

The Lily Barley Mills (Private) Limited (Acquisition And Transfer of Undertakings) Act, 1996

WEST BENGAL

India

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Act 13 of 1996

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The Lily Barley Mills (Private) Limited (Acquisition And Transfer of Undertakings) Act, 1996 West Bengal Act 13 of 1996 [12th July, 1996.] Assent of the Governor was first published in the Calcutta Gazette, Extraordinary, dated the 12th July, 1996. An Act to provide for the acquisition and transfer, in the public interest, of the undertakings of the Lily Barley Mills (Private) Limited, and for matters connected therewith or incidental thereto. Whereas the Lily Barley Mills (Private) Limited had been engaged in the manufacture of flour; And Whereas the management of the undertakings of the Lily Barley Mills (Private) Limited had been conducted in a manner highly detrimental to the public interest; And Whereas the management of the undertakings of the Lily Barley Mills (Private) Limited was taken over by the Central Government under section 18A of the Industries (Development and Regulation) Act, 1951, on and from the 27th day of March, 1979; And Whereas the period of the taking over of the management of the Company expired on the 26th day of March, 1996; And Whereas for the purpose of reconstructing and rehabilitating the undertakings of the Lily Barley Mills (Private) Limited so as to subserve the interest of the general public by augmentation of production and distribution of the aforesaid articles which are essential to the needs of the general public, it is necessary to acquire the undertakings of the Company; It is hereby enacted as follows:-

1. Short title and commencement. -

(1) This Act may be called the Lily Barley Mills (Private) Limited (Acquisition and Transfer of Undertakings) Act, 1996. (2) It shall be deemed to have come into force on the 27th day of March, 1996.

2. Definitions. -

In this Act, unless the context otherwise requires, -(a)"appointed day" means the date on which this Act comes into force;(b)"Commissioner" means the Commissioner of Payments appointed under section 9;(c)"Company" means the Lily Barley Mills (Private) Limited, being a company as defined in the Companies Act, 1956, and having its registered office at 19, Murari Pukur Lane, Calcutta-700 067;(d)"date of taking over of management of the undertakings of the Company" means the 27th day of March, 1979;(e)"existing Government company" means a Government company which is carrying on business on the appointed day;(f)"new Government company" means a Government company formed and registered on or after the appointed day;(g)"notification" means a notification published in the Official Gazette;(h)"prescribed" means prescribed by rules made under this Act;(i)words and expressions used herein and not defined, but defined in the Companies Act, 1956, have the meanings respectively assigned to them in that Act.

3. Transfer to, and vesting in, State Government of the undertakings of the Company. -

On the appointed day, the undertakings of the Company, and the right, title and interest of the Company in relation to its undertakings, shall, by virtue of this Act, stand transferred to, and vest in, the State Government.

4. General effect of vesting. -

(1)The undertakings of the Company shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges, and all property, movable and immovable, including lands, buildings, offices, factories, workshops, stores, instruments, plants, machinery and equipment, installations, laboratories, office furniture, stationery and equipment, vehicles, patents, trade marks, cash balances, cash in 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 Company, whether within or outside India, and all books of accounts, registers and all other documents of whatever nature relating thereto.(2)All properties and assets 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, charges, liens and all other encumbrances affecting them, and any attachment, injunction, decree or order of any court or other authority restricting the use of such properties or assets in any manner or appointing any receiver in respect of the whole or any part of such properties or assets 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 interests, payment of the mortgage money or

other dues, in whole or in part, out of the amount of compensation determined under sub-section (1), and also out of the amount determined under sub-section (2), of section 7, but, no such mortgage, charge, lien or other interests shall be enforceable against any property which has vested in the State Government.(5)Any licence or other instrument granted to the Company in relation to any undertaking which has vested in the State Government under section 3 at any time before the appointed day and in force immediately before the appointed day shall continue to be in force on and after such day in accordance with its tenor in relation to and for the purpose of such undertaking, and, on and from the date of vesting of such undertaking, under section 6, in an existing Government company, or under section 7, in a new Government company, the existing or the 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 such existing or new Government company and such existing or new Government company shall hold it for the remainder of the period for which the Company would have held it under the terms thereof.(6)If, on the appointed day, any suit, appeal or other proceeding of whatever nature, in relation to any property or asset which has vested in the State Government under section 3, instituted or preferred by or against the Company, is pending, 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 anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the State Government or, where the undertakings of the Company are directed to vest, under section 6, in an existing Government company, or under section 7, in a new Government company, by or against such Government company.

5. Central Government or State Government or existing or new Government company not to be liable for certain prior liabilities. -

(1)Every liability, other than the liability specified in sub-section (2), of the Company in respect of any period prior to the appointed day shall be the liability of the Company and shall be enforceable against it and not against the Central Government or the State Government or, where the undertakings of the Company are directed to vest, under section 6, in an existing Government company, or under section 7, in a new Government company, against such Government company.(2)Any liability arising in respect of-(a)loans advanced by the Central Government or the State Government, or both, to the Company (together with interest due thereon), on or after the date of taking over of management of the undertakings of the Company,(b)loans advanced by a bank to the Company (together with interest due thereon) on or after the date of taking over of management of the undertakings of the Company,(c)loans advanced by the Industrial Reconstruction Bank of India Limited to the Company (together with interest due thereon) on or after the date of taking over of management of the undertakings of the Company,(d)wages, salaries and other dues of employees of the Company and dues on account of any deductions made from wages and salaries and other dues of such employees relating to any period commencing on and from the date of taking over of management of the undertakings of the Company, or(e)any debt incurred by the Company during any period commencing on and from the date of taking over of management of the undertakings of the Company, not being a debt falling under clause (a), clause (b), clause (c) or clause (d),shall, on and from the appointed day, be the liability of the State Government or the Government company as aforesaid and shall be discharged by the State Government or the existing

Government company or the new Government company as aforesaid as and when repayment of such loans becomes due or such wages, salaries and other dues or debt become due and payable.(3)For the removal of doubts, it is hereby declared that-(a)save as otherwise expressly provided in this Act, no liability of the Company in relation to its undertakings in respect of any period prior to the appointed day shall be enforceable against the Central Government or the State Government or, where the undertakings of the Company are directed to vest, under section 6, in an existing Government company, or under section 7, in a new Government company, against such Government company;(b)no award, decree or order of any court, tribunal or other authority in relation to the undertakings of the Company passed on or after the appointed day, in respect of any matter, claim or dispute, which arose before the appointed day shall be enforceable against the Central Government or the State Government or, where the undertakings of the Company are directed to vest, under section 6, in an existing Government company, or under section 7, in a new Government company, against such Government company;(c)no liability incurred by the Company before the appointed day for the contravention of any provision of any law for the time being in force shall be enforceable against the Central Government or the State Government or, where the undertakings of the Company are directed to vest, under section 6, in an existing Government company, or under section 7, in a new Government company, against such Government company.

6. Power of State Government to direct vesting of the undertakings of the Company in an existing Government company. -

(1)Notwithstanding anything contained in sections 3 and 4, the State Government may, if it is satisfied that an existing Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification, that the undertakings of the Company, and the right, title and interest of the Company in relation to its undertakings which have vested in the State Government under section 3, shall, instead of continuing to vest in the State Government, vest in that existing Government company either on the date of publication of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification.(2)Where the right, title and interest of the Company in relation to its undertakings vest under sub-section (1) in an existing Government company, that Government company shall, on and from the date of such vesting, be deemed to have become, and shall be deemed to be, the owner in relation to such undertakings and the rights and liabilities of the State Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become, and shall be deemed to be, the rights and liabilities, respectively, of that existing Government company.

7. Power of State Government to direct vesting of the undertakings of the Company in a new Government company. -

(1)Notwithstanding anything contained in sections 3, 4 and 6, the State Government may, if it is satisfied that a new Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by notification, that the undertakings of the Company, and the right, title and interest of the Company in relation to its

undertakings which have vested in the State Government under section 3, shall, instead of continuing to vest in the State Government, vest in that new Government company either on the date of publication of the notification or on such earlier or later date (not being a date earlier than the date of registration of the new Government company) as may be specified in the notification.(2)Where the right, title and interest of the Company in relation to its undertakings vest under sub-section (1) in a new Government company, that new Government company shall, on and from the date of such vesting, be deemed to have become the owner in relation to such undertakings and the rights and liabilities of the State Government in relation to such undertakings shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of that new Government company.

8. Payment of amount. -

(1)For the transfer to, and vesting in, the State Government, under section 3, of the undertakings of the Company and the right, title and interest of the Company in relation to its undertakings, there shall be given by the State Government to the Company in cash, as a one-time settlement, a sum of rupees forty-one thousand within such time as the State Government may by notification specify.(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 State Government under section 3, shall be met from the amount specified in sub-section (1).(3)For the deprivation of the Company of the management of its undertakings, there shall be given to the Company by the State Government an amount of rupees five hundred and twenty-three.(4)Every person having a claim against the Company shall prefer such claim before the Commissioner of Payments appointed under section 9 within such period as the State Government may by notification specify. The procedure of disposing the claim shall be such as may be prescribed.(5)Notwithstanding anything contained elsewhere in this Act,-(a)any amount payable to any bank or financial institution towards repayment of the principal amount of any secured loans advanced by such bank or financial institution to the Company before the date of taking over of management of the undertakings of the Company, shall be paid directly by the State Government to such bank or financial institution in accordance with such agreement, in writing, as the State Government and the bank or the financial institution may enter into with each other; and(b)the amount payable by the State Government directly to any bank or financial institution under clause (a) shall be deducted from the amount payable to the Company under this section.

9. Appointment of Commissioner of Payments. -

(1)The State Government shall, for the purpose of disbursing the amounts payable under section 8, by notification, appoint a Commissioner of Payments.(2)The salary and allowances of the Commissioner appointed under this section shall be defrayed out of the Consolidated Fund of the State.

10. Management, etc., of the undertakings of the Company. -

(1)The general superintendence, direction, control and management of the affairs and business of the undertakings of the Company, the right, title and interest in relation to which have vested in the State Government under section 3, shall, - (a) where a direction has been given by the State Government under sub-section (1) of section 6, vest, on and from the date specified in such direction, in the existing Government company specified therein, or (b) where a direction has been given by the State Government under sub-section (1) of section 7, vest, on and from the date specified in such direction, in the new Government company specified therein, or (c) where no direction referred to in clause (a) or clause (b) has been given, vest in one or more Custodians appointed by the State Government under sub-section (2), and thereupon the existing, or new, Government company so specified or the Custodian or Custodians so appointed, as the case may be, shall be entitled to exercise, to the exclusion of all other persons, all such powers and do all such things as the Company is authorised to exercise and do in relation to its undertakings. (2) The State Government may appoint one or more individuals or a Government company as the Custodian or Custodians of the undertakings of the Company in relation to which no direction has been given by it under sub-section (1) of section 6 or sub-section (1) of section 7. (3) The Custodian or Custodians so appointed shall receive from the funds of the undertakings of the Company such remuneration as the State Government may fix and hold office during the pleasure of the State Government.

11. Duty of person in charge of management of the undertakings of the Company to deliver all assets, etc. -

(1) On the vesting of the management of the undertakings of the Company in an existing, or new, Government company or on the appointment of a Custodian or Custodians, all persons in charge of the management of the undertakings of the Company immediately before such vesting or appointment shall be bound to deliver to such Government company, or Custodian or Custodians, as the case may be, all assets, books of account, registers and other documents in their custody relating to the undertakings of such Company. (2) The State Government may issue such directions as it may deem desirable in the circumstances of the case to the existing, or new, Government company or the Custodian or Custodians as to the power and duties of such Government company or Custodian or Custodians, and such Government company or Custodian or Custodians 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 undertakings of the Company shall be conducted or in relation to any other matter arising in the course of such management. (3) Any person, who on the appointed day has in his possession or under his control any books, documents or other papers relating to the undertakings of the Company which have vested in the State Government or in any existing, or new, Government company and which belong to the Company, or would have so belonged if the undertakings of the Company had not vested in the State Government or the existing, or new, Government company, shall be liable to account for the said books, documents or other papers to the State Government or the existing, or new, Government company, as the case may be, and shall deliver them up to the State Government or the existing, or new, Government company, or to such person or body of persons as the State Government or such Government company may specify in this behalf. (4) The State Government or the existing, or new, Government company may take, or

cause to be taken, all necessary steps for securing possession of all undertakings which have vested in the State Government or the existing, or new, Government company under this Act.(5)The Company 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 undertakings which have vested in the State Government under section 3, and, for this purpose, the State Government or the existing, or new, Government company shall afford to the Company all reasonable facilities.

12. Accounts and audit. -

The Custodian or Custodians of the undertakings of the Company shall maintain an account of the undertakings of the Company in such form and under such conditions as may be prescribed and the provisions of the Companies Act, 1956 shall apply to the audit of the accounts so maintained as they apply to the audit of the accounts of a company.

13. Employment of certain employees to continue. -

Every person who has been, immediately before the appointed day, employed in any of the undertakings of the Company shall become,-(a)on and from the appointed day, an employee of the State Government, and(b)where the undertakings of the Company are directed to vest, under sub-section (1) of section 6, in an existing Government company, or under sub-section (1) of section 7, in a new Government company, an employee of such Government company on and from the date of such vesting,and shall hold office or service under the State Government or the existing, or new, Government company, as the case may be, 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 or transfer and shall continue to do so unless and until his employment under the State Government or the existing, or new, Government company, as the case may be, is duly terminated or until his remuneration and other conditions of service are duly altered by the State Government or the existing, or new, Government company, as the case may be.

14. 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.

15. Protection of action taken in good faith. -

No suit, prosecution or other legal proceeding shall lie against the State Government or any officer of that Government or the Custodian of the undertakings of the Company or the existing, or new, Government company or any officer or other person authorised by that Government or existing, or new, Government company for anything which is in good faith done or intended to be done under this Act.

16. Power to make rules. -

(1)The State Government may, by notification, make rules 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 matters which under any provision of this Act, are required to be prescribed or to be provided for by rules.(3)Every rule made by the State Government under this Act shall be laid, as soon as may be, after it is made, before 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, the State Legislature agrees in making any modifications in the rule or the State Legislature agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

17. 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 date of coming into force of this Act.

18. Repeal and saving. -

(1)The Lily Barley Mills (Private) Limited (Acquisition and Transfer of Undertakings) Ordinance, 1996, is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been validly done or taken under the principal Act as amended by this Act.