

Dep. by Act 38 of 1978, S. 2 + Sch. I

THE INDUSTRIAL DEVELOPMENT BANK OF INDIA
(AMENDMENT) ACT, 1972

No. 75 OF 1972

[24th December, 1972]

An Act to amend the Industrial Development Bank of India Act, 1964

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short
title.

1. This Act may be called the Industrial Development Bank of India (Amendment) Act, 1972.

Amend-
ment
of sec-
tion 2.

2. In section 2 of the Industrial Development Bank of India Act, 1964¹⁸ of 1964 (hereinafter referred to as the principal Act),—

(a) in clause (c), the words “or in the maintenance, repair, testing or servicing of machinery of any description or vehicles or vessels or motorboats or trailers or tractors, or in fishing, or in providing shore facilities for fishing or maintenance thereof” shall be added at the end;

(b) in clause (i), for the word “Madras”, the words “Tamil Nadu” shall be substituted.

Amend-
ment
of sec-
tion 9.

3. In section 9 of the principal Act, in sub-section (1),—

(a) in clause (a),—

(i) in sub-clause (i),—

(1) after the words “any loans or advances granted to industrial concerns”, the brackets and words “(including concerns engaged or to be engaged in the development of any contiguous area of land as an industrial estate)” shall be inserted;

(2) for the words "on the expiry of not less than three years and not more than twenty-five years", the words "within a period not exceeding twenty-five years" shall be substituted;

(ii) in sub-clause (ii),—

(1) after the words "any loans or advances granted to industrial concerns", the brackets and words "(including concerns engaged or to be engaged in the development of any contiguous area of land as an industrial estate)" shall be inserted;

(2) for the words "on the expiry of not less than three years and not more than ten years", the words "within a period not exceeding fifteen years" shall be substituted;

(iii) in sub-clause (iii),—

(1) after the words "any loans or advances granted to industrial concerns", the brackets and words "(including concerns exporting products of industrial concerns)" shall be inserted;

(2) for the words "and are repayable on the expiry of not less than six months and not more than ten years", the words, brackets and letters "or the execution of any turn-key project outside India by any industrial concern as aforesaid or by any person in India, and, in any case, are repayable—

(i) within a period not exceeding twelve years in the case of persons outside India, and

(ii) within a period not exceeding fifteen years in other cases,"

shall be substituted;

(b) in clause (b), for the words "promissory notes of industrial concerns", the words "promissory notes made, drawn, accepted or endorsed by industrial concerns or by any person selling capital goods manufactured by one industrial concern to another industrial concern" shall be substituted;

(c) in clause (c), for the words "any other financial institution", the words "any other financial institution, whether within or outside India," shall be substituted;

(d) in clause (d),—

(i) in the proviso, for the words "which may at the option of the Development Bank be convertible", the words "the amounts outstanding thereon may be convertible at the option of the Development Bank" shall be substituted;

Repealed

(ii) after the proviso, the following Explanation shall be inserted, namely:—

Explanation.—In this clause, the expression “the amounts outstanding thereon” used in relation to any loan or advance, shall mean the principal, interest and other charges payable on such loan or advance as at the time when the amounts are sought to be converted into stocks or shares.”;

(e) after clause (d) and the Explanation thereto, the following clauses shall be inserted, namely:—

“(da) granting loans and advances—

(i) to any person exporting products of industrial concerns; or

(ii) to any person outside India, in connection with the export of capital goods from India; or

(iii) for the execution of turn-key projects outside India by any industrial concern or by any person in India;

(db) transferring for consideration any instrument relating to loans and advances granted by it to industrial concerns;”;

(f) after clause (k), the following clause shall be inserted, namely:—

“(ka) acting as agent of—

(i) the Central Government or of the Reserve Bank, or

(ii) such other Government or person as the Central Government, on the recommendation of the Reserve Bank, may authorise.”.

Insertion
of new
section
9A.

4. After section 9 of the principal Act, the following section shall be inserted, namely:—

Prohibited
business.

‘9A. (1) The Development Bank shall not enter into any kind of business with any industrial concern, of which any of the directors of the Development Bank is a proprietor, partner, director, manager, agent, employee or guarantor, or in which one or more directors of the Development Bank together hold substantial interest:

Provided that this sub-section shall not apply to any industrial concern if any director of the Development Bank—

(i) is nominated as a director of the Board of such concern by Government, or a Government company as defined in section 617 of the Companies Act, 1956, or by a Corporation established by any other law; or

(ii) is elected on the Board of such concern by virtue of shares held in the concern by Government, or a Government company as defined in section 617 of the Companies Act, 1956, or by a Corporation established by any other law,

by reason only of such nomination or election, as the case may be.

Repealed

1 of 1956.

Explanation.—“Substantial interest”, in relation to an industrial concern, means the beneficial interest held by one or more of the directors of the Development Bank or by any relative [as defined in clause (41) of section 2 of the Companies Act, 1956] of such director, whether singly or taken together, in the shares of the industrial concern, the aggregate amount paid up on which either exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the industrial concern, whichever is the lesser.

(2) The provisions of sub-section (1) —

(i) shall not apply to any industrial concern as specified therein if the Development Bank is satisfied that it is necessary in the public interest to enter into business with that concern, and entering into any kind of business with such industrial concern shall be in accordance with and subject to such conditions and limitations as may be prescribed;

(ii) shall not apply to any transaction relating to the business entered into prior to the commencement of the Industrial Development Bank of India (Amendment) Act, 1972, and all such business and any transaction in relation thereto may be implemented or continued as if that Act had not come into force;

(iii) shall apply only so long as the conditions precedent to such disability as set out in the said sub-section continue.’

5. After section 11 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 11A.

“11A. The rights and interests of the Development Bank (including any other rights incidental thereto) in relation to any loan or advance granted, or any amount recoverable, by it may be transferred by the Development Bank, either in whole or in part, by the execution or issue of any instrument or by the transfer of any instrument by endorsement, or in any other manner in which the rights and interests in relation to such loan or advance may be lawfully transferred, and the Development Bank may, notwithstanding such transfer, act as the trustee for the transferee.”

Power to transfer rights.

6. In section 12 of the principal Act, for sub-section (3) and sub-section (4), the following sub-sections shall be substituted, namely:—

Amendment of section 12.

“(3) All loans and advances granted by the Development Bank out of foreign currency borrowed under sub-section (1) shall be expressed in terms of foreign currency as equivalent of Indian currency, calculated in accordance with the rate of exchange prevailing at the time of grant thereof, and the amount due thereunder shall be repayable in equivalent Indian currency, calculated in accordance with the rate of exchange prevailing at the time of repayment of such loan or advance.

(4) Any loss or profit in connection with any borrowing of foreign currency under sub-section (1) for the purpose of granting loans and advances under this Act or with its repayment to the concerned foreign lending agency, on account of any fluctuations in the rate of exchange accruing—

Repealed

(a) during the period within which the loan or advance is repayable by the industrial concern or the period of actual repayment thereof by the concern, whichever is longer, shall be reimbursed by, or paid to, as the case may be, the recipients of such loans and advances;

(b) after the expiry of the period specified in clause (a),—

(i) shall be borne by the Development Bank in respect of normal market fluctuations in foreign exchange;

(ii) shall be reimbursed by, or paid to, as the case may be, the Central Government in respect of fluctuations other than the normal market fluctuations in foreign exchange.

Explanation.—If any question arises as to whether any fluctuation as aforesaid is a normal market fluctuation or not, the same shall be decided by the Central Government whose decision thereon shall be final.”

Insertion of new section 30A.

7. After section 30 of the principal Act, the following section shall be inserted, namely:—

Arrangement with Development Bank on appointment of directors to prevail.

“30A. (1) Where any arrangement entered into by the Development Bank with an industrial concern provides for the appointment by the Development Bank of one or more directors of such industrial concern, such provision and any appointment or directors made in pursuance thereof shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force or in the memorandum, articles of association or any other instrument relating to the industrial concern, and any provision regarding share qualification, age-limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any director appointed by the Development Bank in pursuance of the arrangement as aforesaid. 1 of 1956.

(2) Any director appointed as aforesaid shall—

(a) hold office during the pleasure of the Development Bank and may be removed or substituted by any person by order in writing of the Development Bank;

(b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement.”

Amendment of section 37.

8. In section 37 of the principal Act, in sub-section (2), after clause

(d), the following clause shall be inserted, namely:—

“(da) entering into business with industrial concerns specified in sub-section (1) of section 9A and the conditions and limitations in regard thereto;”