

THE COMPANIES (TEMPORARY RESTRICTIONS ON DIVIDENDS)
ACT, 1974

ACT NO. 35 OF 1974

[31st August, 1974]

An Act to provide, in the interests of national economic development, for temporary restrictions on the power of certain companies to declare dividends out of profits and for matters connected therewith or incidental thereto.

BE, it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:-

1.

Short title extent and commencement.

1.Short title extent and commencement. (1) This Act may be called the Companies (Temporary Restrictions on Dividends) Act, 1974.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 6th day of July, 1974.

2.

Definitions.

2.Definitions. In this Act, unless the context otherwise requires,-

(a) "appointed day" means the 6th day of July, 1974;

(b) "company" has the meaning assigned to it in the Companies Act, 1956, (1 OF 1956) and includes a foreign company within the meaning of section 591 of the Companies Act, 1956, which has made arrangements prescribed under the Income-tax Act, 1961, (43 OF 1961) for the declaration and payment of dividends within India;

(c) "distributable profits in relation to a company to

which this Act applies, means,-

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- (i) one-third of the net profits of the company, or
- (ii) an amount required to pay twelve per cent. dividend on the face value of the equity shares of the company and dividend payable on its preference shares,

whichever is lower;

(d) "financial year" has the meaning assigned to it in section 2 of the Companies Act, 1956; (1 of 1956).

(e) "net profits" means net profits of the company as computed in accordance with the provisions of section 349 of the Companies Act, 1956,(1 of 1956) subject to the modification that-

(i) any income-tax payable under the Income-tax Act, 1961, (43 of 1961) in respect of the profits as so computed or any tax of a similar character payable in respect of such profits under any law in force in any country outside India, and surtax payable in respect of such profits under the Companies (Profits) Surtax Act, 1964,(7 of 1964) shall also be deducted; and

(ii) depreciation shall be provided in accordance with the provisions of section 205 of the Companies Act, 1956;(1 of 1956)

(f) "previous year" and "total income" have the meanings respectively assigned to them in the Income-tax Act, 1961. (43 of 1961)

3.

Companies to which the Act applies.

3.Companies to which the Act applies. This Act shall apply to the following categorie's of companies, namely: -

(a) a company in which the public are substantially interested, as defined in clause (18) of section 2 of the Income-tax Act, 1961; (43 of 1961)

(b) a company, at least seventy-five per cent. of the share capital of which is, throughout the financial year for which any dividend is declared or paid, beneficially held by an institution or fund established in India for a charitable purpose, the income from dividend whereof is exempt from income-tax under section 11 of the Income-tax Act, 1961; (43 of 1961)

(c) an Indian company whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power;

(d) an Indian company, the value of whose capital assets, being machinery or plant (other than office appliances or road transport vehicles), as shown in its books on the last day of the financial year for which any dividend is declared or paid, is fifty lakhs of rupees or more;

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(e) a company which has been exempted under sub-section (3) of section 104 of the Income-tax Act, 1961, (43 of 1961) from the operation, of that section.

Explanation I.-For the purpose of clause (c), the business of a company shall be deemed to consist mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power, if the income attributable to any of the aforesaid activities included in its gross total income for the relevant financial year is not less than fifty-one per cent. of such total income.

Explanation II.-For the purposes of clauses (c) and (d), "Indian company" has the meaning assigned to it in clause (26) of section 2 of the Income-tax Act, 1961,(43 of 1961.) but shall not include a corporation established by or under a Central, State or Provincial Act.

4.

Restriction on declaration of dividends by companies to which the Act applies.

4. Restriction on declaration of dividends by companies to which the Act applies. (1) [Save as otherwise provided in section 5A, for a period of two years] from the appointed day, no company to which this

Act applies shall declare or pay dividends for any financial year except out of the profits of the company for that financial year and no such dividend shall exceed, in the aggregate, the distributable profits of the company for that financial year:

Provided that nothing in this sub-section shall apply to any dividend which was declared and paid, before the appointed day, to a section of the shareholders of a company but was not paid, before the appointed day, to another section of the shareholders of that company.

(2) In computing the aggregate amount which may be declared or paid by a company to which this Act applies as dividends in accordance with the provisions of this Act, for any financial year, any amount paid or promised or partly paid and partly promised by the company before the appointed day by way of interim dividends for that financial year shall be taken into account; but where the amount of the interim dividend paid by the company before the appointed day exceeds its distributable profits for the financial year for which the interim dividend was paid, no further dividend shall be declared or paid by the company. for that financial year.

5.

Dividend in excess of distributable profits to be void and to be recovered.

5. Dividend in excess of distributable profits to be void and to be recovered. 1 [Save as otherwise provided in section 5A, for a period of two years] from the appointed day, any dividend declared. or paid after the appointed day by a company to which this Act applies,, in excess of its distributable profits for a financial year shall, to the extent of such excess, be void, and any amount paid by the company to any shareholder in excess of its distributable profits for that year shall be recovered by the company and no such recovery shall be waived

by the company:

Provided that where any such recovery is not practicable, the amount of dividend to the extent of such excess shall be adjusted against the dividend payable for the financial year next following the financial year for which such excess payment of dividend was made.

3[5A Restriction under which dividends in excess of distributable profits may be declared. (1) On and from the commencement of the Companies (Temporary Restrictions on Dividends)

Amendment Act, 1975 and subject to the provisions of sub-section (2),

it shall be lawful for a company to which this Act applies to declare, out of its profits for any financial year, dividend exceeding, in the aggregate, its distributable profits for that financial year.

(2) Where, after the commencement of the Companies (Temporary

Restrictions on Dividends) Amendment Act, 1975, a company to which

this Act applies declares dividend for any financial year exceeding, in the aggregate, its distributable profits for that financial year, such company shall not, for a period of two years from the appointed

day, make payment of so much of such dividend as exceeds its distributable profits for that financial year and, on the expiry of the said period, so much of the dividend as is in excess of the distributable profits of the company for the financial year aforesaid (the amount in excess as aforesaid being hereinafter, referred to as the "deferred dividend"), shall be payable, together with interest due thereon at the rate of eight per cent. per annum, in two equal annual instalments, the first of which shall become due and payable on the date on which the said period of two years expires.

(3) The provisions of sections 4 and 5 shall, except to the extent they are inconsistent with the provisions of this section, apply to a dividend declared under this section.

(4) No dividend shall be declared under sub-section (1) except after complying with the provisions of sub-section (2A) of section 205 of the Companies Act, 1956.

(5) The provisions of section 205A of the Companies Act, 1956, shall not apply to any instalment of deferred dividend-

Provided that if the Whole or any part of an instalment of deferred dividend remains unpaid after the expiry of a period of thirty days from the date on which such instalment becomes due and payable, the provisions of the said section 205A shall apply to the amount so

remaining unpaid.

(6) Where, after the commencement of the Companies (Temporary Restrictions on Dividends) Amendment Act, 1975, a company to which, this Act applies declares dividend for any financial year exceeding in the aggregate, its distributable profits for that financial year, the provisions of the Income-tax Act, 1961, shall subject to the provisions of sub-section (10), apply in relation to the whole of the dividend so declared, as they apply in relation to dividend which is declared but payment of no part of which is deferred.

(7) Where, after the commencement of the Companies (Temporary Restrictions on Dividends) Amendment Act, 1975, a company to which this Act applies declares dividend for a financial year exceeding, in the aggregate, its distributable profits for that financial year, the company shall post, within forty-two days from the date of such declaration, to every shareholder entitled to the payment of the dividend, a warrant authorising the payment of the dividend so declared, but the said warrant shall be so prepared as to authorise-

(a) immediate payment of so much of the dividend as does not exceed the distributable profits of the company for the financial year aforesaid (hereinafter referred to as the "immediate dividend"), and

(b) the payment of the deferred dividend on the respective dates on which each instalment of the deferred dividend becomes due and payable.

(8) Income-tax deducted under sub-section (6) from dividends shall be so apportioned between the immediate dividend and each instalment of the deferred dividend as to ensure that the income-tax deducted from the immediate dividend and each instalment of the deferred dividend bears the same proportion to the gross amount of the immediate dividend and the gross amount of each instalment of the deferred dividend as the total amount of the income-tax so, deducted bears to the gross amount of the total dividend declared by the company.

(9) Every warrant issued under sub-section (7) shall be in such form and contain such particulars as may be specified by rules made

under this Act,

(10) Notwithstanding anything to the contrary contained in the Income-tax Act, 1961, the Income-tax Officer shall not, for the purposes of that Act, treat an assessee to whom any instalment of deferred dividend is payable as in default in respect of that part of income-tax which is due in respect of such instalment of deferred dividend, as reduced by the income-tax, if any, deducted at source from such instalment, and shall continue to treat the assessee as not in default in respect of the said part of the income-tax, as so reduced, until the expiry of thirty-five days from the date on which such instalment becomes due and payable to the assessee or the warrant in respect of such instalment is transferred by the assessee to any person, whichever is earlier, and no interest shall be chargeable under sub-section (2) of section 220 of that Act in respect of the said part of the income-tax, as so reduced, for the period during which the assessee is treated as not in default.

Explanation.-In this sub-section, "assessee" has the meaning assigned to it in clause, (7) of section 2 of the Income-tax Act, 1961,]

6.

Restriction on interim dividends.

6. Restriction on interim dividends. For a period of two years from the appointed day, no company to which this Act applies shall, except with the previous approval of the Central Government and subject to such conditions and limitations as may be specified by that Government, pay or distribute any Interim dividends for any financial year, whether ending before or after the pointed day,

1 Subs. by Act 28 of 1975, s. 2 (w.e.f. 1-3-1975).

2 Subs. by S. 3, ibid.

3 Ins. by s. 4, ibid.

29 Law-63.

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7.

Restrictions on other distribution.

7. Restrictions on other distribution. For a period of two years from the appointed day, no company to which this Act applies shall, except with the previous approval of the Central Government, by general or special order,-

(a) make any distribution out of its assets;

(b) assume, whether conditionally or otherwise, any obligation to make distribution out of its assets;

(c) grant any loan to any shareholder of the company:

Provided that nothing in clause (c) shall apply to a company which is declared by the Central Government under sub-section (1.) of section 620A of the Companies Act, 1956, (1 of 1956.) to be a Nidhi or Mutual Benefit Society.

8.

Act to have overriding effect.

8. Act to have overriding effect. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Companies Act, 1956, (1 of 1956.) or in any other enactment (other than this Act) or in any contract or instrument having effect by virtue of any enactment other than this Act.

9.

Penalties.

9. Penalties. (1) Whoever contravenes any provision of this Act, shall be punishable with imprisonment for a term which may extend

to three years, or with fine which may extend to twice the amount in relation to which such contravention has been made, or with both.

(2) The provisions of section 621 of the Companies Act, 1956, shall apply to the offences against this Act as they apply to the offences against the Companies Act, 1956. (1 of 1956.)

10.

Offences.

10. Offences. (1) Where an offence against this Act has been committed, every person who at the time the offence was committed was in charge of, and was responsible to, the company committing the offence for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence against this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

11.

Power to delegate.

11. Power to delegate. The Central Government may, by notification in the Official Gazette, direct that any power which may be exercised by it under this Act (other than the power conferred by section 12) shall, subject to such restrictions and conditions, if any, as it may specify in the notification, be exercised also by-

(a) such officer or authority subordinate to the Central Government; or

(b) such other authority,

as may be specified in the notification.

12.

Power to make rules.

12. Power to make rules. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

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(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

13.

Act not to apply to companies in liquidation.

13. Act not to apply to companies in liquidation. Nothing in this Act shall apply to a company which is being wound up by the Court or voluntarily or subject to the supervision of the Court.

14.

Section 637 A of Act 1 of 1956. to apply.

14. Section 637 A of Act 1 of 1956. to apply. Every approval referred to in this Act shall be obtained on an application made to the Central Government and the provisions of section 637A of the Companies Act, 1956, shall apply to every such application as if such application were an application under the Companies Act, 1956.

15.

Power to remove difficulties.

15. Power to remove difficulties . If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty.

16.

Repeal and saving.

16. Repeal and saving. (1) The Companies (Temporary Restrictions on Dividends) Ordinance, 1974, (1 of 1974.) and the Companies (Temporary Restrictions on Dividends) Amendment Ordinance, 1974, (9 of 1974.) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Companies (Temporary Restrictions on Dividends) Ordinance, 1974, (1 of 1974.) as amended by the Companies (Temporary Restrictions on Dividends) Amendment Ordinance, 1974 (9 of 1974.) (including any order or declaration made thereunder), shall be deemed to have been done or taken under the corresponding provisions of this Act.