

Rep. by Act 52 of 1964, s. 2 and Sch. I (w.e.f. 29.12.64)

THE FORWARD CONTRACTS (REGULATION)
AMENDMENT ACT, 1960

No. 62 OF 1960

[28th December, 1960]

An Act further to amend the Forward Contracts (Regulation) Act, 1952.

BE it enacted by Parliament in the Eleventh Year of the Republic of India as follows:—

1. This Act may be called the Forward Contracts (Regulation) Amendment Act, 1960. Short title.

2. In sub-section (2) of section 1 of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as the principal Act), the words "except the State of Jammu and Kashmir" shall be omitted. Amendment of section 1.

3. In section 2 of the principal Act,—

(a) for clause (j), the following clauses shall be substituted, namely:— Amendment of section 2.

'(j) "recognised association" means an association to which recognition for the time being has been granted by the Central Government under section 6 in respect of goods or classes of goods specified in such recognition;

(jj) "registered association" means an association to which for the time being a certificate of registration has been granted by the Commission under section 14B;;

(b) to clause (n), the words "and which is subject to such conditions relating to its transferability as the Central Government may, by notification in the Official Gazette, specify in this behalf" shall be added at the end.

Amendment
of section 3

4. In sub-section (2) of section 3 of the principal Act,—

(a) for the words “but not exceeding three”, the words “but not exceeding four” shall be substituted;

(b) for the proviso, the following proviso shall be substituted, namely:—

“Provided that the members to be so appointed shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commerce or commodity markets, or in administration or who have special knowledge or practical experience in any matter which renders them suitable for appointment on the Commission.”

Amendment
of section 4e

5. In section 4 of the principal Act,—

(a) for clause (b), the following clause shall be substituted, namely:—

“(b) to keep forward markets under observation and to take such action in relation to them as it may consider necessary, in exercise of the powers assigned to it by or under this Act;”;

(b) in clause (e), for the words “any recognised association”, the words “any recognised association or registered association or any member of such association” shall be substituted.

Insertion of
new section
4A.

6. In Chapter II of the principal Act, after section 4, the following section shall be inserted, namely:—

Powers of
the Com-
mission.

“4A. (1) The Commission shall, in the performance of its functions, have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any office;

(e) any other matter which may be prescribed.

(2) The Commission shall have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, any matter under the consideration of the Commission and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 of the Indian Penal Code.

(3) The Commission shall be deemed to be a civil court and when any offence described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898, forward the case to a magistrate having jurisdiction to try the same and the magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the said Code.

(4) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

Explanation.—For the purposes of enforcing the attendance of witnesses, the local limits of the Commission's jurisdiction shall be the limits of the territory of India."

7. In section 8 of the principal Act,—

Amendment
of section 8.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Every recognised association and every member thereof shall furnish to the Central Government such periodical returns relating to its affairs, or the affairs of its members, or his affairs, as the case may be, as may be prescribed.";

(b) in clause (a) of sub-section (2), after the words "recognised association", the words "or a member thereof", and after the words "any of its members", the words "or his affairs, as the case may be," shall be inserted;

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Every recognised association and every member thereof shall maintain such books of account and other documents as the Commission may specify and the books of account and other documents so specified shall be preserved for such period not exceeding three years as the Commission may specify and shall be subject to inspection at all reasonable times by the Commission.”

Amendment
of section 9.

8. For sub-section (1) of section 9 of the principal Act, the following sub-section shall be substituted, namely:—

“(1) Every recognised association shall furnish to the Commission three copies of its annual report.”

Amendment
of section 9A.

9. In section 9A of the principal Act,—

(a) in sub-section (1)—

(i) clauses (a), (b), (c), (d) and (e) shall be re-lettered as clauses (b), (c), (d), (e) and (g) respectively and before clause (b) as so re-lettered, the following clause shall be, and shall be deemed always to have been, inserted, namely:—

“(a) the admission of a firm or a Hindu undivided family as a member;”;

(ii) after clause (e) as so re-lettered, the following clause shall be inserted, namely:—

“(f) the retirement at every annual general meeting of all directors or such number or proportion of their total number as may be specified in the rules;”;

(iii) in clause (g) as so re-lettered, for the expression “clauses (a), (b), (c) and (d)”, the expression “clauses (a) to (f)” shall be substituted;

(b) in sub-section (2), for the expression “clauses (a) to (e)”, the expression “clauses (a) to (g)” shall be substituted;

(c) in sub-section (3), for the expression “clauses (a) to (e)”, the expression “clauses (b) to (e) and (g)” shall be substituted.

Amendment
of section 10.

10. For sub-section (3) of section 10 of the principal Act, the following sub-section shall be substituted, namely:—

“(3) Where, in pursuance of sub-section (2), any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India, and shall, thereupon, have

effect notwithstanding anything to the contrary contained in the Companies Act, 1956, or any other law for the time being in force, as if they had been made or amended by the recognised association concerned."

11. In section 11 of the principal Act,—

Amendment
of section 11—

(a) in sub-section (3), after clause (a), the following clause shall be inserted, namely:—

“(aa) specify the bye-laws the contravention of any of which shall make a forward contract entered into otherwise than in accordance with the bye-laws illegal under sub-section (3A) of section 15;”;

(b) in sub-section (4), the words “and also in the Official Gazette of the State in which the principal office of the recognised association is situate” shall be omitted.

12. In section 12 of the principal Act,—

Amendment
of section 12.

(a) in sub-section (2), for the words “and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and on the publication thereof in the Gazette of India the bye-laws so made or amended shall have effect”, the words “and shall thereupon have effect” shall be substituted;

(b) in sub-section (4), for the words “subject to the condition of previous publication”, the words “subject to such conditions in regard to previous publication as may be prescribed” shall be substituted.

13. After section 12 of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
12A and 12B.

“12A. Any amendment of a bye-law under section 11 other than an amendment made in pursuance of clause (a) or clause (aa) of sub-section (3) of that section or under section 12 shall also apply to all forward contracts entered into before the date of its approval by the Central Government or before the date of its publication in the Gazette of India, as the case may be, and remaining to be performed on or after the said date.

Application
of amend-
ment of bye-
laws to exist-
ing forward
contracts.

12B. (1) If, in the interest of trade or in the public interest, the Commission considers it necessary to suspend a member from his membership of any recognised association or to prohibit such members from entering into any forward contract for the

Power of
Commission
to suspend
member of
recognised
association
or to prohi-
bit him from
trading.

sale or purchase in his own name or through another member of a recognised association of any goods or class of goods, then, notwithstanding anything contained in any law for the time being in force or in the rules or bye-laws of a recognised association, the Commission may, after giving an opportunity to the member concerned of being heard, by order suspend his membership of any association or prohibit him from entering into any such contract.

(2) An order made under sub-section (1) shall specify the period for which the suspension or prohibition is to have effect and such period may be extended from time to time but so as not to exceed three years in the aggregate.

(3) No order made under sub-section (1) in respect of any member of a recognised association shall affect the validity of any forward contract entered into or made by, with or through such member on or before the date of such order and remaining to be performed on or after the said date; but the Commission may make such provision as it deems fit in such order or in any subsequent order for the closing out of any such forward contract."

Insertion of
new Chapter
IIIA.

14. After Chapter III of the principal Act, the following Chapter shall be inserted, namely:—

"CHAPTER IIIA

REGISTERED ASSOCIATIONS

Certificate of
registration
to be obtain-
ed by all
associations.

14A. (1) No association concerned with the regulation and control of business relating to forward contracts shall, after the commencement of the Forward Contracts (Regulation) Amendment Act, 1960 (hereinafter referred to as such commencement), carry on such business except under, and in accordance with, the conditions of a certificate of registration granted under this Act by the Commission. 62 of 1960.

(2) Every association referred to in sub-section (1) which is in existence at such commencement, before the expiry of six months from such commencement, and every association referred to in sub-section (1) which is not in existence at such commencement, before commencing such business, shall make an application for a certificate of registration to the Commission in such form and containing such particulars as may be prescribed:

Provided that the Commission may in its discretion extend from time to time the period of six months aforesaid up to one year in the aggregate.

(3) Nothing in this section shall be deemed—

(a) to prohibit an association in existence at such commencement from carrying on its business until the disposal of the application made by it under sub-section (2); or

(b) to require a recognised association in existence at such commencement to make an application under sub-section (2); and every such association shall, as soon as may be after such commencement, be granted free of cost by the Commission a certificate of registration.

14B. On receipt of an application under section 14A, the Commission, after making such enquiry as it considers necessary in this behalf, may by order in writing grant a certificate of registration or refuse to grant it:

Provided that before refusing to grant such certificate, the association shall be given an opportunity of being heard in the matter.

14C. The provisions of sections 8 and 12B shall apply in relation to a registered association as they apply in relation to a recognised association with the substitution of—

Grant or refusal of certificate of registration of
Application of sections 8 and 12B to registered associations.

(i) references to the registered association, for references to the recognised association; and

(ii) the words "two years", for the words "three years" in sub-section (2) of section 12B."

15. After sub-section (3) of section 15 of the principal Act, the following sub-section shall be inserted, namely:—

Amendment of section 15.

"(3A) Any forward contract in goods entered into in pursuance of sub-section (1) which at the date of the contract is in contravention of any of the bye-laws specified in this behalf under clause (aa) of sub-section (3) of section 11 shall be illegal."

16. In clause (a) of section 16 and sub-section (3) of section 17 of the principal Act, for the words "entered into before the date of the notification", the words "entered into on or before the date of the notification" shall be substituted.

Amendment of sections 16 and 17.

Substitution
of new sec-
tion for
section 20.
Penalties.

17. For section 20 of the principal Act, the following section shall be substituted, namely:—

“20. Any person who—

(a) (i) in any return, statement or other document required by or under this Act, makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement; or

(ii) without reasonable excuse (the burden of proving which shall be on him) fails to furnish any return, statement or other document or any information or to answer any question or to comply with any requisition made under this Act or any rules made thereunder; or

(iii) enters into any forward contract during the period of suspension of business of a recognised association in pursuance of a notification under section 14; or

(b) is a member of any association, other than a recognised association, to which a certificate of registration has not been granted under this Act; or

(c) publishes or circulates information relating to the rate at which any forward contract has been entered into in contravention of any of the bye-laws of a recognised association; or

(d) organises, or assists in organising, or is a member of, any association in contravention of the provisions contained in the proviso to sub-section (1) of section 18; or

(e) enters into any forward contract or any option in goods in contravention of any of the provisions contained in sub-section (1) or sub-section (3A) or sub-section (4) of section 15, section 17 or section 19,

shall, on conviction, be punishable—

(i) for a first offence, with imprisonment which may extend to one year, or with a fine of not less than one thousand rupees, or with both;

(ii) for a second or subsequent offence under clause (d), or under clause (e) [other than an offence in respect of a contravention of the provisions of sub-section (4) of section 15], with imprisonment which may extend to one year and

also with fine: provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall be not less than one month and the fine shall be not less than one thousand rupees.”.

18. In section 21 of the principal Act,—

Amendment
of section 21.

(a) to clause (g), the word “or” shall be added;

(b) after clause (g), the following clause shall be inserted, namely:—

“(h) manipulates or attempts to manipulate prices in respect of forward contracts for the sale or purchase of any goods specified in any notification under section 15, in any area specified in that notification,”;

(c) for the words “shall, on conviction, be punishable with imprisonment which may extend to two years, or with fine, or with both”, the following shall be substituted, namely:—

—“shall, on conviction, be punishable—

(i) for a first offence, with imprisonment which may extend to two years, or with a fine of not less than one thousand rupees, or with both;

(ii) for a second or subsequent offence, with imprisonment which may extend to two years and also with fine: provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall be not less than one month and the fine shall be not less than one thousand rupees.”.

19. After section 21 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
21A.

“21A. Any court trying an offence punishable under section 20 or section 21 may, if it thinks fit and in addition to any sentence which it may impose for such offence, direct that any money, goods or other property in respect of which the offence has been committed, shall be forfeited to the Central Government. Power of court to order forfeiture of property.”

Explanation.—For the purposes of this section, property in respect of which an offence has been committed, shall include deposits in a bank where the said property is converted into such deposits.”.

Insertion of new sections 22A and 22B.

20. After section 22 of the principal Act, the following sections shall be inserted, namely:—

Power to search and seize books of account or other documents.

“22A. (1) Any presidency magistrate or a magistrate of the first class may, by warrant, authorise any police officer not below the rank of sub-inspector to enter upon and search any place where books of account or other documents relating to forward contracts or options in goods entered into in contravention of the provisions of this Act, may be or may be reasonably suspected to be, and such police officer may seize any such book or document, if in his opinion, it relates to any such forward contract or option in goods.

(2) The provisions of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to any search or seizure made under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

Presumptions to be drawn in certain cases.

22B. (1) Where any books of account or other documents are seized from any place and there are entries therein making reference to quantity, quotations, rates, months of delivery, receipt or payment of differences or sale or purchase of goods or option in goods such books of account or other documents shall be admitted in evidence without witnesses having to appear to prove the same; and such entries shall be *prima facie* evidence of the matters, transactions and accounts purported to be therein recorded.

(2) In any trial for an offence punishable under section 21, it shall be presumed, until the contrary is proved, that the place in which the books of account or other documents referred to in sub-section (1) were seized, was used, and that the persons found therein were present, for the purpose of committing the said offence.”

Amendment of section 23.

21. In section 23 of the principal Act, for the expression “any offence punishable under sub-section (1) of section 20 or section 21 shall be deemed to be a cognizable offence within the meaning of that Code”, the following expression shall be substituted, namely:—

“the following offences shall be deemed to be cognizable within the meaning of that Code, namely:—

- (a) an offence falling under sub-clause (ii) of clause (a) of section 20 in so far as it relates to the failure to comply with any requisition made under sub-section (3) of section 8;
- (b) an offence falling under clause (d) of section 20;

Rep. by Act 52 of 1964.

OF 1960] Forward Contracts (Regulation) Amendment 731

(c) an offence falling under clause (e) of section 20 other than a contravention of the provisions of sub-section (3A) or sub-section (4) of section 15;

(d) an offence falling under section 21.”.

22. After section 27 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 27A.

“27A. (1) No suit or other legal proceeding shall lie in any court against the Central Government or any member, officer or servant of the Commission for anything which is in good faith done or intended to be done under this Act, or any rule or bye-law made thereunder.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie in any court against the governing body or any member, office-bearer or servant of any recognised association or against any person appointed under sub-section (1) of section 13 for anything which is in good faith done or intended to be done with the approval, or at the instance, of the Commission and in pursuance of this Act, or of any rule or bye-law made thereunder.”.

23. After clause (c) of sub-section (2) of section 28 of the principal Act, the following clause shall be inserted, namely:—

Amendment of section 28.

“(cc) the manner in which applications for certificates of registration may be made under section 14A and the levy of fees in respect of such applications;”.