

The Maharashtra Textile Companies (Acquisition and Transfer of Undertakings) Act, 1982

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Act 33 of 1982

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The Maharashtra Textile Companies (Acquisition and Transfer of Undertakings) Act, 1982 Maharashtra Act No. 33 of 1982 For Statement of Objects and Review see Maharashtra Government Gazette, 1982, part V dated 14th October 1982 at pages 340 and 341. [This Act received assent of the President on the 13th October 1982; assent was first published in the Maharashtra Government Gazette, Part IV, Extraordinary, on the 14th October 1982]. An Act to provide for the acquisition of undertakings of two textile companies for the purpose of ensuring continued and increased production of goods essential to the needs of the country and for matters connected therewith or incidental thereto. Whereas Messrs. Vijay Manufacturing Company (Private) Limited, Badnera, and Messrs. Western. India Spinning and Manufacturing Company Limited, Bombay, owning industrial undertakings were engaged in production of articles mentioned in the First Schedule to the Industries (Development and Regulation) Act, 1951, i. e. textiles; And Whereas the companies are being wound up under the supervision of the Bombay High Court and the business of these companies is not being continued; And Whereas the management of the industrial undertakings of the two companies had been taken over by the Maharashtra State Textile Corporation Limited, Bombay, on behalf of the Government of India, under section 18FA of the said Act; And Whereas it is expedient to acquire the said undertaking for ensuring continued production of goods essential to the needs of State and the country and to provide for matters connected therewith, or incidental thereto; 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 Maharashtra Textile Companies (Acquisition and Transfer of Undertakings) Ordinance, 1982 on the 24th August 1982; And Whereas it is expedient to replace the said Ordinance by an Act of the State Legislature. It is hereby enacted in the Thirty-third Year of the Republic of India as follows:-

1. Short title and commencement.

(1) This Act may be called the Maharashtra Textile Companies (Acquisition and Transfer of Undertakings) Act, 1982. (2) It shall be deemed to have come into force on the 24th day of August 1982.

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" or "textile Company" means Messrs. Vijay Manufacturing Company (Private) Limited, Badnera, or, as the case may be, Messrs. Western India Spinning and Manufacturing Company Limited, Bombay, being companies as defined in the Companies Act, 1956, and having registered offices in the State of Maharashtra; (c) "Corporation" or "State Textile Corporation" means the Maharashtra State Textile Corporation Limited, Bombay, a Company incorporated and registered under the Companies Act, 1956; (d) "the Court" means the High Court of Judicature at Bombay; (e) "undertaking" means an industrial undertaking owned by the concerned textile Company; (f) 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.

3. Acquisition and transfer of rights of textile Companies in respect of their undertakings.

(1) On the appointed day, the undertakings of both the textile companies and the right, title and interest of the concerned Company in relation to its undertakings, shall by virtue of this Act, stand transferred to, and shall vest absolutely in, the State Government. (2) Every 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 State Textile Corporation.

4. General effect of vesting.

(1) The undertakings of each of the two textile companies shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all property, movable and immovable, including cash balances, cash on hand, 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 concerned in relation to its undertakings, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto. Explanation. - For avoidance of doubt, 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 State Textile Corporation 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 either of the two Companies is pending by or against that Company, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the Company or anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Company concerned.

5. Duty to deliver possession of undertakings and documents relating in thereto.

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

6. Duty to furnish particulars.

(1)Each Company shall, within such period as the State Textile Corporation may allow in this behalf, furnish to the Corporation 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 Corporation.(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 any person other than the Official Liquidator 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. Shares to be issued by State Textile Corporation for the value of assets transferred to it by State Government.

- An amount equal to the value of assets of the undertakings of each Company transferred to, and vested in, the State Textile Corporation under sub-section (2) of section 3, shall be deemed to be the contribution made by the State Government to the equity capital of the Corporation; and for the contribution so made, the Corporation shall issue (if necessary after altering its memorandum and articles of association) to the State Government paid-up shares, in its equity capital, having a face value equal to the amount paid by the State Government as the amount for the acquisition of the said undertakings of the company concerned.

8. Payment of amount for acquisition.

(1)The State Government shall deposit, in cash, in the Court, to the credit of Messrs. Vijay Manufacturing Company (Private) Limited, Badnera, an amount equal to the sum of rupees twenty lakhs (Rs. 20 lakhs) for the transfer to, and vesting in, the State Government, under sub-section (1) of section 3, of the undertaking of the said Company.(2)The State Government shall likewise deposit, in cash, in the Court, to the credit of Messrs. Western India Spinning and Manufacturing Company Limited, Bombay, an amount equal to the sum of rupees one hundred twenty lakhs (Rs. 120 lakhs) for the transfer to, and vesting in the State Government, under sub-section (2) of section 3, or the undertakings of the said Company.(3)For the avoidance of doubt, it is hereby declared that the liabilities of each of the two textile Companies, in relation to its undertakings, which have vested in the State Government, shall be met from the amount referred to in sub-section (1) or sub-section (2), as the case may be.(4)In meeting the liabilities of each of the two textile Companies in relation to its undertakings, which have vested in the State Government, the Court shall distribute the amount referred to in sub-section (1) of sub-section (2), as the case may be, amongst the creditors of the concerned Company, whether secured or unsecured, in accordance with their rights and interests, and if there is any surplus left after such distribution, amongst the contributors of the said Company in accordance with the rights and interests of such contributors.

9. Management and administration of undertakings.

- The undertakings, which have vested in the State Textile Corporation under sub-section (2) of section 3 shall be managed on behalf of the Corporation 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 Corporation 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 Corporation in this behalf, with the previous approval of the State Government.

10. Employment of certain employees of companies to continue under Corporation.

(1)Every person, who has been, immediately before the appointed day, employed in any undertaking of either of the two textile Companies shall become, on and from the appointed day, an employee of the State Textile 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 all shall continue to do so unless and until his employment in the Corporation is duly terminated or until his remuneration and other conditions of service are duly altered by the Corporation.(2)Notwithstanding anything contained in sub-section (1), any liability accruing or arising as a result of continuance of any employee of a Company in the service of the Corporation under this section, shall be borne by the Corporation only in respect of any period on and after the date of taking over of the management of the undertaking under section 18FA of the Industries (Development and Regulation) Act, 1951.

11. Penalties.

(1) Any person who—(a) having in his possession, custody or control of any property forming part of the undertakings of any textile company, wrongfully withholds such property from the State Textile Corporation; or (b) wrongfully obtains possession of any property forming part of the undertakings of any textile Company which have vested in the Corporation under this Act; or (c) wilfully withholds or fails to furnish to the Corporation 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, on conviction, be punished 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 State Government or of an officer authorised by that Government in this behalf.

12. 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 of the company, 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.

13. Protection of action taken in good faith.

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

14. Power to remove difficulties.

- If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion arises, by order, do anything, which appears to it to be necessary to remove the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

15. Repeal and saving.

(1) The Maharashtra Textile Companies (Acquisition and Transfer of Undertakings) Ordinance, 1982 is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken (including any regulation made or any order issued) under the said Ordinance shall be deemed to have been done, taken, made or issued, as the case may be, under the corresponding provisions of this Act.