Investors Education and Protection Fund

Unintended impact

Investors can access unclaimed dividends except when they have not done so for seven consecutive years

The Central Government introduced Investor Education and Protection Fund (IEPF) in 1998 by amending the provisions of the erstwhile Companies Act,1956. The idea was to utilize, for the benefit of investors, the huge unclaimed amounts comprising dividends, matured deposits and interest, redemption proceeds of matured debentures, and application money of IPOs due for refund.

The amendment sought to bring such unclaimed amounts under the control of the Central government by constituting IEPF. After the inclusion of this provision in the Companies Act, 1956, companies were obliged to transfer all such unclaimed amounts to IEPF and file the requisite details with the Registrar of Companies.

Although the provision appeared to be an investor-friendly measure, investors whose unclaimed amounts were so transferred to IEPF lost all their rights to reclaim such money because the erstwhile Act specifically provided that no claim will lie against the fund.

The status quo continued for several years until the Companies Act, 1956 was replaced by the Companies Act, 2013, and the relevant section and rules were notified in 2016. The new law strived to do justice by allowing the affected investors to reclaim the amounts that had been transferred by companies to the IEPF. Following the revision, the government assumed the role of a custodian of unclaimed funds rather than becoming the absolute owner.

Every coin has two sides. The new law on the one hand remedied the previous anomaly but simultaneously brought a draconian provision that underlying shares in respect of which dividends had remained unclaimed for seven consecutive years are also liable to be transferred to the IEPF authority in addition to such unclaimed dividends.

Let us take an example to understand the scenario: A has till date not claimed dividend paid by XYZ in 2017. However, he has claimed dividend for 2018. Therefore, the unclaimed dividend for 2017 will be transferred to IEPF on the expiry of seven years, i.e., in 2024. However, the underlying shares will not be transferred to IEPF because A had claimed dividend on such shares for 2018. The underlying shares will be transferred to IEPF only if the dividend amount for each of the seven consecutive years remains unclaimed.

The underlying shares will be transferred by XYZ to IEPF in 2026 provided A fails to cash the dividends on his shares for seven consecutive years, i.e., from 2019.

After the commencement of the Companies Act, 2013, many companies transferred the underlying shares to the IEPF Authority. Once the shares are transferred to the IEPF Authority, the shareholders' name is removed from the register of members because it stands substituted by the name of the IEPF Authority. Therefore, from the date of such substitution, the company stops sending corporate communications like annual reports and notices of AGM, EGM, and postal ballot to such shareholders. Thus, a shareholder gets completely detached from the company.

Further, the shareholder cannot exercise voting rights on the shares previously held by him. To ascertain whether a company has transferred any shares to the IEPF Authority, an investor needs to refer to the latest quarterly shareholding pattern available on the website of stock exchanges or refer to the latest annual report of the company. For obtaining details of unclaimed dividends and underlying shares due for transfer to IEPF and shares transferred to IEPF, the investors need to visit the website of the company.

Any person whose unclaimed amounts have been transferred to IEPF can lodge a claim with the IEPF Authority by filing e-form IEPF-5 online, available on *www.iepf.gov.in* or *www.iepfportal.in*, for getting back the amount and securities lying with the IEPF Authority. A copy of the e-form along with requisite documents is required to be submitted to the company for verification. The company is required to furnish its verification report to the Authority recommending the acceptance or rejection of the claim along with reasons. Based on the verification report of the company, the claims are processed by the IEPF Authority.

The process looks easy. In practice, it is a time-consuming task requiring lots of documents and persistent follow-up with the Authority as well as the company. Another downside is that, even if the unclaimed amount may have been transferred to IEPF many years ago, the claimant is not paid any interest for this period by the IEPF Authority.

The Act does not specify the maximum time limit for the shareholders or their legal heirs to lodge a claim with the IEPF Authority. Obviously, as time passes, things become complex. The legal heirs tend to lose interest on account of administrative hassles in claiming their rights. While reclaiming the shares already transferred to IEPF, the claimant needs to reconcile the dividends declared by the company prior to and post such transfer of shares to IEPF.

Moreover, multiple corporate actions, i.e., issuance of bonus shares or stock-splits, make reconciliation of resultant shares and the dividends accrued pre and post these corporate actions a herculean task.

Investors also forego the shares offered by the company in right issues because the law specifically provides that rights shares will not be kept in abeyance for the shares transferred to the IEPF Authority.

Mergers and amalgamations increase the complexity manifold for the shareholders of the amalgamating companies as they need to approach the IEPF Authority to refer to old records of the company that may have ceased to exist and, at the same time, approach the management of the corporate entity in which the erstwhile entity has merged. It is possible that companies undergoing insolvency proceedings under the Insolvency and Bankruptcy Code might have credited unclaimed dividends to IEPF while they were healthy. It will be difficult for an investor to get the e-form IEPF-5 verified from such companies without which the claim will not be processed by the IEPF Authority.

Suppose investor X held shares in physical form since 1995. The company began distributing dividends from 2010. X was not able to receive the dividend warrants in 2010 and 2011. In 2012, he dematerialized the shares and sold his entire holding.

In this case, the unclaimed dividends for 2010 and 2011 would have been transferred to IEPF in 2017 and 2018, respectively. However, since X has sold his shares, the possibility of him approaching the IEPF to reclaim dividends is miniscule.

The funds credited to IEPF can be utilized by the IEPF Authority for:

- Refund of unclaimed dividends, matured deposits, matured debentures, and the application money due for refund and the interest on it.
- Promotion of investor education, awareness, and protection.
- 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 of the court directing the disgorgement.
- Reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245 of the Act by the shareholders, debenture holders or depositors, as may be sanctioned by the Tribunal.
- Any other incidental purpose, in accordance with rules as may be prescribed.

The unclaimed amount lying with the IEPF Authority was Rs 5262.25 crore as on 31 March 2022 as compared to Rs 346.6 crore as on 31 March 2002. This shows that, despite best efforts, not many investors have been successful in getting back their unclaimed amounts from IEPF.

The Act and the rules are silent on the fate of unclaimed funds and the underlying shares if an investor or his legal heirs do not approach the IEPF Authority even after the lapse of 25 to 30 years. With the passage of time, the monetary value of the underlying shares lying in the custody of IEPF Authority is continuing to appreciate. The government needs to bring some clarity on this issue.

—Rajesh Relan

Better be safe than sorry

How investors can ensure that they continue to benefit from corporate actions

The underlying shares get transferred to the IEPF Authority only when dividends on these shares remain unclaimed for seven consecutive years. Such a situation can be avoided by ensuring that there are no unclaimed dividends. To achieve this objective:

Link the bank account with the demat account so that dividends are directly credited in the bank account. Companies are constrained to issue dividend warrants to investors whose bank account is not linked with the demat account. This can result in loss of dividend warrants in transit. The investor may forget to deposit the dividend warrant in his bank account during the validity period, leading to the dividend being reflected as unclaimed in the company's records.

Dematerialize shares to eliminate physical share certificates and consolidate all the shareholdings across multiple companies in a single demat account. After dematerialization of shares, the investor needs to approach only the depository participant instead of approaching different registrars and share transfer agents of multiple companies for change of address and updating of bank particulars, details of nominees, KYC etc.

If a bank account gets changed, the investor needs to approach only his depository participant (DP) to update any change. Thereafter, immediately such change becomes accessible to all listed companies for crediting dividend amount.

For physical shares, investors need to approach the registrar and share transfer agents of each company and follow up with them to reflect the change.

Update the IFSC code in demat account if there is change due to merger of banks. The IFSC code may change if two branches of the same bank are combined. Investors need to monitor such events and get the new details and IFSC code updated in their demat account.

Update residential address, email-id and phone number in the demat account to promptly receive reminders from companies prior to transfer of unclaimed dividends and the underlying shares to IEPF. If an investor receives such a communication, he needs to act immediately and do correspondence with RTA for claiming all the unclaimed dividends . To ensure correctness of contact details, investors can approach their DP and ask for a copy of their client master for verification.

Stay vigilant about the investment portfolio by regularly checking the bank and demat account statements to verify that the dividend on shares held on record date has been credited. If there is any discrepancy, investor needs to take up the matter with the concerned company or the RTA.

Complete the process of nomination in demat and bank accounts to ensure that the intended beneficiaries reap the rewards of the investments made during one's lifetime. ■