

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 05.12.2017

+ **W.P.(C) 10589/2017, C.M. APPL. 43341/2017, 43342/2017 & 43343/2017**

INDIA AWAKE FOR TRANSPARENCY Petitioner

Through: Sh. R. Subramanian, Advocate.

versus

**UNION OF INDIA REP. BY SECRETARY, MINISTRY OF
CORPORATE AFFAIRS AND ANR.** Respondents

Through: Sh. Sanjay Jain, ASG with Sh. Dev. P. Bhardwaj, CGSC with Ms. Sneh Suman, Sh. Kartik Rai, Advocates.

Sh. Rakesh Tyagi, Director, Ministry of Corporate Affairs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

MR. JUSTICE S. RAVINDRA BHAT

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1. The petitioner claims that it has approached this Court, under Article 226 of the Constitution in public interest. It describes itself as a non-profit company, *“primarily focused on working in areas of governance and efficient resource management, whether in the public or private sphere.”* It seeks directions for strict enforcement of the *Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016* [“the 2016 Rules”] by every company transferring shares to the second respondent (the Investor Education and Protection Fund, hereafter described

as “the Fund”) and ensure that officials transferring the shares are made responsible for due certification of compliance with the Rules.

2. Referring to Section 205A of the (repealed) Companies Act, 1956, it is submitted that previously, where companies were dealing with eventualities whereby unpaid dividends accrued with them, that provision compelled them (the companies) to designate a specific account as “Unpaid Dividend Account” (UDA) and transfer such monies into it. The UDA marked such amounts as separate and not belonging to or available with, such companies. The Act also provided for transfer of funds from UDA to the Fund if no payout were made for seven years.

3. It is submitted that the Companies Act, 2013 (hereafter “the 2013 Act”) not only retains the feature with respect to transfer of amounts from the UDA of all companies to the Fund, but goes further, in that shares that yield dividends, which remain unpaid for over seven (7) years, would be transferred to the Fund, by virtue of operation of Section 124 (6). It is urged that this radical change would mean that if for some reason shareholders are unable to en-cash their dividends for seven years, they would face asset deprivation. Terming shares as valuable property, the petitioner states that such radical change has to be carefully introduced and not in a tardy manner. It is submitted that the share transfer mandated by Section 124 (6) is not limited to those holding physical scrips, but to all dematerialized (“demat” for short) shares. In the case of the latter, the demat accounts would be automatically debited or altered and the shareholding would be automatically depleted.

4. The magnitude and enormity of the consequence of Section 124 (6) is sought to be highlighted by a few examples; the petitioner submits that the

extent of shareholding transferred by operation of law varies from its impact to as much as 3384 shareholders' holding (in Axis Bank) to 10519 shareholders in ACC Cement Ltd. In both cases- as well as other cases, cited in the petition, the shareowners did not encash the dividends for last seven years. The petition describes the scheme of the Rules, framed on 05.07.2016 and submits that they devised an impractical procedure, which the authorities realized and therefore, amended the Rules on 28.02.2017 ("first amendment") and later, on 13.10.2017 ("second amendment").

5. The petitioner then describes the Rules. It is submitted that Rule 3 describes what comprises the "Fund" and provides details as to which of the amounts are to be credited to the Fund. This *inter alia* also includes accounts to be remitted as prescribed under Section 125(2) of the Act. These amounts are to be transferred within a period of thirty days of becoming due to the Fund. It is stated that every company has to, within ninety days of holding its Annual General Meeting (AGM) or the date on which it should have been and every year thereafter, till the completion of seven years' period, identify the unclaimed amounts, *as on the date of the AGM* and separately furnish and upload on its own website and also on the website of the IEPF Authority or any other website as may be specified by the Government, a statement or information through the relevant Forms.

6. Rule 6 provides the procedure to be followed by companies to ensure the transfer of amount to the Fund. It lists the duties of the Company Secretary of each company. According to Rule 6, no shares can be transferred unless notice in that regard is given, or is deemed to be provided, three months in advance, to the shareholders in the following manner:

- Informing at the latest available address, the shareholder concerned regarding transfer of shares three months before the due date of transfer of shares;
- Publishing a notice in the leading newspaper in English and regional language having wide circulation; and
- Furnishing details of such shareholders and shares due for transfer on the company's website giving details.

7. Rule 6 also establishes a detailed procedure for transferring physical shares as well as where the shares are dealt with in a depository. It is also urged that an important aspect from the shareholder's point of view is that her or his voting rights on shares transferred to the Fund remains frozen until the rightful owner claims the shares.

8. The petitioner states, and in the course of hearing, learned counsel, Sh. R. Subramanian, submitted that the validity of Section 124(6) of the Companies Act, 2013 is not being questioned; yet, what is of concern is that the lack of clarity in the Rules and amendments by the Circulars issued by the Central Government, have resulted in confusion. It is submitted that according to the operation of the Rules, vesting occurs, as a certain event – and had in fact occurred, on 31.05.2017. This was on the basis of the first amendment which fixed that as the date. Yet, by the notice of 27.04.2017, it was notified that National Securities Depository Limited (NSDL) which had to hold the special demat account on behalf of the Fund, was to prescribe the necessary forms and operational procedures for transfer of shares by 30.04.2017 and 15.05.2017 respectively. Sh. Subramanian, learned counsel argues that the imperative of Rule 6(3) to inform the shareholder concerned

with respect of transfer of shares three months before the due date of transfer and follow the procedure prescribed, was overlooked. This, it was argued, was because of the condition and amendment of provisos to Rule 6, which stated that if a shareholder had encashed any dividend warrant, such shares would not be transferred to the Fund even though some share warrants have not been encashed and that the second proviso provided that after the seven-year period was completed between 07.09.2016 to 31.05.2017, the date of transfer of such shares would be deemed to be 31.05.2017.

9. It was argued that these amendments enabled the shareholder to approach the company with appropriate requests to reclaim their shares; the public purpose was to notify such shareholders in the manner prescribed by the Rules. It is argued that the date of vesting was further changed to 31.10.2017 by the second amendment which by Rule 6(1) extends the period of vesting from 07.09.2016 to 31.05.2017, to a later date, i.e. 31.10.2017. The further change made was by way of substitution of clause (d) with a new Rule 6(3)(d), which mainly concerned itself with procedure. It is mainly argued that there is complete lack of clarity with respect to the three month period to be given to shareholders for the purpose of applying to claim their shares from the respective companies before vesting. It is submitted that unless there is a mandate to the companies with appropriate consequence, the effect of 2013 Act and the Rules is that the shareholders would be deprived of their valuable property without any intimation or notice. It is argued that various companies are flagrantly violating the Act and the Rules – either in ignorance or deliberately, and indicating that the vesting of shares would take place on 30.11.2017. Such notices are provided by publication in the website or notice in the public domain as late as in October barely giving the

three-months mandated period. In this regard, the petition cites that its volunteers completed a sample survey to study compliance with the Rules, of 25 randomly chosen companies and that only four had set out details mandated or prescribed under the Act and Rules and that most of the other companies, instead of displaying the names and folio numbers on their websites, have obliged the shareholders to enter their names and folio numbers to check if their shares were transferred, wholly in violation of the Rules. It is urged that all these resulted in a hopeless situation for shareholders who, upon subsequent transfer of their shares, would be confronted with a herculean task of reclaiming them.

10. On the first date of hearing when the petition was listed, after it was received on transfer from the bench of Hon'ble the Acting Chief Justice, who did not wish to hear the matter, the Central Government was represented by the Additional Solicitor General (ASG) on advance notice.

11. With consent of learned counsel, the matter was listed on the next date, i.e. 30.11.2017 when some submissions were made and the petition was listed for orders for 05.12.2017. The respondents urged that the petition is misconceived. Learned ASG relies upon a clarification as to the date of transfer of shares issued by the Union Ministry of Corporate Affairs on 29.05.2017. The clarification reads as follows:

“Subject: Clarification regarding due date of transfer of shares to IEPF Authority

Sir/Madam,

Pursuant to second proviso to Rule 6 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017 notified on February 28, 2017,

where the seven year period provided under sub-section (5) of Section 124 is completed during September 7, 2016 to May 31, 2017, the due date for transfer of such shares by companies is May 31, 2017.

2. The modalities for transfer/transmittal of shares from companies accounts to the demat account of the IEPF Authority are being finalized with the depositories. IEPF Authority is considering to open special Demat Account and till opening of demat accounts, the due date for transfer of shares stands extended. In view of this, a revised due date for transfer/transmittal of shares shall be notified soon.

3. Companies, are advised to complete all formalities, as laid down in the aforesaid Rules without waiting for the fresh dates. Companies which have already published notice in newspaper and send notices to the shareholders, need not give the fresh notices again due to this extension.

4. This issues with the approval of the Competent Authority.”

12. It is urged that the scheme of the Rules is such that by Rule 5(8), every company within 90 days after holding of each Annual General Meeting (AGM) has to identify and claim the amounts referred to in Section 125(2) separately; the same has to be furnished and uploaded on its website and also on the website of the Fund or any other website specified by the Central Government. For the purposes of transfer originally, Rule 6(3) prescribed that companies were to inform at the latest available address, all shareholders concerned with respect to transfer of shares three months before the date of transfer and also publish notices in the leading newspapers as well as provide such information on their website. Realizing that it was difficult for companies to comply with the Rules immediately, the first amendment was

made on 28.02.2017. This also provided relief to a class of shareholders who might have in one go or more than one year have encashed dividend warrants within such seven years, such that their shares were not to be transferred. The second proviso to Rule 6(1) postponed the date of transfer to 31.03.2017. The second amendment extended the date of transfer to 31.10.2017 and further stated that the transfer of shares by the companies would be only transmission of shares. It was argued that the provisions of the Act are adequate with respect to deviancy in that Section 124(7) provides that if companies fail to comply with the requirements of the Section, they would be punishable with fine that would be not less than ₹5 lakhs but which may extend to ₹25 lakhs and every officer in default is punishable with fine that is not less than ₹1 lakh but extendable upto ₹5 lakhs. It is stated by ASG that in the event the Central Government notices any difficulty in the implementation of Section 124(6) or the Rules, it would step in and take suitable remedial action.

13. As is evident from the discussion, this petition is concerned with the transfer of shares to the Fund collected by the Companies Act. For a better resolution of the controversy it would be necessary to extract Section 124:

“124. Unpaid Dividend Account - 1) Where 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.

(2) The company shall, within a period of ninety days of making any transfer of an amount under sub-section (1) to the Unpaid Dividend Account, 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.

(3) If any default is made in transferring the total amount referred to in sub-section (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 enure to the benefit of the member of the company in proportion to the amount remaining unpaid to them.

(4) Any person claiming to be entitled to any money transferred under sub-section (1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.

(5) Any money transferred to the Unpaid Dividend Account of a company in pursuance of this section 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 Fund established under sub-section (1) of section 125 and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.

(6) All shares in respect of which unpaid or unclaimed dividend has been transferred under sub-section (5) shall also be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed;

Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed:

(7) If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.”

14. The Fund is created by Section 125. – it is established by the Central Government; the various amounts to be credited to it are created in Section 125(2). Section 125(3) states that the Fund would be utilized entirely for the refund of unclaimed dividend, matured deposits, matured debentures, promotion of investors’ education, awareness and protection etc. The procedure for management of the Fund, appointment of its personnel, date and information are outlined in the other provisions of Section 125. Section 126 enacts as follows:

“126. Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares

Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,—

(a) transfer the dividend in relation to such shares to the Unpaid Dividend

Account referred to in section 124 unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and

(b) keep in abeyance in relation to such shares, any offer of rights shares under clause (a) of sub-section (1) of section 62 and any issue of fully paid-up bonus shares in pursuance of first proviso to sub-section (5) of section 123.”

15. At the heart of the controversy in this case is the operationalisation of the Section 124(6) which statutorily transfers shares – which are valuable property – to the Fund in the eventuality of dividends lying unclaimed for over seven 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 Government. Thus, the 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. 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 Section 126 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. Proviso to Section 126 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.” In the opinion of this Court, the net result of Section 124(6) is that whilst it introduces a new regime of not merely transferring the amounts lying in the UDA, but also directs the transfer of shares which yield unclaimed dividend for seven 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 Rules. Rule 6 underwent changes twice. Quite correctly, the petitioner points out that the original Rule 6 had allowed some uncertainty and confusion. The said Rule, to the extent it is relevant, reads as follows:

“6. Manner of transfer of shares under sub-section (6) of section 124 to the Fund.- (1) The shares shall be credited to an IEPF suspense account (on the name of the company) with one of the depository participants as may be identified by the Authority within a period of thirty days of such shares becoming due to be transferred to the Fund:

Provided that, in case the beneficial owner has encashed any dividend warrant during the last seven years, such shares shall not be required to be transferred to the Fund even though some dividend warrants may not have been encashed.

(2) For the purposes of effecting transfer of such shares, the Board shall authorise the Company Secretary or any other person to sign the necessary documents.

(3) The company shall follow the following procedure, namely:-

(a) The company shall inform at the latest available address, the shareholder concerned regarding transfer of shares three months before the due date of transfer of shares and also simultaneously publish a notice in the leading newspaper in English and regional language having wide circulation, and on their website giving details of such shareholders and shares due for transfer: Provided that in cases, where the seven years as provided under sub-section (5) of section 124 have been completed or are being completed within three months from the date of coming into force of these rules, the company shall initiate the aforesaid procedure immediately and transfer the shares on completion of three months;

(b) In case, where there is a specific order of Court or Tribunal or statutory Authority restraining any transfer of such shares and payment of dividend, the company shall not transfer such shares to the Fund:

Provided that the company shall furnish details of such shares and unpaid dividend to the Authority in Form No. IEPF 3 within thirty days from the end of financial year;

(c) For the purposes of effecting the transfer where the shares are dealt with in a depository,-

(i) the Company Secretary or the person authorised by the Board shall sign on behalf of such shareholders, the delivery instruction slips of the depository participants where the shareholders had their accounts for transfer in favour of IEPF suspense account (name of the company);

(ii) on receipt of the delivery instruction slips, the depository shall effect the transfer of shares in favour of the Fund in its records.

(d) For the purposes of effecting the transfer where the shares are held in physical form,-

(i) the Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholders, to the company, for issue of duplicate share certificates;

(ii) on receipt of the application under clause (a), a duplicate certificate for each such shareholder shall be issued and it shall be stated on the face of it and be recorded in the register maintained for the purpose, that the duplicate certificate is “Issued in lieu of share certificate No..... for purpose of transfer to IEPF” and the word “duplicate” shall be stamped or punched in bold letters across the face of the share certificate;

(iii) particulars of every share certificate issued as above shall be entered forthwith in a register of renewed and duplicate share certificates maintained in Form No. SH 2 as specified in the Companies (Share Capital and Debentures) Rules, 2014;

(iv) after issue of duplicate share certificates, the Company Secretary or the person authorised by the Board, shall sign the necessary Form No. SH 4 i.e., securities transfer Form as specified in the Companies (Share Capital and Debentures) Rules, 2014, for transferring the shares in favour of the Fund;

(v) on receipt of the duly filled transfer forms along with the duplicate share certificates, the Board or its Committee shall approve the transfer and thereafter the transfer of shares shall be effected in favour of the Fund in the records of the company.

(4) The company or depository, as the case may be, shall preserve copies of the depository instruction slips, transfer deeds and duplicate certificates for its records.

(5) While effecting such transfer, the company shall send a statement to the Fund in Form No. IEPF 4 containing details of such transfer.

(6) The voting rights on shares transferred to the Fund shall remain frozen until the rightful owner claims the shares: Provided that for the purpose of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares which have been transferred to the Authority shall not be excluded while calculating the total voting rights.

(7) Once the physical shares are transferred in the name of the Authority, the Authority shall dematerialise these shares and it shall keep only those shares in physical form, where dematerialisation of shares is not possible.”

16. The first amendment on 28.02.2017, substituted the original Rules which then read as follows:

“4. In the principal rules, for rule 6, the following rule shall be substituted, namely:-

“6. Manner of transfer of shares under sub-section (6) of section 124 to the Fund.- (1) The shares shall be credited to DEMAT Account of the Authority to be opened by the Authority for the said purpose, within a period of thirty days of such shares becoming due to be transferred to the Fund:

Provided that, in case the beneficial owner has encashed any dividend warrant during the last seven years, such shares shall not be required to be transferred to the Fund even though some dividend warrants may not have been encashed:

Provided further that in cases where the period of seven years provided under sub-section (5) of section 124 has been completed or being completed during the period from 7th September, 2016 to 31st May, 2017, the due date of transfer of such shares shall be deemed to be 31st May, 2017.

(2) For the purposes of effecting transfer of such shares, the Board shall authorise the Company Secretary or any other person to sign the necessary documents.

(3) The company shall follow the following procedure while transferring the shares, namely:-

(a) The company shall inform, at the latest available address, the shareholder concerned regarding transfer of shares three months before the due date of transfer of shares and also simultaneously publish a notice in the leading newspaper in English and regional language having wide circulation informing the concerned that the names of such shareholders and their folio number or DP ID - Client ID are available on their website duly mentioning the website address.

(b) In case, where there is a specific order of Court or Tribunal or statutory Authority restraining any transfer of such shares and payment of dividend or where such shares are pledged or hypothecated under the provisions of the Depositories Act, 1996

or shares already been transferred under sub-rule (1) above, the company shall not transfer such shares to the Fund:

Provided that the company shall furnish details of such shares and unpaid dividend to the Authority in Form No. IEPF 3 within thirty days from the end of financial year.

(c) For the purposes of effecting the transfer, where the shares are dealt with in a depository-

(i) the Company shall inform the depository by way of corporate action, where the shareholders have their accounts for transfer in favour of the Authority.

(ii) on receipt of such intimation, the depository shall effect the transfer of shares in favour of DEMAT account of the Authority.

(d) For the purposes of effecting the transfer where the shares are held in physical form-

(i) the Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholders, to the company, for issue of duplicate share certificates;

(ii) on receipt of the application under clause (a), a duplicate certificate for each such shareholder shall be issued and it shall be stated on the face of it and be recorded in the register maintained for the purpose, that the duplicate certificate is "Issued in lieu of share certificate No..... for purpose of transfer to IEPF" and the word "duplicate" shall be stamped or punched in bold letters on the first page of the share certificate;

(iii) particulars of every share certificate issued as above shall be entered forthwith in a register of renewed and duplicate share certificates maintained in Form No. SH-2 as specified in the Companies (Share Capital and Debentures) Rules, 2014;

(iv) after issue of duplicate share certificates, the company shall inform the depository by way of corporate action to convert the duplicate share certificates into DEMAT form and transfer in favour of the Authority.

(4) The company shall make such transfers through corporate action and shall preserve copies for its records.

(5) While effecting such transfer, the company shall send a statement to the Authority in Form No. IEPF 4 containing details of such transfer.

(6) The voting rights on shares transferred to the Fund shall remain frozen until the rightful owner claims the shares: Provided that for the purpose of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares which have been transferred to the Authority shall not be excluded while calculating the total voting rights.”

17. The second amendment of 13.10.2017 which came into force immediately, substituted the second proviso by extending the date of transfer to 31.10.2017 and added the third proviso in the following terms:

“(I) in sub-rule (1),—

(a) for the second proviso, the following proviso shall be substituted, namely:—

“Provided further that in cases where the period of seven years provided under sub-section (5) of section 124 has been completed or being completed during the period from 7th September, 2016 to 31st October, 2017, the due date of transfer of such shares shall be deemed to be 31st October, 2017.”

(b) after the second proviso, the following proviso shall be inserted, namely:—

“Provided further that transfer of shares by the companies to the Fund shall be deemed to be transmission of shares and the procedure to be followed for transmission of shares shall be

followed by the companies while transferring the shares to the fund.”.

18. In Rule 6(3), clause (d) was substituted in the following terms:

“(II) in sub-rule(3), for clause (d), the following clause shall be substituted, namely;—

‘(d) For the purposes of effecting the transfer shares held in physical form-

(i) the Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholder, to the company, for issue of a new share certificate;

(ii) on receipt of the application under clause (a), a new share certificate for each such shareholder shall be issued and it shall be stated on the face of the certificate that “Issued in lieu of share certificate No..... for the purpose of transfer to IEPF” and the same be recorded in the register maintained for the purpose;

(iii) particulars of every share certificate shall be in Form No. SH-1 as specified in the Companies (Share Capital and Debentures) Rules, 2014;

(iv) after issue of a new share certificate, the company shall inform the depository by way of corporate action to convert the share certificates into DEMAT form and transfer in favour of the Authority.’;

19. The sum and substance of the Rules is that the companies were mandated to follow two crucial steps – one, inform the shareholders about the manner of vesting of shares and in that regard provide three clear months before the date of statutory transfer and two, ensure that the further

conditions and changes introduced by the first and second amendments, granting relief to certain classes of shareholders who might have either in the interregnum encashed dividends or approached them to reclaim the shares, were protected.

20. The essential condition for the purpose of this proceedings is encapsulated in Rule 6(3)(a) which obliges the companies to inform the shareholders in the manner prescribed three months from the due date of transfer. The due date of transfer was an unclear concept under the old Rules – originally notified on 05.09.2016. This brought in uncertainty and inchoateness because in the absence of a *terminus quo* as it were, or a prescribed cut-off date, the companies were at liberty to pick any date without any objective standard. Realizing this, the first amendment introduced the cut-off date as 31.05.2016 and further recognized that the class of shareholders who might have approached the company in between or even encashed dividends needed to be protected. Therefore, appropriately, first and second provisos were introduced to Rule 6(1). For whatever reasons, perhaps on account of the difficulties experienced by several companies, the Rules were again amended and the date of transfer shifted to 31.10.2017. Here again, the second proviso was appropriately amended to reflect the date changed. The third proviso clarifying beyond doubt that the transfer of shares would be deemed to be transmission and the procedure for transmission was to be applicable was prescribed. The changes brought about, especially by the second amendment to the Rules, in the opinion of the Court, have lent some uncertainty. The samples of advertisements issued by the various companies after the Rules were notified on 05.09.2016 indicated that the three month period provided was apparently not adhered

to, at least in the case of five of them. The notices were published in newspapers etc. in the first week or mid-November with the further intimation that the date of transfer would be 30.11.2017. The petitioner has relied upon and produced the circular issued by the Central Ministry of Corporate Affairs on 16.10.2017, which in the relevant part reads as follows:

***“No.11/06/2017-IEPF
Government of India
Ministry of Corporate Affairs***

*5th Floor, ‘A’ Wing
Shastri Bhawan, Dr. R.P. Road,
New Delhi-110001
Dated : 16.10.2017*

*To
All Stakeholders
Nodal Officers (IEPF) of Concerned Companies
All Regional Directors and Registrar of Companies
MD & CEO NSDL
MD & CEO NSDL*

Subject: Transfer of Shares to IEPF Authority

*Pursuant to second proviso to Rule 6 of Investor Education and Protection Fund Authority
(Accounting, Audit, Transfer and Refund) Rules, 2016 as amended
time to time, wherein the seven years period provided under sub-section (5) of section 124 is completed for unpaid/unclaimed dividends during September 7, 2016 to October 31, 2017, the due date for transfer of such shares by companies is **October 31st, 2017.***

2. The IEPF Authority has opened demat accounts with National Securities Depository Limited (NSDL) and Central Depository Services Limited (CDSL) through Punjab National

Bank and SBICAP Securities Limited respectively, as Depository Participants. The details of said accounts are as under:

<i>Particulars</i>	<i>PNB</i>	<i>SBICAP</i>
<i>DP ID</i>	<i>IN300708</i>	<i>12047200</i>
<i>Client ID</i>	<i>10656671</i>	<i>13676780</i>

3. These demat accounts will have features and functionality to support IEPF

Operations using paperless, digital processes and facilitate record keeping of shares

Transferred to the IEPF Authority to meet the requirements of the Rules.

4, All companies which are required to transfer shares to IEPF Authority under

the aforesaid Rules, shall transfer such shares, whether held in dematerialised form

or physical form, to the demat accounts of IEPF Authority by way of corporate

action. The information related to the shareholders, whose shares are being

transferred to IEPF's demat accounts with PNB or SBI CAP shall be provided by the companies to NSDL or CDSL respectively

as per the prescribed format by the concerned depository.

5. The Ministry of Corporate Affairs has held separate discussions with NSDL and CDSL during which they have agreed to levy reduced charges for account maintenance and record keeping pertaining to shares transferred to the demat accounts of IEPF Authority. A Memorandum of Understanding (MOU) to the effect is being finalized with the two depositories and the same will also be uploaded on website www.iepf.gov.in on finalization. NSDL and CDSL shall, based on these discussions, separately notify the charges, which shall not be

more than those finalized in the MOU, NSDL and CDSL are required to allow the services with immediate effect.

6. Any cash benefit accruing on account of shares transferred to IEPF such as dividend, proceeds realized on account of delisting of equity shares of the company, amount entitled on behalf of security holder if the company is being wound up as per Rule 6. Sub-rule (10), (11) and (12) of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, shall be transferred by companies to bank account opened by the Authority with Punjab National Bank, Sansad Marg, New Delhi, which has been linked to demat accounts mentioned at para 2 above.”

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21. The petitioner's complaint is that even when the date of vesting is said to be 31.10.2017, the authorities continued to indicate changes with the result that companies would not be accountable for the mandate of Rule 6(1), i.e. three months notice. This Court is of the opinion that Rule 6(3) has not undergone any change. Its clause (a) retains its original character which means that every company had to necessarily give three months clear notice to all concerned about the date of transfer. Undoubtedly, the absence of any date in the original Rules might have led to some uncertainty, even confusion. However, the first amendment clarified that and fixed the date as 31.05.2017. It also gave some manner of relief to those who had approached the companies or encashed dividends in the interregnum between 07.09.2016 and 31.05.2017. The same spirit was continued in the second amendment which merely extended the date of transfer. All this meant that at least from 28.02.2017, the companies were obliged to provide notice and were given that time. The extension of date to 31.10.2017 meant that if any company

was in the dark or could not for some reason, give adequate notice, it was enabled to do so during the extended period.

22. As far as the non-compliance with requirement of notice by various companies goes, this Court is of the opinion that in public interest proceedings, those violations and non-compliances cannot be gone into. 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. So far as the other aspect highlighted with regard to the non-publication of list of shareholders goes, this Court is of the opinion that without any details or reference to form etc. in this regard, it would be next to impossible to return a finding. These are causes that cannot and ought not to be gone into in public interest proceedings.

23. To summarize, the Court holds that Section 124(6) 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. The Central Government further is mandated to devise appropriate procedures to enable shareholders to reclaim their property in the shares, by an appropriate procedure. For the duration of transfer of the shares, the companies cannot issue bonus shares or add anything prohibited under Section 126. As far as the operationalisation of this provision goes, the Rules, especially the first and second amendments had the effect of giving companies adequate time to notify and comply with the three month public

notice period to their shareholders about the event of transfer. The Court also notices 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.

24. It is imperative that the Central Government 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.

25. In the light of the above, this Court is of the opinion that no orders or directions of the kind sought for by the petitioner are necessary; the writ petition is therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

SANJEEV SACHDEVA
(JUDGE)

DECEMBER 5, 2017