

## ORISSA ORDINANCE No.12 OF 1983

**THE ORISSA TEXTILE MILLS LIMITED (ACQUISITION OF SHARES)  
ORDINANCE, 1983**

[Promulgated by the Governor of Orissa on the 26th August 1983, published in an extraordinary issue of the *Orissa Gazette*, dated the 27th August 1983.]

**AN**

**ORDINANCE**

**TO PROVIDE FOR THE ACQUISITION OF SHARES OF THE ORISSA TEXTILE MILLS LIMITED WITH A VIEW TO SECURING THE PROPER MANAGEMENT OF THE AFFAIRS OF THE COMPANY AND THE CONTINUITY AND DEVELOPMENT OF THE PRODUCTION OF GOODS WHICH ARE VITAL TO THE NEEDS OF THE COUNTRY AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO**

WHEREAS Messrs Orissa Textile Mills Limited, Choudwar, District Cuttack, Orissa are engaged in the manufacture and production of pure cotton and blended fabrics which are vital to the needs of the general public;

AND WHEREAS in exercise of powers conferred by clause (b) of sub-section (1) of section 18 AA of the Industries (Development and Regulation) Act, 1951 the Central Government authorised the Orissa State Textile Corporation Limited, Cuttack to take over management of the whole of the said industrial undertaking; 65 of 1951

AND WHEREAS the Government of Orissa and public financial institutions have also invested considerable funds in the share capital of the Company;

AND WHEREAS the Allahabad Bank and the Industrial Reconstruction Corporation of India have advanced considerable sums to the Company;

AND WHEREAS further investment of large sums of money is necessary for the maintenance and development of the production of the undertaking and for securing proper management of the Company;

AND WHEREAS acquisition by the Government of Orissa of an effective control over the affairs of the Company is necessary to enable it to make the investments aforesaid;

AND WHEREAS the State Legislature is not in session;

AND WHEREAS the Governor of Orissa is satisfied that circumstances exist which render it necessary for him to take immediate action to make a law for the purpose aforesaid;

AND WHEREAS, instructions from the President under the proviso to clause (1) of Article 213 of the Constitution of India have been received to promulgate the Ordinance for the above purpose;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Orissa is pleased to make and promulgate the following Ordinance in the Thirty-fourth Year of the Republic of India:—

**CHAPTER I**  
**PRELIMINARY**

Short title and commencement.

1. (1) This Ordinance may be called the Orissa Textile Mills Limited (Acquisition of Shares) Ordinance, 1983.

(2) It shall come into force at once.

Definitions

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

(a) "appointed day" means the date of commencement of this Ordinance;

(b) "bank" means a banking company within the meaning of the Banking Regulation Act, 1949;

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(c) "Commissioner" means the Commissioner of payments appointed under section 5;

(d) "Company" means the Orissa Textile Mills Limited, being a company within the meaning of the Companies Act, 1956 and having its registered office at Choudwar in the State of Orissa.

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(e) "Share" means a share, whether preference share or equity share, in the capital of the Company and includes a share pledged by any shareholder with any bank or other creditor;

(f) "Shareholder" means,—

(i) a person who, immediately before the appointed day, was registered by the Company as the holder of any share and includes his legal representative; or

(ii) a person who, before the appointed day, had lodged with the Company a proper instrument of transfer of any share in the form prescribed under section 108 of the Companies Act, 1956, and executed in accordance with the provisions of that section; or

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(iii) a person who claims under a proper instrument of transfer of any share in the form prescribed under section 108 of the Companies Act, 1956, and delivers such instrument to the Commissioner, duly executed, on or before such date as the State Government may, by notification, specify in this behalf;

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(g) "specified date" means such date as the State Government may, for the purpose of any provision of this Ordinance, by notification, specify and different dates may be specified for different provisions of this Ordinance;

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

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**CHAPTER II**  
**ACQUISITION OF THE SHARES OF THE COMPANY**

Transfer and vesting of shares of the Company in the State Government.

3. (1) On the appointed day, all the shares of the Company, other than the shares specified in the schedule shall, by virtue of this Ordinance, stand transferred to, and vest in, the State Government.

(2) The State Government shall be deemed, on and from the appointed day, to have been registered in the Register of members of the Company as the holder of each share which stands transferred to, and vested in it, by virtue of the provisions of sub-section (1).

(3) All the shares which have vested in the State Government under sub-section (1), shall, by force of such vesting, be freed and discharged of all trusts, liabilities, obligations, mortgages, charges, liens and other encumbrances affecting them, and any attachment, injunction or any decree or order of any Court, tribunal or other authority restricting the use of such shares in any manner shall be deemed to have been withdrawn.

(4) For the removal of doubts, it is hereby declared that the provisions of sub-sections (1) and (2) shall not be deemed to affect —

(a) any right of the Company subsisting immediately before the appointed day, against any shareholder to recover from such shareholder any sum of money on the ground that the shareholder has not paid or credited to the Company the whole or any part of the value of the shares held by him or on any other ground whatsoever ; or

(b) any right of the shareholder subsisting, immediately before the appointed day, against the company to receive any dividend or other payment due from the Company.

Payment of amounts.

4. (1) For the transfer to and vesting in the State Government under section 3, of the shares of the Company, there shall be given by the State Government to the concerned shareholders of the Company in cash and in the manner specified in section 6, an amount of rupees ten for each preference share of one hundred and rupee one for each equity share of rupees ten.

(2) The amount referred to in sub-section (1), shall carry simple interest at the rate of four per cent per annum for the period commencing on the appointed day and ending on the date on which payment of such amount is made by the State Government to the Commissioner.

Appointment of Commissioner of payments.

5. (1) The State Government shall, for the purpose of disbursing the amounts payable to shareholders of the Company under section 4, by notification, appoint a Commissioner of payments.

(2) The State Government may appoint such other persons as it may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such persons also to exercise all or any of the powers exercisable by him under this Ordinance and different persons may be authorised to exercise different powers.

(3) any person authorised by the Commissioner to exercise any of the powers exercisable by the Commissioner may exercise those powers in the same manner and to the same effect as if those have been conferred on that person directly by this Ordinance and not by way of authorisation.

(4) The salaries and allowances of the Commissioner and other persons appointed under this section shall be defrayed out of the consolidated Fund of the State.

Payment by  
the State  
Government  
to the  
Commis-  
sioner.

6. (1) The State Government shall, within thirty days from the specified date, pay in cash to the Commissioner for payment to the shareholders of the Company —

- (a) an amount equal to the amount specified in sub-section (1) of section 4 ; and
- (b) an amount equal to the amount determined under sub-section (2) of section 4.

(2) A deposit account shall be opened by the State Government in favour of the Commissioner in the Public Account of the State and every amount paid under this Ordinance to the Commissioner shall be deposited by him to the credit of the said deposit account and the said deposit account shall be operated by the Commissioner.

(3) The interest accruing on the amount standing to the credit of the deposit account referred to in sub-section (2), shall ensure to the benefit of the shareholders of the Company.

Claims to be  
made to the  
Commis-  
sioner.

7. Every shareholder having a claim in relation to any share acquired by this Ordinance, shall prefer such claim before the Commissioner within thirty days from the specified date :

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

Examination  
of claims.

8. On receipt of the claims made under section 7, the Commissioner shall separately arrange the claims in relation to preference shares and in relation to equity shares and examine the claims in relation to each such share.

Admission  
or rejection  
of claims.

9. (1) After examining the claims, the Commissioner shall fix a certain date on or before which every claimant shall file the proof of his claim.

(2) 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 in one issue of such daily newspaper in the regional language as the Commissioner may consider suitable, and every such notice shall call upon the claimant to file the proof of this claim with the Commissioner within the time specified in the advertisement.

(3) Every claimant, who fails to file the proof of his claim within the time specified by the Commissioner, shall be excluded from the disbursements made by the Commissioner.

(4) The Commissioner shall, after such investigation as may, in his opinion, be necessary, and after giving the Company an opportunity of refuting the claim 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 also decide any dispute as to the person or persons who are entitled to the amount and any dispute as to who are the legal representatives of any deceased claimant.

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

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

(7) Any investigation before the Commissioner shall be deemed to be a <sup>45 of 1860</sup> judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Commissioner shall be deemed to be a Civil Court for the purposes of section 345 and Chapter XXVI of the Code of Criminal Procedure, <sup>2 of 1974</sup> 1973.

(8) A claimant, who is aggrieved by the decision of the Commissioner, may prefer an appeal against the decision to the Principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the registered office of the Company is situated.

Disbursement of money by the Commissioner to Claimants.

10. (1) After admitting a claim under this Ordinance, the amount due in respect of each share acquired by virtue of this Ordinance shall be paid by the Commissioner to the person or persons to whom such sums are due, and on such payment, the liability of the State Government in respect of the share so acquired shall stand discharged.

(2) The Commissioner shall also apportion amongst the shareholders, the amount paid to him by way of interest under sub-section (3) of section 6 and such apportionment shall be made on the basis of the amount due to each shareholder.

Undisbursed or unclaimed amount to be deposited to the general revenue account.

11. Any money paid to the Commissioner which remain undisbursed or unclaimed on the date immediately preceding the date on which the office of the Commissioner is finally wound up, shall be transferred by the Commissioner before his office is finally wound up to the general revenue account of the State Government, but a claim to any money so transferred may be preferred to the State Government by the person entitled to such payment and shall be dealt with as if such transfer had not been made, the order, if any, for payment of the claim being treated as an order for the refund of revenue.

power of inspection.

12. For the purposes of ascertaining whether any person claiming payment under this Ordinance is a shareholder, the Commissioner shall have the right to —

- (a) require any person, having the possession, custody or control of any register or record of the Company, to produce such register or record before the Commissioner ;
- (b) require any person to make any statement or furnish any information which may be required by the Commissioner.

Power of Commissioner to inquire into disputes as to amount.

13. Where there is any dispute as to the person or persons who are entitled to any amount payable under this Ordinance (including any dispute as to who are the legal representatives of any deceased claimant to the amount), the Commissioner may, after making such inquiry as he may deem fit, make the payment to such person as appears to him to be best entitled to receive the amount :

Provided that if the Commissioner is unable to determine as to who is the person entitled to the amount and considers that the matter could more appropriately be dealt with by the Principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the registered office of the Company is situated, he may refer such dispute to the said court, whose decision thereon shall be final :

Provided further that nothing mentioned herein shall affect the liability of any person, who may receive the whole or any part of the amount allowed under this Ordinance to pay the same to the person lawfully entitled thereto.

Deposit of amount in Court.

14. Where any dispute has been referred under section 13 by the Commissioner to the Civil Court referred to therein, he shall deposit the amount in that Court.

### CHAPTER III MISCELLANEOUS

Act to have overriding effect.

15. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any law or in any instrument having effect by virtue of any law, other than this Ordinance.

Penalties

16. If any person,—

- (a) makes any claim for any payment under this Ordinance knowing or having reason to believe that such claim is false or without any basis; or
- (b) when required under this Ordinance so to do,—
  - (i) omits or fails to produce any register or record of the Company or
  - (ii) makes any statement or furnishes any information which is false in any material particular and which he knows or believes to be false or does not believe to be true ; or
- (c) makes any such statement as aforesaid in any book, account, record, register, return or other document ;

he shall be punishable with imprisonment for term which may extend to two years or with fine which may extend to two thousand rupees, or with both

Offences by Companies.

17. (1) Where an offence under this ordinance 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 Ordinance 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 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 purpose of this section —

(a) "Company" means anybody corporate and includes a firm or other association of individuals ; and

(b) "Director" in relation to a firm, means a partner in the firm.

Limitation of  
Cognisance  
of Offences.

18. No Court shall take cognisance of an offence punishable under this Ordinance, except with the previous sanction of the State Government or of an officer authorised by that Government in this behalf.

Power to  
make rules.

19. The State Government may, by notification, make rules to carry out the provisions of this Ordinance.

Power to  
remove  
difficulties.

20. If any difficulty arises in giving effect to the provisions of this Ordinance, the State Government may, as occasion arises, by order, do anything, which appears to it to be necessary to remove the difficulty.

**B. N. PANDE**

**Dated the 26th August 1983**

*Governor of Orissa*

**SCHEDULE**

(See Section 3)

**Shares held by—**

- (a) Any State Government
- (b) The State Bank of India established under the State Bank of India Act, 1955.
- (c) Any corresponding new Bank within the meaning of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.
- (d) The Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956.
- (e) The State Industrial and Investment Corporation of Maharashtra Limited.