

DG-WEBSERIES

DIVIDEND – PAST EXAMINATION – QUESTION-ANSWER

1. Write note on - Punishment for failure to distribute dividend and exceptions

June 2016

4 marks

Ans:

As per **Section 127** of the Companies Act, 2013, when 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:

Following are the exceptions to the abovementioned punishment: —

- (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.

MAKE MY CAREER

Right / wrong

2. Board of directors of KM Ltd. proposes to transfer 11.3% of the net profits of the company for the financial year 2015-16 to general reserves. Examining the provisions of the Companies Act, 2013, advise the Board whether it can go ahead with its proposal.

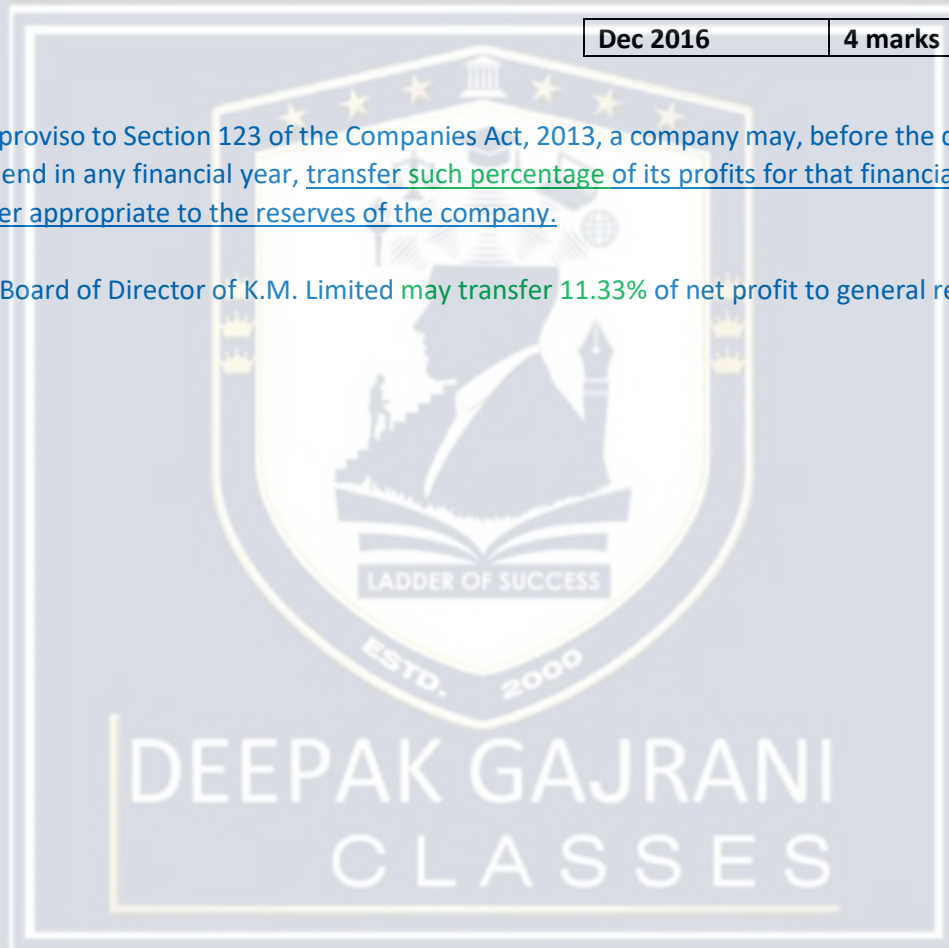
Dec 2016

4 marks

Ans:

As per first proviso to 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.

Hence, the Board of Director of K.M. Limited may transfer 11.33% of net profit to general reserve



MAKE MY CAREER

(IEPF) ✓

(Allowed/Not Allowed) ✓

91
7

3. Rise Ltd., a company with diversified interests, has constituted Investor Education and Protection Fund as required under the provisions of the Companies Act, 2013. The company has so far not deposited any amount to the fund. The President (Finance) has asked you, the Company Secretary, to submit a note on amounts payable to the credit of the fund and the period within which amount shall be paid. Prepare the said note.

Dec 2016

4 marks

Ans -

① NOTE ON INVESTOR EDUCATION AND PROTECTION FUND (IEPF)

② Kind attention: President (Finance)

③ Dear Sir,

✓ Sub: Details on amount payable to Investor Education & Protection Fund constituted ✓

As per Section 125(1) of the Companies Act, 2013, the Central Government shall establish a Fund to be called the Investor Education and Protection Fund (Fund), AND not the company.

According to Section 125(2) of the Companies Act, 2013 the following amounts shall be credited to the Fund established by the Government by the company:

- (a) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;
- (b) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
- (c) the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub-section (5) of section 124;
- (d) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 and remaining unpaid or unclaimed on the commencement of this Act;
- (e) the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;
- (f) the interest or other income received out of investments made from the Fund;
- (g) the amount received under sub-section (4) of section 38;
- (h) the application money received by companies for allotment of any securities and due for refund;
- (i) matured deposits with companies other than banking companies;
- (j) matured debentures with companies;
- (k) interest accrued on the amounts referred to in clauses (h) to (j);
- (l) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
- (m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
- (n) such other amount as may be prescribed:

RAMA IYA

Foster Vs New Trinidad & Co

Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

- This is for your information and record please.
- Best Regards / Sincere Regards.

Company Secretary

4. Board of Directors of AVB Limited wants to declare dividend Rs. 15 lakh out of capital profits for the year ended 31st March, 2017, without making a provisions for depreciation. Referring to the provisions of the Companies Act, 2013, you being the Secretary of the Company advise the board whether it can go ahead with its proposal?

June 2017 4 marks

Ans:

As per Section 123(1) of the Companies Act, 2013, a company can declare and pay dividend out of 3 sources:

1. Current year profits (i.e. profit after tax and statutory reserves.)
2. The accumulated profits of the preceding Financial Years. [i.e. from P&L (Cr.)] – [Not from general reserves or free reserves].
3. The funds provided by C.G. / S.G. for payment of dividend pursuant to any guarantee given by the C.G. / S.G. to the company

Current year profits means the revenue profits earned from the business activity, and does not include the capital profits earned from sale of capital assets etc.

Further, Section 123(2) provides that the company shall make provisions for depreciation before declaring any dividend out of current year profits in accordance with the provisions of Schedule II.

Hence, in the present case, AVB Limited can neither declare dividend out of Capital Profits nor it can declare dividend without making provision for depreciation.

Q

Court

Cap. Assets Cost = 100 Cr
Sale price = 150 Cr
Cap. Profit = 50 Cr

NOT Allowed

Dividend - allowed (if AOA authorise Co-)

Court = If Co. fulfills (3) re-conditions Co --

Result (1) 2

Conclusion (2)

(3) However, in FOSTER case

Court held
↓
Company Law doesn't expressly prohibit the pay of Dividend out of CAPITAL PROFIT.

MAKE MY CAREER

Co. Law
is equally applicable
Interim dividend
Final Dividend

?
yes
No

Q

5. The Board of Directors of American Express Ltd. declared interim dividend third time during the financial year 2015-16. After declaration, the Board of Directors decided to revoke third interim dividend as they noticed that company's financial position did not permit payment of such interim dividend. The Board of Directors seek your advice in this matter. Please advise the Board as a Company Secretary. Will your advice be different in case it was a regular dividend instead of interim dividend?

FINAL DIVIDEND (b)

Dec 2017	4 marks
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Ans:

As per definition of 'Dividend' under Section 2(35) of the Act, "dividend" includes any interim dividend

Further, **Section 123(4)**, provides that, the amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend

The Act doesn't provide anything for revocation of declared dividend and the dividend once declared, becomes debt for a Company and a shareholder is entitled to sue for recovery of the same after expiry of the 30 days from the declaration as mentioned under Section 127.

Therefore, the interim dividend once declared cannot be revoked except with the consent of the shareholders.

Based on aforesaid facts, Board of directors of American Express Limited cannot revoke the interim dividend and should pay the same.

LITERAL INTERPRETATION
AS SEC 123, 127, 124.

MY OPINION

No, Regular dividend also cannot be revoked even by the shareholders. It's a statutory debt against the company once it is declared.

MAKE MY CAREER

6. The Board of Directors of Peculiar Ltd. **proposes to recommend a final dividend of Rs 25 each to all the equity shareholders of the company.** The company seeks your opinion on the following:

- (1) The company wants to deposit the dividend amount to **co-operative bank.** **No**
- (2) The company is **a defaulter in the repayment of deposits** and **proposes to repay its all deposit after the payment of dividend within 10 days.** **No** *Cap Arbit*
- (3) Dividend will be declared out of the **capital reserves** of the company. **As per sec 123(1),** **No**
- (4) The company wants to pay such dividend **through the cash counter** by way of **cash voucher.** **No** *But FOSTER CASE*

June 2018

4 marks

Ans:

- (1) As per Section 123(4) of the Companies Act, 2013, the amount of the dividend, including interim dividend, shall be deposited in a **scheduled bank** in a separate account within five days from the date of declaration of such dividend

Hence, the Company has to ensure that such co-operative bank should be a scheduled bank, then it can deposit dividend in such co-operative bank

- (2) As per Section 123(6) of the Companies Act, 2013, a company which fails to comply with the provisions of sections 73 and 74 [repayment of deposits] shall not, **so long as such failure continues**, declare any dividend on its equity shares

Therefore, the Company can declare dividend AFTER repayment of deposits and make the default good. Dividend can't be declared as long as company is in default of repayment of deposits.

- (3) As per third proviso to Section 123(1) of the Act, no dividend shall be declared or paid by a company from its reserves other than free reserves.

Further, as per Section 2(43), Free reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend: Provided that—

- (a) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- (b) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,

shall not be treated as free reserves;

Therefore, dividend cannot be declared out of the capital reserves of the company.

- (4) As per Section 123(5) of the Act, dividend shall not 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.**

Therefore, proposal of the Company to pay dividend through the cash counter by way of cash voucher is **strictly prohibited.**

- Q-7. X is a shareholder of Company A. At the AGM held on 27th Sep. 2018 Company A declared a Dividend of Rs 20 per equity share. X wrote to the company saying that he does not want to take the dividend and advised the company not to send the dividend amount. Comment whether the waiver of dividend by X is tenable under the provisions of the Companies Act, 2013?

Yes/No

Dec 2018 OS

5 marks

Ans:

The receipt of dividend is a right of shareholder and not an obligation. The Companies Act, 2013 is silent regarding provisions relating to waiver of dividend by a shareholder. Hence, such provisions may be contained in the articles of the company.

The Articles of Association of the company must contain a clause in regard to this where the shareholder has the right to waive the right to receive dividend, either final or interim, to which it is entitled, on some or all the shares held in the company.

However, it is pertinent to analyse the time period, as to when can a shareholder exercise his right to waive dividend in case of final or interim dividends.

In the case of interim dividend, right to claim dividend will only arise once it has been declared by the board of directors of the company.

Normally the directors have authority to pay an interim dividend without reference to the shareholders. If the directors resolve to pay an interim dividend, that resolution gives no rights to the shareholders.

An interim dividend is of no effect until the money is actually paid to the shareholders.

Hence, shareholders of the company can waive their right to receive interim dividend once the same is declared by the company.

In case of final dividend, board of directors recommend the payment of dividend after complying with the statutory provisions, and the same is then approved by the shareholders of the company at the AGM. Hence, shareholders of the company can waive their right to receive dividend once the same is proposed by the board of directors of the company but before it is declared.

The difference between the two waivers exercised at different point of time is because, in case of unclaimed interim dividend, which has been declared, creates no debt or liability upon the company but such is not the case when it comes to declared unclaimed final dividend.

The dividend waiver must be formally executed and signed by all the shareholders who wish to waive their share of dividend and waiver provisions should have mention in the Articles of Association of the company for shareholders who want to waive the right to receive dividends in respect of any financial year as mentioned above.

8. Distinguish between the following:

Unpaid Dividend Account Vs. Consequences of Non-Transfer of Dividend to unpaid dividend account.

Dec 2018 OS

4 marks

Ans:

Unpaid Dividend Account

As per Section 124(1) of the Companies Act, 2013, when a dividend has been declared by a company but has **not been paid or claimed** within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, **transfer the total amount of dividend which remains unpaid or unclaimed to a special account** to be opened by the company in that behalf in any scheduled bank to be called the **Unpaid Dividend Account**.

Consequences of Non-Transfer of Dividend to unpaid dividend account

As per Section 124(3) of the Act, if any default is made in transferring the total amount referred to in Section 124(1) or any part thereof to the Unpaid Dividend Account of the company, it 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 twelve 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.

MAKE MY CAREER

5000 members ✓
 4954 Dividend ✓
 46 members (X)

9. A company declared dividend on 21st November, 2018. It reports on 22nd December, 2018 that it **could not pay dividend to 46 members as they are not traceable for last three years.** Advise the company with regard to **unpaid dividend** under the provisions of the Companies Act, 2013.

Clause (c) proviso of 127 (No fault of Co.)

IEPF ?

Dec 2018 NS	3 marks
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Ans:

In accordance with Section 124(1) of the Companies Act, 2013, when a dividend has been declared by a company but has **not been paid or claimed** within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the **Unpaid Dividend Account**.

In the present case, dividend was declared on 21st November, 2018 and at the expiry of 30 days i.e. on 22nd November, 2018, dividend remained unpaid to 46 shareholders as they are not traceable.

The Company shall deposit the total amount of unpaid dividend to a special account opened in any scheduled bank to be called the "unpaid dividend account" **within 7 days from 21st December, 2018 i.e. by 28th December, 2018.**

Further, as per Section 124(5) of the Act, any money transferred to the Unpaid Dividend Account of a company, which remains unpaid or unclaimed **for a period of seven years from the date of such transfer** shall be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund.

IEPF

MAKE MY CAREER

Calculation

Qⁿ

10. Referring to the provisions of Companies Act, 2013 advise a public company which declared dividend on 30th September, 2018 as to the procedures to be followed in this regard for payment of dividend. Whether any intervening holidays in the month of October 2018 shall be taken into account in calculating the time limit?

+ 30 days
see 127
(+ 5 Days) =

June 2019 NS 3 marks

Ans:

In the present case, following shall be the procedure for payment of dividend:

Date of Decln
30 Sep 2018

S. No.	Provision of the Companies Act	Timeline
Date of declaration of Dividend – September 30, 2018		
1	As per Section 123(4), the amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account <u>within five days from the date of declaration of such dividend</u>	By <u>5th October, 2018</u>
2	As per Section 124(1), the Company shall despatch dividend within 30 days of declaration.	By <u>30th October, 2018</u>
3	As per Section 124(1), if any amount of dividend, which is still unpaid or unclaimed, the company shall, within seven days from the date of expiry of the said period of thirty days , transfer the total amount of unpaid/unclaimed dividend to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account .	By <u>6th November, 2018</u>
4	Any money transferred to the Unpaid Dividend Account of a company, which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued to IEPF	<u>6th Nov 2025 + 30 days extra given by MCA circular</u>

+ 30 days =
+ 5 days
+ 7 days =
Extra = 30 days MCA =

MAKE MY CAREER

11. (i) Draft specimen of a board resolution recommending payment of dividend on equity shares out of current profits of JAK Ltd., a company which is in existence for more than ten years. Assume facts and figures.

(ii) The Board of Directors of Prince Ltd. passed a resolution at its 50th meeting for recommending declaration of dividend out of reserves. Prepare specimen extracts of minutes containing the board resolution. Assume facts and figures.

Dec 2019 OS	8 marks
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Ans:

(i) **DRAFT BOARD RESOLUTION FOR PROPOSING THE PAYMENT OF DIVIDEND**

"RESOLVED THAT pursuant to Section 123 of the Companies Act, 2013 read with the Companies (Declaration and Payment of Dividend) Rules, 2014 and subject to approval of the members at the Annual General Meeting, the Directors of the Company do and hereby recommend a dividend at the rate of Rs. _____ per share out of the current profits of the year on _____ Equity shares to those shareholders whose names stand in the register of members as on _____.

RESOLVED FURTHER THAT Mr. _____, Managing Director, Mr. _____ Director (Finance) or Mr. _____, Company Secretary be and are hereby authorized severally to deposit the dividend amount within 5 days from the date of declaration to a separate bank account opened for that purpose and to comply with any other legal requirement in this regard including taking all necessary steps to ensure remittance of the dividend amount to the shareholders."

(ii) **SPECIMEN EXTRACTS OF MINUTES CONTAINING THE BOARD RESOLUTION FOR RECOMMENDING DIVIDEND OUT OF RESERVES**

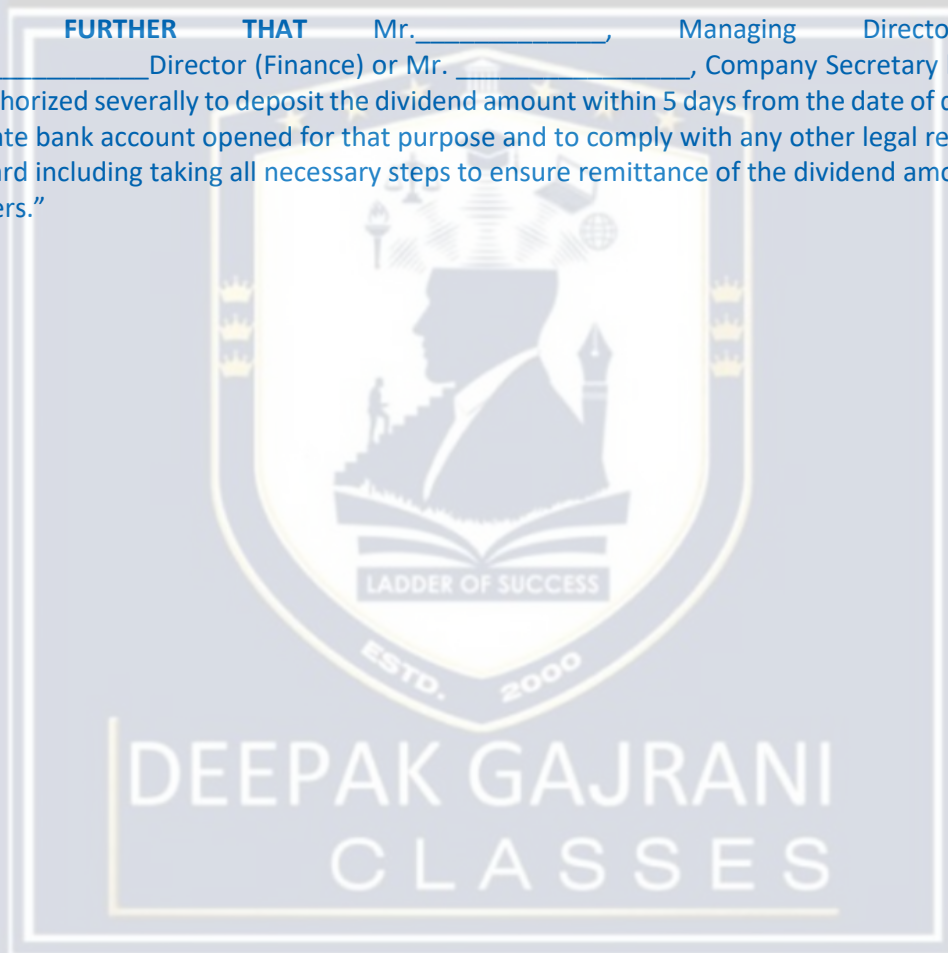
The Chairman informed the Board that the profits of the current year, i.e. the financial year ended on the 31st March, 2020 are inadequate for payment of a reasonable amount of dividend to the members of the company.

He further informed that the free reserves of the company do, however, permit the distribution of dividend not exceeding the average of the rates at which dividend was declared by it in the three years immediately preceding that year.

The directors considered the matter and passed the following resolution:

“**RESOLVED THAT** the Board of directors of the company do hereby recommend to the members of the company, the declaration and payment of a dividend at the rate of _____ per cent on all the fully paid equity shares of the company out of the free reserves of the company that stood in the books of the company on..... 2020 absorbing a total of....., with due compliance of the Companies (Declaration and Payment of Dividend) Rules, 2014, and that, subject to the declaration by the members at the forthcoming annual general meeting, to the holders of the equity shares whose names will appear on the register of members on2020

RESOLVED FURTHER THAT Mr. _____, Managing Director, Mr. _____ Director (Finance) or Mr. _____, Company Secretary be and are hereby authorized severally to deposit the dividend amount within 5 days from the date of declaration to a separate bank account opened for that purpose and to comply with any other legal requirement in this regard including taking all necessary steps to ensure remittance of the dividend amount to the shareholders.”



MAKE MY CAREER

12. While adopting accounts for the year, the Board of directors of Prima Ltd. decided to consider the interim dividend @ 12% as final dividend and did not consider transfer of profit to reserves. Explain whether decisions of the Board were justified referring to relevant provisions.

Dec 2019 NS 3 marks

Ans:

As per definition of 'Dividend' under Section 2(35) of the Act, "dividend" includes any interim dividend. Section 123 of the Companies Act, 2013 provides for the provisions relating to declaration of dividends.

Since interim dividend is also a dividend, companies shall provide for depreciation under section 123 of the Companies Act, 2013 before declaration of interim dividend.

However, the first proviso to the section 123(1) of the Companies Act, 2013 provides that a company **MAY**, before declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it considers appropriate to the reserves of the company irrespective of the size of declared dividend i.e. **company is not mandatorily required to transfer the profit to reserves**, and it is only an option made available to the company to transfer such percentage of profit to reserves.

In the instant case, the Board has decided to pay interim dividend @12% of the paid up capital. Assuming the company has complied with the depreciation requirement and other applicable provisions, the interim or final dividend can be declared without transferring such percentage of its profits as it may consider appropriate to the reserve of the company.

Thus, from the facts and provisions, it may be concluded that Prima Ltd is under no violation of law by not transferring i.e. the company is free to transfer any amount of its profit to the reserves, without any compulsion or restriction before declaration of any dividend.

Section 123(3) of the Companies Act, 2013 provides that 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.

The amount of dividend including interim dividend should be deposited in a separate bank account within five days from declaration of such dividend for compliance of section 123(4) of the Companies Act, 2013.

- [① MEMBERSHIP ✓
- [② Incorporation (+) related matters ✓
- [③ Winding up (Sat) (Type of Co) ✓
- (Sundary) [④ BOARD OF DIRECTORS ✓

OPTIONAL

①

yes allowed

②

Basics (prelim) PROSPECTUS

Motors Deposits

Dividend oppression Misg