

The Parel Investments and Trading Private Limited and Domestic Gas Private Limited (Taking Over of Management) Act, 1979

UNION OF INDIA

India

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Act 29 of 1979

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1. [Repealed by The Parel Investments And Trading Private Limited And Domestic Gas Private Limited (Taking Over Of Management) Repeal Act, 2005 (Act 14 of 2005) on 11 April 2002]

THE PAREL INVESTMENTS AND TRADING PRIVATE LIMITED AND DOMESTIC GASPRIVATE LIMITED (TAKING OVER OF MANAGEMENT) ACT, 1979ACT No. 29 OF 1979

26thMay.

, 1979BODYAn Act to provide for the taking over, in the public interest, ofthe management of the undertakings of the Parel Investments and Trading PrivateLimited and the Domestic Gas Private Limited, pending acquisition of thoseundertakings, with a view to maintaining a service essential to the life of thecommunity, namely, the bottling, transporting, marketing and distribution ofliquefied petroleum gas, and for matters connected therewith or incidentaltheretoWHEREAS the undertakings inIndia of Caltex (India) Limited, a foreign company, had vested in Caltex OilRefining (India) Limited, a Government company within the meaning of theCompanies Act, 1956 (1 of 1956), under the Caltex [Acquisition of Shares ofCaltex Oil Refining (India) Limited and of the Undertakings in India of Caltex(India) Limited] Act, 1977 (17 of 1977);AND WHEREAS the agreement datedthe 23rd November, 1970 entered into by Caltex (India) Limited with the EastCoast Gas Company, a partnership firm which has since been taken over by ParelInvestments and Trading Private Limited, under which Caltex (India) Limitedappointed the East Coast Gas Company as distributors for sale of its liquefiedpetroleum gas packed in cylinders, to domestic, commercial and industrialcustomers, in certain areas, has terminated on the 31st December, 1978;AND WHEREAS

the agreement dated the 23rd November, 1970, entered into by Caltex (India) Limited with Domestic Gas Private Limited, under which the former appointed the latter as distributors for sale of its liquefied petroleum gas packed in cylinders, to domestic, commercial and industrial customers, in certain areas, has terminated on the 31st December, 1978; AND WHEREAS by an order issued by the Company Law Board on the 9th May, 1978, the aforementioned Caltex Oil Refining (India) Limited has been amalgamated with Hindustan Petroleum Corporation Limited; AND WHEREAS for giving effect to the policy of the State towards securing the principle specified in clause (b) of article 39 of the Constitution, it is proposed to acquire the undertakings of Parel Investments and Trading Private Limited and Domestic Gas Private Limited so that the means and resources as to bottling, transporting, marketing and distribution of liquefied petroleum gas of the said undertakings become vested in the State and thereby are so distributed as best to subserve the common good; AND WHEREAS pending the acquisition of the undertakings of Parel Investments and Trading Private Limited and Domestic Gas Private Limited with a view to the nationalisation of the business of bottling, transporting, marketing and distribution of liquefied petroleum gas hitherto carried on by them, it is expedient in the public interest to take over the management of the said undertakings; BE it enacted by Parliament in the Thirtieth Year of the Republic of India as follows: --CHAPTER PRELIMINARY

1. Short title and commencement:

(1) This Act may be called the Parel Investments and Trading Private Limited and Domestic Gas Private Limited (Taking Over of Management) Act, 1979. (2) It shall come into force at once.

2. Definitions:

In this Act, unless the context otherwise requires, --(a) "appointed day" means the date on which this Act comes into force; (b) "Custodian" means the Government company appointed under section 4 to take over the management of the undertaking of each of the two companies; (c) "Government company" has the meaning assigned to it by section 617 of the Companies Act, 1956 (1 of 1956); (d) "liquefied petroleum gas" has the same meaning as in sub-item (2) of item No. 11A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944); (e) "notification" means a notification published in the Official Gazette; (f) "the two companies" means --(i) Parel Investments and Trading Private Limited, a company within the meaning of the Companies Act, 1956 (1 of 1956), having its registered office at 53/57, Lakshmi Insurance Buildings, Sir Phiroz Shah Mehta Road, Bombay-1; (ii) Domestic Gas Private Limited, a company within the meaning of the Companies Act, 1956 (1 of 1956), having its registered office at 3464, Rashtrapathi Road, Secunderabad.

Chapter II

TAKING OVER OF MANAGEMENT OF THE UNDERTAKINGS OF THE TWO COMPANIES

3. Management of the undertakings of the two companies to vest in Central Government:

(1) On and from the appointed day, the management of the undertaking of each of the two companies shall vest in the Central Government. (2) The undertaking of each of the two companies shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, works, workshops, accommodation, shops and godowns, projects, stores, gas cylinders, facilities for bottling and filling liquefied petroleum gas and transporting, marketing and distribution thereof in bulk and in cylinders, regulators, valves, machinery, locomotives, automobiles, tank lorries, tank wagons, and other vehicles, liquefied petroleum gas in process or in stock or in transit, bank balances, cash balances, reserve funds, investments, books, 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 concerned company in relation concerning the undertaking in India, and all books of accounts, registers, records, correspondence files, instruments (including agreements with dealers, sub-dealers and customers), assurances, maps, plans, sections, drawings, records of survey and all other documents of whatever nature relating thereto. (3) Any contract, whether express or implied, or other arrangement in so far as it relates to the management of the business and affairs of each of the two companies in relation to its undertaking and in force immediately before the appointed day, shall be deemed to have terminated on the appointed day. (4) All persons in charge of the management including persons holding offices as directors, managers or any other managerial personnel of each of the two companies immediately before the appointed day shall be deemed to have vacated their offices as such on the appointed day. (5) Notwithstanding anything contained in any other law for the time being in force, no person 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 (3) or who ceases to hold any office by claim any the provisions contained in sub-section (4), 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, as the case may be.

4. Appointment of Custodian to take over management of the undertakings of the two companies:

(1) The Central Government shall, as from the appointed day, appoint Hindustan Petroleum Corporation Limited, a Government company, as the Custodian of the undertaking of each of the two companies for the purpose of taking over the management thereof, and the Custodian shall carry on the management of the undertaking of each of the two companies for and on behalf of the Central Government. (2) The Central Government may issue such directions (including directions as to initiating defending or continuing any legal proceedings before any court, tribunal or other authority) to the Custodian as to its powers and duties as the Central Government deems desirable and the Custodian may apply to the Central Government at any time for instructions as to the manner in which the Custodian shall conduct the management of the undertaking of each of the two companies or in relation to any matter arising in the course of such management. (3) Subject to the provisions of this Act and to the control of the Central Government, the Custodian shall be entitled,

notwithstanding anything contained in the Companies Act, 1956 (10 of 1956), to exercise all the powers of the Board of Directors of the two companies (including the power to dispose of any properties or assets of the two companies) whether such powers are derived from the Companies Act, 1956, or from the memorandum and articles of association of either of the two companies or from any other source. (4) Any person having possession, custody or control of any property forming part of the undertaking of either of the two companies, shall, on demand, deliver forthwith such property to the Custodian or to any such person as may be authorised by the Custodian or the Central Government in this behalf. (5) If any person fails or refuses to comply with any demand made under sub-section (4) for the delivery of any property, the Custodian or any person authorised under the said sub-section may take possession of that property and may, for that purpose, use such reasonable force as may be necessary. (6) Any person who, on the appointed day, has in his possession or under his control any books, papers or other documents relating to the undertaking of either of the two companies, including the minutes books containing the resolutions of the persons in charge of the management thereof before the appointed day, the current cheque books relating to the undertaking of such company, any; letters, memoranda, notes or other communications between him and such company, shall, notwithstanding anything contained in any other law for the time being in force, be liable to account for the books, paper and other documents (including such minutes books, cheque books, letters, memoranda or other communications) to the Custodian and shall deliver them up to the Custodian or to any such person as may be authorised by the Custodian or the Central Government in this behalf. (7) Every person in charge of the management of the undertaking of either of the two companies immediately before the appointed day, shall, within ten days from the appointed day; or within such further period as the Central Government may allow in this behalf, furnish to the Custodian a complete inventory of all the properties and assets (including particulars of book debts and investments and belongings) forming part of such undertaking immediately before the appointed day and of all the liabilities and obligations of such company in relation to its undertakings subsisting immediately before that day and any other information relating to the undertaking of such company which the Custodian may require in this behalf and also of all agreements entered into by such company in relation to its undertaking and in force immediately before that day. (8) The Custodian shall receive from the funds of the undertaking of each of the said companies such remuneration as the Central Government may fix.

5. Payment of amount:

(1) Each of the two companies shall be given by the Central Government an amount, in cash, for vesting in it, under section 3, of the management of the undertaking thereof. (2) For every; month during which the management so vests in the Central Government, the amount referred to in sub-section (1) shall be a sum of rupees seven hundred and fifty in the case of the Parel Investments and Trading Private Limited and rupees two hundred and fifty in the case of the Domestic Gas Private Limited.

Chapter III

MISCELLANEOUS

6. Application of Act 1 of 1956:

(1) Notwithstanding anything contained in the Companies Act, 1956, or in the memorandum or articles of association of either of the two companies, so long as the management of the undertakings of the two companies remains vested in the Central Government, –(a) it shall not be lawful for the shareholders of either of the two companies or any other person to nominate or appoint any person to be a director of such company; (b) no resolution passed at any meeting of the shareholders of either of the two companies on or after the appointed day shall be given effect to unless approved by the Central Government; (c) no proceeding for the winding up of either of the two companies or for the appointment of a liquidator or receiver in respect thereof shall lie in any court except with the consent of the Central Government. (2) Subject to the provisions contained in sub-section (1), and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification, specify in this behalf, the Companies Act, 1956 (1 of 1956), shall continue to apply to the two companies in the same manner as it applied thereto before the appointed day.

7. Penalties:

(1) Any person, who –(a) having in his possession, custody or control any property forming part of the undertaking of any of the two companies, wrongfully; withholds such property from the Custodian or any person authorised under this Act for the purpose, or (b) wrongfully obtains possession of any such property, or (c) wilfully and without lawful excuse, retains any property of the undertaking of any of the two companies or removes or destroys it, or (d) wilfully; withholds or fails to deliver any books, papers or other documents which may be in his possession or under his control to the Custodian or any person authorised under this Act for the purpose, or (e) fails, without reasonable cause, to furnish information or particulars as provided in sub-section (7) of section 4, shall be punishable with imprisonment for a term which may extend to shall be punishable 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) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Central Government or of an officer authorised by the Central Government in this behalf.

8. 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 purpose 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.

9. Exclusion of period of operation of Act:

In computing the period of limitation prescribed by law for the time being in force for any suit or application against any person by either of the two companies in respect of any matter arising out of any transaction in relation to the undertaking of such company, the time during which this Act is in force shall be excluded.

10. Act to have over-riding effect:

The provisions of this Act or any notification, order or rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law other than this Act or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any court.

11. Protection of action taken in good faith:

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

12. Contracts in bad faith, etc., to be terminated or modified:

If the Central Government is satisfied, after such inquiry as it may think fit, that any contract or agreement entered into at any time within twenty-four months immediately preceding the appointed day, between either of the two companies and any other person, in so far as such contract or agreement relates to the undertaking of either of the two companies, has been entered into in bad faith or is detrimental to the interests of the undertaking of the concerned company, it may make an order terminating or modifying (either unconditionally or subject to such conditions as it may think fit to impose) and thereafter the contract or agreement shall have effect accordingly: Provided that no contract or agreement shall be terminated or modified by the Central Government except after giving to the parties to the contract or agreement a reasonable opportunity of being heard and except after recording in writing its reasons for such termination or modification.

13. Avoidance of transfer or surrender after 29th December, 1977:

Any transfer of property, movable or immovable, or any delivery of goods (other than a delivery made in the ordinary course of business) or relinquishment or surrender of any right or interest in respect of any property under any arrangement secured by agreement or otherwise by either of the two companies or East Coast Gas Company (before its take over by Parel Investments and Trading Private Limited) made at any time after the 29th December, 1977 (being the date on which the notice terminating the dealership agreement with the relevant companies was made known) and before the appointed day shall be void against the Central Government or the Custodian, as the case may be, and notwithstanding anything contained in any other law or agreement or instrument relating to any such property, right or interest, the Central Government or the Custodian, as the case may be, shall, on and after the appointed day, be entitled to such property, right or interest on the same terms and conditions on which either of the two companies or East Coast Gas Company would have been entitled to such property, right or interest if it had not transferred, delivered, relinquished or surrendered the same and this Act had not been passed: Provided that nothing in this section shall apply to any property, goods, right or interest, transferred, delivered, relinquished or surrendered in good faith and for sufficient monetary consideration.

14. Power to terminate contract of employment:

If the Custodian is of the opinion that any contract of employment entered into by either of the two companies in relation to the undertaking of such company, at any time before the appointed day, is unduly onerous, it may, by giving to the employee one month's notice in writing or the salary or wages for one month in lieu thereof, terminate such contract of employment.

15. Power to remove difficulties:

If any difficulty arises in giving effect to the provisions of this Act, the Central 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 appointed day.

16. Power to make rules:

(1) The Central Government may, by notification, make rules to carry out the provisions of this Act. (2) Every rule 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 rule or both Houses agree 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.