



The Basumati Private Limited (Acquisition of Undertaking) Act, 1974

Act 35 of 1974

Keyword(s):

Commissioner, Company, Scheduled Bank, Undertaking

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West Bengal Act XXXV of 1974¹

THE BASUMATI PRIVATE LIMITED (ACQUISITION OF UNDERTAKING) ACT, 1974.

[29th July, 1974.]

An Act to provide for the acquisition, for public purpose, of the undertaking of the Basumati Private Limited with a view to securing the proper administration and management thereof for the purpose of ensuring efficient publication of the Basumati, a daily newspaper in the Bengali language which has a great past and tradition and timely publication of journals and periodicals published by it and resuming the publication of books, particularly Sanskrit Classics in Bengali version and other Bengali Classics, and also with a view to assuring the retention of the services of the workmen whose continued employment has been threatened, so that the interests of the public may be better served.

WHEREAS it will be useful to the public and it will result in benefit and advantage to the public and having regard to the public utility it is expedient to provide for the acquisition of the undertaking of the Basumati Private Limited with a view to securing the proper administration and management thereof for the purpose of ensuring efficient publication of the Basumati, a daily newspaper in the Bengali language which has a great past and tradition and timely publication of journals and periodicals published by it and resuming the publication of books, particularly Sanskrit Classics in Bengali version and other Bengali Classics, and also with a view to assuring the retention of the services of the workmen whose continued employment has been threatened, so that the interests of the public may be better served;

It is hereby enacted in the Twenty-fifth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. This Act may be called the Basumati Private Limited (Acquisition of Undertaking) Act, 1974. Short title.

2. In this Act, unless the context otherwise requires,—

- (a) "appointed day" means such date as the State Government may, by notification, appoint;
- (b) "Commissioner" means the Commissioner of Payments appointed under section 9; Definitions.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, Part IV, of the 27th April, 1974, page 965; for proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of that Assembly held on the 14th May, 1974.

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(Sections 3, 4.)

- (c) "company" means the Basumati Private Limited, being a company as defined in the Companies Act, 1956, having its registered office at 166, Bepin Behari Ganguli Street, Calcutta; 1 of 1956.
- (d) "notification", means a notification published in the *Official Gazette*;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "scheduled bank" has the same meaning assigned to it in the Reserve Bank of India Act, 1934, and includes a Nationalised Bank; 2 of 1934.
- (g) "undertaking", in relation to the company, means the properties and assets of the company referred to in sub-section (1) of section 4.

Undertaking of the company to vest in the State Government.

3. On and from the appointed day, the undertaking of the company shall, by virtue of this Act, stand transferred to, and vest in, the State Government free from all trusts, liabilities and encumbrances.

General effect of vesting.

4. (1) The undertaking of the company shall be deemed to include all assets, rights, powers, authorities and privileges and all properties, movable and immovable, machinery including rotaries and composing machine, reserve funds, investments and all other rights and interests arising out of such properties as were immediately before the appointed day in the ownership, power or control of the company in relation to the undertaking, or in the possession of the company irrespective of the fact whether the company has any right, title or interest in such properties or not, and all documents of whatever nature relating thereto but does not include the right, title and interest of the owners of lands and buildings in possession of the company, cash balance of the company and the amounts receivable by the company from its debtors.

(2) Any contract, whether express or implied, or other arrangement, whether under any statute or otherwise, in so far as it relates to the management of the business and affairs of the company in relation to its undertaking and in force immediately before the appointed day, or any order made by any court in so far as it relates to the management of the business and affairs of the company in relation to its undertaking and in force immediately before the appointed day, shall be deemed to have terminated on the appointed day.

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(Sections 5, 6.)

(3) All persons in charge of the management, including persons holding offices as directors, managers or any other personnel connected with the management of the company immediately before the appointed day, shall be deemed to have vacated their offices as such on the appointed day.

(4) Notwithstanding any judgement, decree or order of any court, tribunal or other authority or anything contained in any law for the time being in force, every Receiver, Official Liquidator or any other person in whose possession or custody or under whose control the undertaking of the company or any part thereof may be, shall forthwith deliver possession of the said undertaking or such part thereof, as the case may be, to the State Government or to such person as the State Government may appoint in this behalf.

(5) 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 undertaking of the company which has vested, under section 3, in the State Government, shall be liable to account for the said books, documents or other papers to the State Government or to such person as the State Government may appoint in this behalf.

(6) All properties in the undertaking which have vested in the State Government under section 3 shall, by virtue of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances 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.

(7) The State Government may take or cause to be taken all necessary steps for securing the possession of all properties of the undertaking which have vested in the State Government under section 3.

5. The undertaking which has vested in the State Government under section 3 shall be managed by such person or body of persons as may be nominated by the State Government in this behalf and such person or body of persons shall carry on the management in accordance with such rules as may be made by the State Government.

Management of the undertaking.

6. (1) Notwithstanding anything contained in sections 3, 4 and 5, the State Government may by order in writing direct that the undertaking of the company together with all its properties and assets, specified in sub-section (1) of section 4, shall, instead of continuing to vest in the State Government, vest in such corporation owned or controlled by the State Government (hereinafter referred to as the corporation and on such date as may be specified in the direction

Power of State Government to direct vesting of the undertaking in a corporation

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(Sections 7, 8.)

(2) Where an order vesting the undertaking of the company in a corporation is made under sub-section (1), all the rights, liabilities and obligations of the State Government in relation to the undertaking of the company shall, on and from the date of such vesting, be deemed to have become the rights, liabilities and obligations, respectively, of such Corporation.

(3) The corporation shall, for the purpose of management and administration of the undertaking of the company, act in accordance with such direction, if any, as may be issued by the State Government in this behalf.

(4) The corporation may also apply to the State Government at any time for instructions as to the manner in which the management of the undertaking of the company or in relation to any matter arising in the course of such management shall be conducted.

Employment
of certain
employees
to continue.

7. (1) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been, immediately before the appointed day, in the employment of the company shall, on and from the appointed day, be deemed to be reappointed as an employee of the State Government or, as the case may be, of the corporation in which the undertaking may be vested by an order under sub-section (1) of section 6 and shall hold office on the same terms and conditions and with the same rights to pay, gratuity and other matters as would have been admissible to him if the undertaking of the company had not been vested in the State Government or in such corporation, as the case may be, and continue to do so unless and until his employment is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the State Government or such corporation, as the case may be.

14 of 1947.

(2) The State Government or the corporation may employ, on mutually acceptable terms and conditions, any person who is not a workman within the meaning of the Industrial Disputes Act, 1947 and who has been, immediately before the appointed day, in the employment of the company, and on such employment the said person shall become an employee of the State Government or such corporation, as the case may be.

(3) Save as otherwise provided in sub-sections (1) and (2), the services of any or every person employed in the company before the appointed day shall stand terminated on and from the appointed day.

Amount to
be paid for
vesting of
the
properties.

8. For the vesting of the properties of the undertaking in the State Government under section 3, there shall be paid by the State Government to the owners of such properties and to the persons having any interest

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(Sections 9, 10.)

9. (1) The State Government shall, by notification, appoint such person as it may think fit to be the Commissioner of Payments who shall determine the persons entitled to the amount referred to in section 8 and apportion the same according to the value of the properties and their respective rights therein.

Commissioner of Payments to be appointed.

(2) The Commissioner shall get such salary and allowances as may be determined by the State Government.

(3) The salary and allowances of the Commissioner shall be defrayed out of the Consolidated Fund of the State.

10. (1) Every owner of, and every person having an interest in, the properties vested in the State Government under section 3 or any part thereof and having a claim in the amount referred to in section 8 (hereinafter referred to as the claimant) may prefer such claim before the Commissioner within thirty days from the date specified by the State Government by notification:

Claims to be made to the Commissioner.

Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days, he may, on the expiry of the said period of thirty days, entertain the claim within a further period of thirty days, but not thereafter.

(2) The Commissioner shall fix a date on or before which every claimant shall file the proof of his claim.

(3) Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of the daily newspaper in the English language and one issue of such daily newspaper in the Bengali language and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the time specified in the advertisement.

(4) The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the claimant a reasonable opportunity of being heard, in writing admit or reject the claim in whole or in part.

(5) The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions including the place or places at which he will hold his sittings, and shall, for the purpose of making any investigation under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) the summoning and enforcing the attendance of any witness and examining him on oath.

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(Sections 11, 12.)

- (b) the discovery and production of any document or other material object producible as evidence;
- (c) the reception of evidence on affidavits;
- (d) the issuing of any commission for the examination of witnesses.

(6) A claimant who is dissatisfied with any decision of the Commissioner may prefer an appeal against such decision to such authority, in such manner and within such time, as may be prescribed.

Duty to
furnish
particulars.

11. The Company shall within such period as the State Government may allow in this behalf furnish to the State Government or to the corporation a complete inventory of all the properties and assets of the company as on the appointed day pertaining to the undertaking which has vested in the State Government under section 3.

Penalties.

12. (1) Any person, who—
- (a) having in his possession, custody or control any property forming part of the undertaking of the company, wrongfully withholds such property from the State Government or the Corporation; or
 - (b) wrongfully obtains possession of any property forming part of the undertaking of the company which has vested in the State Government or in the corporation under this Act; or
 - (c) wilfully withholds or fails to furnish to the State Government or the corporation, any document which may be in his possession, custody or control; or
 - (d) wilfully fails to furnish an inventory as required under section 11;

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:

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 or cash wrongfully withheld or obtained or any document wilfully withheld or not furnished.

(2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the State Government or an officer authorised by that Government in this behalf.

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(Sections 13-16.)

13. (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:

Offences by companies.

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 or manager or 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 a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

14. The provisions of this Act 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, tribunal or other authority.

Act to have overriding effect.

15. (1) No suit, prosecution or other legal proceeding shall lie against the State Government or the corporation or any of its officers or other employees for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie against the State Government or the corporation or any of its officers or other employees 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.

16. 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 difficulties.

Power to remove difficulties.

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(Section 17.)

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

Power to
make rules.

17. The State Government may, by notification, make rules for carrying out the provisions of this Act.
