

The Pulgaon Cotton Mills Limited (Acquisition Of Shares) Act, 1982

MAHARASHTRA

India

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Act 34 of 1982

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The Pulgaon Cotton Mills Limited (Acquisition Of Shares) Act, 1982[14th October 1982]Maharashtra Act No. XXXIV of 1982An Act to provide for the acquisition of shares of the Pulgaon Cotton Mills Limited, with a view to securing proper management of the affairs of the company and the continuity and development of the production of articles which are vital to the needs of the general public and for matters connected therewith, or incidental thereto.WHEREAS Messrs. Pulgaon Cotton Mills Limited, 59, Apollo Street, Bombay, are engage in the manufacture and production of cotton fabrics at its mills at Pulgaon, in Wardha District, which are vital to the needs of the general public ;AND WHEREAS the Central Government by its Notification in the Ministry of Industries (Department of Industrial Development), No. S. O. 753 (E)/18AA/IDRA/76, dated the 25th November 1976, has taken over the industrial undertaking for management under section 18AA of the Industries (Development and Regulation) Act, 1951;AND WHEREAS large scale modernisation programmes have been chalked out for the undertaking for making it a completely viable unit and whereas the State Bank of India and the Financial Institutions have advanced considerable sums to the company and a major portion of the loans sanctioned by the Financial Institutions for the modernisation programmes has been guaranteed by the State Government;AND WHEREAS the State Government has also advanced a sum of Rs. 25.00 lakhs for the unit;AND WHEREAS it is essential to maintain the volume of production as well as the level of employment in the industry;AND WHEREAS further investment of large sums of money is necessary for the maintenance and development of the production of the undertakings of the industry and for securing the proper management of the affairs of the industry;AND WHEREAS acquisition of the shares of the company by the State Government for having an effective control over the affairs of the company was necessary in the public interest to enable it to make the investments aforesaid;AND WHEREAS both Houses of the State Legislature were not in session ;AND WHEREAS the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take

immediate action to make a law for the purposes aforesaid; and, therefore, promulgated the Pulgaon Cotton Mills Limited (Acquisition of Shares) Ordinance, 1982 on the 24th August 1982 ;AND WHEREAS it is expedient to replace the said Ordinance by an Act of the State Legislature ; It is hereby enacted in the Thirty-third Year of the Republic of India as follows :—

Chapter I

Preliminary

1. Short title and commencement.

(1)This Act may be called the Pulgaon Cotton Mills Limited (Acquisition of Shares) Act, 1982.(2)It shall be deemed to have come into force on the 24th day of August 1982.

2. Definitions.

In this Act, unless the context otherwise requires,—(a)" appointed day " means the date of commencement of this Act;(b)" bank " means a banking company within the meaning of the Banking Regulation Act, 1949 ;(c)" Commissioner "means the Commissioner of Payments appointed under section 5 ;(d)" Company " means Messrs. Pulgaon Cotton Mills Limited, being a company within the meaning of the Companies Act, 1956, and having its registered office at 56, Apollo Street, Bombay 400 023, in the State of Maharashtra ;(e)" share" means share in the capital of the Company, and includes a share pledged by any shareholder with any bank or other creditor;(f)" shareholder " means,—(i)a person who, immediately before the appointed day, was registered by the company as the holder of any share, and includes his legal representative ; or(ii)a person who, before the appointed day, had lodged with the Company a proper instrument of transfer of any share in the form prescribed under section 108 of the Companies Act, 1956, and executed in accordance with the provisions of that section ; or(iii)a person who claims under a proper instrument of transfer of any share in the form prescribed under section 108 of the Companies Act, 1956, and delivers such instrument to the Commissioner, duly executed, on or before such date as the State Government may, by notification in the Official Gazette, specify in this behalf;(g)" specified date " means such date as the State Government may, for the purpose of any provision of this Act, by notification in the Official Gazette, specify and different dates may be specified for different provisions of this Act;(h)words and expressions used herein and not defined, but defined in the Companies Act, 1956, shall have the meanings respectively assigned to them in that Act.

Chapter II

Acquisition of shares of the company

3. Transfer and vesting of shares of the Company in the State Government.

(1)On the appointed day, all the shares of the Company, except those held by the financial institutions like the State Industrial Development Corporation of Maharashtra, the Maharashtra

State Financial Corporation, the State Bank of India or the Life Insurance Corporation of India shall, by virtue of this Act, stand transferred to, and vested in, the State Government.(2)The State Government shall be deemed, on and from the appointed day, to have been registered in the register of members of the Company as the holder of each share which stands transferred to, and vested in it, by virtue of the provisions of sub-section (1).(3)All the shares which have vested in the State 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, and any attachment, injunction or any decree or order of the Court, tribunal or other authority restricting the use of such shares in any manner, shall be deemed to have been withdrawn.(4)For the removal of doubts, it is hereby declared that the provisions of sub-sections (1) and (2) shall not be deemed to affect—(a)any right of the Company subsisting, immediately before the appointed day, against any shareholder to recover from such shareholder any sum of money on the ground that the shareholder has not paid or credited to the Company the whole or any part of the value of the shares held by him, or on any other ground whatsoever, or(b)any right of the shareholder subsisting, immediately before the appointed day, against the Company to receive any dividend or other payment due from the Company.

4. Payment of amounts.

(1)For the transfer to, and vesting in, the State Government,under section 3, of the shares of the Company, there shall be given by the State Government to the shareholders of the Company, in cash and in the manner specified in section 6, an amount of rupees four per share.(2)The amount referred to in sub-section (1) shall carry simple interest at the rate of four per cent per annum for the period commencing on the appointed day and ending on the date on which payment of such amount is made by the State Government to the Commissioner.

5. Appointment of Commissioner of Payments.

(1)The State Government shall, for the purpose of disbursing the amounts payable to the shareholders of the Company under section 4, by notification in the Official Gazette, appoint a Commissioner of Payments.(2)The State Government may appoint such other persons as it may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such persons also to exercise all or any of the powers exercisable by him under this Act, and different persons may be authorised to exercise different powers.(3)Any person authorised by the Commissioner to exercise any of the powers exercisable by the Commissioner may exercise these powers in the same manner and with the same effect as if they have been conferred on that person directly by this Act, and not by way of authorisation.(4)The salaries and allowances of the Commissioner and other persons appointed under this section shall be defrayed out of the Consolidated Fund of the State.

6. Payment by the State Government to the Commissioner.

(1)The State Government shall, within thirty days from the specified date, pay, in cash, to the Commissioner, for payment to the shareholders of the Company -(a)an amount equal to the amount

specified in sub-section (1) of section 4, and (b) an amount equal to the amount determined under sub-section (2) of section 4. (2) A deposit account shall be opened by the State Government in favour of the Commissioner, in the Public Account of the State, and every amount paid under this Act to the Commissioner shall be deposited by him to the credit of the said deposit account and the said deposit account shall be operated by the Commissioner. (3) The interest accruing on the amount standing to the credit of the deposit account referred to in sub-section (2), shall ensure to the benefit of the shareholders of the Company.

7. Claims to be made to the Commissioner.

Every shareholder, having a claim in relation to any share acquired by this Act, shall prefer such claim before the Commissioner within thirty days from the specified date: Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the period of thirty days, he may entertain the claim within a further period of thirty days and not thereafter.

8. Examination of claims.

On receipt of the claims made under section 7, the Commissioner shall examine the claims in relation to each share.

9. Admission or rejection of claims.

(1) After examining the claims, the Commissioner shall fix a certain date on or before which every claimant shall file the proof of his claim. (2) Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of such daily newspaper in the English language, in one issue of such daily newspaper in the Marathi language and in one issue of such daily newspaper in any other regional language as the Commissioner may consider suitable, and every such notice shall call upon every claimant to file the proof of his claim with the Commissioner within the time specified in the advertisement. (3) Every claimant, who fails to file the proof of his claims within the time specified by the Commissioner, shall be excluded from the disbursements made by the Commissioner. (4) The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the Company an opportunity of refuting the claim and after giving the claimant a reasonable opportunity of being heard, in writing, admit or reject the claim in whole or in part. (5) The Commissioner shall also decide any dispute as to the person or persons who are entitled to the amount and any dispute as to who are the legal representatives of any deceased claimant. (6) The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions, including the place or places at which he will hold his sittings and shall, for the purpose of making an investigation under this Act, have the same powers as are vested in a Civil Court under the Code of Civil V of Procedure, 1908, while trying a suit, in respect of the following 1908. matters, namely :—(a) the summoning and enforcing the attendance of any witness and examining him on oath ;(b) the discovery and production of any document or other material object producible as evidence ;(c) the reception of evidence on affidavits ;(d) the issuing of any commission for the examination of witnesses. (7) Any investigation before the Commissioner

shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the Commissioner shall be deemed to be a Civil Court for the purposes of section 345 and Chapter XXVI of the Code of Criminal Procedure, 1973.(8)A claimant, who is dissatisfied with the decision of the Commissioner, may prefer an appeal against the decision to the Bombay City Civil Court, within the local limits of whose jurisdiction the registered office of the Company is situated.

10. Disbursement of money by the Commissioner to claimants.

(1)After admitting a claim under this Act the amount due in respect of each share acquired by virtue of this Act shall be paid by the Commissioner at the rate of rupees four per share to the person or persons to whom such sums are due, and on such payment, the liability of the State Government in respect of the share so acquired shall stand discharged.(2)The Commissioner shall also apportion amongst the shareholders, the amount paid to him by way of interest under sub-section (3) of section 6, and such apportionment shall be made on the basis of the amount due to each shareholder.

11. Undisbursed or unclaimed amount to be deposited to the general revenue account.

Any money paid to the Commissioner which remains undisbursed or unclaimed on the date immediately preceding the date on which the office of the Commissioner is finally wound up, shall be transferred by the Commissioner, before his office is finally wound up, to the general revenue account of the State Government; but a claim to any money so transferred may be preferred to the State Government by the person entitled to such payment and shall be dealt with as if such transfer had not been made, the order, if any, for payment of the claim being treated as an order for the refund of revenue.

12. Power of inspection.

For the purposes of ascertaining whether any person claiming payment under this Act is entitled thereto, the Commissioner shall have the right to -(a)require any person, having the possession, custody or of control of any register or record of the Company, to produce such register or record before the Commissioner;(b)require any person to make any statement or furnish any information which may be required by the Commissioner.

13. Power of Commissioner to inquire into disputes as to amount.

Where there is any dispute as to the person or persons who are entitled to any amount payable under this Act (including any dispute as to who are the legal representatives of any deceased claimant to the amount), the Commissioner may, after making such inquiry as he may deem fit, make the payment to such persons as appears to him to be best entitled to receive the amount:Provided that if the Commissioner is unable to determine as to who is the person entitled to

the amount and considers that the matter could more appropriately be dealt with by a Civil Court, he may refer such dispute to the Bombay City Civil Court, whose decision thereon shall be final: Provided further that nothing contained herein shall affect the liability of any person, who may receive the whole or any part of the amount allowed under this Act, to pay the same to the person lawfully entitled thereto.

14. Deposit of amount in Court.

Where any dispute has been referred under section 13 by the Commissioner to the Bombay City Civil Court, he shall deposit the amount in that court.

Chapter III Miscellaneous

15. Act to have over-riding effect.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any law, other than this Act, or in any instrument having effect by virtue of any law other than this Act.

16. Penalties.

If any person—(a)makes any claim for any payment under this Act, knowing or having reason to believe that such claim is false or without any basis; or(b)when required under this Act so to do,—(i)omits or fails to produce any register or record of the Company; or(ii)makes any statement or furnishes any information which is false in any material particular and which he knows or believes to be false or does not believe to be true ; or(c)makes any such statement as aforesaid in any book, account, record, register or other document,he shall, on conviction, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to two 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 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 under this Act 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, 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 any body corporate, and includes a firm or other association of individuals ; and (b)'director', in relation to a firm, means a partner in the firm.

18. Limitation of cognizance of offences.

No Court shall take cognizance of an offence punishable under this Act, except with the previous sanction of the State Government or of an Officer authorised by that Government in this behalf.

19. Power to make rules.

(1) Subject to the condition of previous publication, the State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. (2) Every rule made under 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 in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall from the date of publication of such notification 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 or omitted to be done under that rule.

20. Power to remove difficulties.

If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion arises, by order, do anything, which appears to it to be necessary to remove the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

21. Repeal and saving.

(1) The Pulgaon Cotton Mills Limited (Acquisition of Shares) Ordinance, 1982 is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken (including any rule, order or notification issued or any appointment or delegation or claim made) under the said Ordinance shall be deemed to have been done, taken, issued or made, as the case may be, under the corresponding provisions of this Act.