to section 124 of the Companies Act, 2013:

(1) Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account - Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the total amount of unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account (UDA). The UDA shall be opened by the company in any scheduled bank.

(2) Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF) - Any money transferred to the Unpaid Dividend Account which remains unpaid or unclaimed for a period of seven (7) years from the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.

(3) Transfer of Shares to IEPF- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.

(4) Right of Owner of 'transferred shares' to Reclaim - Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

As per the provisions of sub-section (3) of section 125 of the Companies Act, 2013, read with rule

7 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, any person, whose unclaimed dividends have been transferred to the Fund, may apply for refund, to the Authority, by submitting an online application.

In the given question, Mr. R did not claim the payment of dividend on his shares for a period of more than 7 years (i.e. expiry of 30 days from 31.08.2011 to last week of September 2019). As a result, his unclaimed dividend (₹ 2,000) along with such shares (1,000 equity shares) must have been transferred to Investor Education and Protection Fund Account. Therefore, the company is justified in refusing to accept the request of Mr. R for the payment of dividend of ₹ 2,000 (declared in Annual General Meeting on 31.8.2011).

In terms of the above stated provisions, Mr. R should be advised as under:

- (i) If Mr. R wants to reclaim the transferred shares, he should apply to IEPF authorities along with the necessary documents in accordance with the prescribed procedure.
- (ii) He is also entitled to get refund of the dividend amount, which was transferred to the above fund; in accordance with the prescribed rules.

CS LLM ARJUN CHHABRA