

The Bhaskar Textile Mills (Acquisition and Transfer) Act, 1986

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The Bhaskar Textile Mills (Acquisition and Transfer) Act, 1986 Orissa Act 4 of 1986 Published in Orissa Gazette Extraordinary No. 290 Dated 12.3.1986. No. 4721-Legis. - The following Act of the Orissa Legislative Assembly having been assented to by the President on the 7th March 1986, is hereby published for general information. An Act to provide for the Acquisition and transfer of the Bhaskar Textile Mills Limited, Jharsuguda and the right, title, interest of the owners in respect of the said mills with a view to reopening and Rehabilitating the same, so as to subserve the interest of the general public by augmentation of the production and distribution, at fair price, of different varieties of yarn as well as to protect the workmen against unemployment, and for matters connected therewith or incidental thereto. Be it enacted by the legislature of the State of Orissa in the Thirty-Seventh Year of the Republic of India, as follows : Chapter-I Preliminary

1. Short title and Commencement.

(1) This Act may be called the Bhaskar Textile Mills (Acquisition and Transfer) Act, 1986. (2) It shall be deemed to have come into force with effect from the 13th day of August, 1985.

2. Definitions.

(1) In this Act, unless the context otherwise requires, (i) "appointed day" means the date on which this Act came into force; (ii) "Banks" means: (a) a banking company within the meaning of the Banking Regulation Act, 1949 (10 of 1949) or a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) (b) any other bank being a scheduled bank as defined in clause (e) of Section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) (iii) "Commission" means the Commission of Assessment appointed under Sub-section (1) of Section 13; (iv) "Commissioner" means the Commissioner of Payments appointed under Sub-section (1) of Section 15; (v) "Corporation" means the Orissa State Textile Corporation

Limited, Cuttack formed and registered under the Companies Act, 1956 (1 of 1956);(vi)"owner" means Bhaskar Textile Mills Limited, Jharsuguda in the district of Sambalpur having its registered office at 2, Biplabi Trailokya Maharaj Sarani, Calcutta and includes any agent or manager of such owner, the lessee or occupier of the said Mills or part thereof and the receiver or liquidator, if any, appointed by any Court of the country;(vii)"prescribed" means prescribed by rules made under this Act;(viii)"specified date" means such date as the State Government may, for the purpose of this Act, by notification, specify and different dates may be specified for different provisions of this Act;(ix)"textile" includes yarn made either wholly or partly of cotton, wool, jute, synthetic and artificial (man-made) fibres;(x)"textile company" means Bhaskar Textile Mills Limited, Jharsuguda in the district of Sambalpur having its registered office at 2, Biplabi Trailokya Maharaj Sarani, Calcutta;(xi)"textile undertaking" means the Bhaskar Textile Mills located at jharsuguda in the district of Sambalpur.(2)Words and expressions used but not defined in this Act and defined in the Industries (Development and Regulation) Act, 1951 (65 of 1951) shall have the meaning respectively assigned to them in the Act.(3)Words and expressions used but not defined in this Act or in the Industries (Development and Regulation) Act, 1951 but defined in the Companies Act, 1956, shall have the meaning respectively assigned to them in the Companies Act, 1956.

Chapter-II Acquisition of Rights of The Owner of The Textile Undertaking

3. Acquisition of Rights of the owner in respect of the textile undertaking.

(1)On the appointed day, the textile undertaking and the right, title and interest of the owner in relation to the said textile undertaking shall stand transferred to and shall vest absolutely in the State Government.(2)The textile undertaking which stands vested in the State Government by virtue of Sub-section (1) shall, immediately after it has so vested, stand transferred to and vested in the Corporation.

4. Effect of vesting.

(1)The Textile undertaking referred to in Section 3 shall be deemed to include all assets, rights, lease holds, powers, authorities and privileges and all property, movable and immovable including lands, buildings, workshops, stores, instrument, machinery and equipment, cash balance, cash in hand, reserve funds, investments 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 owner of the textile undertaking, whether within or outside India and all books of account, registers and all other documents of whatever nature relating thereto.(2)All properties as aforesaid which have vested in the State Government under Sub-section (1) of Section 3 shall, by force of such vesting, be freed, discharged from any trust, obligation, mortgage, hypothecation, charge, lien and all other encumbrances affecting it; and attachment, injunction or decree or order of any Court restricting the use of such property in any manner shall be deemed to have been withdrawn.(3)Where any licence or other instrument in relation to the textile undertaking had been granted at any time before the appointed day to the owner by the Central Government or a State Government or any other authority, the Corporation shall, on and from such date, be deemed to be substituted in such licence or other instrument in place of the owner referred to therein as if such licence or other instrument had been granted to the Corporation and shall hold such licence or such

other instrument for the remainder of the period for which the owner would have held such licence or such other instrument.(4)Every holder of mortgage or hypothecation of any property which has vested under this Act in the State Government and every person holding any charge, lien or other interest in or in relation to any such property shall give, within such time and in such manner, as may be prescribed, an intimation to the Commissioner of Payments of such mortgage, hypothecation, charge, lien or other interest.(5)For removal of doubt, it is hereby declared that the holder of mortgage or hypothecation of property referred to in Sub-section (2) or any other person holding any charge, lien or other interest in, or in relation to any such property, shall be entitled to claim in accordance with his rights and interests, payment of the mortgaged or hypothecated money or other dues, in whole or in part, out of the amount determined in relation to such property under Section 7, but no such mortgage, hypothecation, charge, lien or other interest shall be enforceable against any property which has vested in the State Government.

5. Owner's liabilities.

(1)Every liability of the owner of the textile undertaking in respect of any period prior to the appointed day shall be the liability of such owner and shall be enforceable against it and not against the State Government or the Corporation.(2)For the removal of doubts, it is hereby declared that:-(a)save as otherwise expressly provided in this Section or in any other Section of this Act, no liability in relation to the textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the State Government or the Corporation;(b)no liability of the owner incurred before the appointed day, for the contravention of any provision of law for the time being in force, shall be enforceable against the State Government or the Corporation.

6. State Government contribution to Corporation.

- An amount equal to the value of the assets of the textile undertaking transferred to and vested in the Corporation under Sub-section (2) of Section 3 shall be deemed to be the contribution made by the State Government to the Corporation.

Chapter-III Payment of Amount

7. Payment of amount to the owner.

(1)For the transfer to, and vesting in, the State Government under Sub-section (1) of Section 3 of the textile undertaking and the right, title and interest of the owner in relation to such textile undertaking, there shall be given by the State Government to the owner in cash the amount determined as specified in Chapter - V, in the manner specified in Chapter - VI.(2)Where any liability of the owner specified in the Schedule is discharged by the State Government according to the order of the priorities mentioned in the Schedule, the amount to be paid to the owner under Sub-section (1) shall stand reduced to that extent.

8. Management of the textile undertaking.

- The Corporation shall be entitled to exercise the powers of general superintendence, direction,

control and management of the affairs and business of the textile undertaking.

9. Duty to deliver all assets.

- On the vesting of the management of the textile undertaking in the Corporation, all persons in charge of the management of such textile undertaking immediately before such vesting, shall be bound to deliver to the Corporation all assets, books of account, registers and other documents in their custody relating to the textile undertaking.

10. Accounts.

- The Corporation shall maintain the accounts of the textile undertaking in accordance with the provisions of the Companies Act, 1956 (1 of 1956); Chapter -IV Provision Relating to Employees of the Textile Mills

11. Employees to continue.

(1) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, (14 of 1947) and has been, immediately before the second day of October, 1982, employed in the textile undertaking shall become on and from the appointed day an employee of the Corporation, and shall hold office or as the case may be service, in the Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him had the right in relation to the said textile undertaking not been transferred to, and vested in, the Corporation and shall continue to do so unless and until his employment in the Corporation is 'duly terminated' or until his remuneration, terms and conditions of employment are duly altered by the Corporation. (2) Every person who is not a workman within the meaning of the Industrial Disputes Act, 1947 and who has been, immediately before the second day of October, 1982 employed in the said mills of the textile undertaking shall become, on and from the appointed day, an employee of the Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him had the right in relation to such textile undertaking not been transferred to, and vested in, the Corporation and shall continue to do so unless and until his employment in the Corporation is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Corporation. (3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other person employed in the textile undertaking to the Corporation shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force, and no such claim shall be entertained by any Court, Tribunal or other authority.

12. Provident and other funds.

(1) Where the owner of the textile undertaking has established a Provident Fund, superannuation, welfare or other fund for the benefit of the persons employed in such textile undertaking the moneys relating to the employees whose services have been transferred by or under this Act to the

Corporation shall, out of the moneys standing, on the appointed day, to the credit of such Provident Fund, superannuation, welfare or other fund stand transferred to, and shall vest in the Corporation.(2)The moneys which stand transferred under Sub-section (1), to the Corporation shall be dealt with by the Corporation in such manner as may be prescribed.Chapter-V Commission of Assessment

13. Appointment of Commission of Assessment.

(1)For the purpose of determining the amount payable to the owner of the textile undertaking, the State Government within one month from the appointed day shall, by notification in the Official Gazette, appoint any person or persons having the qualification to become a Company Secretary or a Chartered Accountant, to be the Commission of Assessment who shall exercise the powers conferred, and perform the duties imposed on him by or under this Act.(2)The State Government may appoint such other persons as it may think fit to assist the Commission and thereupon the Commission may authorise one or more 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 Commission to exercise any powers may exercise those powers in the same manner and with the same effect as if such powers have been conferred on that person by this Act.(4)The salaries and allowances of the Commission and other persons appointed under this Section shall be defrayed out of the Consolidated Fund of the State.

14. Duties and powers of the Commission.

(1)The Commission shall, within two months from the date of notification mentioned in Subsection (1) of Section 13 assess on the basis of book value of the assets which are in physical existence on the appointed day, the amount payable to the owner and submit his recommendation to Government specifying the amount payable to the owner.(2)The Commission shall have powers to call for all books of account, registers and other documents relevant for the purpose of assessment of value of assets from persons who are supposed to be in possession of the same on the appointed day.(3)In case, books of account, registers and other documents are not available to the Commission within the time limit prescribed by him in this behalf, it shall be open to him to collect relevant information, as far as possible, from other sources for the purpose of assessment of value of assets.(4)The Commission shall have the right to make physical verification of assets on the spot and for this purpose, he shall have the power to enter into the premises of the textile undertaking.Explanation - For the purpose of this Section physical existence of assets shall mean the physical existence of assets available within the premises of the textile undertaking.(5)The Commission shall have the power to regularise 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 any investigation under this Act, have the same powers as are vested, in a Civil Court while trying a suit under the Code of Civil Procedure, 1908, (5 of 1908) in respect of the following matters, namely -(a)the summoning and enforcing the attendance of any person from any part of India and examining him on oath;(b)requiring the discovery and production of any document or other material object produceable as evidence;(c)receiving evidence on affidavits;(d)the issuing of any commission for the examination of witnesses or documents;

and(e)requisitioning any public record or copy thereof from any Court or office.Chapter-VI
Commissioner of Payments

15. Appointment of Commissioner of Payments.

(1)For the purpose of disbursing the amounts payable to the owner of the textile undertaking in accordance with Section 7, the State Government shall, by notification in the Official Gazette, appoint a Commissioner of Payments who shall exercise the powers conferred, and perform the duties imposed on him by or under this Act.(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 powers 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)Salaries and allowances of the Commissioner and other persons appointed under this Section shall be defrayed out of the Consolidated Fund of the State.

16. Payment by the State Government to the Commissioner.

(1)The State Government shall, within thirty days from the date of publication of the notification appointing the Commissioner, pay in cash to the Commissioner, for payment to the owner of the textile undertaking an amount equivalent to the amount determined by the Commission.(2)A deposit account shall be opened by the State Government, in favour of the Commissioner, in the Public Account of the State, and the amount paid to the Commissioner under Sub-section (1), shall be deposited by him to the credit of the said deposit account in the Public Account of the State and thereafter the said deposit account shall be operated by the Commissioner.(3)Records shall be maintained by the Commissioner in relation to which payments have been made to him under this Act.(4)Interest accruing on the amount standing to the credit of the deposit account referred to in Sub-section (2) shall accrue to the benefit of the owner of the textile undertaking.

17. [Claim to be made to the Commissioner. [Substituted by Orissa Act 10 of 1990 w.e.f. 12.3.1986.]

- Every person having a claim against the owner of the Textile undertakiug shall prefer such claim before the Commissioner within thirty days from the date of publication of a notice issued by the Commissioner inviting such claims :]Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days he may entertain the claim within a further period of thirty days but not thereafter.

18. Priority of claims.

- The claims arising out of the matters specified in the Schedule shall have priorities in accordance with the following principles, namely :(a)category - I shall have precedence over all other categories

and category II shall have precedence over category III and so on;(b)the claims specified in each category except category III shall rank equally and be paid in full, but if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly;(c)the liabilities specified in category III shall be discharged subject to the priorities specified in this Section, in accordance with the terms of the secured loan and the priority inter se of such loans; and(d)the question of payment of liability with regard to a matter specified in a succeeding category shall arise if a surplus is left after meeting all the liabilities specified in the immediately preceding category.

19. Examination of claims.

(1)On receipt of the claims under Section 17, the Commission shall arrange the claims in the order of priority specified in the Schedule and examine the same in accordance with the said order.(2)If on examination of the claims the Commissioner is of the opinion that the amount paid to him under this Act is not sufficient to meet the liabilities specified in any succeeding category, he shall not be required to examine the liabilities in respect of such succeeding category.

20. Admission or rejection of claims.

(1)After examining the claims with reference to priority set out in the Schedule, the Commissioner shall fix a certain date on or before which every claimant shall file the proof of his claim or be excluded from the benefit of disbursement made by the Commissioner.(2)Not less than fourteen days notice of the date so fixed shall be given by advertisement in one issue of the daily newspaper in the English language and one issue of the daily newspaper in the regional language as the Commissioner may consider suitable and every such notice shall call upon the claimant to file the proof of the claim with the Commissioner within the time specified in the advertisement.(3)Every claimant who fails to file the proof of his claim 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 owner of the textile undertaking an opportunity of refusing 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 have the same powers as are conferred on the Commission in Sub-section (5) of Section 14 in the matter of regulating his own procedure and making any investigation for discharge of the functions conferred on him.(6)An investigation before the Commissioner shall be deemed to be the judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860) and the Commissioner shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).(7)A claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against that decision to the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the textile undertaking is situated :Provided that where a person who is a Judge of the High Court is appointed to be the Commissioner, such appeal shall lie to the High Court for the State and it shall be heard and disposed of by not less than two other judges of the High Court.

21. Disbursement of money by the Commissioner to claimants.

- After admitting a claim under this Act, the amount due in respect of such claim shall be credited by the Commissioner to the relevant fund or be paid to the person or persons to whom such sums are due and on such credit or payment the liability of the owner in respect of such claim shall stand discharged. -

22. Disbursement of amount to the owner of the textile undertaking.

(1) If out of money paid to him in relation to the textile undertaking there is a balance left after meeting the liabilities as specified in the Schedule, the Commissioner shall disburse such balance to the owner of the textile undertaking. (2) Before making any payment to the owner of the textile undertaking under Sub-section (1), the Commissioner shall satisfy himself as to the right of such person to receive the whole or any part of such amount, and in the event of there being a doubt or dispute as to the right of the person to receive the whole or any part of the amount referred to in Section 9, the Commissioner shall refer the matter to the Court, and make the disbursement in accordance with the decision of the Court. (3) Where any machinery, equipment or other property in the textile undertaking has vested in the Corporation, but such machinery, equipment or other property does not belong to the owner of such textile undertaking, the amount determined under Sub-section (1) of Section 14 shall, on a reference made to the Court by the Commissioner, be apportioned by the Court between the owners of such machinery, equipment or other property having due regard to the value of such machinery, equipment or other property on the appointed day. Explanation - In this Section, "Court" in relation to the textile undertaking, means the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the textile undertaking is situated.

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

- Any money paid to the Commissioner which remains undisbursed or unclaimed for a period of three years from the last day on which the disbursement was made, shall be transferred by the Commissioner 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 money 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. Chapter-VI Miscellaneous

24. Act to override all other enactments.

- 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 authority.

25. Contract to cease to have effect unless ratified by the Corporation.

(1) Every contract entered into by the owner or occupier of the textile undertaking for any service, sale or supply and in force immediately before the appointed day shall, on and from the expiry of one hundred and eighty days from such date, cease to have effect unless such contract is, before the expiry of that period, ratified, in writing by the Corporation and in ratifying such contract the Corporation may, with the previous approval of the State Government, make such alteration or modification therein as it may think fit : Provided that the Corporation shall not omit to ratify a contract, and shall not make any alteration or modification in a contract, unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interest of the textile undertaking. (2) The Corporation shall not omit to ratify a contract and shall not 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 refusal to ratify the contract or for making any alteration or modification therein.

26. Penalties.

- Any person who - (a) having in his possession, custody or control any property forming part of the textile undertaking, wrongfully withholds such property from the State Government or the Corporation or any person authorised by the Government or the Corporation, as the case may be, in this behalf, or (b) wrongfully obtains possession, or retains, any property forming part of the textile undertaking or wilfully withholds or fails to furnish to the State Government, the Corporation or any person specified by the Government or the Corporation, as the case may be, any document relating to such textile undertaking which may be in his possession, custody or control or fails to deliver to the Corporation or any person specified by that Corporation any assets, books of account, registers or other documents in his custody relating to the textile undertaking, or (c) wrongfully removes or destroys any property forming part of the textile undertaking or prefers any claim under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate, 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.

27. Offences by Companies.

(1) Whereas 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 the Companies Act, 1956 has been committed by the textile company and it is proved that the offence has been committed with the consent or connivance or, is attributable to any neglect on the part of, any, director, manager, secretary or other officer of the said textile company, such director, manager, secretary or other officer, as the case may be, shall be deemed to be guilty of that

offence and shall be liable to be proceeded against and punished accordingly.

28. Protection of action taken in good faith.

- No suit, prosecution or other legal proceeding shall lie against the State Government, or any officer of the State Government, or the Corporation or any officer or other person authorised by the Corporation for anything which is, in good faith done or intended to be done under this Act.

29. Textile undertaking not to be wound up by the Court.

- No proceeding for the winding up of the textile company, the right, title and interest in relation to the textile undertaking which have vested in the Corporation under this Act or, for the appointment of a receiver in respect of the business of such undertaking, shall lie or be proceeded within any Civil Court except with the consent of the State Government.

30. Delegation of powers.

(1)The State Government may, by notification, direct that all or any of the powers exercisable by it under this Act after than the power under Section 31 may also be exercised by any person or persons as may be specified by them by notification.(2)Whenever any delegation of power is made under Sub-section (1), the person to whom such power has been delegated shall act under the direction, control and supervision of the State Government.

31. Power to make rules.

(1)The State Government may, after previous publication by notification make rules to carry out any of the purposes of this Act,(2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely(a)the time within which and the manner in which an intimation referred to in Sub-section (4) of Section 4 shall be given;(b)the manner in which moneys in any provident fund or other fund referred to in Section 14 shall be dealt with;(c)any other matter which is, required to be, or may be prescribed.

32. Power to remove difficulties.

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

33. Declaration as to the policy of the State.

- It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clause (b) of Article 309 of the Constitution.Explanation - In this Section "State" has the same meaning as in Article 12 of the Constitution.

34. Repeal and Savings.

(1)The Bhaskar Textile Mills (Acquisition and Transfer) Ordinance, 1985 is hereby repealed.(2)Notwithstanding such repeal any thing done, any action taken or notification, order, instruction or direction issued under the ordinance so repealed, shall be deemed to have been done, taken or issued under the corresponding provisions of this Act.

Schedule

[See Sections 18, 19, 20]Order of priorities for the discharge of liabilities in respect of the textile undertaking.Category-IAll dues including arrear salaries, wages, leave and other dues and gratuity of persons employed in the textile undertaking relating to the period prior to the appointed day.Category-II Loans inclusive of interest advanced by the Central and the State Government and any bank prior to the appointed day.Category-IIIDues of secured creditors including banks and institutions pertaining to the period prior to the, appointed day.Category - IV(i)Statutory dues of Government pertaining to the period prior to the appointed day;(ii)Sundry creditors of the period prior to the appointed day;(iii)Other liabilities.