

The Plyboard Industries (Acquisition of Shares and of the Industrial Undertaking) Act, 1987

JAMMU & KASHMIR

India

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Act 6 of 1987

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The Plyboard Industries (Acquisition of Shares and of the Industrial Undertaking) Act, 1987(Act No. 6 of 1987)Received the assent of the Governor on 20th April, 1987 and published in the Government Gazette dated 21st April, 1987.]An Act to provide, in the public interest, for the acquisition of shares and for the acquisition and transfer of right, title and interest of Messers Plyboard Industrial limited, Pampore, Kashmir and thereby to secure that the ownership and control of the products produced by the said Industrial Undertaking are so distributed as best to subserve the common good.Whereas Messers Plyboard Industries Limited, Pampore, Kashmir was engaged in production of ply articles at its mill at Pampore in District Pulwama, which are essential to the State;And whereas the Central Government by its notification in the Ministry of Civil Supplies (Department of industrial Development) No, SO3 19(E)/18-AA/IDRA/76 dated 27-4-1976 had authorised, the Jammu and Kashmir Industries Limited to take over the management of the whole of the said Industrial Undertaking under section 18-AA of the Industries (Development and Regulation) Act 1951;And whereas the management of the Plyboard Industries Limited, Pampore was taken over by the Jammu and Kashmir Industries in pursuance of the said notification;And whereas it is expedient acquire the said undertaking and its shares for ensuring continued production of goods essential to the needs of State and to provide for matters connected therewith, or incidental thereto.Be it enacted by the Jammu and Kashmir State Legislature in the Thirty eighth Year of the republic of India as follows :-

1. Short title, extent and commencement.

(1)This Act may be called the Plyboard Industries (Acquisition of Shares and of the Industrial Undertaking) Act, 1987.(2)It extends to whole of the state of Jammu and Kashmir,(3)It shall deemed to have come into force on 26th day of December, 1985

2. Definitions.

- In this Act, unless the context otherwise requires. -(a)"appointed day" means the date of commencement of this Act.(b)"Government" means the Government of Jammu and Kashmir;(c)"Industrial Undertaking" means Messers Plyboard industries Limited, Pompore, Kashmir;(d)"Notification" means notification published in the Government Gazette;(e)"Prescribed" means prescribed by rules made under this Act.

3. Transfer and vesting in the government of shares of the industrial undertaking.

(1)On the appointed day, all the shares in the capital of the industrial undertaking shall by virtue of this Act stand transferred to and vested in the Government.(2)All the shares which have vested in the Government under subsection (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 Messers Plyboard Industries Limited, Pampore in respect of any period beginning from appointed day, shall be payable to the Government.

4. Management of the industrial undertaking.

(1)For the purpose of enabling the industrial undertaking to function as a Government Company, the Government may by notification in the Government Gazette, make such amendments in the memorandum and articles of association of the said industrial undertaking and such other provisions as it may consider necessary.(2)Any amendments in the memorandum and articles of association the industrial undertaking and any other provisions made under sub-section (1) shall have effect notwithstanding anything contained in the Companies Act, 1956.

5. Transfer and vesting in the government of the industrial undertaking.

- On the appointed day, the right, title and interest of the industrial undertaking shall by virtue of this Act, stand transferred to, and vested in the Government.

6. General effect of vesting.

(1)The industrial undertaking shall be deemed to include all assets, rights, powers, authorities and privileges and all property movable and immovable, cash balances, reserve funds, book debts, investments and all other rights and interests in or arising out of such property as were, immediately before the appointed day, in the ownership, possession power of control of the said industrial undertaking and all books of accounts, registers, and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities (including the liability for the payment of any pension and other pensionary benefits to the person employed in the said industrial undertaking) and obligations of whatever kind subsisting on the appointed date;Provided that remittances within or outside the state 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 profits earned by the industrial undertaking from the appointed day shall be payable to the Government.(3)Unless, otherwise expressly provided by this Act all deeds, bonds, agreements, powers of attorney, grant of legal representation and other instruments of whatever nature in relation to the said industrial undertaking subsisting or having effect immediately before the appointed day, shall be as of full force and effect against or in favour of the Government and may be enforced or acted as fully and effectively as if in the place of the said industrial undertaking the Government had been a party thereto or as if they had been issued in favour of the Government.(4)if on the appointed day, any suit, appeal or other proceedings, of whatever nature in relation to the said industrial undertaking which have been transferred to and vested in the Government under section 5 is pending by or against the said industrial undertaking, the same shall not abate, be discontinued or be in any way, prejudicially affected by reason of the transfer of the said industrial undertaking or of anything contained, prosecuted and enforced by or against the Government.

7. Special provisions as to certain rights and interest held by the industrial undertaking before the appointed day.

(1)Every right or interest in respect of any property in the state including a right under any lease or under any right tenancy or any right under any arrangement to secure any premises for any purpose which the said industrial undertaking held immediately before the appointed day shall, notwithstanding anything in any other law or in any agreement or instrument relating to such rights or interest, vest in and be held by the Government on and after the appointed day on the terms and conditions on which the said industrial undertaking would have held it, if no negotiation/negotiations had taken place for the acquisition by the Government of the undertaking of the said industrial undertaking in the state if this Act had not been enacted.(2)If at any time before the commencement of this Act, the said industrial undertaking surrendered or otherwise relinquished any right or interest in respect of any property in the state including a right under any lease or under any right of tenancy or a right under any arrangement to secure any premises for any purpose, then for the purpose of this Act notwithstanding anything contained in other law or in any agreement or instrument relating to such right or interest, the Government shall on and after the appointed day, be entitled to such right or interest if it had not surrendered or otherwise relinquished such right or interest and this Act had not been enacted;Provided that nothing in this sub-section shall apply to any right or interest surrendered or otherwise relinquished by the said industrial undertaking before the commencement of this act for sufficient monetary consideration.(3)On the expiry of the terms 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 Government be renewed or continued, so far 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 the said industrial

undertaking in the state, and to the rights and powers acquired and to debts, liabilities and obligations incurred and to contracts, agreements and other instruments made, by the said industrial undertaking in the State and to legal proceedings relating to those matters pending in any Court or Tribunal in or outside the State.(2)If any question arises as to whether any property appertained immediately before the appointed day to any business of the said industrial undertaking in the State or whether any rights, powers, debts, liabilities or obligations were acquired or incurred or any contract, agreement or other instrument was made by the said industrial undertaking for the purposes of its business in the state, 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 Government which shall after giving a reasonable opportunity of being heard to the person interested in the matter, decide it in such manner as it may think fit.

9. Power of Government to direct vesting of the industrial undertaking in a Government Company.

(1)Notwithstanding anything contained section 5, 6 and 7 the Government may if it is satisfied that a Government Company willing to comply, or has complied, with such terms and conditions as the Government may think fit to impose, direct by notification in the Government Gazette that the right, title and interest and the liabilities of the said industrial undertaking in relation to any its undertakings in the state shall, instead of continuing to vest in the Government, vest in the Government Company either on the date of notification or on such earlier or later date (not being date earlier than the appointed day) as may be specified in the notification.(2)When the right, title and interest and the liabilities of the industrial undertaking in the State vest in a Government Company under sub-section (1) all the rights and liabilities of the Government in relation to such undertaking, shall on and from the date of such vesting, be deemed to have become the rights and liabilities respectively, of the Government Company.(3)The provisions of section 5, 6 and 7 shall so far as may be apply in relation to such Government Company as they apply in relation to Government and for this purpose reference therein to the "Government" shall be construed as reference to such Government Company.

10. Payment of amount to the industrial undertaking.

(1)For the transfer to and vesting in the Government under section 3 and 5 of the shares, right, title and interest of the industrial undertaking, there shall be paid by the Government an aggregate amount of Rupees two lakhs to the industrial undertaking in the proportion agreed to by them.(2)The amount specified in sub-section (1) shall carry interest free of Income -tax at the rate of 10% per annum from the appointed day, till the date of payment in the manner as may be prescribed.(3)the amounts payable under sub-section (1) and (2) shall be payable in instalments in the prescribed manner.(4)In addition to the amounts mentioned in sub-sections (1) and (2) the Government shall pay to the industrial undertaking such amount in Indian currency a may be required by the said industrial undertaking to pay towards all taxes India on the amounts payable under the said sub-sections and all other taxes in India the liability for the payment of which arises directly on the transfer to and vesting in the Government of the shares and of the undertakings of the industrial undertakings.

11. Transfer of service of existing employees of the industrial undertaking.

(1) Every whole-time officer or other employees of the industrial undertaking who was immediately before the appointed day, employed by the said industrial undertaking and every whole-time officer or other employee of the said industrial undertaking who was immediately before the appointed day, temporarily holding any assignment shall on the appointed day, become an officer or of the employee, as the case may be, of the government or the Government Company (thereinafter referred to as the successor Government Company) in which the right, title and interest of the said industrial undertaking have vested under this Act and shall hold office or service under the 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 Government or the successor Government Company is duly terminated or until his remuneration and conditions of service are duly altered by the Government or the successor Government Company. (2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, the Payment of Gratuity Act, 1947 or in any other law for the time being in force, the transfer of the service of any officer or other employee under sub-section (1) shall not entitle such officer or other employee to any compensation or gratuity under these Acts or such law, and no such claim shall be entertained to any Court, Tribunal or other authority.

12. Provident, superannuation, welfare fund etc.

(1) Where a provident, superannuation, welfare or other fund has been established by the industrial undertaking for the benefit of the person employed by it, the moneys relatable to the employee-(i) whose service are transferred by or under this Act in the Government or the successor Government Company; or (ii) 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 Government or the successor Government Company, as the case may be, free any trust that may have been constituted by the said industrial undertaking in respect thereof. (2) The moneys which stand transferred under sub-section (1) to the Government or the successor Government Company, shall be dealt with by the Government or that Company, as the case may be in such manner as may be prescribed. (3) The successor Government Company shall, as soon as may be after said industrial undertaking become vested in it, 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 objects of the existing trusts, as in the circumstances may be practicable, is however, that the rights and interests of the beneficiaries of the trust referred to in sub-section (i) are not any way prejudiced or diminished.

13. Effect of the 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 the virtue of any law other than this Act or in any decree or order of any court, tribunal or other

authority.

14. Contracts to continue unless terminated by the Government.

(1) Every contract entered into by the industrial undertaking 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 one year from the appointed day continue to be of full force and effect against or in favour of the Government or the successor Government Company, as the case may be. (2) The 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 interest of the Government or the successor Government Company, as the case may be, by order in writing, either terminate such contract or make such alteration or modification therein as it may think fit; Provided that the 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.

15. Penalties.

- Any person who—(a) having in his possession, custody or control any property forming part of the industrial undertaking; or (b) wrongfully obtains possession of, or retains any property forming part of the industrial undertaking; or (c) wilfully withholds or fails to furnish to the Government or the successor Government Company or any person specified by the Government or that Company, any books, documents or other papers relating to the industrial undertaking which may be in his possession, custody or control; or (d) fails to deliver to the Government or the successor Government Company any assets, books of accounts, registers or other documents in his possession, custody; or (e) wrongfully removes or destroys any property forming part of the industrial undertaking; or (f) wrongfully uses any property forming part of the industrial undertaking; 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.

16. Protection of action taken in good faith.

- No suit, prosecution or other legal proceeding shall lie against the 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 Ordinance.

17. 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 Government or any officer authorised in this behalf by the Government.

18. Indemnity.

- Every officer of the Government, every officer or other employee of the successor Government Company shall be indemnified by Government or by 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 default.

19. Power to remove difficulties.

- If any difficulty arises in giving effect to the provisions of this Act the 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.

20. Power to make rules.

(1) The Government may, by notification in the Government Gazette, make rules carry out the provisions of this Act. (2) Every rule made this Act shall be laid, as soon as may be after it is made, before each House of the state Legislature while it is in session for a total period of thirty days which may be comprised one session or in two or more successive sessions, of 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 validity or anything previously done under that rule.

21. Repeal and saving.

(1) The Plyboard Industries (Acquisition of shares and of the Industries Undertaking) Ordinance, 1986 (VII of 1986) is hereby repealed. (2) Notwithstanding such repeal anything done, any action taken, any order made, any notification issued or any saving made under the said Ordinance shall be deemed to have been done, taken, made or issued under this Act as if this Act was in force on the day when such thing was done action taken, order made, notification issued or saving made.