

The Lowis Jubilee Sanitarium (Taking Over of Management) Act, 1976

WEST BENGAL

India

The Lowis Jubilee Sanitarium (Taking Over of Management) Act, 1976

Act 18 of 1976

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The Lowis Jubilee Sanitarium (Taking Over of Management) Act, 1976 West Bengal Act 18 of 1976 [1st April, 1976.] Assent of the President was first published in the Calcutta Gazette, Extraordinary, dated the 1st April, 1976. An Act to provide for the taking over of the management of the Lowis Jubilee Sanitarium for a limited period in the public interest and in order to secure the proper management thereof. Whereas it is expedient to provide for the taking over of the management of the Lowis Jubilee Sanitarium for a limited period in the public interest and in order to secure the proper management thereof; It is hereby enacted as follows :-

Chapter I Preliminary

1. Short title.

- This Act may be called the Lowis Jubilee Sanitarium (Taking over of Management) Act, 1976.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a) "Administrator" means the Administrator appointed under clause (a) of sub-section (3) of section 3 and includes persons authorised to discharge the functions of the Administrator under this Act; (b) "appointed day" means the 16th day of February, 1976; (c) "financial year" means the year commencing on the 1st day of April; (d) "Lowis Jubilee Sanitarium" means the Sanitarium established under the name and style of the Lowis Jubilee Sanitarium on the 1st day of September, 1887, at Darjeeling, and shall be deemed to include -(i) its assets, properties (movable and immovable including valuable securities, lands, buildings,

works, materials, plants, power house, stores, instruments, machineries, vehicles of any kind, cash balances, deposits to its credit in any bank, cash in hand, reserve funds, investments and book debts and all other rights and interests arising out of such assets and properties as were immediately before the appointed day in the ownership of the Sanitarium,(ii)its books of accounts, registers, records and all other documents of whatever nature relating to it including documents of title, and(iii)all rights, lease-holds, power, authorities and privileges, borrowings, obligations and liabilities of whatever nature owned or incurred by, or subsisting in respect of, the Sanitarium;(e)"prescribed" means prescribed by rules made under this Act;(f)the Sanitarium means the Lowis Jubilee Sanitarium.

Chapter II

Taking over of the management of the Sanitarium

3. Taking over of the management of the Sanitarium.

(1)On and from the appointed day and for a period of ten years thereafter, the management of the Sanitarium shall vest in the State Government and all persons in charge of the management of the Sanitarium immediately before such day shall be deemed to have vacated their offices.(2)Any contract, whether express or implied, or other arrangement, in so far as it relates to the management of the business and affairs of the Sanitarium and in force immediately before the appointed day, shall be deemed to have terminated on and from that day.(3)(a)On and from the appointed day the State Government shall carry on the management of the Sanitarium and shall appoint an Administrator for the purpose:Provided that it shall be competent for the State Government to appoint the West Bengal Tourism Development Corporation Limited as the Administrator.(b)On the vesting of the management of the Sanitarium in the State Government under sub-section (1), every person, in whose possession, custody or control, the Sanitarium or any part thereof may be, shall forthwith deliver possession thereof to the Administrator, or to such other person whom the Administrator may authorise in this behalf (hereinafter referred to as the authorised person).(c)If any person refuses or fails to comply with the provisions of clause (b), the Administrator shall apply to the Executive Magistrate within whose jurisdiction the Sanitarium or a part thereof is situated, and such Executive Magistrate shall enforce the delivery to the Administrator or to the authorised person, of possession of the Sanitarium or part thereof, as the case may be.(4)Every person having, on the appointed day, possession, custody or control of any property forming part of the Sanitarium shall deliver forthwith such property to the Administrator or to the authorised person.(5)Any person who, on the appointed day has in his possession or under his control any books, papers or other documents relating to the Sanitarium or any current cheque books issued in favour of, or relating to, the Sanitarium, shall, notwithstanding anything contained in any law for the time being in force, be liable to account for the books, papers and other documents (including such cheque books), to the Administrator and shall deliver them up to the Administrator or to the authorised person.(6)Every person in charge of the management of the Sanitarium immediately before the appointed day shall, within fifteen days from that day or within such further time as the Administrator may allow in this behalf, furnish to the Administrator a complete inventory of,-(a)all the properties and assets (including valuable securities, movable and immovable properties, particulars of book debts, bank

accounts and cash in hand, investments and belongings) forming part of the Sanitarium immediately before the appointed day,(b)all the borrowings, liabilities and obligations of the Sanitarium immediately before that day, and(c)all agreements entered into by or on behalf of the Sanitarium and in force immediately before that day.

Chapter III

Management of the Sanitarium after the take-over

4. Management of the Sanitarium after the take-over.

(1)For and on behalf of the State Government and subject to its control, the management of the affairs and business of the Sanitarium shall be carried on by the Administrator.(2)The Administrator shall exercise such powers, perform such duties and discharge such functions as may be prescribed and as the State Government may, from time to time direct, and the Administrator may apply to the State Government at any time for instructions as to the manner in which it shall conduct the management of the Sanitarium or in relation to any matter arising in course of such management.(3)Subject to the other provisions of this Act and the control of the State Government, the Administrator shall, immediately after the appointed day, take such steps as may be necessary for the purpose of efficiently managing the business and affairs of the Sanitarium.(4)While managing the affairs and business of the Sanitarium, the Administrator shall have regard to the best business principles, consistent with the original purpose for which the Sanitarium was established.(5)Subject to the provisions of this Act and the rules made thereunder, the Administrator may entrust such duties and functions to such persons as the Administrator may deem fit in the interest of the efficient administration of the Sanitarium.

5. Bar to compensation.

- Notwithstanding anything contained in any law for the time being in force, no person, in respect of whom any contract of management or other arrangement is terminated by reason of the provisions contained in sub-section (2) of section 3, or who is deemed to have vacated his office by reason of the provisions contained in sub-section (1) of section 3, shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the loss of office.

6. Use of the Sanitarium.

(1)The Sanitarium shall be used for the original purpose for which it was established.(2)Subject to the control of the State Government, the Administrator may, for effectively carrying out the purposes of this Act,–(a)add to the Sanitarium, such new works, plants, machineries, electric supply lines, furniture, equipments, stores, lands, buildings and fixtures, and(b)make such alterations to the buildings, plants, machineries and other erections of the Sanitarium,as the Administrator may consider necessary.

7. Officers and employees of the Sanitarium.

(1)The Administrator may, subject to the approval of the State Government, appoint such officers and employees as he may consider necessary for carrying out the purposes of this Act.(2)The terms and conditions of service of the Administrator and of the officers and employees appointed under sub-section (1), shall be such as may be determined by the State Government by order made in this behalf.(3)The persons who were in the employ of the Sanitarium immediately before the appointed day and are, in the opinion of the Administrator, suitable and competent for service in the Sanitarium shall, subject to the approval of the State Government, be re-employed therein under terms and conditions not being less advantageous than what they were entitled to during their aforesaid employment:Provided that the State Government may, in the interest of economy of the Sanitarium, vary the terms and conditions of such employees as it may deem fit:Provided further that no such variation shall be made to the prejudice of any employee unless such employee has been given an opportunity of being heard.

8. Borrowings.

(1)In the interest of efficient management and further expansion and improvement of the Sanitarium,-(a)the Administrator may, with the approval of the State Government, borrow money from any bank, financial institution or in the open market, subject to such terms and conditions as the State Government may determine, and the State Government may guarantee repayment of such loan and payment of interest thereon, and(b)the State Government may, on the application of the Administrator, make loan or advance money to the Sanitarium on such terms and conditions as the State Government may determine, and such loan or money shall be repaid by the Sanitarium within such period, and with such interest, if any, as the State Government may determine.(2)Notwithstanding anything contained in any other law for the time being in force, every debt arising out of any loan made or money advanced to the Sanitarium under clause (b) of sub-section (1) or any loan made to the Sanitarium by a bank or any other financial institution under clause (a) of sub-section (1),-(a)shall have priority over all other debts, whether secured or unsecured, incurred before the management of such Sanitarium was taken over under sub-section (1) of section 3,(b)shall be a preferential debt within the meaning of section 530 of the Companies Act, 1956,and such debts shall rank equally among themselves and be paid in full out of the assets of the Sanitarium unless such assets are insufficient to meet them, in which case they shall, in absence of any guarantee by the State Government, abate in equal proportions.

9. Management of the Sanitarium to revert.

- On the expiry of the period referred to in sub-section (1) of section 3 or on any date earlier to the date of expiration of such period, as the State Government may direct, the management of the Sanitarium shall revert to the persons who are in charge of the management thereof immediately before the appointed day.

Chapter IV

Accounts, budget and audit

10. Accounts, budget and audit.

(1)The accounts of the Sanitarium shall be kept and maintained in such forms and in such manner as may be prescribed.(2)(a)The Administrator shall, before the 15th day of December each year, cause to be prepared and submitted before the State Government a budget estimate showing, in such form and in such manner as may be prescribed, the anticipated income and expenditure of the Sanitarium for the next financial year, and the State Government shall, before the 31st day of March each year, consider the budget estimate and approve it with such additions, alterations or modifications as it may deem fit.(b)The Administrator may, at any time during the year for which any budget estimate has been prepared and approved, cause a supplementary estimate to be prepared and submitted to the State Government for approval in the same manner as if it were an original budget estimate, and the State Government shall consider such estimate and approve it as expeditiously as possible with such additions, alterations or modifications as it may deem fit.(3)(a)Within three months of the close of each financial year, the State Government shall appoint an auditor for audit of the accounts of the Sanitarium in respect of the preceding year. The auditor shall have the same rights, privileges and authority in connection with such audit, as the Comptroller and Auditor-General has in connection with the audit of the Government accounts, and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other necessary documents and papers, and the Administrator shall comply with the same.(b)As soon as the report of the auditor is received, the Administrator shall send a copy thereof along with a copy of the audited accounts to the State Government, and the State Government may give such direction to the Administrator in connection therewith, as it may deem fit.

Chapter V

Miscellaneous

11. Penalties.

(1)Whoever, in contravention of the provisions of sub-section (3) of section 3, refuses or wilfully obstructs the delivery of possession of the Sanitarium or a part thereof to the Administrator or the authorised person shall, on conviction before a Magistrate, be punishable, without prejudice to any other penalty to which he may be liable under any other law for the time being in force, with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees or with both.(2)Any person, who-(a)having in his possession, custody or control any property forming part of the Sanitarium, wrongfully withholds such property from the Administrator or the authorised person in contravention of the provisions of sub-section (4) of section 3, or(b)wrongfully obtains possession of any such property, or(c)wilfully retains any such property or removes or destroys it, or(d)wilfully withholds or fails to deliver any books, papers or other documents relating to the Sanitarium, which may be in his possession or under his control, to

the Administrator or to the authorised person in contravention of sub-section (5) of section 3, or(e)without any reasonable cause,-(i)fails to furnish a complete inventory, or(ii)furnishes any inventory suffering from material omissions or incorrect particulars,in contravention of the provisions of sub-section (6) of section 3,shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.(3)All offences under this section shall be cognizable offences within the meaning of the Code of Criminal Procedure, 1973.(4)No court shall take cognizance of any offence punishable under this section except with the previous sanction of the State Government or of an officer authorised by the State Government in this behalf.

12. Indemnity.

(1)No suit, prosecution or other legal proceeding shall lie against the Administrator or any other officer or employee of the State Government or the Sanitarium for anything which is in good faith done or intended to be done under this Act.(2)No suit, or other legal proceeding shall lie against the State Government or the Administrator or any of the other officers or employees of the State Government or the Sanitarium for any damage caused or likely to be caused by anything which in good faith done or intended to be done under this Act.

13. Power of Administrator to institute or defend suit.

- The Administrator shall have the power to institute, defend, or take part in, any suit or proceeding by or against the Sanitarium.

14. Laying of annual administration report.

- The State Government shall, as soon as may be after the expiry of each financial year, lay before the State Legislative Assembly an annual administration report from the Administrator in respect of the Sanitarium with audited statement of accounts and the auditor's report thereon.

15. Power to make rules.

(1)The State Government may, by notification in the Official Gazette, make rules to carry out 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 powers, functions and duties of the Administrator referred to in sub-section (2) of section 4;(b)the forms and the manner in which the accounts of the Sanitarium shall be kept and maintained, referred to in sub-section (1) of section 10;(c)the form and the manner in which a budget estimate shall be prepared and submitted to the State Government, referred to in clause (a) of sub-section (2) of section 10;(d)any other matter which may be, or is required to be, prescribed.

16. Repeal and savings.

(1)The Lowis Jubilee Sanitarium (Taking over of Management) Ordinance, 1976, is hereby repealed.(2)Anything done or any action taken under the Lowis Jubilee Sanitarium (Taking over of Management) Ordinance, 1976, shall be deemed to have been validly done or taken under this Act as if this Act had commenced on the 16th day of February, 1976.