

The Central India Spinning, Weaving and Manufacturing Company Limited, The Empress Mills, Nagpur (Acquisition and Transfer of Undertaking) Act, 1986

MAHARASHTRA

India

The Central India Spinning, Weaving and Manufacturing Company Limited, The Empress Mills, Nagpur (Acquisition and Transfer of Undertaking) Act, 1986

Act 46 of 1986

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The Central India Spinning, Weaving and Manufacturing Company Limited, The Empress Mills, Nagpur (Acquisition and Transfer of Undertaking) Act, 1986 Maharashtra Act No. 46 of 1986 For Statement of Objects and Reasons, see Maharashtra Government Gazette, 1986, Part 5, Extra, pages 551-552, dated the 20th October 1986. [This Act received assent of the President on the- 23rd day of December 1986; assent first published in the Maharashtra Government Gazette, Part IV, Extraordinary, on the 26th day of December 1986]. An Act to provide acquisition and transfer of undertaking of the Central India Spinning, Weaving and Manufacturing Company Limited, with a view to securing the proper management of such undertaking so as to subserve the interest of the general public by ensuring the continued manufacture, production and distribution of textile and paper products which are essential to the needs of the economy of the country and for matters connected therewith or incidental thereto. Whereas, the Central India Spinning, Weaving and Manufacturing Company Limited, being an existing company as defined in clause (ii) of sub-section (1) of section 3 of the Companies Act, 1956 had been engaged in the manufacture and production of yarn, cloth and paper through its undertaking which was composite textile mill and paper manufacturing unit, styled as the Central India Spinning, Weaving and Manufacturing Company Limited, "The Empress Mills", Nagpur; And Whereas, in Petition No. 183 of 1986 filed by the company for voluntary winding up, the High Court of Bombay had made an order for appointment of the provisional liquidator and the proceedings for its liquidation were pending; And Whereas, the company had declared lock-out throwing about more than 6,000 workers out of employment and the undertaking has not been functioning since 3rd May 1986; And Whereas, it was expedient to acquire the undertaking of the said company to ensure that the interest of the general public and of

the employees of the undertaking were served by the continuance, by the undertaking of the said company, of the manufacture, production and distribution of textile and paper products which are essential to the needs of the country and to provide for matters connected therewith or incidental thereto; And Whereas, such acquisition is for giving effect to the policy of the State, Wards securing the principle specified in clause (b) of article 39 of the Constitution; 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 Central India Spinning, Weaving and Manufacturing Company Limited, the Empress Mills, Nagpur (Acquisition and Transfer of Undertaking) Ordinance, 1986, on the 3rd October 1986; And Whereas, it is expedient to replace the said Ordinance by an Act of the State Legislature; It is hereby enacted 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 Central India Spinning, Weaving and Manufacturing Company Limited, the Empress Mills, Nagpur (Acquisition and Transfer of Undertaking) Act, 1986. (2) It shall be deemed to have come into force on the 3rd October, 1986.

2. Definitions.

- In this Act unless the context otherwise requires, - (a) "appointed day" means the date of commencement of this Act; (b) "bank" means - (i) the State Bank of India constituted under the State Bank of India Act, 1955. (ii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959. (iii) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. (iv) any other bank, being a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934; (c) "Commissioner" means the Commissioner of Payment appointed under section 14; (d) "Corporation" means the Maharashtra State Textile Corporation, a Government company registered under the Companies Act, 1956; (e) "Institution" means - (i) The General Insurance Corporation formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972. (ii) The Industrial Credit and Investment Corporation of India, a Company being an existing Company as defined in clause (ii) of section 3 of the Companies Act, 1956. (iii) The industrial Development Bank of India established section 3 of the Industrial Development Bank of India Act, 1964. (iv) The Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation of India Act, 1948. (v) The Industrial Re-construction Bank of India established under section 3 of the Industrial Re-construction Bank of India Act, 1984. (vi) The Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956. (vii) The Maharashtra State Finance Corporation established under section 3 of the State

Financial Corporation Act, 1951.(viii)The State Industrial and Investment Corporation of Maharashtra, a Company registered under the Companies Act, 1956, or(ix)The Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963;(f)"new Government company" means a Government company (including a subsidiary Government company) formed and registered under the Companies Act, 1956, in which the undertaking is directed to vest under sub-section (1) of section 6;(g)"prescribed" means prescribed by rules made under this Act;(h)"proprietors" means the Central India Spinning, Weaving and Manufacturing Company Limited, an existing company as defined in clause (ii) of sub-section (1) of section 3 of the Companies Act, 1956 with registered office at Army and Navy Building, 148, Mahatma Gandhi Road, Fort, Bombay 400 023 and includes the liquidator appointed in petition No. 183 of 1986 in the Bombay High Court;(i)"Schedule" means the Schedule appended to this Act;(j)"specified date", in relation to a provision of this Act, means such date as the State Government may, by notification in the Official Gazette, specify for the purposes of that provision, and different dates may be specified for different provisions of this Act;(k)"undertaking" means the industrial undertaking known as "the Central India Spinning, Weaving and Manufacturing Company Limited, 'the Empress Mills', Nagpur", (l)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 and Transfer of the Undertaking

3. Acquisition and transfer of undertaking and its vesting in State Government and its transfer and vesting in Corporation.

(1)On the appointed day, the undertaking and the right, title and interest of the proprietors in relation to the undertakings, shall, by virtue of this act, stand transferred to, and vest absolutely in, the State Government.(2)The 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. General effect of vesting.

(1)The undertaking 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, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments, 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 proprietors, 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 section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them, and any attachment, injunction, decree or order of any court, tribunal or other authority restricting the use of such properties in any manner shall be deemed to have been withdrawn.(3)Every mortgagee 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 such mortgage, charge, lien or other interest.(4)For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (3) 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 interest, payment of the mortgage money or other dues, in whole or in part, out of the amount specified in section 7. and also out of the amounts referred to in section 8, but no such mortgage, charge, lien or other interest shall be enforceable against any such property which has vested in the State Government, the Corporation or new Government company.(5)Any licence or other instrument granted to the proprietors in relation to the undertaking which has vested in the State Government under section 3, at any time before the appointed day and in force immediately before that day, shall continue to be in force on and after such day in accordance with its tenor in relation to, and for the purposes of such undertaking, and, on and from the date of vesting of such undertaking under section 3 in the Corporation, or under section 6 in the new Government company, the Corporation, or new Government Company, as the case may be, shall be deemed to be substituted in such licence or other instrument as if such licence or other instrument had been granted to the Corporation, or new Government company, and that the Corporation, or the new Government company, shall hold it for the remainder of the period for which the proprietors would have held it under the terms thereof.

5. Proprietors to be liable for prior liabilities.

(1)Every liability of the proprietors in relation to the undertaking in respect of any period prior to the appointed day, shall be the liability of the proprietors and shall be enforceable against them and not against the State Government or against the Corporation or, where the undertaking is directed under section 6 to vest in a new Government company, against the new Government company.(2)For the removal of doubts, it is hereby declared that-(a)save as otherwise expressly provided in this section or in any other provision of this Act, no liability, shall be enforceable against the State Government or the Corporation, or, where the undertaking is directed under section 6 in any other new Government company, against such new Government company(b)no award, decree or order of any court, tribunal or other authority relation to the undertaking passed on or after the appointed day, in respect of a matter, claim or dispute, which arose before that day, shall be enforceable against the State Government or the Corporation or, where the undertaking is directed under section 6 to vest in any other new Government company, against such new Government company;(c)no liability incurred by the proprietors before the appointed day, for the contravention of any provision of any law for the time being in force, shall be enforceable against the State Government or the Corporation, or, where the undertaking is directed under section 6 to vest in any other new Government company, against such new Government company;(d)notwithstanding anything contained in sub-sections (1) and (2) of section 12 or any other provisions of this Act, or any other law-for the time being in force or any contract, agreement, settlement, award or decree or order of any court, tribunal or other authority, no liability towards claims of whatever nature of any employee against the proprietors in respect of his employment in the undertaking for the period prior to the appointed day shall be enforceable against the State Government or the Corporation, or where the undertaking is directed under section 6 to vest in any other new Government company,

against such new Government company.

6. Power of State Government to direct vesting of undertaking in new Government company.

(1) Notwithstanding anything contained in sections 3 and 4, where the undertaking vests, under sub-section (2) of section 3, in the Corporation, the State Government may, subject to such terms and conditions as it may think fit to impose, direct, by notification in the Official Gazette, that the undertaking and the right, title and interest of the proprietors in relation to the undertaking which had vested in the State Government and which on its transfer vest in the Corporation under section 3, shall instead of continuing to vest in the Corporation, vest in a new Government company with effect from the date specified in the notification. (2) Where the right, title and interest of the proprietors in relation to their undertaking vest, under sub-section (1), in the new Government company, such Government company shall, on and from the date of such vesting, be deemed to have become the owner in relation to such undertaking, and all the rights and liabilities of the State Government and the Corporation in relation to the undertaking shall, on and from the date of such vesting, be deemed to have become the rights and liabilities of such Government company.

Chapter III

Payment of Amounts

7. Payment of amount.

- For the transfer to, and vesting in, the State Government under section 3, of the undertaking and the right, title and interest of the proprietors in relation to the undertaking, there shall be paid by the State Government to the proprietors, in cash and in the manner specified in Chapter VI, an amount of rupees six crores and ten lakhs: Provided that, where any liability of the proprietors specified in the Schedule is discharged by the State Government or the Corporation according to the order of the Kritis mentioned in the Schedule, the amount to be paid to the proprietors under this section shall stand reduced to that extent.

8. Payment of further amount.

(1) The amount payable in accordance with the provisions of section 7 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. (2) The amount representing interest calculated at the rate specified in subsection (1) shall be given by the State Government to the proprietors in addition to the amount specified in section 7. (3) For the removal of doubts it is hereby declared that the liabilities of the proprietors in relation to their undertaking which has vested in the State Government or the Corporation under section 3 shall be discharged from the amounts specified in section 7 and also from the amounts specified in sub-section (1) in accordance with the rights and interests of the creditors of the

Chapter IV

Management, etc. of the Undertaking

9. Management etc. of undertaking.

(1)The general superintendence, direction, control and management of the affairs and business of the undertaking, the right, title and interest in relation to which have vested in the State Government under sub-section (1) of section 3, shall-(a)by virtue of the provisions of sub-section (2) of section 3, vest in the Corporation or in such person and to such extent or limitation as the Corporation may by order in writing, specify; or(b)where a direction has been issued by the State Government under subsection (1) of section 6, vest in the new Government company or in such person and to such extent or limitations as the new Government company may, by order in writing, specify;and thereupon the Corporation or the new Government company or, as the case may be, such persons shall be entitled to exercise, to the exclusion of all other persons, all such powers and do all such things as the proprietors were authorised to exercise and do in relation to their undertaking.(2)Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, it shall be lawful for the Corporation or the new Government company to recognise the functioning of the different units and offices of the undertaking and the employees employed therein and thereby restructure such units and offices with such strength of employees as the Corporation or such new Government company deems fit.

10. Duty of persons in charge of management of undertaking to deliver all assets, etc.

(1)On the vesting of the management of the undertaking in the Corporation or the new Government company all persons in charge of the management of the undertaking immediately before such vesting, including the liquidator appointed by the Court shall be bound to deliver to the Corporation, or new Government company, as the case may be, all assets books of account, registers and other documents in their possession or custody or under their control, relating to the undertaking.(2)The State Government may issue such directions as it may deem de3 in the circumstances of the case to the Corporation or new Government company, such Corporation or new Government company may also, if it is considered necessary so to do, apply to the State Government at any time for instructions as to the manner in which the management of the undertaking shall be conducted or in relation to any other matter arising in the course of such management.

11. Duty of person to account for assets, etc., in their possession.

(1)Any person who has on the appointed day, in his possession or custody or under his control, any assets books, documents or other papers relating to the undertaking, which have vested in the State Government or in the Corporation, or in the new Government company under this Act, shall be

liable to account for the said assets books, documents and other papers to the State Government, or the Corporation, or the new Government company, as the case may be, and shall deliver them to the State Government, or the Corporation or the new Government company or to such person or persons as the State Government or the Corporation or the new Government company may specify in this behalf.(2)The State Government or the Corporation or the new Government company aforesaid may take, or cause to be taken, all necessary steps for securing possession of the undertaking which has vested in the State Government or the Corporation or the new Government company under this Act.(3)The proprietors shall, within such period as the State Government may allow in this behalf, furnish to that Government a complete inventory of all its properties and assets as on the appointed day, pertaining to the undertaking which has vested in the State Government under sub-section (1) of section 3 and in the Corporation, by virtue of the provisions of sub-section (2) of that section, or the new Government company and, for this purpose the State Government or the Corporation or the new Government company shall afford to the proprietors all reasonable facilities.

Chapter V

Provisions Relating to Employees of the Proprietors

12. Employment of certain employees.

(1)Where services of a person who is a workman within the meaning of the Industrial Disputes Act, 1947, and who has been, immediately before the appointed day, employed in the undertaking, are, in the opinion of the Corporation necessary having regard to the requirements of the units restructured as a result of re-organisation of the undertaking, he shall become, from the date of his appointment by the Corporation, an employee of the Corporation and shall hold office or service in the Corporation with the same rights and' privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to the undertaking had not been transferred to, and vested in, the Corporation and continue to do so unless and until his employment in such Corporation is duly terminated or until his remuneration and terms and conditions of employment are duly altered by the Corporation.(2)Where services of a person who is not a workman within the meaning of the Industrial Disputes Act, 1947 and who has been, immediately before the appointed day, employed in the undertaking, are, in the opinion of the Corporation necessary having regard to the requirements of the units or offices of the Corporation restructured as a result of re-organisation of the undertaking, he shall become, from the date of his appointment by the Corporation, an employee of the Corporation and shall hold office or service in the Corporation on such terms and conditions of employment as may be determined by the Corporation.(3)(a)The services of every person employed by the proprietor before the appointed day shall stand terminated-(i)on the designated date if such person is not employed before that date by the Corporation under sub-section (1) or (2), and(ii)on the date of his appointment if such person is employed before the designated date by the Corporation under sub-section (1) or (2).(b)A person whose services stand terminated under sub-clause (i) of clause (a) shall not be entitled to claim employment in the Corporation as of right.(4)(a)Every person whose services stand terminated sub-clause (i) of clause (a) of sub-section (3) shall be entitled to -(i)payment of gratuity and of compensation for

retrenchment or closure in accordance with the provisions of the Payment of Gratuity Act, 1972 and the Industrial Disputes Act, 1947 if he is a workman within the meaning of the latter Act and(ii)payment of gratuity if he is not such a workman:Provided that, no person whose services are terminated on his superannuation on or before the designated date, shall be entitled to payment of compensation for retrenchment.(b)Notwithstanding anything contained in Chapter VI and notwithstanding that the liability for payment of gratuity and compensation for retrenchment or closure under clause (a) is that of the proprietors such liability shall be discharged by the State Government or the Corporation, according to the order of priorities mentioned in the Schedule and on discharge of such liability by the State Government or the Corporation the proprietors shall stand discharged to the extent of the liability so discharged.(5)Where -(a)the services of any person employed before the appointed day in the undertaking are terminated-(i)under the terms of any contract or service or otherwise, or(ii)under sub-section (3), and(b)such person is entitled to any arrears of salary or wages or any payment for any leave not availed of or other payment not being payment by way of gratuity or compensation for retrenchment,such person may except to the extent such liability of payment has been discharged by the State Government or the Corporation under the proviso to section 7, enforce his claim against the proprietors of the undertaking but not against the State Government or the Corporation:Provided that, notwithstanding anything contained in the Industrial Disputes Act, 1947, the Payment of Wages Act, 1936 and the Payment of Gratuity Act, 1972-(a)the State Government or the Corporation shall not be liable,-(i)to any person who has become an employee of the Corporation under sub-section (1) for payment of gratuity or any arrears of wages, or(ii)to any person whose services stand terminated under sub-clause (i) of clause (a) of sub-section (3) for payment of gratuity or any arrears of wages or compensation for retrenchment or closure, for the period commencing from the date on which the undertaking was closed ending on the day on which such person becomes an employee of the Corpora or, as the case may be, on which his services stand terminated irrespective whether such closure was in accordance with the provisions of the Industrial Disputes Act, 1947 or not;(b)the termination of services of a person under sub-clause (ii) of clause (a) of sub-section (3) on his becoming an employee of the Corporation under sub-section (1) shall not entitle such person to payment of any gratuity.Explanation. - In this Chapter-(a)the expression "Corporation" includes "new Government company"; and(b)the expression "designated date" means such date as the State Government may, by notification in the Official Gazette designate.

13. Provident fund and other funds.

(1)Where the proprietors have established a provident fund, superannuation fund, welfare fund or any other fund for the benefit of the persons employed in the undertaking, the monies relatable to the officers or other employees, whose services have been continued on appointment to the Corporation shall, out of the monies standing on the appointed day to the credit to such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and vested in, the Corporation.(2)The monies 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 VI

Commissioner of Payments

14. Appointment of Commissioner of Payments.

(1)The State Government shall, for the purpose of disbursing the amounts payable under sections 7 and 8 to the proprietors, 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 those 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.

15. Payment by State Government to Commissioner.

(1)The State Government shall, within thirty days from the specified date pay in cash to the Commissioner for Payment to the proprietors,-(a)an amount equal to the amount specified in section 7, after deducting therefrom any amount paid under clause (Id) of sub-section (4) of section 12; and(b)an amount equal to the amount payable to the proprietors under section 8.(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)Records shall be maintained by the Commissioner in respect of the undertaking in relation to which payment has been made to him under this Act.(4)The 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 proprietors.

16. Certain powers of State Government or Corporation or new Government company.

(1)The State Government or the Corporation or, where a Direction has been issued by the State Government under sub-section (1) of section 6, the new Government company, as the case may be, shall be entitled to receive up to the specified date, to the exclusion of all other persons, any money due to the proprietors, in relation to their undertaking which has vested in the State Government, or the Corporation or in the new Government company, and realised after the appointed day, notwithstanding that the realisation pertains to a period prior to the appointed day.(2)The State Government or the Corporation or the new Government company, as the case may be, may make a claim to the Commissioner with regard to every payment made by it after the appointed day, not being payment made under the proviso to section 7, for discharging any liability of the proprietors,

in relation to any period prior to the appointed day, and every such claim shall have priority, in accordance with the priorities attaching, under this Act, to the matter in relation to which such liability has been discharged by the State Government, or the Corporation or the new Government company.(3)Save as otherwise provided in this Act, the liabilities of the proprietors in respect of any period prior to the appointed day, shall be the liabilities of the proprietors.

17. Claims to be made to Commissioner.

- Every person having a claim other than the claim relating to gratuity or compensation for retrenchment or closure against the proprietors with regard to any of the matters specified in the Schedule pertaining to the undertaking, 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 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 categories III and IV, and category III shall have precedence over category IV;(b)the claims arising out of matters 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 accordingly;(c)the liabilities specified in category III shall be discharged in the manner agreed to by the State Government of one part with the banks and institutions of other part subject to the priorities specified in this section, in accordance with the terms of the secured loans and the priority inter se of such loans; and(d)the question of payment of a liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.

19. Examination of claims.

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

20. Admission or rejection of claims.

(1)After examining the claims with reference to the priorities set out in the Schedule, the Commissioner shall fix a date on or before which every claimant shall file the proof of his claim or be excluded from the benefit of the 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 such daily newspaper

in the English language, and one issue of such daily newspaper in the Marathi language as the Commissioner may consider suitable, and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the period specified in the advertisement.(3)Every claimant, who fails to file the proof of his claim within the period 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 proprietors an opportunity of refuting the claims and after giving the claimant a reasonable opportunity of being heard, admit or reject, by order in writing, the claim in whole or in part.(5)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 may 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 Procedure, 1908, while trying a suit, in respect of the following 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; and(d)the issuing of any commission for the examination of witnesses.(6)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 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.(7)A claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against such decision to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the registered office of the proprietors is situated:Provided that where a person who is a Judge of High Court is appointed to be the Commissioner such appeal shall lie to the High Court of Bombay and such appeal shall be heard and disposed of by not less than two Judges of the High Court.

21. Disbursement of money by 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 amount is due and on such credit or payment, the liability of the proprietors in respect of such claim shall stand discharged.

22. Disbursement of amounts to proprietors.

- If, out of the monies paid to him in relation to the undertaking, there is a balance left after meeting the liabilities as specified in the Schedule, the Commissioner shall disburse such balance to the proprietors.

23. Possession of machinery, etc. not belonging to proprietors to continue.

- Where the possession of any machinery, equipment or other property has vested in the State Government, or Corporation, or new Government company under this Act, but such machinery, equipment or other property does not belong to the proprietors, it shall be lawful for the State Government or the Corporation or such Government company to continue to possess such

machinery or equipment or other property on the same terms and conditions under which they were possessed by the proprietors immediately before the appointed day.

24. Undisbursed or unclaimed amount to be deposited with 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, and the order, if any, for payment of the claim, being treated as an order for the refund of revenue.

Chapter VII Miscellaneous

25. Assumption of liabilities.

(1)Where any liability of the proprietors arising out of any item specified in category I of the Schedule is not discharged fully by the Commissioner out of the amount paid under this Act, the Commissioner shall intimate in writing to the State Government the extent of the liability which remains undischarged and that liability shall be assumed by the State Government.(2)The State Government may, by order, direct the Corporation to take any liability assumed by the Government under sub-section (1) and on receipt of such direction, it shall be the duty of the Corporation to discharge such liability.

26. Act to have overriding effect.

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

27. Contracts to cease to have effect unless ratified by State Government or Corporation or new Government company.

- Every contract entered into by the proprietors in relation to their undertaking, which has vested in the State Government under section 3, 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 the appointed day, cease to have effect unless such contract is, before the expiry of that period, ratified, in writing by the State Government, or the Corporation, or new Government company, in which such undertaking has been vested under this Act, and in ratifying such contract, the State

Government, or the Corporation, or the new Government company, as the case may be, may make such alteration or modification therein as it may think fit: Provided that, the State Government, or the Corporation, or the new Government company shall not omit to ratify a contract and shall not make any alteration or modification in a contract, -(a) 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 State Government, or the Corporation or the new Government company; and (b) except after giving 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.

28. Protection of action taken in good faith.

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

29. Delegation of powers.

(1) The State Government may, by notification in the Official Gazette, direct that all or any of the powers exercisable by it under this Act, other than the powers conferred by this section, section 33 and section 34, may also be exercised by such person or persons as may be specified in the notification. (2) Whenever any delegation of power is made under sub-section (1), the persons to whom such power has been delegated shall act under the direction, control and supervision of the State Government.

30. Penalties.

- Any person who, -(a) having in his possession, custody or control any property forming part of the undertaking wrongfully withholds such property from the State Government or the Corporation or the new Government company or any person or body of persons specified by the State Government, Corporation or, as the case may be, new Government company, in this behalf; or (b) wrongfully obtains possession of, or retains, any property forming part of the undertaking; or (c) wilfully withholds or fails to furnish to the State Government, or the Corporation, or the new Government company, as the case may be, or any person or body of persons specified by that Government, or the Corporation or the new Government company, any document relating to the undertaking, which may be in his possession, custody or control; or (d) fails to deliver to the State Government, or the Corporation, or the new Government company, as the case may be, or to any person or body of persons specified by that Government, or the Corporation, or the new Government company, any assets, books of account, registers or order documents in his possession, custody or control relating to the undertaking; or (e) wrongfully removes or destroys any property forming part of the undertaking; or (f) wrongfully prefers any claim under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate; shall, on conviction, be punished with

imprisonment for a term which may extend to two 'years, or with fine which may extend to ten thousand rupees, or with both.

31. Offences by companies.

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

32. Company not to be wound up by Court.

- No proceeding for the winding up of the company, the right, title and interest in relation to the undertaking owned by which, have vested in the State Government or the Corporation or the new Government company under this Act shall lie or be proceeded within any Court except with the consent of the State Government.

33. Power to make rules.

(1)The State Government may, by notification in the Official Gazette, make for carrying out the provisions 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 (3) of section 4 shall be given to the Commissioner;(b)the manner in which the monies in any provident fund or other fund under section 13 shall be dealt with;(c)any other matter which is required to be, or may be, prescribed.(3)Every rule made by the State Government 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 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, then on publication of such decision in the Official Gazette, the rule shall 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.

34. 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 the period of two years, from the date of commencement of this Act.

35. Repeal of Maharashtra Order V of 1986 and saving.

(1) The Central India Spinning, Weaving and Manufacturing Company Limited, the Empress Mills, Nagpur (Acquisition and Transfer of Undertaking) Ordinance, 1986, is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken (including any rule made, order or notification issued or any appointment made or direction issued) 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.

Schedule

[See sections 2(h), 17, 18, 19, 20(1) and 22] Order of Priorities for the Discharge of Liabilities of the Proprietors

Category I - All dues including gratuity of employees in the undertaking; arrears relating to contributions towards Provident Fund and contributions under the Employees' State Insurance Act, 1948, payable by proprietors.

Category II - Arrears of excise duty, sales-tax, dues relating to electricity and dues of a local authority.

Category III - Secured creditors including banks and institutions.

Category IV - (i) Sundry creditors. (ii) Other liabilities.