

REPEALED BY ACT... 72... OF 1971 *h.s. 11*

THE COTTON TEXTILE COMPANIES (MANAGEMENT
OF UNDERTAKINGS AND LIQUIDATION OR
RECONSTRUCTION) ACT, 1967

No. 29 OF 1967

[23rd December, 1967]

An Act to provide in the public interest for the liquidation of cotton textile companies while keeping the undertakings thereof as running concerns, or for the reconstruction of cotton textile companies, in certain cases and for matters connected therewith.

WHEREAS cotton textile industry is an important industry in the country;

AND WHEREAS adequate and improved production of cloth is not only essential for the life of the community but also contributes in the earning of foreign exchange substantially;

AND WHEREAS quite a large number of ancillary industries depend and flourish on the cotton textile industry;

AND WHEREAS conditions in the cotton textile industry have tended to deteriorate due to lack of modernisation and other reasons;

AND WHEREAS on account of mismanagement certain cotton textile mills are threatened with closure;

AND WHEREAS the closure of the cotton textile mills will affect prejudicially the production of cotton textiles and the interests of labour;

Be it enacted by Parliament in the Eighteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Cotton Textile Companies (Management of Undertakings and Liquidation or Reconstruction) Act, 1967.

19 Law—27.

Short
title,
extent
and
commence-
ment.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date¹ as the Central Govern-
ment may, by notification in the Official Gazette, appoint.

Defini-
tions.

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

(a) "cotton textiles" means yarn or fabrics made either wholly or partially of cotton;

(b) "Court" means the High Court having jurisdiction in relation to the place at which the registered office of a textile company is situate;

(c) "current assets" means bank balances and cash and includes such other assets or reserves as are expected to be realised in cash or sold or consumed within a short period of time in the ordinary course of business such as stock-in-trade, amounts due from sundry debtors for sale of goods and for services rendered, advance tax payments and bills receivable, but does not include sums credited to a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by a textile company;

(d) "current liabilities" means liabilities which must be met on demand or within a period of twelve months from the date they are incurred;

(e) "Industries Act" means the Industries (Development and Regulation) Act, 1951; 65 of 1951.

(f) "prescribed" means prescribed by rules made under this Act;

(g) "textile company" means a company as defined in the Companies Act, 1956, engaged wholly or mainly in the manufacture of cotton textiles; 1 of 1956.

(h) words and expressions used but not defined in this Act and defined in the Companies Act, 1956, shall have the meanings respectively assigned to them in that Act. 1 of 1956.

¹ 8-1-1968 : Vide Notification No. S.O. 103, dated 6-1-1968, Gazette of India, Extraordinary, Part II, Sec. 3 (ii), p. 27.

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3. Where the management of the undertaking of a textile company has been taken over under section 18A of the Industries Act, the Central Government may, at any time during the continuance of such management, call for a report on the affairs and working of the undertaking from the person or body of persons authorised to take over the management of the undertaking (hereinafter referred to as the authorised person) and in submitting the report, the authorised person shall take into account the inventory and the lists of members and creditors prepared under section 7.

Power of Central Government to call for report on the affairs and Working of managed company.

4. (1) If the Central Government on receipt of the report from the authorised person is satisfied that the financial condition and other circumstances of the textile company are such that the textile company is not in a position to meet its current liabilities out of its current assets, that Government may, if it considers it necessary or expedient in the public interest, by order, decide that the undertaking of the textile company should be sold as a running concern as provided in section 5 and proceedings should simultaneously be started for the winding up of the textile company.

Decision of Central Government in relation to managed company.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government on receipt of the report from the authorised person is satisfied that—

(a) in the public interest, or

(b) in the interests of the shareholders, or

(c) to secure the proper management of the textile company,

it is necessary so to do, the Central Government may, by order, decide to prepare a scheme for the reconstruction of the textile company.

(3) For the removal of doubt, it is hereby declared that nothing contained in this section shall be construed as preventing the Central Government from exercising the powers conferred on it by section 18F of the Industries Act in respect of a textile company the management of whose undertaking has been taken over under section 18A of that Act but such powers shall not be exercised after the making of an order under sub-section (1) or, as the case may be, under sub-section (2) of this section.

5. (1) The provisions hereinafter laid down shall apply where the Central Government decides that the course specified in sub-section (1) of section 4 should be followed, namely:—

Provisions where Government

decides
to follow
the
course
specified
in section
4(1).

(a) the decision of the Central Government that the course specified in sub-section (1) of section 4 should be followed in relation to any textile company shall be deemed to be a ground specified in section 433 of the Companies Act, 1956, for the presentation of an application for the winding up of the textile company;

1 of 1956.

(b) the authorised person shall, as soon as may be, after the decision specified in sub-section (1) of section 4 has been taken by the Central Government, present by petition an application to the Court for the winding up of the textile company on the ground that in the opinion of the Central Government it is necessary or expedient in the public interest that while the undertaking of the textile company should continue to be managed as a running concern, the company itself should be wound up;

(c) the authorised person shall, in addition to discharging his functions of management of the undertaking as a running concern under the Industries Act, function as Official Liquidator, until it is sold or purchased in pursuance of this section, in the winding up proceedings of the textile company as if he were an Official Liquidator appointed under section 448 of the Companies Act, 1956, and thereafter the Official Liquidator referred to in that section shall function as the Official Liquidator in the said proceedings;

1 of 1956.

(d) the authorised person shall make a report to the Central Government as to what should be the reserve price for the sale of the undertaking as a running concern, and in making such a report, he shall have regard to—

(i) the financial condition of the textile company on the date of the order under section 4—

(1) as disclosed in its books of account,

(2) as disclosed in its balance-sheets and profit and loss accounts during a period of five years immediately before the said date;

(ii) the condition and nature of the plant, machinery, instruments and other equipment from the point of view of their suitability for profitable use in the running of the undertaking;

(iii) the total amount of liability on account of secured and unsecured debts including overdrafts, if any, drawn

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on banks, liabilities on account of terminal benefits to the employees and other borrowings and liabilities of the textile company; and

(iv) other relevant factors including the factor that the undertaking will be sold free from all encumbrances, and notice of such price shall be given in such manner as may be prescribed to the members and creditors of the textile company requiring them to make representations within a specified time to the Central Government through the authorised person and the Central Government after considering the representations received and the report of the authorised person, determine the reserve price;

(e) the authorised person shall thereafter, with the permission of the Court, invite tenders from the public in such manner as may be determined by the Court for the sale of the undertaking as a running concern subject to the condition that it will be sold to the person offering the highest price which shall not be less than the reserve price determined under clause (d):

Provided that the Court shall not refuse permission if it is satisfied that the textile company is not in a position to meet its current liabilities out of its current assets;

(f) the undertaking shall be sold to the highest bidder as a running concern only if the price offered by him therefor is not less than the reserve price;

(g) where no offer of price is equal to or more than the reserve price, the undertaking shall be purchased by the Central Government at the reserve price;

(h) the amount realised from the sale of the undertaking as a running concern together with any other sum which may be realised from any contributory, purchaser or any other person from whom any money is due to the textile company shall be utilised in accordance with the provisions of the Companies Act, 1956, in discharging the liabilities of the textile company and distributing the balance, if any, amongst the members of the company;

1 of 1956.

(i) in other respects, the provisions of the Companies Act, 1956, relating to winding up by the Court shall, as far as may be, apply.

1 of 1956.

(2) When any undertaking is sold to any person under clause (f), or purchased by the Central Government under clause (g), of

sub-section (1), there shall be transferred to and vested in the purchaser, free from all encumbrances, all such assets relating to the undertaking as are referred to in sub-clause (i) of clause (a) of section 7 and existing at the time of the sale or purchase.

Provi-
sions
where
Govern-
ment
decides
to follow
the
course
specified
in sec-
tion
4(2).

6. (1) Where in any case the Central Government decides that the course specified in sub-section (2) of section 4 should be followed, it shall cause to be prepared by the authorised person a scheme for the reconstruction of the textile company in accordance with the provisions hereinafter contained and the authorised person shall submit the same for its approval.

(2) The scheme for the reconstruction of the textile company may contain provisions for all or any of the following matters, namely:—

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations of the company on its reconstruction;

(b) any change in the Board of directors, or the appointment of a new Board of directors of the company on its reconstruction and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of directors or of any director, the period for which such appointment shall be made;

(c) the vesting of controlling interest in the reconstructed textile company in the Central Government either by the appointment of additional directors or by the allotment of additional shares;

(d) the alteration of the memorandum and articles of association of the company on its reconstruction to give effect to such reconstruction;

(e) subject to the provisions of the scheme, the continuation by or against the company on its reconstruction of any action or proceedings pending against the company immediately before the date of its reconstruction;

(f) the reduction of the interest or rights which the members and creditors have in or against the company before its reconstruction to such extent as the Central Government may consider necessary in the public interest or in the interests of the members and creditors or for the maintenance of the business of the company;

Provided that nothing contained in this clause shall be deemed to authorise the reduction of the interest or rights of any creditor (including Government) in respect of any loan or advance made by that creditor to the company after the date on which the management of the undertaking of the company has been taken over under section 18A of the Industries Act;

(g) the payment in cash or otherwise to the creditors in full satisfaction of their claim—

(i) in respect of their interest or rights in or against the company before its reconstruction; or

(ii) where their interest or rights aforesaid in or against the company has or have been reduced under clause (f), in respect of such interest or rights as so reduced;

(h) the allotment to the members of the company for shares held by them therein before its reconstruction [whether their interest in such shares has been reduced under clause (f) or not], of shares in the company on its reconstruction and where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim—

(i) in respect of their interest in shares in the company before its reconstruction; or

(ii) where such interest has been reduced under clause (f), in respect of their interest in shares as so reduced;

(i) the offer by the Central Government to acquire by negotiations with the members of the company their respective shares on payment in cash to those members who may volunteer to sell their shares to the Central Government in full satisfaction of their claim—

(i) in respect of their interest in shares in the company before its reconstruction; or

(ii) where such interest has been reduced under clause (f), in respect of their interest in shares as so reduced;

(j) the conversion of any debentures issued by the company after the taking over of the company under section 18A of the Industries Act or of any loans obtained by the company after that date or of any part of such debentures or loans, into shares in the company and the allotment of those shares to such debenture-holders or creditors, as the case may be;

(k) the increase of the capital of the company by the issue of new shares and the allotment of such new shares to the Central Government;

(l) the continuance of the services of such of the employees of the company as the Central Government may specify in the scheme in the company itself on its reconstruction on such terms and conditions as the Central Government thinks fit;

(m) notwithstanding anything contained in clause (l), where any employees of the company whose services have been continued under clause (l) have, by notice in writing given to the company at any time before the expiry of one month next following the date on which the scheme is sanctioned by the Court, intimated their intention of not becoming employees of the company on its reconstruction, the payment to such employees and to other employees whose services have not been continued on the reconstruction of the company, of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947 and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorisations of the company immediately before the date of its reconstruction;

14 of 1947.

(n) any other terms and conditions for the reconstruction of the company;

(o) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction shall be fully and effectively carried out.

(3) (a) A copy of the scheme as approved by the Central Government shall be sent in draft to the company and to the creditors thereof for suggestions and objections, if any, within such period as the Central Government may specify for this purpose.

(b) The Central Government may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the company and from any members or creditors of the company.

(4) The scheme shall thereafter be placed before the Court for its sanction and the Court if satisfied that the scheme is in the public interest or in the interests of the shareholders or for securing the proper management of the company and that the scheme is designed to be fair and reasonable to the members and creditors of the company, may, after giving an opportunity to the company and to its members and creditors of showing cause, sanction the scheme without any modification or with such modifications as it may consider necessary.

(5) The scheme as so sanctioned by the Court shall come into force on such date as the Court may specify in this behalf:

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Provided that different dates may be specified for different provisions of the scheme.

(6) The sanction accorded by the Court under sub-section (4) shall be conclusive evidence that all the requirements of this section relating to the reconstruction of the company have been complied with, and a copy of the sanctioned scheme certified by the Court to be a true copy thereof, shall, in all legal proceedings (whether original or in appeal or otherwise), be admitted as evidence to the same extent as the original scheme.

(7) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the company and also on all the members and other creditors and employees of the company and on any other person having any right or liability in relation to the company.

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(8) On the coming into operation of the scheme or any provision thereof, the authorised person shall cease to function, and the management of the reconstructed company shall be assumed by the Board of directors as provided in the scheme.

(9) Copies of the scheme shall be laid before each House of Parliament, as soon as may be, after the scheme has been sanctioned by the Court.

(10) The provisions of this section and of any scheme made thereunder shall have effect notwithstanding anything contained in sections 391 to 394A (both inclusive) of the Companies Act, 1956.

1 of 1956

7. For the purposes of this Act, the authorised person shall, as soon as may be, after taking over the management of the undertaking of a textile company under section 18A of the Industries Act,—

(a) prepare a complete inventory of—

(i) all property, movable and immovable, including lands, buildings, works, workshops, stores, instruments, plant, machinery, automobiles and other vehicles, stocks of yarn, thread, cloth or fabric, in course of production, storage or transit, raw materials, chemicals, dyes, cotton, cash balances, cash in hand, deposits in bank or with any other person or body or on loan, reserve funds, investments and book debts and all other rights and interests arising out of such property as were immediately before the date of taking over of the undertaking in the ownership, possession, power or control of the textile company, whether within or without India; and all books of account, registers,

Preparation of inventory of assets and liabilities and list of members and creditors of a managed company.

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maps, plans, sections, drawings, records, documents or titles of ownership of property, and all other documents of whatever nature relating thereto; and

(ii) all borrowings, liabilities and obligations of whatever kind of the textile company including liability on account of terminal benefits to its employees subsisting immediately before the said date;

(b) prepare separately a list of members, and a list of creditors, of such textile company as on the date of taking over of the management of the undertaking showing separately in the list of creditors, the secured creditors and the unsecured creditors:

Provided that where the management of the undertaking of a ~~under section 4 has been made~~, no suit or other legal proceeding before the commencement of this Act, the aforesaid functions shall be performed by the authorised person within six months from such commencement.

Stay of suits and other proceedings.

8. In the case of a textile company in respect of which an order under section 4 has been made, no suit or other legal proceeding shall be instituted or continued against the textile company except with the previous permission of the Central Government or any officer or authority authorised by that Government in this behalf.

Protection of action taken in good faith.

9. (1) No suit, prosecution or other legal proceedings shall lie against the Central Government, the authorised person or any officer or authority for anything which is in good faith done or intended to be done in pursuance of this Act or any rule, order, notification or scheme made thereunder.

(2) No suit or other legal proceedings shall lie against the Central Government, the authorised person or any officer or authority for any damage, loss or injury caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule, order, notification or scheme made thereunder.

Power to make rules.

10. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes 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 successive sessions, and if, before the expiry of the session in which

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it is so laid or the session immediately following, 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.

11. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the difficulty: Power to remove difficulties.

Provided that no such order shall be made after the expiration of three years from the commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament.