

Ref. by Act 97 of 1976, S. 37 (W. e. & L. I. 1975)

THE BURN COMPANY AND INDIAN STANDARD WAGON  
COMPANY (TAKING OVER OF MANAGEMENT)  
ACT, 1973

No. 57 OF 1973

[17th December, 1973]

An Act to provide for the taking over, in the public interest, of the management of the undertakings of certain companies, pending nationalisation of such undertakings, with a view to ensuring rational and co-ordinated development and production of rolling stock, other products of iron and steel industry and other goods needed by such industry, and for matters connected therewith or incidental thereto.

WHEREAS Burn and Company Limited and Indian Standard Wagon Company Limited, which are inter-linked both financially and production-wise, are engaged in the production of goods which are vital to the needs of the economy of the country, such as, railway wagons and components thereof, steel structurals, iron castings, forgings and the like and also other goods needed by the iron and steel industry;

AND WHEREAS there has been a substantial fall in the production of goods by both the companies by reason of the mismanagement of the affairs thereof, and such fall in production has adversely affected the production of goods which are vital to the needs of the economy of the country as also the fulfilment of contracts for the supply of railway wagons to countries abroad;

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

CHAPTER I

PRELIMINARY

Short title

1. This Act may be called the Burn Company and Indian Standard Wagon Company (Taking Over of Management) Act, 1973.

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

Defini-  
tions.

(a) "appointed day" means the date on which this Act comes into force;

(b) "Custodian" means the person appointed under section 4 to take over the management of the undertakings of the two companies;

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

(d) "two companies" means Burn and Company Limited and Indian Standard Wagon Company Limited, being companies as defined in the Companies Act, 1956 and both having their registered offices at 12, Mission Row, Calcutta-1;

1 of 1956.

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

1 of 1956.

## CHAPTER II

### MANAGEMENT OF THE UNDERTAKINGS OF THE TWO COMPANIES

3. (1) On and from the appointed day, the management of the undertakings of the two companies shall vest in the Central Government.

Manage-  
ment of  
the under-  
takings of  
the two  
companies  
to vest  
in Central  
Govern-  
ment.

(2) The undertakings of each of the two companies shall be deemed to include all assets, rights leaseholds (including mining leases, if any), powers, authorities and privileges and all property, movable and immovable, including lands, buildings, works, mines, workshops, projects, washeries, smelters, ropeways, stores, instruments, machinery, aircraft, locomotives, automobiles and other vehicles, cash balances, reserve fund, investments and book debts and all other rights and interests arising out of such property as were immediately before the appointed day in the ownership, possession, power or control of each of the two companies, whether within or without India, and all books of account, registers, 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 the undertakings owned by each of them, 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.

Rep by Act of 1976, § 32 (W. & I. J. 1975)

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(5) Notwithstanding anything contained in any law for the time being 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 reason of 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.

Custodian  
of the  
two  
companies.

4 (1) The Central Government may, as soon as it is convenient administratively so to do, appoint any person (including a Government company, whether in existence at the commencement of this Act or incorporated thereafter) as the Custodian of the undertakings of the two companies for the purpose of taking over the management thereof, and the Custodian shall carry on the management of the undertakings of the two companies for and on behalf of the Central Government.

(2) The Central Government may also appoint a person (including a Government company, whether in existence at the commencement of this Act or incorporated thereafter) as the Additional Custodian of the undertakings of the two companies for assisting the Custodian in the exercise of his powers and duties under this Act.

(3) The Additional Custodian shall function under the direction, supervision and control of the Custodian and the Custodian may delegate all or such of the powers as he may think fit to the Additional Custodian.

(4) 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 his powers and duties as the Central Government deems to be desirable in the circumstances of the case, and the Custodian may also apply to the Central Government at any time for instructions as to the manner in which the Custodian shall conduct the management of the undertakings of the two companies or in relation to any other matter arising in the course of such management.

(5) Subject to the other 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, 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.

1 of 1956.

(6) Every person having possession, custody or control of any property forming part of the undertaking of either of the two companies shall deliver forthwith such property to the Custodian or to any officer or other employee of the Central Government or the concerned company, as may be authorised by the Central Government in this behalf.

(7) 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 law for the time being in force, be liable to account for the books, papers and other documents (including such minutes books, cheque books, letters, memoranda, notes or other communications) to the Custodian and shall deliver them up to the Custodian or to any such person (being an officer or other employee of the Central Government or either of the two companies) as may be authorised by the Central Government in this behalf.

(8) 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 that 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 the undertaking of such company immediately before the appointed day and of all the liabilities and obligations of such company in relation to its undertaking subsisting immediately before that day and also of all agreements entered into by such company in relation to its undertaking and in force immediately before that day.

(9) The Custodian and the Additional Custodian shall receive from the funds of the undertakings of the two companies such remuneration as the Central Government may fix.

5. (1) The two companies shall be given by the Central Government an amount in cash, for the vesting in it, under section 3, of the management of the undertakings of such companies.

Payment of amount.

(2) For every month during which the management of the undertakings of the two companies remains vested in the Central Government, the amount referred to in sub-section (1) shall be computed at the rate of—

(a) rupees fifty thousand per annum in the case of Burn and Company Limited; and

(b) rupees twenty-five thousand per annum in the case of Indian Standard Wagon Company Limited.

### CHAPTER III

#### MISCELLANEOUS

6. (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,—

Applica-  
tion of  
Act 1 of  
1956.

(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 in the Official Gazette, specify in this behalf, the Companies Act, 1956, shall continue to apply to the two companies in the same manner as it applied thereto before the appointed day.

1 of 1956.

Penal-  
ties.

7. (1) Any person, who—

(a) having in his possession or custody or under his control any property forming part of the undertaking of either of the two companies, wrongfully withholds such property from the Custodian or any person authorised under this Act, or

(b) wrongfully obtains possession of any such property, or

(c) wilfully retains any property forming part of the undertakings of the two companies or either of them 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, power or custody or under his control to the Custodian or any person authorised under this Act, or

(e) fails, without any reasonable cause, to furnish information or particulars as provided in sub-section (8) of section 4,

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 an officer authorised by that Government in this behalf.

Offences by  
com-  
panies.

8. (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 purposes 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. In computing the period of limitation prescribed by any 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 any of such companies, the time during which this Act is in force shall be excluded.

Exclusion from limitation of the period of operation of Act.

10. 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.

Act to have overriding effect.

11. (1) No suit, prosecution or other legal proceeding shall lie against the Custodian, Additional Custodian or any officer or other employee of the Central Government or of either of the two companies 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 Central Government or the Custodian or the Additional Custodian or any of the officers or other employees of the Central Government or of either of the two companies 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. (1) 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 three years immediately preceding the appointed day, between either of the two companies or managing or other director of any such company 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 cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) such contract or agreement and thereafter the contract or agreement shall have effect accordingly:

Contracts, etc., in bad faith may be cancelled or varied.

Provided that no contract or agreement shall be cancelled or varied except after giving to the parties to the contract or agreement a reasonable opportunity of being heard.

(2) Any person aggrieved by an order made under sub-section (1) may make an application to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the registered office of the concerned company is situated for the variation or reversal of such order and thereupon such court may confirm, modify or reverse such order.

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Avoidance  
of  
voluntary  
transfers.

13. Any transfer of property, movable or immovable, or any delivery of goods made by or on behalf of either of the two companies (not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser in good faith and for valuable consideration), if made within a period of six months immediately preceding the appointed day shall be void against the Central Government or the Custodian, as the case may be.

Power to  
terminate  
contracts  
of  
employ-  
ment.

14. If the Custodian is of opinion that any contract of employment entered into by either of the two companies or any managing agent or managing or other director of either of the two companies, at any time before the appointed day is unduly onerous, he 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.

Power  
to make  
rules.

15. (1) The Central Government may, by notification in the Official Gazette, 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.