

# **The Alcock Ashdown Company Limited (Acquisition Of Undertakings) Act, 1973**

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### **Act 56 of 1973**

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### **1269.**

Messrs. Alcock Ashdown and Company Limited was incorporated on 17-3-1884 at Bombay. The Company owns two plants, one at Bombay and the other at Bhavnagar. Its activities which are included in the list of priority industries, comprise of Light and Heavy Structural, Transmission Line Towers, Railway Points and Crossings, Ship Repairs, Boat Building, Marine Diesel Engines, etc. 2. The Company which was making substantial profits till 1965 started declining from 1969 onwards and came to a close in January, 1971. The affairs of the Company were subsequently investigated by the Government through an Investigation Committee and the report revealed that while the deterioration in the performance of the Company was caused by a number of factors, the primary cause was the serious lapse on the part of the management in running the Company. 3. After the closure of the Company, on the application of one of its unsecured creditors an order for the winding up of the Company was made by the Bombay High Court on 13-1-1972. After the winding up order, on the application of the Bank of Maharashtra one of the secured creditors of the Company, a Receiver was appointed by the High Court for looking after the interests of the secured creditors. The Official Receiver has now invited tenders regarding the auctioning of the properties of the Company at Bombay and Bhavnagar. 4. As the Company was formerly engaged in the boat building, ship repairs and the production of marine diesel engines, and was also engaged in the production of goods which are essential to the needs of the country in general and defence departments in particular, the necessity to revive the activities of the Company for the production of goods for the various strategic use was carefully considered. After considering all the aspects of the matter, it is felt that it is expedient, in public interest, to acquire, on payment of a sum of rupees one crore, the undertakings of Messrs. Alcock Ashdown and Company Limited at Bombay and Bhavnagar. The Bill

seeks to achieve the said object. - Gazette of India, 28-11-1973, Pt. II, Section 2, Ext., p. 968. Ad 33 of 1974. - Section 4 (1) of the Alcock Ashdown Company Limited (Acquisition of Undertakings) Act, 1973, specifies the properties which are deemed to be included within the ambit of the expression "undertakings of the company". A doubt has been expressed as to whether book debts due to the company and loans and advances made by the company, and moneys recoverable by the company from its directors or shareholders by way of misfeasance or other proceedings are also included within the ambit of the expression "undertakings of the company". The Central Government has been advised that by way of abundant caution, a clarificatory amendment should be made to make it clear that the expression "undertakings of the company" does not include book debts due to the company and loans and advances made by the company and any amounts recoverable by the company from its shareholders or directors. Accordingly the Act was amended by an Ordinance promulgated by the President to make explicit what was already implicit in section 4(1) of the Act.<sup>2</sup> The Bill seeks to replace the Alcock Ashdown Company Limited (Acquisition of Undertakings) Amendment Ordinance, 1974. - Gazette of India, 1-8-1974, Pt-II. Section 2. Ext., p. 792. Act 38 of 1988. - The undertakings of the Alcock Ashdown Company Limited comprised of two units, one in Bombay and the other in Bhavnagar, Gujarat which were acquired by the Central Government through the Alcock Ashdown Company Limited (Acquisition of Undertakings) Act, 1973. Immediately after the acquisition of the undertakings, the Central Government, in exercise of powers under section 8 of the Act entrusted the management, and administration of the two units viz.; (1) Bombay unit and (2) Bhavnagar unit to (1) Mazgaon Dock Limited, a Government of India undertaking under the Ministry of Defence and (2) Industries Commissioner, Government of Gujarat, respectively. Since then, the respective managements of Mazgaon Dock Limited and Government of Gujarat have been running the units.<sup>2</sup> Prior to the acquisition of the undertakings of the company both the Mazgaon Dock Limited and the Government of Gujarat had expressed their keen interest in ultimately owning the respective units in public interest. While acquiring the undertakings of the company, the Central Government was also of the view that the ownership of the two units would in due course be transferred to them who had been managing these units.<sup>3</sup> While the Central Government was actively considering the transfer of the two units, a question arose whether under the existing provisions of the Act, the units could be transferred. After examining the provisions of the Act, it however appeared that in the absence of specific provisions in the Act, the Central Government cannot transfer the right, title and interest vested in it to any other Government or organisation.<sup>4</sup> The Bill seeks to re-vest the property of the Bhavnagar and Bombay units of the undertakings of the Alcock Ashdown Company Limited in the State Government of Gujarat and Mazgaon Dock Limited, respectively. The Bill also seeks to safeguard the interests of the existing employees of Bhavnagar unit by continuing their employment, provide for the transfer of Provident fund and other funds to the State Government and for the saving of all contracts, deeds and bonds, to which the Central Government is a party in relation to the said unit. - Gazette of India, 14-12-1987, Pt. II, Section 2, Ext., P. 5 (No. 65). [14th December, 1973] An Act to provide for the acquisition of the undertakings of the Alcock Ashdown Company Limited for the purpose of ensuring rational and co-ordinated development and production of goods essential to the needs of the country in general, and defence department in particular and for matters connected therewith or incidental thereto.

## **1. Short title.**

This Act may be called the Alcock Ashdown Company Limited (Acquisition of Undertakings) Act, 1973.

## **2. Definitions.**

In this Act, unless the context otherwise requires,--(a)"appointed day" means the date on which this Act comes into force;(b)"company" means the Alcock Ashdown Company Limited, being a company as defined in the Companies Act, 1956 (1 of 1956), and having its registered office in the State of Maharashtra;(c)"Court" means the High Court at Bombay;(ca)[ "notification" means a notification published in the Official Gazette; [Inserted by Act 38 of 1988, Section 2.](i)the industrial unit owned by the company and located at Bhavnagar in the State of Gujarat (hereinafter referred to as the Bhavnagar unit); and(ii)the industrial unit owned by the company and located at Bombay in the State of Maharashtra (hereinafter referred to as the Bombay unit);](cb)"undertakings of the company" means--(d)words and expressions used herein and not defined but defined in the Companies Act, 1956 (1 of 1956), have the meanings respectively assigned to them in that Act.

## **3. Undertakings of the company to vest in the Central Government.**

On and from the appointed day, the undertakings of the company shall, by virtue of this Act, be transferred to, and shall vest in, the Central Government.

## **4. General effect of vesting.**

(1)The undertakings of the company shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments 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 company, [in relation to the undertakings] [ Inserted by Act 33 of 1974, Section 2 (w.e.f. 14-12-1973)] whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto.[Explanation. [Inserted by Act 33 of 1974, Section 2 (w.e.f. 14-12-1973) ]--For the avoidance of doubts, it is hereby declared that the expression "undertakings of the company" does not include--(a)any debts due to the company; and(b)any amounts recoverable by the company from its shareholders or directors.](2)All property included as aforesaid in the undertakings which have vested in the Central Government under section 3 shall, by force of such vesting, be freed and discharged from any trusts, obligations, mortgages, charges, liens and other incumbrances affecting it, and any attachment, injunction or any decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn.(3)If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any business of the undertakings of the company is pending by or against the company, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertakings of the company or of any thing contained in this Act but the suit, appeal or other proceeding may be continued,

prosecuted and enforced by or against the company.

## **5. Duty to deliver possession of the undertaking and documents relating thereto.**

(1) Notwithstanding any decree, judgment or order of any court or anything contained in any other law for the time being in force, the Receiver, Official Liquidator of the company or any other person, in whose possession or custody or under whose control the undertakings of the company or any part thereof may be, shall deliver possession of the undertakings of the company or such part thereof as may be in his possession, custody or control to the Central Government forthwith. (2) The Receiver, Official Liquidator or any other person who has, on the appointed day, in his possession or under his custody or control any books, documents or other papers relating to the undertakings of the company which have vested, under section 3, in the Central Government, shall be liable to account for the said books, document or other papers to the Central Government or to such person as the Central Government may specify in this behalf. (3) The Central Government may take, or cause to be taken, all necessary steps for securing possession of the undertakings which have vested in it under section 3.

## **6. Duty to furnish particulars.**

(1) The company shall, within such period as the Central Government may allow in this behalf, furnish to that Government a complete inventory of all the properties and assets of the company, as on the appointed day, pertaining to the undertakings which have vested in the Central Government under section 3. (2) So much of the obligation of the company under sub-section (1) as relates to the properties and assets of the company in the possession, custody or control of the Receiver shall be discharged by him and so much of that obligation as relates to the properties and assets in the possession, custody or control of the Official Liquidator shall be discharged by the Official Liquidator.

## **7. Payment of amount.**

(1) The Central Government shall deposit, in cash, in Court, to the credit of the company, an amount equal to the sum of rupees one crore for the transfer to, and vesting in, the Central Government, under section 3, of the undertakings of the company. (2) For the avoidance of doubts, it is hereby declared that the liabilities of the company in relation to the undertakings which have vested in the Central Government under section 3, shall be met from the amount referred to in sub-section (1). (3) In meeting the liabilities of the company in relation to the undertakings which have vested in the Central Government under section 3, the Court shall distribute the amount referred to in sub-section (1) amongst the creditors of the company, whether secured or unsecured, in accordance with their rights and interests, and if there is any surplus left after such distribution, amongst the contributories of the company in accordance with the rights and interests of such contributories.

## **8. Management and administration of the undertakings.**

The undertakings, which have vested in the Central Government under section 3, shall be managed on behalf of the Central Government by such person or body of persons (including one or more Government companies, whether in existence at the commencement of this Act or incorporated thereafter) as may be nominated by the Central Government in this behalf, and such person or body of persons shall carry on the management in accordance with such regulations as may be made by the Central Government in this behalf.

### **8A. [ Vesting of the Bhavnagar unit in the State Government. [ Inserted by Act 38 of 1988, Section 3.]**

(1) Notwithstanding anything contained in sections 3 and 4 the Central Government shall direct by notification that all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments and all other rights and interests in, or arising out of, such property of the Bhavnagar unit which have vested in the Central Government under section 3, shall, instead of continuing to vest in the Central Government, vest in the State Government of Gujarat (hereinafter referred to as the State Government), either on the date of publication of the notification or on such later date as may be specified in the notification. (2) Where the assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments and all other rights and interests in, or arising out of, such property of the Bhavnagar unit vest, under sub-section (1), in the State Government that Government shall, on and from the date of such vesting, be deemed to have become the owner of such unit and rights and liabilities of the Central Government in relation to that unit shall, on and from the date of such vesting, be deemed to have become the rights and liabilities of the State Government.

### **8B. Vesting of Bombay unit in Government company. [ Inserted by Act 38 of 1988, Section 3.]**

(1) Notwithstanding anything contained in sections 3 and 4, the Central Government shall direct by notification that all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments and all other rights and interests in, or arising out of, such property of the Bombay unit which have vested in the Central Government under section 3, shall, instead of continuing to vest in the Central Government, vest in the Mazagon Dock Limited, a Government company having its registered office in the State of Maharashtra (hereinafter referred to as the Government company), either on the date of publication of the notification or on such later date as may be specified in the notification. (2) Where the assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments and all other rights and interests in, or arising out of, such property of the Bombay unit vest, under sub-section (1), the Government company, that company shall, on and from the date of such vesting, be deemed to have become the owner of such unit and the rights and liabilities of the Central Government in relation to that unit shall, on and from the date of such vesting, be deemed

to have become the rights and liabilities of the Government company.

### **8C. Employment of certain employees to continue when Bhavnagar unit vests under section 8A. [ Inserted by Act 38 of 1988, Section 3.]**

(1)Where the assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments and other rights and interests in, or arising out of such property of the Bhavnagar unit vest, under section 8A in the State Government, every person who has been, immediately before the date of such vesting, employed in that unit shall become, on and from the date of such vesting, an employee of the State Government, and shall hold office or service under that State Government with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the State Government is duly terminated or until his remuneration and other conditions of service are duly altered by the State Government.(2)Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947) or in any other law for the time being in force, the transfer of the services of any officer or other person employed in the Bhavnagar unit to the State Government, shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.(3)Where under the terms of any contract of service otherwise, any person, whose services become transferred to the State Government by reason of the provisions of this Act, is entitled to any arrears of salary or wages or any payments for any leave not availed of or any other payment, not being payment by way of gratuity or pension, such person may enforce his claim against the Central Government, but not against the State Government.

### **8D. Transfer of provident fund and other fund when undertakings vest under section 8A. [ Inserted by Act 38 of 1988, Section 3.]**

(1)Where a provident fund, superannuation fund, welfare fund or any other fund has been established for the benefit of the persons employed in the Bhavnagar unit, the monies relatable to the officers or other employees, whose services have become transferred by or under this Act to the State Government shall stand transferred to, and vest in, the State Government.(2)The monies which stand transferred under sub-section (1) to the State Government shall be dealt with by that Government for the benefit of the officers and employees so transferred in such manner as the State Government may decide from time to time.

### **8E. Saving of contracts, etc. [ Inserted by Act 38 of 1988, Section 3.]**

All contracts, deeds, bonds, agreements and other instruments of whatever nature to which the Central Government is a party in relation to the Bhavnagar unit vested in the State Government under section 8A subsisting or having effect immediately before the date of vesting of the said unit in the State Government shall, as from that day, be of full force and effect against, or in the State Government and may be enforced fully and effectual if, instead of the Central Government, the State

Government been a party thereto.

## **8F. Power to remove difficulties. [ Inserted by Act 38 of 1988, Section 3.]**

(1) If any difficulty arises in giving effect to the provisions of sections 8A, 8B, 8C, 8D and 8E, the Central Government may, by the order published in the Official Gazette, 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 coming into force of the Alcock Ashdown Company Limited (Acquisition of Undertakings) Amendment Act, 1988. (2) Every order made under sub-section (1) shall be laid before each House of Parliament.]

## **9. Penalties.**

(1) Any person who--(a) having in his possession, custody or control any property forming part of the undertakings of the company, wrongfully withholds such property from the Central Government; or (b) wrongfully obtains possession of any property forming part of the undertakings of the company which have vested in the Central Government under this Act; or (c) wilfully withholds or fails to furnish to the Central Government as required by sub-section (2) of section 5 any document which may be in his possession, custody or control; or (d) wilfully fails to furnish an inventory as required under section 6; or (e) when required to furnish such inventory, furnishes any particulars therein which are false and which he either knows or believes to be false or does not believe to be true, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both: Provided that the court trying any offence under clause (a) or clause (b) or clause (c) of this sub-section may, at the time of convicting the accused person, order him to deliver up or refund within a time to be fixed by the court any property wrongfully withheld or wrongfully obtained or any document wilfully withheld or not furnished. (2) No court shall take cognizance of any offence punishable under this section except with the previous sanction of the Central Government or of an officer authorised by that Government in this behalf.

## **10. Offences by companies.**

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.--For the purposes of this section,--(a) "company" means any body corporate and includes a firm or other association of individuals; and (b) "director", in relation

to a firm, means a partner in the firm.

## **11. Protection of action taken in good faith.**

No suit, prosecution or other legal proceeding shall lie against the Central Government or an officer or other employee serving in connection with the affairs of the undertakings of the company for anything which is in good faith done or intended to be done under this Act.

## **12. Power to make regulations.**

(1) The Central Government may, by notification in the Official Gazette, make regulations with regard to the matters specified in section 8. (2) Every regulation made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.