

Bolani Ores Limited (Acquisition of Shares) And Miscellaneous Provisions Act, 1978.

UNION OF INDIA

India

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Act 42 of 1978

- Published on 8 December 1978
- Commenced on 8 December 1978
- [This is the version of this document from 8 December 1978.]
- [Note: The original publication document is not available and this content could not be verified.]

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1439.

Object and Reasons. Bolani Ores Limited was incorporated as a private limited company in June, 1957 for supplying iron ore mainly to the Durgapur Steel Plant. The capital of the company was contributed by the Government of India to the extent of 50.5 per cent., the remaining 49.5 per cent, being contributed by the Orissa Mineral Development Company Limited (OMDC), a company of the Bird Group. In February, 1973, the shares of the Central Government in the company were transferred to the Steel Authority of India Limited (SAIL).² The present financial position of the company is far from satisfactory. The accumulated losses suffered by the company till the end of 1977-78 are over Rs. 270 lakhs against the paid-up capital of Rs. 100 lakhs. The company is in immediate need of funds to the extent of about Rs. 250 lakhs to complete the capital schemes in hand and for providing balancing facilities and to replace some of the worn out earth moving machinery, failing which the regular supply of iron ore of adequate quality to the Durgapur Steel Plant cannot be ensured. Bolani Ores Limited is the main source of supply of iron ore to the Durgapur Steel Plant which has no other alternative economic source of bulk supply and closure or inefficient working of the mine by the Bolani Ores Limited, will seriously affect the interests of the steel plant. The Orissa Mineral Development Company is not interested in making any further investment in the Bolani Ores Limited. In order to ensure the regular supply of adequate quality of iron ore to the Durgapur Steel Plant, it is necessary that substantial investments are made in the Bolani Ores Limited by the Central Government. It is therefore necessary in the public interest to take over the company. The Bill proposes to acquire the shares held by the OMDC in the Bolani Ores Limited. To facilitate the efficient management of the Bolani Ores Limited, it is proposed to transfer the undertaking of that company to the Steel Authority of India Limited which is the apex body for

all steel plants.³ The present state of affairs of the Bolani Ores Limited has revealed that the shares of the company do not have any value under the conventional methods of valuation namely, net worth and profit earning capacity. It is however proposed to make a payment of an amount of Rs. 49.50 at the rate of rupee one for each share of the face value of Rs. 100 for the acquisition of the shares.⁴ The Bill seeks to achieve the above objects. - See Gazette of India, 31-8-78, Pt. II. S.2, Ext., p. 1310.[8th December, 1978]An Act to provide for the acquisition of shares of the Bolani Ores Limited in public interest in order to serve better the needs of the nation and to facilitate the promotion and development in the interests of the general public, of national steel industry and for matters connected therewith or incidental thereto.WHEREAS Bolani Ores Limited was incorporated as a private limited company in June, 1957. For supplying ores mainly to the Durgapur Steel Plant;WHEREAS 50.5 per cent, shares in the share capital of the said Bolani Ores Limited are held by the Steel Authority of India Limited, a wholly owned Government company and the remaining 49.5 per cent shares are held by the Orissa Minerals Developments Company Limited;WHEREAS cumulative losses suffered by the Bolani Ores Limited at the end of 1977-78 were to the extent of over Rs. 270 lakhs and the said Bolani Ores Limited is in need of urgent funds to carry on the operations of its undertakings;AND WHEREAS the Orissa Minerals Development Company is not willing to contribute any further amount towards the share capital of the Bolani Ores Limited;AND WHEREAS the Bolani Ores Limited is the main source of supply of iron ores to the Durgapur Steel Plant and without further substantial investments by way of capital outlay and otherwise the supply of iron ores to the said Plant cannot be maintained;AND WHEREAS it is expedient in the public interest that the shares of the said Bolani ores Limited should be acquired;BE it enacted by Parliament in the twenty-ninth Year of the Republic of India as follows:-

Chapter I

Preliminary

1. Short title and Commencement.-

(1)This Act may be called the Bolani Ores Limited (Acquisition of Shares) and Miscellaneous Provisions act, 1978.(2)it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.-

(1)In this Act, unless the context otherwise requires,-(a)"appointed day" means the date on which this act comes into force;(b)"Bolani Ores Limited" means the Bolani Ores Company Limited, a company formed and registered under the companies Act and having its registered office at Chartered Bank Buildings in Calcutta in the state of West Bengal;(c)"Companies Act" means the companies Act, 1956 (1 of 1956);(d)"dissolved company" means the Bolani Ores Limited dissolved by virtue of section 6;(e)"the company" means the Orissa Minerals Development Company Limited, a company formed and registered under the companies Act and having its register office at Chartered Bank Buildings, Calcutta in the State of West Bengal;(f)"Steel Authority of India: means the steel Authority of India Limited, a company formed and register under the companies Act and

having its registered office at New Delhi.(2)Save as provided in section 14, the words and expressions used herein and not defined but defined in the Companies Act have the meanings respectively assigned to them in that Act.

Chapter II

Acquisition And Transfer Of Shares Of Bolani Ores Limited

3. Vesting in the Central Government of the shares held by the company.-

(1)On the appointed day, all the shares held by the Company in the share capital of the Bolani Ores Limited shall, by virtue of this act, stand transferred to, and shall vest 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, and any attachment or injunction or any decree or order of any court, tribunal or other authority restricting the use of such shares in any manner shall be deemed to have been withdrawn.

4. Payment of amount to the Company.-

(1)For the transfer to, and vesting in, the Central government under section 3 of the shares held by the Company in the Bolani Ores Limited, the Central Government shall, within thirty days from the appointed day, pay to the Company in cash an amount of forty-nine thousand five hundred rupees.(2)Where the Central Government fails to pay to the Company the amount specified in sub-section (1) within the period specified in that sub-section, the central Government shall pay on the said amount simple interest at the rate of six per cent, per annum from the appointed day till the date of payment.

5. Allocation of shares to the Steel authority of India.-

(1)All the shares held by the Company in the Bolani Ores Limited which have vested in the Central Government by virtue of section 3 shall, immediately after they have so vested, stand transferred to, and shall vest in, the steel authority of India.(2)The amount paid by the Central Government for the shares which stand transferred to, and vested in, the Steel authority of India under sub-section (1) shall be deemed to be the contribution by the central Government to the equity capital of the steel Authority of India and the Steel authority of India shall issue (if necessary, after amending its memorandum and articles of association) to the Central Government forty-nine fully paid-up shares of the face value of one thousand rupees each and pay to that Government five hundred rupees in cash.

Chapter III

Vesting Of Undertakings In The Steel Authority Of India And

Dissolution Of Bolani Ores Limited

6. Vesting of undertakings a in the Steel Authority of India and dissolution of Bolani Ores Limited.-

On the appointed day-(a)all the undertakings of the Bolani Ores Limited, the shares of which have vested in the Steel Authority of India by virtue of section 5, shall stand transferred to, and shall vest in, the Steel Authority of India;(b)the Bolani Ores Limited shall stand dissolved.

7. Under-taking meaning of.-

For the purposes of this act, the undertakings of the dissolved company shall be deemed to include all assets, rights, lease-holds (including mining leases), industrial or other licences, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, works, mines, workshops, projects, stores, instruments, machinery, automobiles and other vehicles, equipment, cash or bank balances, cash in hand, reserve funds, investments and book debts 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 or control of the dissolved company and all books of account, registers, maps, drawings, records of survey and all other documents of whatever nature relating thereto, and shall also be deemed to include all borrowings liabilities and obligations of whatever kind of the dissolved company.

Chapter IV

Provisions Relating To Officers And Employees

8. Provisions relating to officers and other employees of dissolved company.-

(1)Every officer (not being a director) or other employee holding office immediately before the appointed day in the dissolved company in relation to any undertaking of such company, shall, as from the appointed day, contrive to hold office as such in respect of the undertaking vested in the steel Authority of India by virtue of section 6, by the same tenure and upon the same terms and conditions of service and with the same rights and privileges as to retirement benefits as would have been admissible to him if the company in which he was holding office had not been dissolved and shall contrite to dos unless and until such tenure and terms and conditions are duly altered by the Steel Authority of India.(2)Notwithstanding anything contained in sub-section (1), rules relating to the conditions of service and Standing Orders applicable to the officers or other employees referred to in sub-section (1), as immediately before the appointed day, shall continue to apply unless and until they are duly altered by the steel Authority of India.

9. provisions relating to directors.-

Every person holding office as a director of the dissolved company immediately before the appointed day shall, on that day, cease to hold office as such director.

10. Provisions relating to auditors.-

Every person appointed under section 619 of the Companies Act as an auditor of the dissolved company holding office immediately before the appointed day, may continue to hold office as such auditor in relation to the undertakings to the dissolved company which stand vested in the Steel Authority of India by virtue of section 6, for the duration for which he was so appointed, on the same terms and conditions as were applicable to him immediately before the appointed day.

11. Directors, etc., not entitled to compensation.-

(1) Notwithstanding anything contained in any law for the time being in force, no director or managerial personnel specified in section 197A of the Companies Act or other person entitled to manage the whole or a substantial part of the business and affairs of the undertakings of the dissolved company under a special agreement or otherwise shall be entitled to any compensation against the dissolved company or the Central government of the Steel Authority of India for the loss of office or for the premature termination of any contract of management entered into by him with the dissolved company whether such loss or termination was due to the provisions of this act. (2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the provisions of sub-section (1) of section 8 shall not entitle any officer or other employee referred to in that sub-section to any compensation under that act or under any other law for the time being in force and no claim for such compensation shall be entertained by any court, tribunal or other authority.

12. Provident fund.-

Where a provident fund has been established by the dissolved company for the benefit of the employees and the same stands vested in a trust, the monies and other assets standing to the credit of such provident fund shall continue to be held in trust with the same objects as were applicable before the appointed day and the trustees of such trusts functioning immediately before the appointed day shall, subject to the provisions of the trust deeds and the rules relating to such trusts, continue to function as trustees in respect of such provident fund maintained in relation to the undertakings to the dissolved company which stand vested in the Steel Authority of India by virtue of section 6, as if this act had not been passed: Provided that the right to nominate trustees and other rights relating to the trust vested in the dissolved company shall vest in the Steel Authority of India.

13. Gratuity, welfare fund and other funds.-

Where any gratuity, welfare fund or other fund has been established by the dissolved company for the benefit of its employees and is in existence immediately before the appointed day, all monies and other assets standing to the credit of or relatable to such gratuity, welfare fund or other fund shall vest in the Steel authority of India.

Chapter V

Financial Provisions

14. Provisions with respect to income-tax and surtax.-

(1)The Steel authority of India shall be liable to pay any sum under the provisions of the Income-tax Act of the Companies (profits) Surtax Act which the dissolved company would have been liable to pay if the dissolution had not taken place, in the like manner and to the same extent as the dissolved company.(2)For the purpose of making an assessment of the income or, as the case may be, the chargeable profits of the dissolved company and for the purpose of levying any sum in accordance with the provisions of sub-section (1),-(a)any proceeding taken against the dissolved company before the appointed day shall be deemed to have been taken against the Steel Authority of India and may be continued against the steel Authority of India from the stage at which it stood immediately before the appointed any;(b)any proceeding which could have been taken against the dissolved company, if the dissolution had not taken place, may be taken against the Steel Authority of India; and(c)all the provisions of the Income-tax Act or, as the case may be, the companies (Profits) Surtax Act shall apply accordingly.(3)The assessment of the income or, as the case may be, the chargeable profits of the previous year of the dissolved company up to the appointed any shall be made as if such dissolution had not taken place and all the provisions of the Income-tax Act, or as the case may be, the Companies (Profits) surtax Act shall, so far as may be, apply accordingly.(4)The transfer and vesting of the undertakings of the dissolved company in the steel authority of India under the provisions of this Act shall be deemed to be an amalgamation in relation to the dissolved company and the steel authority of India and the provision of the Income-tax Act shall, so far as may be apply accordingly as if references in the said Act to the amalgamating company and the amalgamated company were references to the dissolved company and the Steel authority of India respectively.(5)The accumulated loss and the unabsorbed depreciation, if any, of the dissolved company shall be deemed to be the loss or, as the case may be, allowance for depreciation of the Steel Authority of India for the previous year in which the amalgamation referred to in sub-section (4) has taken place and the provisions of the Income-tax Act relating to set-off and carry forward to loss and allowance for depreciation shall apply accordingly.(6)The provisions of sub-sections (1) to (5) shall have effect notwithstanding anything to the contrary contained in the income-tax Act or the Companies (Profits) Surtax Act.Explanation.- For the purposes of this section,-(a)"Income-tax Act" means the income-Tax Act, 1961 (43 of 1961.);(b)"Companies (profits) Surtax Act" means the companies (Profits) Surtax Act, 1964 (7 of 1964);(c)words and expressions used in this section and not defined in this Act but defined in the Income-tax Act or the Companies (Profits) Surtax Act shall have the meanings respectively assigned to them in the said Acts.

15. Taxes, fees and other charges not payable.-

for the removal of doubts, it is hereby declared that no taxes, duties, fees or other charges of whatever nature (including registration charges, shall be payable in respect of any transfer of shares or transfer of undertakings or transfer of any immovable property, under the provisions of this act.

Chapter VI Miscellaneous

16. Duty to deliver possession of properties, etc.-

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

17. Penalties.-

Any person who,-(a)having in his possession, custody or control any property forming part of the dissolved company wrongfully withholds such property from the Steel Authority of India; or(b)wrongfully obtains possession of, or retains, any property forming part of any of the undertakings of the dissolved company; or(c)wilfully withholds or fails to furnish to the Steel Authority of India or any person authorised by it any books, documents or other papers relating to any of the undertakings of the dissolved company which may be in his possession, custody or control; or(d)fails to deliver to the Steel authority of India or to a person authorised by it, any assets, books of account, registers or other documents in his possession, custody or control relating to any of the undertakings of the dissolved company; or(e)wrongfully removes or destroys any property forming part of any of the undertakings of the dissolved company; or(f)wrongfully uses any property forming part of any of the undertakings of the dissolved company, shall be punishable with imprisonment for a term which may extend to two years, own with find which may extend to ten thousand rupees, or with both.

18. Offences by companies.-

(1) Where an offence under this Act, has been committed by a company, every person who, at the time 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 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 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.

19. Protection of action taken in good faith.-

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

20. Cognizance of offences.-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974.), no Court shall take cognizance of any offence under this Act except on a complaint, in writing, made by the Central Government or any officer authorised in this behalf by the Government.

21. Saving of contracts, etc.-

All Contracts, deeds, bonds, agreements and other instruments of whatever nature to which the dissolved company is a party subsisting or having effect immediately before the appointed day, shall as from that day, be of full force and effect against, or, as the case may, be in favour of, the Steel authority of India and may be enforced as fully and effectual as if, instead of the dissolved company, the Steel Authority of India had been a party thereto.

22. Saving of legal proceedings.-

If, on the appointed day, there is pending any suit, arbitration, appeal or other legal proceeding of whatever nature by or against the dissolved company, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of the undertakings of the dissolved company or of anything contained in this act, but the suit, arbitration, appeal or other proceeding

any be continued, prosecuted and enforced by or against the Steel Authority of India in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the dissolved company if this Act had not been passed.

23. Broad of Directress of the steel authority of India to adopt accounts of dissolved company.-

(1)The accounts of the dissolved company shall stand closed on the appointed day and the balance-sheet and the profit and loss accounts for the current financial year up to the appointed day shall be prepared and audited in accordance with the provisions of the Companies Act. (2)Notwithstanding the provisions in the Companies Act, the Board of directors of the Steel Authority of India shall be deemed to be the Board of Directors of the dissolved company and the shareholders of the Steel Authority of India shall be deemed to be the shareholders of the dissolved company for the purpose of adoption of the accounts, directors' report and completion of other formalities in accordance with the provisions of the Companies Act in this regard.

24. Transfer of documents relating to the dissolved company.-

(1)The Registrar of Companies with whom the dissolved company is registered shall, as soon as may be after the appointed day, transfer all documents relating to the dissolved company to the Registrar of Companies, New Delhi. (2)The Registrar of Companies, New Delhi, on receipt of the documents relating to the dissolved company shall add those documents to the file maintained by him in relation to the Steel Authority of India, and shall consolidate the files relating to the dissolved company and the Steel Authority of India and the documents filed by the dissolved company shall, for the purposes of the Companies Act, be deemed to have been filed by the Steel Authority of India in relation to the business of the undertakings of the dissolved company which had transferred to and vested in the Steel Authority of India by virtue of section 6.

25. Power to remove difficulties.-

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary, for the removal of the difficulty: Provided that no such order shall be made after the expiry of a period of three years from the appointed day.

26. Act to override the provisions of other laws.-

The provisions of this Act or of any order made thereunder shall have effect notwithstanding anything contained in the Companies Act or in any other law for the time being in force or in any contract, express or implied, or in any rules or regulations having effect by virtue of any law other than this Act.

27. Power to amend memorandum and articles of association.-

(1)For the purpose of giving effect to the provisions of this Act, the Central Government may, by notification in the Official Gazette, make amendments in the memorandum or articles of association, or both of the Steel Authority of India.(2)Any amendments in the memorandum or articles or association of the steel authority of India made in pursuance of sub-section (1) shall have effect notwithstanding anything contained in the companies act.

28. 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.(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.