

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14 /2/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.1538 of 2020

and

W.M.P.No.1814 and 1816 of 2020

Kamala Srinivasan ... Petitioner

Vs

1. Union of India
rep. By its Secretary to Ministry of Corporate Affairs
A Wing, Shastri Bhawan
Rajendra Prasad Road
New Delhi 110 001.
 2. The Regional Director
Southern Region
Ministry of Corporate Affairs
5th Floor, Shastri Bhawan
26 Haddows Road
Chennai 600 006.
 3. Investor Education and Protection Fund Authority
rep. By its Chief Executive Officer
Ministry of Corporate Affairs
Ground Floor, Jeevan Vihar Building
3 Sansad Marg
New Delhi 110 001.
 4. M/s. Oracle Financial Services Software Limited
rep. By its Director Venkatachalam Sambasivan
Oracle Park, Off.Western Express Highway
Goregaon (East)
Mumbai 400 063.
- ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration to declare Section 124 (6) of the Companies Act, 2013 and corresponding Rules 6 & 7 of the Investor Education and Protection Authority Fund (Accounting, Audit, Transfer and Refund) Rules, 2016, as unconstitutional being violative of Articles 14, 21 and 300 A of the Constitution of India.

For petitioner ... Mr.M.Sricharan Rangarajan
For respondents ... Mr.R.Durga Rani,CGSC
for R.R.1 and 2.

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O R D E R

SUBRAMONIUM PRASAD, J

The instant writ petition challenges the vires of Section 124 (6) of the Companies Act, 2013 and Rule 6 and 7 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 as unconstitutional being violative of Article 14, 21 and 300 A of the Constitution of India.

2. The petitioner states that her son R.Murali Srinivasan passed away on 30/8/1993 intestate at Quriyat, Oman, leaving behind the petitioner and his wife. The petitioner's son was having shares in a Company called I-Flex Solutions Limited (IFLEX). The said Company was taken over by M/s. Oracle Financial Services Software Limited, fourth respondent herein. These shares were allotted to the petitioner in the year 1992.

3. Over the years, bonus shares were issued and the petitioner was holding 3200 shares. The market value of the share as on date would be about 1.14 crores. It is also stated that after the petitioner's son passed away, the dividends which were not received and as on date, unclaimed dividends worth Rs.29,92,000/-. It is stated by the petitioner that Section 124 (6) of the Companies Act, which deals with unclaimed dividends provides that all the shares in respect of which dividends have not been claimed for seven consecutive years or more than shall 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. Proviso to sub-Section 6 of Section 124 states that claimant of the shares shall be entitled to claim the transfer of shares from the Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

4. Section 124 of the Companies Act, 2013, reads as under:-

"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 website of the company, if any, and also on any other website 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 ensure to the benefit of the members 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 dividend has not been paid or claimed for seven consecutive years or more shall 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.

[Explanation.—For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.]

(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."

5. In exercise of powers conferred under sub-Section 1, 2, 3, 4, 8, 9, 10 and 11 of Section 125 and sub-Section 6 of 124 r/w. Section 469 of the Companies Act, the Central Government brought out the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016. Rule 6 and 7 of the said Act read as under:-

"Rule 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 or any dividend amount has been credited to bank account of the owner of such shares 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 October, 2017, the due date of transfer of such shares shall be deemed to be 31st October, 2017.

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.

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.

Explanation.-For removal of all doubts, it is hereby clarified that all shares in respect of which dividend has been transferred to Investor Education and Protection Fund on or before the 7th September 2016, shall also be transferred by the company in the name of Investor Education and Protection Fund.

(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 a new share certificates;

(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 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 certificates, 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.

(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 within thirty days of the corporate action taken under clause (c) of sub-rule (3) of rule 6 containing details of such transfer and the company shall also attach a copy of the public notice published under clause (a) of sub-rule (3) of rule 6 in Form No. IEPF-4.

(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)The company shall maintain all such statements filed under sub - rule (5) in the same format along with all supporting documents and the Authority shall have the powers to inspect such records.

(8)All benefits accruing on such shares like bonus shares, split, consolidation, fraction shares and the like except right issue shall also be credited to such DEMAT account [by the company which shall send a statement to the Authority in Form No. IEPF-4 within thirty days of the corporate action containing details of such transfer.]

(9) The shares held in such DEMAT account shall not be transferred or dealt with in any manner whatsoever except for the purposes of transferring the shares

back to the claimant as and when he approaches the Authority or in accordance with sub-rule (10) and (11).

(10) If the company is getting delisted, the Authority shall surrender shares on behalf of the shareholders in accordance with the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 and the proceeds realised shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.

(11) In case the company whose shares or securities are held by the Authority is being wound up, the Authority may surrender the securities to receive the amount entitled on behalf of the security holder and credit the amount to the Fund and a separate ledger account shall be maintained for such proceeds.

(12) Any further dividend received on such shares shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.

(13) Any amount required to be credited by the companies to the Fund as provided under sub-rules (10), (11) and sub-rule (12) shall be remitted into the specified account of the IEPF Authority maintained in the Punjab National Bank and the details thereof shall be furnished to the Authority in Form No. IEPF 7 within thirty days from the date of remittance or within thirty days from the date of enforcement of these Rules, as the case may be.

(14) Authority shall furnish to its report to the Central Government as and when noncompliance of the rules by companies came to its knowledge.

7. Refunds to claimants from Fund:-

(1) Any person whose shares, unclaimed dividend, matured deposits, matured debentures, application money due for refund, or interest thereon, sale

proceeds of fractional shares, redemption proceeds of preference shares etc., has been transferred to the Fund, may claim the shares under proviso to sub-Section (6) of Section 124 or apply for refund under clause (a) of sub-Section (3) of Section 125 or under proviso to sub-Section (3) of Section 125, as the case may be, to the Authority by submitting an online application in Form IEPF-5 available on the website www.jepf.gov.in along with fee specified by the Authority from time to time in consultation with the Central Government.

(2). Upon submission, Form No.IEPF-5 shall be transmitted online to the Nodal Officer of the Company for verification of claim:

Provided that the claimant after making an application in Form No.IEPF-5 under sub-rule 1, shall send original physical share certificate, original bond, deposit certificate, debenture certificate, as the case may be, along with Indemnity Bond, Advance Receipts, any other document as enumerated in Form No.IEPF-5, duly signed by him, to the Nodal Officer of the concerned company at its registered office for verification of the claim.

2 A. Every company which is required to credit amounts or shares to the fund or has deposited the amount or transferred the shares to the Fund shall nominate a Nodal Officer, who shall either be a Director or Chief financial Officer or Company Secretary of the company, for the purposes of verification of claims and coordination with Investor Education and Protection Fund Authority:

Provided that a company may appoint one or more Officer as Deputy Nodal Officer to assist the Nodal Officer for the purposes of verification of claim and for coordination with Investor Education and Protection Fund Authority:

Provided further that the Nodal Officer shall be solely liable for all actions of any officer appointed as Deputy Nodal Officer:

Provided also that in case a company fails to appoint Nodal Officer, every director of the company shall be deemed to be nodal officer and be liable for any failure to comply with requirement of these rules.

(2B) The details of the Nodal Officer and Deputy Nodal Officer duly indicating his or her designation, postal address, telephone and mobile number and company authorized e-mail ID shall be communicated to the Investor Education and Protection Fund Authority in Form No. IEPF-2 within fifteen days from the date of publication of these rules and the company shall display the name of Nodal Officer and his e-mail ID on its website:

Provided that any change in the Nodal Officer or his details shall be communicated to the Authority through Form No. IEPF-2 within seven days of such change along with board resolution thereof.

(3) The company shall, within thirty days from the date of receipt of claim, send an online verification report to the Authority after verification of details in Form No. IEPF-5 in the format specified by the Authority along with all the documents submitted by the claimant and shall attach the scanned copy of all the original documents submitted by the claimant in physical form duly certified by its Nodal Officer along with the e-verification report along with a scanned copy of both sides of original physical share certificate or original bond or deposit or debenture certificate/s duly cancelled and certified:

Provided that if the online verification report is not sent by the company within thirty days of filing of claim, the company may do so by paying additional fee of fifty rupees for every day subject to maximum of two thousand and five hundred rupees:

Provided further that the company shall be liable to maintain the original documents submitted to it by the claimant and shall produce such documents whenever required:

Provided also that in case of non-receipt of verification report along with documents by the Authority after the expiry of sixty days from the date of filing of Form No. IEPF-5, the Authority may reject Form No. IEPF-5, after sending a communication to the claimant and the concerned company, on the e-mail address of the claimant and the company, to furnish response within a period of fifteen days:

Provided also that for failure to submit verification report of the claim in accordance with these rules, the company and its Nodal Officer shall be punishable as per the provisions of the Act.

Explanation.- In case (i) loss of original physical share certificate or original bond or deposit or debenture certificate or proof of entitlement, the company and the claimant shall follow the procedure as laid down in the Companies (Share Capital and Debenture) Rules, 2014, the Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulation, guidelines, procedures and circulars issued from time to time and Schedule III of these rules and attach certified copies of all documents as may be required under the said rules or guidelines with the e-verification report; (ii) In addition, the company shall attach a scanned copy of both sides of share certificate generated under clause (d) of sub-rule (3) of rule 6 of these rules along with the e-verification report; (iii) The Company shall be solely responsible for collecting original physical share certificate or original bond or deposit or debenture certificate or proof of entitlement from the claimant and shall be liable for any misuse thereof.

(3) The company shall, within fifteen days from the date of receipt of claim, send a verification report to the Authority in the format specified by the Authority along with all the documents submitted by the claimant.

(4) After verification of the entitlement of the claimant-

(a) to the amount claimed, the Authority and then Drawing and Disbursement Officer of the Authority

shall present a bill to the Pay and Accounts Office for e- payment as per the guidelines,

(b) to the shares claimed, the Authority shall issue a refund sanction order with the approval of the Competent Authority and shall credit the shares to the DEMAT account of the claimant to the extent of the claimant's entitlement.

(5) The Authority shall, in its records, cause a note to be made of all the payments made under sub-rule (4).

(6) An application received for refund of any claim under this rule duly verified by the concerned company shall be disposed off by the Authority within sixty days from the date of receipt of the verification report from the company, complete in all respects and any delay beyond sixty days shall be recorded in writing specifying the reasons for the delay and the same shall be communicated to the claimant in writing or by electronic means.

(7) Where the Authority, on examining any application for claim, finds it necessary to call for further information or finds such application or e-form or document to be defective or incomplete in any respect, the Authority shall give intimation of such information called for or defects or incompleteness, by e-mail on the email address of the claimant and the company, which has filed such application or e-form or document, directing him or it to furnish such information or to rectify such defects or incompleteness or to re-submit such application or e-Form or document within fifteen days from the date of receipt of such communication, failing which the Authority may reject the claim or e-form No. IEPF-5:

Provided that if such information or incompleteness is called from the claimant, he shall file the e-form and shall send such documents as called for within fifteen days, duly signed by him, to the Nodal Officer of the concerned company at its registered office for verification of the claim and company shall send a revised verification report:

Provided further that if any such information or incompleteness is called from the company, the company shall file the revised verification report and shall send such documents as called for within thirty days:

Provided also that the provisions of sub-rule (3) of rule 7 shall apply mutatis mutandis to this sub-Rule.

(8) In case, claimant is a legal heir or successor or administrator or nominee of the registered share holder, the claimant shall ensure to submission of self-attested scanned copy of all documents detailed in Schedule II of these rules online along with the Form No. IEPF-5:

Provided that in case of loss of securities held in physical form, he has to ensure to submission of self-attested scanned copy of additional documents detailed in Schedule III of these rules online along with the Form No. IEPF-5:

Provided further that the claimant shall submit in original all these documents duly signed by him, to the Nodal Officer of the concerned company at its registered office for verification of the claim.

(9) In case, claimant is a legal heir or successor or administrator or nominee of any other registered security or in cases where request of transfer or transmission of shares is received after the transfer of shares by company to the Authority, the company shall verify all requisite documents required for registering transfer or transmission and shall issue letter to the claimant indicating his entitlement to the said security and furnish a copy of the same to the Authority while verifying the claim of such claimant through its e-verification report.

Provided that the authority shall dispose such request of transfer or transmission based on the e-verification report of the company subject to verification of such request.

(10)

(11) The company shall be liable under all circumstances whatsoever to indemnify the Authority in case of any dispute or lawsuit that may be initiated due to any incongruity or inconsistency or disparity in the verification report or otherwise and the Authority shall not be liable to indemnify the security holder or Company for any liability arising out of any discrepancy in verification report submitted etc., leading to any litigation or complaint arising thereof.

(b) Any fraudulent claim by the claimant shall be deemed to be fraud within the meaning of section 447 of the Act and the claimant shall be liable accordingly.

(c) If any person deceitfully personates an owner of any security or of any share warrant or coupon issued in pursuance of this Act and thereby files any claim to obtain or attempts to obtain any such security or interest or any such warrant or coupon due to the lawful owner, he shall be punishable under sections 57, 447 and 448 of the Act."

6. It is the contention of the petitioner that Section 124 of the Companies Act, 2013 corresponds to Section 205 A of the Companies Act, 1956. It is contended that under the 1956 Act where dividends have been declared by the Company and where within 30 days from the date of declaration, the said amount have not been claimed even after a period of seven days, the Company had to transfer the amount of dividend which remain unpaid to an account called unpaid dividend account from the date of expiry of 30 days period, and if the money transferred to the unpaid dividend account remains unclaimed for a period of seven years, it got transferred to the Investor Education and Protection Fund (IEPF).

7. It is the contention of the petitioner that under the erstwhile Section, the title in the shares never got transferred and the shares continued to remain with the share holder. It is therefore, submitted that by virtue of 124 (6), of the Companies Act 2013, the share holder loses his shares, which is property and is violative of 300 A of the Constitution of India. It is contended that a share is a bundle of rights and is movable

property cannot be taken away merely because the dividends which is a share in the profits given to the share holder has not been claimed.

8. It is the contention of the petitioner that failure to claim dividends cannot amount to divesting the rights in the shares which is property. It is further contended that there is no public purpose for bringing out under Section 124 (6). It is contended that Section 124 (b) also applies where dividends are not paid by the Company. It is therefore, stated that if the dividends are not paid by the Company, then the shareholder cannot be divested of his property and such an action is completely unreasonable and unfair and is in violation of Article 14 of the Constitution of India.

9. It is contended that divesting the rights of a shareholder by transfer of such shares to the Investor Education and Protection Fund, just because the dividends are not paid, or that the dividends are unclaimed is completely unjustifiable, arbitrary and violative of Article 14, 21 and 300 A of the Constitution of India.

10. It is contended that it is well settled that before a person is divested of his rights in any property and affected person ought to be heard. Taking away the right of a shareholder even without affording a hearing, cannot be sustained and such law which permits such a procedure of divesting property is unsustainable and deserves to be struck down.

11. It is also contended by the learned counsel for the petitioner that Rules 6 and 7 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, is so cumbersome that it virtually makes it impossible to comply with the procedure. It is contended that Rules 6 and 7 in as much as it relates to transfer of shares along with the unclaimed dividend is patently illegal and arbitrary in as much as the said rules render the transfer of shares to IEPF as transmission thereby divesting the shareholder and his legal heirs from their title to the said share.

12. It is further contended that Rule 7 elaborates the procedure on claiming shares transferred to Investor Education

and Protection Fund account. Sub-Rule 8 read with sub-Rule 1 initially held that the legal heirs of the claimants who are entitled for such shares need only send Form IEPF - 5 online to IEPF regarding the claim and complete the entire transmission process with the company. However, vide a recent amendment w.e.f. 20/9/2019, the legal heirs are forced to send two sets of documents both the authority and to the Company regarding the very same claim. The legal heirs now are compelled to complete the transmission process with the company and also the satisfaction of the authority. Therefore, the object of claiming unclaimed shares will only be rendered futile if the procedure to retrieve the same is onerous.

13. It is further contended that Schedule II appended to the amended Rules lists out the documents to be sent by the legal heirs to the IEPF. The list clearly stipulates that for shares held in physical form without any nomination and for value above Rs.2,00,000/-, obtaining of Succession Certificate or probate or will or letter of administration is mandatory. Therefore, the legal heirs are constrained to take legal recourse and incur additional expenses instead of being entitled to the shares simply by transmission.

14. It is further contended that Schedule III renders an even more arduous case where the legal heirs are compelled to furnish surety affidavit of value equal to the market value of shares as on the date of execution in case of loss of original share certificates/documents. It is contended in the petition that in the instant case, the claims are around Rs.22 lakhs and the petitioner being a senior citizen, who had just realised the existence of such shares is now compelled to file such a surety affidavit to claim the shares that she is legally entitled to otherwise under law as the sole surviving legal heir.

15. It is further contended that Rule 7 (3) initially held that even shares held in physical form could be transferred to the Authority by issuing a duplicate certificate and the Authority shall endeavour to dematerialize all such shares and retain some shares in physical form. However, vide amendment w.e.f 13/10/2017, the rule was amended where the company is forced to convert all such shares in DEMAT form. Thus, the burden is now on the company to convert such shares and incur exorbitant costs.

16. It is further contended that neither the Companies Act, 1956 nor 2013 Act stipulate any condition/list of documents to be adduced for transmission of shares to the legal heirs. However, the Rules which are procedural in nature, have gone beyond the scope of the Act and had mandated the legal heirs to produce additional documents which are never prescribed in the Act. In as much as Section 124 (6) and the corresponding Rule 6 and 7 make it mandatory that the shares in relation to which the unclaimed dividend shall be transferred to IEPF, the same is arbitrary and illegal as the shareholder is divested of his title to the shares.

17. Heard Mr.M.Sricharan Rangarajan, learned counsel for the petitioner and Ms.R.Durga Rani, Central Government Standing Counsel for the respondents 1 and 2.

18. Mr.Sricharan Rangarajan, learned counsel for the petitioner, would submit that there is no rationale behind Section 124(6) of the Act which provides for transfer of shares along with dividend remaining unpaid or unclaimed for a period of 7 years from the Unpaid Dividend account of the company to the Investors Education and Protection Fund (IEPF). He would submit that the erstwhile Companies Act, 1956 did not have any provision which provided for transfer of shares along with unpaid/unclaimed dividend. This was introduced only in the new Companies Act, 2013. He would state that the introduction of the Section does not effectively remedy any mischief which was present under the erstwhile Act. He would state that no reasons have been given in order to bring out the intent behind its introduction. He would state that the reason for introducing the impugned Sections for transfer of shares along with such unpaid/unclaimed dividend was not discussed in the Companies Bill, 2009 and in fact, the bill only provided for transfer of unpaid dividend.

19. He would submit that the reason given in the report submitted by the Parliamentary Standing Committee of Finance dated 26.06.2012, was that the underlying securities may be misused by vested parties, but no explanation had been given as to who are the vested parties and how it could be misused. No rationale has been accorded as to the introduction of transfer of shares along with unpaid/unclaimed dividend. He would state that the report submitted by the Parliamentary Standing Committee of Finance dated 26.06.2012, the Ministry had remarked that provisions are retained to achieve a broader objective of

safety and security in capital market since unclaimed securities could be misused by unscrupulous persons for money laundering activities, but there is no explanation as to who such unscrupulous persons and the manner of such misuse are. No rationale has been given for the introduction of transfer of shares along with unpaid/unclaimed dividend. He would therefore state that the legislative intent behind the introduction of the Section is non-existent and no reason has been cited by the Legislature as to its introduction and implementation.

20. Mr. Sricharan Rangarajan, learned counsel for the petitioner, in his challenge to Rule 6 and Rule 7 of the Investor Education and Protection Authority Fund (Accounting, Audit, Transfer and Refund) Rules, 2016, would state that the procedure as prescribed in the said Rules are extremely cumbersome. Heavy expenditure has to be incurred by the claimants for retrieving their shares. He would state that initially the 2016 rules provided for return of physical certificates of shares transferred to IEPF. However, after the 2017 amendment, such shares are to be mandatorily converted to DEMAT form while transferring to IEPF. Therefore, the claimants/legal heirs are forced to incur additional expenditure to open DEMAT accounts in order to claim back their own shares. He would state that even though some companies are not mandated to keep their shares in DEMAT form, due to the transfer of shares to IEPF, the companies are forced to incur high expenditure for the conversion of physical shares to DEMAT and to subsequently transfer the same to IEPF's DEMAT Account.

21. He would submit that Rule 7 originally provided that in case of claimants being legal heirs or representatives of the deceased claimant, they ought to complete the transmission process alone in order to obtain refund of shares and the unpaid/unclaimed dividend. However, after the amendment in 2019, the process of completion of transmission has been completely done away with and the legal heirs/representatives are forced to undergo an arduous procedure where they are mandated to provide a Succession Certificate/Probate/Letter of Administration in addition to other documents as per Schedule II in case the value of securities are above Rs. 2,00,000/-. He would state that in addition to the above, if the securities held in physical mode are lost, as per Schedule III, the claimant also ought to provide a surety affidavit of value equal to the market value of shares in addition to Notarised copy of FIR/Police complaint, indemnity bond and copy of advertisement for the same. He would state that in the instant case, the market value of the shares

are Rs. 1,14,00,000/-, therefore, the legal heirs are forced to incur heavy litigation expenses and are forced to wait for a longer period to claim back the shares.

22. Mr.Sricharan Rangarajan, learned counsel for the petitioner, also submits that Section 124(6) and Rule 6 and 7 of Investor Education and Protection Authority Fund (Accounting, Audit, Transfer and Refund) Rules, 2016, are violative of Article 300A of the Constitution of India. he would state that share is a movable property, with all the tributes of such property. A person whose name is entered in the Register as a member of the company holding such shares is entitled to exercise all or any rights that emanate from such shares. Mr.Sricharan Rangarajan, learned counsel for the petitioner, would argue that shares constitute a bundle of rights and sharing of profits in the company is only one of the many rights that a shareholder is entitled to. Merely because a shareholder does not exercise one right in the share does not entitle the Government to divest the shares from the shareholder. The deprivation of right without any purpose is manifestly arbitrary (as held in Shayira Banu vs Union of India 2017 9 SCC 1). There is no intelligible differentia as to how the right to claim dividend is given primacy over other rights. He would state that there might be a case where a shareholder who actively participates in the management and exercises his voting right does not claim dividends for a period of 7 years. In such a case, merely because he fails to claim dividend, his shares are transferred and he is restrained from exercising his voting rights as the same are frozen as per Rule 6(6). He would argue that transfer of shares/securities along with the unpaid dividend to IEPF is illegal as the property which vests with a person cannot be transferred without the permission/authority of the owner. It is the owner's prerogative to exercise all/some of his rights on the property and merely because a right is not exercised does not automatically vest with the Government to take up the property to itself.

23. In the instant case, the petitioner is an 81 year old woman who was not aware even about the existence of the shares until recently on 2019. Since the shares were acquired by her son who died on 1993 in Oman, the petitioner had no way of knowing the shares on her own. Therefore, the shares were dormant for more than 7 years and in such a case, the shares are also unreasonably transferred to IEPF where the shareholder had actually died and the claimants were unaware of their existence.

24. Mr.Sricharan Rangarajan, learned counsel for the petitioner, places reliance on the judgment of the Hon'ble Supreme Court in K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1, paras 190,191 & 2019), for the proposition that the transfer of shares/securities along with the unpaid dividend to IEPF is violative of Article 300A of the Constitution of India, not having followed the twin tests of compensation and public purpose. No public purpose is served in transferring the shares of a person to IEPF merely because dividends had not been claimed with respect to such shares, more particularly when the rationale behind the introduction of this concept has not been elaborated by the legislature and no reason till date has been adduced by the Legislature.

25. He would state that Article 300A provides that no person shall be deprived of his property save by the authority of law. On a conjoint reading of the Section and the Rules, shares being property of a person are arbitrarily transferred to IEPF, a statutory authority without the consent of the owner therein. Article 300A strikes down at the very first instance, any law where any person is divested of their property without the proper sanction of law. Article 300A does not provide that mere provision of a recovery mechanism saves the illegality in the acquisition of such property. No exceptions are made in Article 300A merely because a person is given a right to claim back the property.

26. The procedure for transfer of shares is onerous as the Claimant/legal heir of the claimant is forced to undergo an ordeal of procedure to get back their own property. The procedure given under the Rules after the amendment is not in conformity with the substantial due process and fairness, as mentioned above, the Section and the Rules are manifestly arbitrary.

27. Neither the Section nor the rules provide for any checks and balances and effective adjudicative mechanism through which its civil right in shares can be divested. It is an essential facet of law and matter of fundamental policy in India that a person, whose rights are affected, ought to be heard. Therefore, the lack of such opportunity and effective mechanism by itself renders the section and the rules arbitrary and unconstitutional.

28. Lastly he would submit that simplified procedure of transmission done away with:

Parliament noted a large and growing trend of companies, in improperly declaring and distributing dividend. It is for this reason that the Companies (Amendment) Act, 1974 was enacted. Sections 205-A and 205-B were introduced, and the Statement of Objects and Reasons for the introduction of the Sections is extracted below:

"Clause 16.—It has been observed that large established companies have been in the practice of declaring dividends even in a year in which profits are not adequate for payment of large dividends out of reserves accumulated in previous years. Such accumulated reserves which should have been normally available as a plough-back for the furtherance of the company's business are thus used in a manner prejudicial to public interest. It is, therefore, proposed to incorporate in the statute provisions to the effect that declaration of dividend out of reserves could be made only in accordance with the rules to be prescribed by the Central Government or in special cases with the previous approval of the Government. It is also proposed to make it obligatory for companies to transfer the total amount which is to be distributed to shareholders as dividend in any year to a special account to be opened by the Company in any Scheduled Bank, within seven days from the date of the declaration. This is intended to prevent companies from declaring dividends when no profits in the shape of liquid funds are readily available. It has also been observed that very large amounts declared as dividends to shareholders by companies lie unclaimed or undistributed for several years. Hence it is proposed that such amounts lying unpaid for a period of three years should be transferred by the company to the general revenue account of the Central Government. In this way the possibility of the misuse of the money due to shareholders by management is avoided while the Central Government empowered to pay individual claimants as and when the claims are preferred. It is also proposed to make it obligatory to deposit in the general revenue account unclaimed dividends outstanding at the commencement of the amending Act."

29. Section 205-A of the erstwhile Companies Act, 1956 was introduced by Parliament in the year 1974. It provided for instructions/directions to the companies to create a separate account for the dividend declared, which was unpaid. In other words, in the event dividend declared by a company was not collected by a shareholder, the dividend payable to such

absentee shareholder, was to be maintained by the company in a separate account. Under Section 205-A, (5), before its amendment in 1999, unclaimed dividend would within three year from date of the payment vest in the Central Government. Section 205-A(5) as it was enacted is extracted below:

"(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 three years from the date of such transfer, shall be transferred by the company to the general revenue account of the Central Government but a claim to any money so transferred to the general revenue account may be preferred to the Central Government by the person to whom the money is due and shall be dealt with as if such transfer to the general revenue account had not been made, the order, if any, for payment of the claim being treated as an order for refund of revenue"

30. Section 205-B, on the other hand provided a remedy for such shareholder, who would have been entitled to the dividend, if he had claimed the dividend. It provided the shareholder the right to approach the Central Government to recover the money he was entitled to.

31. In the year 1999, these provisions underwent a drastic change. Section 205-C was introduced, and amendments were made to Sections 205-A and 205-B. Under Section 205-A (5), the unclaimed dividend would after a period of 7 years, be transferred to the Investor Education and Protection Fund (hereinafter "IEPF"), established under Section 205-C. Section 205-A(5) as after the 1999 amendment, as well as Section 205-C are extracted below:

"Section 205-A. (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 to the Fund established under sub-section (1) of Section 205-C.

205-C. Establishment of Investor Education and Protection Fund.—(1) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the "Fund").

(2) There shall be credited to the Fund the following amounts, namely :—

(a) amounts in the unpaid dividend accounts of companies;

(b) the application moneys received by companies for allotment of any securities and due for refund;

(c) matured deposits with companies;

(d) matured debentures with companies;

(e) the interest accrued on the amounts referred to in clauses (a) to (d);

(f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and

(g) the interest or other income received out of the investments made from the Fund:

Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.

Explanation.—For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

(3) The Fund shall be utilised for promotion of investors' awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

(4) The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(5) It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.

32. Before 1999, in the event that dividend was unclaimed or unpaid for a period of 3 years from the date of its declaration, the money would be transferred by the company to the Central Government. Any shareholder retained the right to obtain such unclaimed dividend either from the company itself, within 3 years from the date of declaration of the dividend. In the event that the shareholder was unable to avail of this opportunity, the shareholder could recover such dividend by making an application under Section 205-B, to the Central Government.

33. After the amendments introduced in 1999, any company declaring dividend was required to maintain a dividend account for a period of 7 years. After the expiry of 7 years, the amount would then be transferred to the IEPF. This amount however would not be recoverable once the transfer was made by the Company to the IEPF. The explanation appended to Sub-Section 2 of Section 205-C, read with Section 205-A(5) makes this position abundantly clear.

34. Thus, a time limit of 7 years was imposed for claiming any dividend due to a shareholder, after which the money would instead be used by the IEPF, for fulfilling its various objectives. Parliament in its infinite wisdom felt that money owed to careless shareholders ought to be put to good use, i.e. used for the purposes of the IEPF. In this manner, the right of the shareholder, to recover dividend in respect of his forgotten investments was curtailed. A shareholder could only recover dividend for upto 7 years, from the date on which he made an application to the company.

35. The vires of Section 205-C were challenged before the Delhi High Court in case Titled Nivedita Sharma Versus The Industrial Credit & Investment Corporation Of India & Ors, W.P. (C) No. 10157 of 2009. The Delhi High Court vide judgement dated 07.07.2011 dismissed the Challenge to Section 205-C, and held as under:

"Section 205 C is a salutary and virtuous provision. It has been enacted to ensure that a company does not unjustifiably and unduly enrich themselves, as the depositors have failed to stake claim and have not been paid for a period of seven years from the date the amount became due. The word "unclaimed" used in the proviso to Section 205 C (2) clarifies that in case a claim is made within a period of seven years from the date amount became due and payable; the

money shall not be transferred to the said fund. Thus, if a person makes a claim within a period of seven years, Section 205 C will not apply. Period of seven years is substantially long. A depositor or a person dealing with a company, therefore, should make a claim within a period of seven years. In case he makes a claim, provisions of Section 205 C of the Act are not applicable and money cannot be transferred to the fund. We do not see any reason to hold that the said provisions are unconstitutional or they violate Article 14 or any other provisions of the Constitution. It cannot be said that the aforesaid provisions are faulty and violate the fundamental rights guaranteed in the Constitution.

9. To strike down Section 205 C will amount to negating and striking down a worthy and meritorious legislation which is on the whole beneficial and advantageous and in public interest. The petitioner is aggrieved because she did not stake her claim for refund within seven years. She did not inform change of address and, therefore, could not be communicated and informed about the premature redemption. The petitioner also did not bother to read the terms and conditions of allotment including the early redemption clause. These are serious lapses on the part of the petitioner. It is because of these lapses that the petitioner is in the present infelicitous situation. However, these cannot be a ground to strike down Section 205 C, which has been enacted in public interest and has a public purpose. Another contention during the course of arguments raised was that forfeiture clause should be struck down as unreasonable. It is not possible to agree with the said contention. The investors or public when they deposit the amount must make a claim within seven years otherwise, they will lose their right to make the claim. Rules of limitation are founded on consideration of public policy. The law of limitation affords a guarantee and ensures that cause of action is not raised after a lapse of particular period. Limitation is preventive and not curative and seeks to give quietus to claims which have not been enforced. It ensures that litigants are diligent in seeking remedies in court and prohibits stale claims. It ensures promptitude and assist vigilant persons who do not sleep over their rights. Laws prescribing reasonable period of limitation have been upheld,

though whenever the period prescribed expires a claimant suffers, but this invariably happens as the said litigant has been grossly negligent and has failed to take steps. This has happened in the present case."

36. A Special Leave Petition, bearing SLP (CC) No. 19616 of 2011 was preferred against this Judgement before the Hon'ble Supreme Court of India. On 02.01.2012, the Petition was dismissed as withdrawn with the liberty to approach the appropriate forum, once again.

37. Consequently, W.P. (C) No.1098 of 2012, titled Nivedita Sharma Versus Ministry Of Corporate Affairs & Ors, was preferred before the Delhi High Court. This Petition too was dismissed vide Judgement and order dated 20.04.2012.

38. Thus, the vires of Section 205-C, was upheld and the creation of a period of limitation, in respect of the right of a shareholder to claim dividend was deemed to be constitutionally valid.

39. Subsequently, The Companies Act, 1956 was repealed by the Companies Act, 2013. Consequently, sections 205-A, 205-B and 205-C all were replaced by Sections 124 and 125 of the New Act. Section 124 has been quoted in an earlier portion of the judgment and Section 125 reads as under:-

"125. Investor Education and Protection Fund.-(1) The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund).

(2) There shall be credited to the Fund-

(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 205-A of the Companies Act, 1956 (1 of 1956), as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 (21 of 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 205-C of the Companies Act, 1956 (1 of 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:

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.

(3) The Fund shall be utilised for—

(a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;

(b) promotion of investors' education, awareness and protection;

(c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;

(d) reimbursement of legal expenses incurred in pursuing class action suits under Sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and

(e) any other purpose incidental thereto,
in accordance with such rules as may be prescribed:

Provided that the person whose amounts referred to in clauses (a) to (d) of sub-section (2) of Section 205-C transferred to Investor Education and Protection Fund, after the expiry of the period of seven years as per provisions of the Companies Act, 1956 (1 of 1956), shall be entitled to get refund out of the Fund in respect of such claims in accordance with rules made under this section.

Explanation.—The disgorged amount refers to the amount received through disgorgement or disposal of securities.

(4) Any person claiming to be entitled to the amount referred in sub-section (2) may apply to the authority constituted under sub-section (5) for the payment of the money claimed.

(5) The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.

(6) The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.

(7) The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed.

(8) The authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of India.

(9) It shall be competent for the authority constituted under sub-section (5) to spend money out of the Fund for carrying out the objects specified in

sub-section (3).

(10) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually by the authority to the Central Government.

(11) The authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament."

40. Sections 124 and 125 of the New Companies Act, 2013, replaced Sections 205-A, 205-B and 205-C. The mechanism of the transfer of unpaid dividend to the IEPF, remain unchanged. However, under the New Act, shares for which dividend had not been paid for over 7 years, would also now be transferred to the IEPF, by virtue of Section 124(6). The proviso to Section 124(6) however protected the right of a shareholder to recover the share from the IEPF. A shareholder, whose shares stood transferred to the IEPF, could make an application in accordance with the Rules laid down.

41. For the purposes of Section 124(6), the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 were brought into force by the Central Government in exercise of its powers under Sections 124, 125 and 469 of the Companies Act, 2013.

42. Under Rule 3(2)(b), all shares in accordance with Section 124(6) were to be transferred to the IEPF.

43. The present Petition seeks to challenge, Section 124(6) of the 2013 Act, and the rules made thereunder. It is the case of the Petitioner, that the provisions related to the transfer of shares to the IEPF, i.e. 124(6), and the rules made thereunder, deprive a person of their right to property and are violative of Article 300-A of the Constitution of India. It is

further the case of the Petitioner that the provision and the rules made thereunder, are onerous and are manifestly arbitrary.

44. Article 300-A, is extracted below.

"300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law."

45. It is settled law that Article 300-A ensures that no person shall be deprived of their property, except in accordance with law. The protection offered under this Article ensures that an executive fiat cannot result in the deprivation of property, and that law must be made by the appropriate legislature, to deprive a person of their property.

46. In the case of Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC, the Hon'ble Supreme Court explained the meaning of the expression, "deprivation of the property of a person," as under:

"48. The word 'property' used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase "deprivation of the property of a person" must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent....."

47. Additionally, it must be remembered that Article 300-A protects the private property of a person from Executive Action. In addition to affirming the Judgement in Jilubhai's case, the Constitution Bench in the case of K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 has held as under:

"168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression "property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law.

169. This Court in *State of W.B. v. Vishnunarayan and Associates (P) Ltd.*⁹⁴, while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300-A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights.

170. Article 300-A, therefore, protects private property against executive action. But the question that looms large is as to what extent their rights will be protected when they are sought to be illegally deprived of their properties on the strength of a legislation. Further, it was also argued that the twin requirements of "public purpose" and "compensation" in case of deprivation of property are inherent and essential elements or ingredients, or "inseparable concomitants" of the power of eminent domain and, therefore, of List III Entry 42, as well and, hence, would apply when the validity of a statute is in question."

48. Thus, Article 300A, is attracted to those situations where the property of a person is acquired only by an executive fiat, and not on the basis of any law, validly made. It is the case of the Petitioners that the impugned provisions deprive them of their property, and are violative of Article 300-A of the Constitution of India. This argument is liable to be rejected because there is no actual deprivation of property taking place.

49. There is no doubt that as a result of the impugned provisions, the shares on which dividend is unclaimed for more than 7 years are to be transferred to the IEPF, but that does not amount to deprivation of property. This is for two reasons. Firstly, under Section 124(6), there is no statutory vesting of

the shares so transferred to the IEPF. Section 124(6), only contemplates a transfer of shares to the IEPF, and does not confer ownership of the shares on IEPF. This position is reflected in the proviso to Section 124(6), which provides that a person shall always be permitted to re-claim his shares, from the IEPF. Secondly, the Rules prescribed under Section 124(6), provide for a procedure for the refund of the shares so transferred to the IEPF. Rule 7, of the IEPF Rules, 2016 a procedure is prescribed for the refund of the shares by the IEPF to the owner of the shares. Rule 7(1) is extracted below:

"7. Refund to claimants from Fund.-(1) Any person whose shares, unclaimed dividend, matured deposits, matured debentures, application money due for refund, or interest thereon, sale proceeds of fractional shares, redemption proceeds of preference shares etc., has been transferred to the Fund, may claim the shares under proviso to sub-section (6) of Section 124 or apply for refund under clause (a) of sub-section (3) of Section 125 or under proviso to sub-section (3) of Section 125, as the case may be, to the Authority by submitting an online application in Form IEPF-5 available on the website www.iepf.gov.in along with fee specified by the Authority from time to time in consultation with the Central Government."

50. Thus, we are of the view that no deprivation of property is taking place, under the Impugned Provisions, and as such Article 300-A is not attracted in this case. The Delhi High Court in *INDIA AWAKE FOR TRANSPARENCY versus UNION OF INDIA REP. BY SECRETARY, MINISTRY OF CORPORATE AFFAIRS AND ANR W.P.(C) 10589/2017*, which was a Public Interest Litigation seeking directions for the strict enforcement of the Rules, remarked about the nature of the transfer contemplated under Section 124 (6), and held as under:

"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 W.P.(C) 10589/2017 Page 24 of 24 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."

[Emphasis Supplied]

51. Even if we are to accept the argument of the Petitioner that by the transfer of shares under 124(6), they are being deprived of their property, such deprivation would be in accordance with law, as a result of law made by Parliament, and not as a result of an executive fiat.

52. The other argument advanced by the Petitioner is that the impugned provisions being onerous are manifestly arbitrary, and are liable to be struck down under Article 14 of the Constitution of India. It is a settled principle of law that a law made by Parliament or the Legislature, can be struck down, on the ground of being manifestly arbitrary in the event that it is shown that the action of the legislature was capricious, irrational, excessive or disproportional. The Constitution Bench of this Court in the case of Shayara Bano v. Union of India, (2017) 9 SCC 1, noted the principles to be borne in mind while determining, whether the action of the legislature can be struck down on the grounds of being manifestly arbitrary. The Constitution Bench in Shayara Bano v. Union of India, (2017) 9 SCC 1, observed as under:-

"87. The thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three-Judge Bench decision in McDowell [State of A.P. v. McDowell & Co., (1996) 3 SCC 709] when it is said that a constitutional challenge can succeed on the ground that a law is 'disproportionate, excessive or unreasonable', yet such challenge would fail on the very ground of the law being 'unreasonable, unnecessary or unwarranted'. The arbitrariness doctrine when applied to legislation

obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution."

"101. It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* [*Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14. "

53. The decision in *Shayara Bano*, holds that legislation or state action which is manifestly arbitrary would have elements of caprice and irrationality and would be characterized by the lack of an adequately determining principle. An "adequately determining principle" is a principle which is in consonance with constitutional values. With respect to criminal legislation, the principle which determines the "act" that is criminalized as well as the persons who may be held criminally culpable, must be tested on the anvil of constitutionality. The judgment of the Hon'ble Supreme Court in *Shayara Banu* (supra) has been consistently quoted with approval in a number of judgments.

54. Thus, the position of law that, is that it is open for the courts to quash/strike down legislation on the grounds that it is manifestly arbitrary. In order to prove that a legislation is manifestly arbitrary, the burden is therefore to show that legislature has done something capriciously, irrationally and/or without adequate determining principle or if something is done which is excessive and disproportionate. In the facts of the present case however we do not find that the impugned provisions are "manifestly arbitrary. There is an avowed purpose for bringing this piece of legislation. It has been enacted to ensure that a company does not unjustifiably and unduly enrich themselves, as the depositors have failed to stake claim and have not been paid for a period of seven years from the date the amount became due. We do not see any reason to hold that the said provisions are unconstitutional or they violate Article 14 or any other provisions of the Constitution. It cannot be said that the aforesaid provisions are faulty and violate the fundamental rights guaranteed in the Constitution. To strike down Section 124(6) of Investor Education and Protection Authority Fund (Accounting, Audit, Transfer and Refund) Rules, 2016, Rules will amount to negating and striking down a worthy and meritorious legislation which is on the whole beneficial and advantageous and in public interest. As observed by the Delhi High Court while upholding Section 205 of the Companies Act 1956, the investors or public when they deposit the amount must make a claim within seven years otherwise, they will lose their right to make the claim. Rules of limitation are founded on consideration of public policy. The law of limitation affords a guarantee and ensures that cause of action is not raised after a lapse of particular period. Limitation is preventive and not curative and seeks to give quietus to claims which have not been enforced. It ensures that litigants are diligent in seeking remedies in court and prohibits stale claims. It ensures promptitude and assist vigilant persons who do not sleep over their rights. Laws prescribing reasonable period of limitation have been upheld, though whenever the period prescribed expires a claimant suffers, but this invariably happens as the said litigant has been grossly negligent and has failed to take steps.

55. It is also equally well settled that just because Rules are cumbersome and it is difficult to carry out the procedure prescribed under the Rules cannot make the Rules violative of Article 14. Section 124(6) has been brought out to ensure that the companies do not profit out of unclaimed dividends. The Rules have been brought out only to ensure that only claims of genuine persons can be entertained. The fact that the procedure

to reclaim the shares and the dividend is more expensive and the conditions are more onerous does not make it fall foul of Article 14 of the Constitution of India.

56. In view of the above, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mvs/pkn.
To

1. Secretary to Ministry of Corporate Affairs,
Union of India
A Wing, Shastri Bhawan
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2. The Regional Director
Southern Region
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3. Investor Education and Protection Fund Authority
rep. By its Chief Executive Officer
Ministry of Corporate Affairs
Ground Floor, Jeevan Vihar Building
3 Sansad Marg
New Delhi 110 001.

+1 cc to Mr.Sricharan Rangarajan Advocate sr12260

+1 cc to M/s.R.Durga Rani Advocate sr12045

Pre-delivery order in
Writ Petition No.1538 of 2020

nrl(co)
aa14/05/2020