Declaration and Payment of Dividends

Subject – 1.2.5. Law of Investment and Foreign Exchange
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Dr. Poosarla Bayola Kiran

Rights of the Shareholder

- "…Normally the shareholders' rights fall under three heads
  - Dividends;
  - Return of Capital and Participation in surplus assets on a winding up; and
  - Attendance at Meetings and Voting.

  Unless there is some indication to the contrary, all the shares will confer the like rights…."

  -Gower, Principles of Company Law, para 23-4

Dividend - Meaning

- Section 2 (35) – includes Interim Dividend.
- Dividend is a return on the investment made in the share capital of a company, as distinct from the return on borrowed capital, which is in the form of interest.
- "Dividend" means a distribution of any sums to Members out of profits and wherever permitted out of free reserves available for the purpose. - *SS 3*
- Corporate earnings and profits not retained in the business?!

Why?

- Almost all commercial enterprises are undertaken with a view of making profits for their members.
- **Profits of a company when distributed among its members are called ‘dividends’.**
- Actions → Results/Consequences
- Can a company under Section 8 of the Companies Act, 2013 give a dividend?
- Business Adventure → Returns
- Risk and Reward

Profit not Capital

- **Profits of a company when distributed among its members are called ‘dividends’.**
- Dividends must never be paid out of Capital.
  - Payment from Capital is a Breach of Trust.
  - Creditor has no debtor except the legal fiction called Company.
  - The Credit is given to that Capital.
  - Further, credit is given on the representation that the capital shall be applied only for the purposes of the business.
- Shall be paid only out of Profits.
- Meaning of Profit and how to construe it is significant.

What is Profit?

- Profit is the difference between the revenues and the expenses for given period.
- Generally increase in the net value of the asset of a business over their net value at the commencement of a given period.
- Concept of Divisible Profits.
  - Principles of Accounting
  - MoA and AoA
  - Companies Act, 2013
  - Judicial Decisions

Profit available for Dividend - How to determine?

- "As dividend can only be out of surplus earnings, there must be an exact method of determining whether surplus earnings for that purpose actually exist."
- The law provides no guidance.
  - "Dividends are to be Paid"
  - But nothing on "How profits are to reckoned?"
- Can court formulate rules in this regard?
  - Generally courts think it is undesirable to do what the law maker abstained from doing.
- Depends on the circumstances.

Dividend Fund - From Where?

- Section 123
  - Current Profits
    - Depreciation – Schedule II of the Act
  - Past reserves created out of profits or credit balance in the profit and loss brought forward
    - A company is empowered to transfer such percentage of profits for the year as it may consider appropriate to the reserves of the company.
  - Out of money provided by the Govt. for the purpose.
- What about Appreciation of Assets?
- Dividend declared shall be deposited in a separate bank account.

Declaration of Dividend and Concept of Interim Dividend

- Generally AoA have provisions on the declaration.
- It should be shown as ordinary business in the agenda of the AGM.
- Once declared the dividend becomes a statutory debt from company to its shareholders.
- A part of the profits may be distributed before the accounts are finally passed and the declaration of dividend is sanctioned at the AGM. – Hence Interim.

Payment of Dividend

- Section 123 (5) – To registered shareholders.
- Payment in cash.
  - Cheque, Warrant or in electronic form.
- Can bonus shares be issued?
  - Generally, there is no prohibition of capitalization of profits or reserves.
  - Procedure laid down to be followed.
- Section 124 – 30 days time frame.
- Penalty for default

Unpaid and Unclaimed Dividends

- Declared and not Paid
- Declared and not Claimed
- 30 days from the Date of Declaration.
- Unpaid Dividend Account
- 7 Days after the expiry
- Make a list in 90 days
- 12% interest
- Investor Education and Protection Fund (Section 127)

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