

Burmah Oil Company [Acquisition of Shares of Oil India Limited and of the Undertaking in India of Assam Oil Company Limited and The Burmah Oil Company (India Trading) Limited] Act, 1981

UNION OF INDIA

India

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Act 41 of 1981

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1459.

Object and Reason.- The Burmah Oil Company Limited, a foreign company, has at present the ownership of, and control over, a significant portion of the petroleum products produced, marketed and distributed in India. The said company holds 50% of the shares of the Oil India Limited, and Indian company, engaged in the exploration and production of crude oil and gas. One of the subsidiaries of The Burman Oil Company Limited, namely, the Assam Oil Company Limited, a company incorporated in England, is engaged in the production of crude oil and gas, refining of crude oil and marketing and distribution of petroleum products. Another of its subsidiaries, The Burmah Oil Company (India Trading) Limited, a company incorporated in Scotland, was engaged in the marketing of petroleum products up to 1965 and thereafter its marketing activities were transferred to the Assam Oil Company and the marketing assets of The Burmah Oil Company (India Trading) Limited are now being utilised by the Assam Oil Company Limited on a rental basis. In Implementation of the policy for progressively securing that the ownership and control of the products of the nation's petroleum resources are vested in the State and thereby so distributed as best to subserve the common good, Government entered into negotiations with The Burmah Oil

Company Limited with a view to acquiring 50% of the shares of the Oil India Limited held by it and the undertakings in India of the Assam Oil Company Limited and the Burmah Oil Company (India Trading) Limited. After detailed negotiations, it was agreed, inter alia, that the acquisition of the aforementioned shares and undertakings should be effected by an Act of Parliament. The Bill provides for the following matter namely :-(i) Acquisition of all the shares of Oil India held by The Burmah Oil Company Limited and of the undertaking in India of the Assam Oil Company and the Burmah Oil Company (India Trading) Limited. Although the physical transfer of the aforementioned shares and undertakings shall take place on the date to be effective from 1st January, 1977, for the purpose of payment of dividends on the said shares of Oil India to the Central Government and for the taking over profits and losses of the undertakings of the Assam Oil Company Limited and The Burmah Oil Company (India Trading) Limited by the Central Government. (ii) Empowering the Central Government to direct the vesting of the undertakings in India of the Assam Oil Company Limited and The Burmah Oil Company (India Trading) Limited so acquired in a Government company or Government companies by notification. (iii) Transfer of the services of the existing employees of the Assam Oil Company Limited and The Burmah Oil Company (India Trading) Limited to the Central Government or the said Government company or companies. (iv)

Continuance of the contracts entered into by the Assam Oil Company Limited and The Burmah Oil Company (India Trading) Limited for any service, sale or supply in India. [28th September, 1981.] An Act to provide in the public interest for the acquisition of the shares of oil India Limited held by The Burma Oil Company Limited and for the acquisition and transfer of the right, title and interest of the Assam Oil Company Limited and The Burmah Oil Company (India Trading) Limited in relation to their undertakings in India and thereby to secure that the ownership and control of crude oil, gas and petroleum products produced by the undertaking in India of the Assam Oil Company Limited and of petroleum products marketed and distribution by the said undertakings and the undertakings in India of The Burmah Oil Company (India Trading) Limited are so distributed as best to subserve the common good. WHEREAS "The Burmah Oil Company Limited" (a foreign company) has at present the ownership of and, control over, a significant portion of crude oil, gas and petroleum products produced, marketed and distributed in India by reason of the fact that Oil India Limited, wherein it holds fifty percent, of the shares, and one of its subsidiaries, namely, the Assam Oil Company limited are carrying on the business of exploration and production of crude oil, gas and petroleum products, and the said Assam Oil Company Limited is also carrying on through its undertakings in India and through the undertaking in India of "The Burmah Oil Company (India Trading) Limited" another of the subsidiaries of "The Burmah Oil Company Limited", the business of marketing and distribution of petroleum products; AND WHEREAS it is expedient in the public interest that the shares of the said Oil India Limited held by "The Burmah Oil Company Limited" and the undertakings in India of the said Assam Oil Company Limited and "The Burma Oil Company (India Trading) Limited" should be acquired; AND WHEREAS such acquisition is for giving effect to the policy of the state towards securing the principle specified in clause (b) of article 39 of the constitution as the ownership and control of the material resources of the community, to wit, crude oil, gas and petroleum products produced by the said Oil India Limited and by the undertakings in India of the Assam Oil Company Limited and marketed and distributed by the undertakings in India of the said Assam Oil Company Limited and "The Burmah Oil Company (India Trading) Limited", would by reason of such acquisition become vested in the state and thereby so distributed as best to subserve the common good; BE it enacted by parliament in the

thirty-second year of the Republic of India as follows.-

Chapter I

Preliminary

1. Short title.-

This act may be called the Burmah Oil Company [Acquisition of shares of Oil India Limited and of the Undertaking in India of Assam Oil Company limited and the Burmah Oil Company (India Trading) Limited] Act,1981.

2. Definitions.-

In this Act, unless the context otherwise requires;-(a)"appointed day " means such date as the central Government may, by notification, appoint;(b)"Burmah Oil Company " means "The Burmah Oil Company Limited", a company incorporated in Scotland and having its registered office at 48. st. Vincent Street, Glasgow,scotland ;(c)"government company " means a company as defined in sections 617 of the companies Act, 1956; (1 of 1956).(d)"notification " means a notification published in the official Gazette ;(e)"Oil India " means the Oil India Limited, being a company as defined in the companies Act,1956 (1 of 1956), and having its registered office at duliajan district dibrugarh;(f)"prescribed " means prescribed by rules made under this Act;(g)"specified company" means a company specified in clause (h) ;(h)"two companies" means;-(i)the Assam Oil Company Limited a company incorporated in the United Kingdom and having its registered office at Burmah House, Pipers way, Swindon, England ; and(ii)"The Burmah Oil Company (India Trading) Limited " a company incorporated in Scotland and having its registered office at 48, St. Vincent street, Glasgow,scotland, being foreign companies within the meaning of section 591 of the companies Act, 1956; (1 of 1956).(i)words and expressions used herein and not defined but defined in the companies Act,1956, (1 of 1956) have the meanings respectively assigned to them in that Act.

Chapter II

Acquisition Of The Shares Of Oil India Heds By Burmah Oil Company

3. Transfer and vesting of certain shares of Oil India in the Central Government.-

(1)On the appointed day, all the shares in the capital of Oil India held by Burmah Oil Company shall by virtue of this Act, stand transferred to, and vested in, the central government(2)All the shares which have vested in the central government under sub-section (1) shall by force of such vesting, be freed and discharged of all trusts, liabilities, obligations, mortgages, charges, liens, and other encumbrances affecting them.(3)Any dividend payable by Oil India to the shares which have vested

in the central government under sub-section (1) in respect of any period beginning from the 1st day of January, 1977, shall be payable to the central government .

4. Management of Oil India.-

For the purpose of enabling Oil India to function as a government company, the central government may, by notification, make such amendments in the memorandum and articles of association of that company and such other provisions as it may consider necessary.(2)Any amendments in the memorandum and articles of association of Oil India and any other provisions made under sub-section (1) shall have effect notwithstanding anything contained in the companies Act, 1956 (1 of 1956).

Chapter III

Acquisition Of The Undertakings Of The Two Companies

5. Transfer and vesting in the Central Government of the under takings in India of the two companies.-

On the appointed day, the right, title and interest of each of the two companies in relation to its undertakings in India shall, by virtue of this Act, stand transferred to, and vested in the central government.

6. General affect of vesting.-

(1)Subject to the provisions of sub-section (2), the undertakings of each specified company shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, including and designs, trade marks, trade names, styles of labeling, station decor or any distinctive color schemes, cash balances, reserve funds, book debts, investment and all other rights and interest in, or arising out of, such property as were,immediately before the appointed day, in the ownership, possession, power or control of the specified company, in relation to its undertakings in India, and all books of liabilities (including the liability for the payment of taxes, if any, and for the payment of any pension and other pensionary benefits to the persons employed in relation to its undertakings in India) and obligations of whatever kind of the specified company in relation to its undertakings in India :Provided that remittances outside India of any money for the payment of pension or other pensionary benefits shall be subject to the rules and regulations for the time being in force in relation to such remittances.(2)The undertakings in India of "The Burmah Oil Company (India Trading) Limited" shall not include the shares held by the said company in the tin plate company of India Limited . a company as defined in the companies Act 1956 (1 of 1956), and having its registered office at 4, Bankshall street, Calcutta-700001.(3)The profits earned,or the losses suffered, as the case may be, by each specified company in relation to its undertakings in India from the I st day of January,1977, shall be payable to, or, as the case may be, borne by, the central government.(4)Unless otherwise expressly provided by this Act, all deeds, bonds agreements,

powers of attorney, grants of legal representation and other instruments of whatever nature in relation to the undertakings in India of a specified company subsisting or having effect immediately before the appointed day, and to which the specified company is a party or which are in favor of the specified company shall be of as full force and effect against or in favor of the central government and may be enforced or acted as fully and effectively as if in the place of the specified company the central government had been a party thereto or as if they had been issued in favor of the central government .(5). If, on the appointed day, any suit appeal or other proceeding of whatever nature (including proceeding before any authority) in relation to the undertakings in India of a specified company which have been transferred to, and vested in the central government under section 5.is pending by or against that specified company, the same shall not abate,be discontinued or be in any way prejudicially affected by reason or of anything contained in this Act but the suit appeal or other proceeding may be continued,prosecuted and enforced by or against the central government .(6). The promotion agreement and supplement agreement entered into on the 14th day January, 1958 and the 16 th day of February, 1959.respectively, to which the central government, the Burmah Oil Company and the Assam Oil Company Limited were parties and the adopting agreement and the second supplemental agreement entered into on 14 th day of march . 1959 and the 27 th day of 1961.respectively. to which the central government the Burmah Oil Company, the Assam Oil Company Limited and Oil India Limited. Were parties shall be deemed to have been terminated with effect from the 1st day of January, 1977, and accordingly the rights, liabilities and obligations arising out of such Agreement shall be deemed to have been extinguished on and from that date:Provide that clause 12 of the said second supplemental Agreement shall, in so far as it relate to the rights, liabilities and obligations of oil India limited, continue in force up to and inclusive of the financial year of the company ending on the 31st day of March, 1982.

7. Special provisions as to certain rights and interests held by the specified companies before the appointed day.-

(1)Every right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or any right under any arrangement to secure any premises for any purpose), which a specified company held, immediately before the appointed day, shall, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, vest in, and held by, the central government on and after that day on the same terms and conditions on which the specified company would have held it, if no negotiations had taken place for the acquisition by the central government of the undertakings in India of the specified company or, as the case may be, if this Act had not been passed.(2)If at any time after the 2nd day of February, 1974 (being the date on which the central government's policy for acquiring undertakings engaged in the production, marketing or distribution of petroleum products was made known) and before the appointed day a specified company surrendered or otherwise relinquished any right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or a right under any arrangement to secure any premises for any purposes), then for the purposes of this Act notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, the central government shall, on the same terms and conditions on which the specified company would have been entitled to such right or interest if it had not surrendered or otherwise relinquished such right or interest and this Act had

not been passed: Provided that nothing in this sub-section shall apply to any right or interest surrendered or otherwise relinquished by the specified company before the appointed day for sufficient monetary consideration. (3) On the expiry of the term of any lease, tenancy or arrangement referred to in sub-section (1) or sub-section (2), such lease or tenancy or arrangement shall, if so desired by the central government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into.

8. Removal of doubts.-

(1) For the removal of doubts, it is hereby declared that the provisions of sections 5, 6 and 7 shall apply to the extent to which any property appertains to the business carried on by each specified company in India ; and to the rights and powers acquired, and to debts, liabilities and obligations incurred, and to contracts, agreements, and other instruments made, by the specified company in India, and to proceedings relating to those matter pending, in any court or tribunal or before any other authority, in India . (2) if any question arises as to whether any property appertained, immediately before the appointed day, to any business of a specified company in India or whether any rights, powers, debts, liabilities or obligations were acquired or incurred or any contract, agreement or other instrument was made by a specified company for the purposes of its business in India, or whether any documents relate to those purposes, or whether the provisions of section 7 apply in relation to any property, the question shall be referred to the Central Government which shall, after giving a reasonable opportunity of being heard to the persons interested in the matter, decide it in such manner as it may think fit.

9. Power of Central Government to direct vesting of the under takings of specified companies in one or more Government Companies.-

(1) Notwithstanding anything contained in section 5, 6 and 7, the Central Government may, subject to such terms and conditions as it may think fit to impose, direct, by notification, that the right, title and interest and the liabilities of each specified company in relation to its undertakings in India which have vested in that Government under section 5 shall, instead of continuing to vest in the Central Government, vest in one or more Government companies either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification. (2) When the right, title and interest and the liabilities of a specified company in relation to its undertakings in India vest in one or more Government companies under sub-section (1), all the rights and liabilities of the Central Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company or companies. (3) The provisions of sections 5, 6 and 7 shall, so far as may be, apply in relation to such Government company ; or companies as they apply in relation to the Central Government and for this purpose references therein to the "Central Government shall be construed as references to such Government company or companies.

Chapter IV

Payment Of Amount

10. Payment of amount to Burmah Oil Company.-

(1)For the transfer to, and vesting in, the Central Government under section 3 of the shares of Oil India, and for the transfer to, and vesting in, the Central Government under section 5, of the right, title and interest of each specified company in relation to its undertakings in India, there shall be paid by the Central Government an aggregate amount of rupees twenty-one crores and fifty-six lakhs, free of taxes, to the Burmah Oil Company and such amount shall be allowed to be remitted to that company in one installment in pound sterling calculated at the rate of exchange in force on the date of such remittance.(2)Where the amount specified in sub-section (1) is not paid on or before the 15th day of October, 1981 it shall carry simple interest, free of taxes, at the rate of eight per cent. per annum from that date, till the date of its payment.

Chapter V

Provisions Relating To Employees

11. Transfer of service of existing employees of the specified companies.-

(1)Every whole-time officer or other employee of a specified company who was, immediately before the appointed day, employed by that company in connection with its undertakings in India and every whole-time officer or other employee of a specified company who was immediately before the appointed day, temporarily holding any assignment outside India shall on the appointed day, become an officer or other employee, as the case may be of the central government or the conserved government company, (herein after referred to as the successor government company) in which the right title and interest of the specified company in relation to its undertakings in India have vested under this Act and shall hold office or service under the central government or the successor government company as the case may be, on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the central government or the successor government company is duly terminated or until his remuneration and conditions of service are duly altered by the central government or the successor government company.(2)Subject to rules made in this behalf under section 22, every whole-time officer or other employee of oil India who was immediately before the appointed day, employed by it in India and every whole-time officer or other employee of Oil India who was, immediately before the appointed day, temporally holding any assignment outside India shall, on and from that day, continue to be an officer or other employee of Oil India on the same terms and conditions and with the same rights to pension, gratuity and other matters as are admissible to him immediately before that day and shall continue to hold such office unless and until his employment under Oil India is duly terminated or until his remuneration and conditions of service are duly altered by that company.(3)If any question arises as to whether any person was a whole time officer or other employee of a specified company,

or as to whether any officer or other employee was employed wholly or mainly in connection with the undertakings of that company in India immediately before the appointed day, or whatever any whole-time officer or other employee of a specified company was temporarily holding any assignment outside India, the question shall be referred, within a period of two years from the appointed day, to the central government which shall after giving an opportunity of being heard to the person concerned in the matter, decide it in such manner as it thinks fit and such decision shall be final. (4) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), the payment of gratuity Act, 1972 (39 of 1972), or in any law for the time being in force the transfer of the services of any officer or other employees, under sub-section (1), shall not entitle any such officer or other employee to any compensation or gratuity under those Acts or such other law, and no such claim shall be entertained by any court, tribunal or other authority.

12. Provident superannuation, welfare fund, etc.-

(1) Where a provident super annuation welfare or other fund has been established by a specified company for the benefit of the persons employed by it in connection with its undertakings in India or for the benefit of such persons and persons employed by Oil India, the moneys relatable to the employees (a) whose services are transferred by or under this Act to the Central Government or the successor Government Company or as the case may be continued with Oil India or (b) who are in receipt of pension or other pensionary benefits immediately before the appointed day shall out of the moneys standing on that day to the credit of such provident superannuation, welfare or other fund stand transferred to and vested in the Central Government or the successor Government company or Oil India as the case may be free from any trust, that may have been constituted by the specified company in respect thereof. (2) The moneys which stand transferred under sub-section (1) to the Central Government or the successor Government company or Oil India shall be dealt with by the Central Government or that company or Oil India as the case may be in such manner as may be prescribed. (3) The successor Government company or Oil India as the case may be shall as soon as may be after the appointed day, constitute, in respect of the moneys and other assets which are transferred to and vested in it under this section, one or more trusts having objects as similar to the object of the existing trust, as in the circumstances may be practicable; so however that the rights and interests of the beneficiaries of the trust referred to in sub-section (1) are not in any way prejudiced or diminished. (4) Where all the moneys and other assets belonging to an existing trust are transferred to and vested in the Central Government or the successor Government company or Oil India under this section the trustees of such trust shall as from the date of such vesting stand discharged from the trust except as respects things done or omitted to be done before the date of such vesting.

Chapter VI

Miscellaneous

13. Effect of Act on other laws.-

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any court, tribunal or other authority.

14. Duty to deliver possession of properties etc.-

(1)Where any property appertaining to any undertaking in India of a specified company has been transferred to and vested in the Central Government or the successor Government company under this Act.-(a)every person in whose possession, custody or control any such property may be shall, on a demand by the Central Government or the successor Government company as the case may be deliver the property to the Central Government or the successor Government company as the case may be forthwith;(b)any person who, immediately before such vesting, has in his possession, custody or control any books, documents or other papers relating to the undertakings in India of the specified company, shall be liable to account for the said books, documents and papers to the Central Government or the successor Government company as the as may be and shall deliver them up to the Central Government or that company or to such person as the Central Government or that company may authorise in this behalf.(2)Without prejudice to the other provisions contained in this section it shall be lawful for the Central Government or the successor Government company to take all necessary steps for taking possession of all properties which have been transferred to, and vested in, it under this Act.

15. Contracts to continue unless terminated by Central Government.-

(1)Every contract other than an Agreement referred to in sub section (6) of section 6 entered into by a specified company for any service sale or supply in India and in force immediately before the appointed day, shall unless terminated under sub-section (2) within a period of two years from the appointed day, continue to be of full force and effect against or in favor of the Central Government or as the case may be the successor Government company.(2)The Central Government may, if it is satisfied that any contract referred to in sub-section (1) is unduly onerous or has been entered into in bad faith or is detrimental to the interests of that Government or the successor Government company as the as may be by order in writing either terminate such contrast or make such alterations or modifications therein as it may think fit.Provided that the Central Government shall not terminate any contract or make any alteration or modification therein except after giving to the parties to the contract, a reasonable opportunity of being heard and except after recording in writing its reasons for such termination, alteration or modification as the case may be.

16. Penalties.-

And person who-(a)having in his possession custody or control any property forming part of any undertaking in India of a specified company, wrongfully withholds such property from the Central Government or the successor Government company or(b)wrongfully obtains possession of or retains

any property forming part of any undertaking in India of a specified company; or(c)wilfully withhold or fails to furnish to the Central Government or the successor Government company or any person specified by the Central Government or that company, any books documents or other papers relating to any undertaking in India of a specified company which may be in his possession custody or control or(d)fails to deliver to the Central Government or the successor Government company any assets, books of account registers or other documents in his possession custody or control relating to any undertaking in India of a specified company or(e)wrongfully removes or destroys any property forming part of any undertaking in India of a specified company, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees or with both.

17. Offences by companies.-

(1)Where an offence under this Act has been committed by a company every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the Offences and shall be liable to be proceeded against and punished accordinglyProvided 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 under this act has been committed by a company and it 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 of the company such director manager secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.Explanation - For the purposes of this section -(a)company means anybody corporate and includes a firm or other association of individuals and(b)director in relation to a firm means a partner in the firm Protection of action taken in good faith

18. Protection of action taken in good faith.-

No suit prosecution or other legal proceeding shall lie against the Central Government or the successor Government company or any of its officers or other employees for anything which is in good faith done or intended to be done under this Act.

19. Cognizance of offences.-

Notwithstanding anything contained in the code of Criminal Procedure 1973, no court shall take cognizance of any offence against this Act except on a complaint in writing made by the Central Government or any officer authorised in this behalf by that Government.

20. Indemnity.-

Every officer of the Central Government and every officer or other employee of the successor Government company shall be indemnified by the Central Government or the successor Government company as the case may be against all losses and expenses incurred by him in or in relation to the discharge of his duties under this Act except such as have been caused by his own wilful act or default.

21. 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: Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

22. Power to make rules.-

(1) The Central Government may by notification make rules to carry out the provisions of this Act. (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.

Additional Information⁶

For the Burmah Oil Company (Acquisition of Shares of Oil India Limited and of the Undertaking in India of Assam Oil Company Limited and Burmah Oil Company (India Trading) Limited) (Administration of Funds) Rules, 1982.