THE SWADESHI COTTON MILLS COMPANY LIMITED (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1986

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THE SCHEDULE.

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THE SWADESHI COTTON MILLS COMPANY LIMITED (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1986

ACT NO. 30 OF 1986

[30*th May*, 1986.]

An Act to provide for the acquisition and transfer of certain textile undertakings of the Swadeshi Cotton Mills Company Limited, with a view to securing the proper management of such undertakings so as to subserve the interests of the general public by ensuring the continued manufacture, production and distribution of different varieties of cloth and yarn and thereby to give effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of article 39 of the Constitution and for matters connected therewith or incidental thereto.

WHEREAS the Swadeshi Cotton Mills Company Limited has, through its six textile undertakings, been engaged in the manufacture and production of different varieties of cloth and yarn;

AND WHEREAS the management of the said textile undertakings was taken over by the Central Government under section 18AA of the Industries (Development and Regulation) Act, 1951(65 of 1951);

AND WHEREAS large sums of money have been invested with a view to making the said textile undertakings viable;

AND WHEREAS further investment of very large sums of money is necessary for the purpose of securing the optimum utilisation of the available facilities for the manufacture, production and distribution of cloth and yarn by the said textile undertakings of the Company;

AND WHEREAS such investment is also necessary for securing the continued employment of the workmen employed in the said textile undertakings;

AND WHEREAS it is necessary in the public interest to acquire the said textile undertakings of the Swadeshi Cotton Mills Company Limited to ensure that the interests of the general public are served by the continuance by the said undertakings of the Company of the manufacture, production and distribution of different varieties of cloth and yarn which are vital to the needs of the country;

AND WHEREAS such acquisition is for giving effect to the policy of the State towards securing the principles specified in clauses (a) and (b) of article 39 of the Constitution;

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

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(*1*) This Act may be called the Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986.

(*2*) The provisions of sections 27 and 28 shall come into force at once, and the remaining provisions of this Act shall be deemed to have come into force on the 1st day of April, 1985.

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

(*a*) "appointed day" means the 1st day of April, 1985;

(*b*) "Commissioner" means the Commissioner of Payments appointed under section 15;

(*c*) "Company" means the Swadeshi Cotton Mills Company Limited, Kanpur, a company within the meaning of the Companies Act, 1956 (1 of 1956), and having its registered office at Swadeshi House, Civil Lines, Kanpur, in the State of Uttar Pradesh;

(*d*) "date of taking over" means the date on which the management of the textile undertakings of the Company was taken over by the Central Government by virtue of the order of the Government of India in the late Ministry of Industrial Development No. S.O. 265(E), dated the 13th April, 1978,

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made under clause (*a*) of sub-section (*1*) of section 18-AA of the Industries (Development and Regulation) Act, 1951(65 of 1951);

(*e*) "National Textile Corporation" means the National Textile Corporation Limited, a company formed and registered under the Companies Act, 1956 (1 of 1956);

(*f*) "notification" means a notification published in the Official Gazette;

(*g*) "Ordinance" means the Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Ordinance, 1986 (5 of 1986);

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

(*i*) "specified date," in relation to any provision of this Act, means such date as the Central Government may, by notification in the Official Gazette and in the newspapers circulating in the locality in which the registered office of the Company is situated, specify for the purposes of that provision and different dates may be specified for different provisions of this Act;

(*j*) "Subsidiary Textile Corporation" means a textile corporation formed by the National Textile Corporation as its subsidiary;

(*k*) "textile undertakings" means the six textile undertakings of the Company specified below:—

(*i*) the Swadeshi Cotton Mills, Kanpur;

(*ii*) the Swadeshi Cotton Mills, Pondicherry;

(*iii*) the Swadeshi Cotton Mills, Naini;

(*iv*) the Swadeshi Cotton Mills, Maunath Bhanjan;

(*v*) the Udaipur Cotton Mills, Udaipur;

(*vi*) the Rae Bareli Textile Mills, Rae Bareli;

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

CHAPTER II

ACQUISITION AND TRANSFER OF THE TEXTILE UNDERTAKINGS

3. Transfer and vesting of the textile undertakings.—(*1*) On the appointed day, every textile undertaking and the right, title and interest of the Company in relation to every such textile undertaking shall, by virtue of this Act, stand transferred to, and shall vest in, the Central Government.

(*2*) Every such textile undertaking which stands vested in the Central Government by virtue of sub-section (*1*) shall, immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation.

4. General effect of vesting.—(*1*) The textile undertakings referred to in section 3 shall be deemed to include all assets, rights, lease holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts pertaining to the textile undertakings and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the Company in relation to the said undertakings, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto.

(*2*) All property as aforesaid which have vested in the Central Government under sub-section (*1*) of section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other incumbrances affecting it, and any attachment, injunction or decree or order of any court or other authority restricting the use of such property in any manner shall be deemed to have been withdrawn.

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(*3*) Where any licence or other instrument had been granted at any time before the appointed day to the Company in relation to the textile undertakings by the Central Government or a State Government or any local authority, the National Textile Corporation shall, on and from such day, be deemed to be substituted in such licence or other instrument in place of the Company as if such licence or other instrument had been granted to the National Textile Corporation and that Corporation shall hold it for the remainder of the period of which the Company to which it was granted would have held it under the terms thereof.

(*4*) Every mortgagee of any property which has vested under this Act in the Central Government and every person holding any charge, lien or other interest in, or in relation to, any such property shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner of such mortgage, charge, lien or other interest.

(*5*) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (*2*) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights and interests, payment of the mortgage money or other dues, in whole or in part, out of the amounts specified in section 8 and section 9, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government.

(*6*) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any property which has vested in the Central Government, under section 3, instituted or preferred by or against the Company is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the textile undertakings or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the National Textile Corporation.

5. Company to be liable for certain prior liabilities.—(*1*) Every liability of the Company in relation to the textile undertakings in respect of any period prior to the appointed day shall be the liability of the Company and shall be enforceable against it and not against the Central Government of the National Textile Corporation.

(*2*) For the removal of doubts, it is hereby declared that,—

(*a*) save as otherwise expressly provided in this section or in any other section of this Act, no liability of the Company in relation to the textile undertakings, in respect of any period prior to the appointed day shall be enforceable against the Central Government or the National Textile Corporation;

(*b*) no award, decree or order of any court, tribunal or other authority in relation to any textile undertaking, passed after the appointed day, in respect of any matter, claim or dispute which arose before that day shall be enforceable against the Central Government or the National Textile Corporation;

(*c*) no liability incurred by the Company in relation to any textile undertaking before the appointed day, for the contravention of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation.

6. Transfer of any textile undertaking or part thereof to a Subsidiary Textile Corporation.—(*1*) The National Textile Corporation may, by order in writing, transfer any of the textile undertakings or part thereof to a Subsidiary Textile Corporation and any such transfer shall be subject to such terms and conditions as may be specified in the said order.

(*2*) The Subsidiary Textile Corporation shall, on and from the date of such transfer, be deemed to be substituted in the licence or other instrument referred to in sub-section (*3*) of section 4 in place of the National Textile Corporation as if such licence or other instrument had been granted to the Subsidiary Textile Corporation, and shall hold such licence or other instrument for the remainder of the period for which the National Textile Corporation would have held such licence or other instrument.

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(*3*) Save as otherwise expressly provided in this Act, references in this Act to the National Textile Corporation shall, in respect of any textile undertaking or part thereof which is transferred to a Subsidiary Textile Corporation, be construed as references to the Subsidiary Textile Corporation.

7. Shares to be issued by National Textile Corporation for the value of assets transferred to it by the Central Government.—An amount equal to the value of the assets of the textile undertakings transferred to, and vested in, the National Textile Corporation under sub-section (*2*) of section 3 shall be deemed to be the contribution made by the Central Government to the equity capital of the National Textile Corporation; and for the contribution so made, the National Textile Corporation shall issue (if necessary after amending its memorandum and articles of association) to the Central Government paid up shares, in its equity capital having a face value equal to the amount specified in section 8.

CHAPTER III

PAYMENT OF AMOUNTS

8. Payment of amount.—For the transfer to, and vesting in the Central Government, under section 3, of the textile undertakings of the Company, and the right, title and interest of the Company in relation to such undertakings, there shall be given by the Central Government to the Company in cash and in the manner specified in Chapter VI, an amount of rupees twenty-four crores and thirty-two lakhs.

9. Payment of further amounts.—(*1*) For the deprivation of the Company of the management of the textile undertakings, there shall be given by the Central Government to the Company, in cash, an amount calculated at the rate of rupees ten thousand per annum for the period commencing on the date on which the management of the textile undertakings of the Company was taken over in pursuance of the order made by the Central Government under section 18AA of the Industries (Development and Regulation) Act, 1951 (65 of 1951) and ending on the appointed day.

(*2*) In consideration of the retrospective operation of the provisions of sections 3 and 4, there shall also be given by the Central Government to the Company, in cash, an amount calculated at the rate of rupees ten thousand per annum for the period commencing on the appointed day and ending on the date on which the Ordinance was promulgated.

(*3*) The amount specified in section 8 and the amounts determined in accordance with the provisions of sub-sections (*1*) and (*2*) 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 amounts is made by the Central Government to the Commissioner.

(*4*) The amounts determined in accordance with the provisions of sub-sections (*1*), (*2*) and (*3*) shall be given by the Central Government to the Company in addition to the amount specified in section 8.

(*5*) For the removal of doubts, it is hereby declared that the liabilities of the Company in relation to the textile undertakings which have vested in the Central Government under section 3 shall be discharged from the amount referred to in section 8 and also from the amounts determined under sub-sections (*1*), (*2*) and (*3*), in accordance with the rights and interests of the creditors of the Company.

CHAPTER IV

MANAGEMENT, ETC., OF THE TEXTILE UNDERTAKINGS

10. Management, etc., of the textile undertakings.—The National Textile Corporation or any person which that Corporation may, by order in writing, specify, shall be entitled to exercise the powers of general superintendence, direction, control and management of the affairs and business of a textile undertaking, the right, title and interest of the Company in relation to which have vested in that Corporation under sub-section (*2*) of section 3, and do all such things as the Company is authorised to exercise and do.

[1][**10A. Special provision for disposal of assets of the textile undertakings in certain circumstances.**—If the National Textile Corporation considers it necessary or expedient for the better management, modernisation, restructuring or revival of a textile undertaking so to do, it may, with the

1. Ins. by Act 40 of 1995, s. 3 (w.e.f. 27-6-1995).

previous sanction of the Central Government, transfer, mortgage, sell or otherwise dispose of any land, plant, machinery or any other assets of any of the textile undertakings:

Provided that the proceeds of no such transfer, mortgage, sale or disposal shall be utilised for any purpose other than the purpose for which the sanction of the Central Government has been obtained.]

11. Duty of persons in charge of management of the textile undertakings to deliver all assets, etc.—On the vesting of a textile undertaking in the National Textile Corporation, all persons in charge of the management of a textile undertaking immediately before such vesting shall be bound to deliver to the National Textile Corporation, all assets, books of account, registers or other documents in their custody relating to the textile undertaking.

CHAPTER V

PROVISIONS RELATING TO EMPLOYEES OF THE TEXTILE UNDERTAKINGS

12. Continuance of employees of the textile undertakings.—(*1*) Every person who has been, immediately before the appointed day, employed by the Company in relation to a textile undertaking, shall become, on and from the appointed day, an employee of the National Textile Corporation and shall hold office or service in that Corporation with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such textile undertaking had not been transferred to, and vested in, the National Textile Corporation, and shall continue to do so unless and until his employment in that Corporation is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Corporation.

(*2*) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1974), or in any other law for the time being in force, the transfer of the services of any officer or other person employed in a textile undertaking to the National Textile Corporation shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

13. Provident and other funds.—(*1*) Where the Company has established a provident fund, superannuation, welfare or other fund for the benefit of the persons employed in a textile undertaking, the moneys relatable to the officers and other employees whose services have been transferred by or under this Act to the National Textile Corporation shall, out of the moneys standing, on the appointed day, to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to and vest in, the National Textile Corporation.

(*2*) The moneys which stand transferred under sub-section (*1*) to the National Textile Corporation, shall be dealt with by that Corporation in such manner as may, be prescribed.

14. Transfer of employees to a Subsidiary Textile Corporation.—Where any textile undertaking or any part thereof is transferred under this Act to a Subsidiary Textile Corporation, every person referred to in section 12 shall, on and from the date of such transfer, become an employee of the Subsidiary Textile Corporation, and the provisions of sections 12 and 13 shall apply to such employee of the National Textile Corporation as if references in the said sections to the National Textile Corporation were references to the Subsidiary Textile Corporation.

CHAPTER VI

COMMISSIONER OF PAYMENTS

15. Appointment of Commissioner of Payments.—(*1*) The Central Government shall, for the purpose of disbursing the amounts payable under sections 8 and 9 to the Company, by notification, appoint a Commissioner of Payments.

(*2*) The Central 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 Act and different persons may be authorised to exercise different powers.

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(*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 with the same effect as if they have been conferred on that person directly by this Act 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 India.

16. Payment by the Central Government to the Commissioner.—(*1*) The Central Government shall, within thirty days from the specified date pay in cash to the Commissioner, for payment to the Company, an amount equal to the amount specified in section 8 and the amounts payable to the Company under section 9.

(*2*) A deposit account shall be opened by the Central Government in favour of the Commissioner in the Public Account of India, and every amount paid under this Act 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 interests accruing on the amount standing to the credit of the deposit account referred to in sub-section (*2*) shall enure to the benefit of the Company.

17. Certain powers of the National Textile Corporation.—(*1*) The National Textile Corporation shall be entitled to receive, up to the specified date, to the exclusion of all other persons, any money due to a textile undertaking, realised after the appointed day, notwithstanding that the realisation pertains to a period prior to the appointed day.

(*2*) The National Textile Corporation may make a claim to the Commissioner with regard to every payment made by it as the authorised person in relation to a textile undertaking after the appointed day but before the date on which the Ordinance was promulgated for discharging any liability of the Company in relation to any period prior to the appointed day, and every such claim shall have priority, in accordance with the priorities attaching, under this Act, to the matter in relation to which such liability has been discharged by the authorised person.

(*3*) Save as otherwise provided in this Act, the liabilities in relation to a textile undertaking in respect of any period prior to the appointed day which have not been discharged by the authorised person shall be the liabilities of the Company.

Explanation.—For the purposes of this section, "authorised person" means the person authorised to take over the management of any textile undertaking in pursuance of the order of the Government of India in the late Ministry of Industrial Development No. S.O. 265(E), dated the 13th April, 1978, issued under clause (*a*) of sub-section (*1*) of section 18AA of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

18. Claims to be made to the Commissioner.—Every person having a claim against the Company in relation to the textile undertakings with regard to any of the matters specified in the Schedule 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 said period of thirty days, he may entertain the claim within a further period of thirty days, but not thereafter.

19. Priorities of claims.—The claims arising out of matters specified in the Schedule shall have priorities in accordance with the following principles namely:—

(*a*) Category I shall have precedence over all other categories and Category II shall have precedence over Category III and so on;

(*b*) the claims specified in each of the categories, shall rank equally and be paid in full, but, if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly; and

(*c*) the question of discharging any liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.

20. Examination of claims.—(*1*) On receipt of the claims made under section 18, the Commissioner shall arrange the claims in the order of priorities specified in the Schedule and examine the same in accordance with such order.

(*2*) If on examination of the claims against the Company, the Commissioner is of the opinion that the amounts paid to him under this Act for payment to such Company are not sufficient to meet the liabilities specified in any lower category, he shall not be required to examine any claim in respect of such lower category.

21. Admission or rejection of claims.—(*1*) After examining the claims against the Company with reference to the priorities set out in the Schedule, the Commissioner shall fix a date on or before which every claimant shall file the proof of his claim.

(*2*) Not less than fourteen days's notice of the date so fixed shall be given by advertisement in one issue of any daily newspaper in the English language having circulation in the major part of the country and in one issue of any daily newspaper in such regional language as the Commissioner may consider suitable, and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the period specified in the advertisement.

(*3*) Every claimant who fails to file the proof of his claim within the period 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, by order, in writing, admit or reject the claim in whole or in part.

(*5*) The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions, including the place or places at which he may hold his sittings and shall, for the purpose of making any investigation under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while 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 affidavit;

(*d*) the issuing of any commission for the examination of witnesses.

(*6*) Any investigation before the Commissioner shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(*7*) A claimant who is dissatisfied with 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:

Provided that where a person who is a Judge of a High Court is appointed to be the Commissioner, such appeal shall lie to the High Court of Allahabad and such appeal shall be heard and disposed of by not less than two Judges of that High Court.

22. Disbursement of money by the Commissioner to claimants.—(*1*) After admitting a claim against the Company under this Act, the amount due in respect of such claim shall be paid by the Commissioner to the person or persons to whom such amount is due and on such payment, the liability of the Company in respect of such claim shall stand discharged.

(*2*) If, out of the moneys paid to him in relation to the textile undertakings, there is a balance left after meeting the liabilities as specified in the Schedule, the Commissioner shall disburse such balance to the Company.

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23. Undisbursed or unclaimed amount to be deposited with the general revenue account.—Any money paid to the Commissioner which remains 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 Central Government, but a claim to any money so transferred may be preferred to the Central Government by the person entitled to such payment and shall be dealt with as if such transfer had not been made, and the order, if any, for payment of the claim being treated as an order for the refund of revenue.

CHAPTER VII

MISCELLANEOUS

24. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority.

25. Assumption of liability.—(*1*) Where any liability of the Company in relation to any textile undertaking arising out of any item specified in Part I of the Schedule is not discharged fully by the Commissioner out of the amounts paid to him under this Act, the Commissioner shall intimate in writing to the Central Government the extent of the liability which remains undischarged and that liability shall be assumed by the Central Government.

(*2*) The Central Government may, by order, direct the National Textile Corporation to take over the liability assumed by the Central Government under sub-section (*1*), and on receipt of such direction, it shall be the duty of that Corporation to discharge such liability.

26. Contracts to cease to have effect unless ratified by National Textile Corporation.—Every contract, entered into by the Company in relation to any textile undertaking which has vested in the National Textile Corporation under sub-section (*2*) of section 3, for any service, sale or supply and in force immediately before the appointed day, shall, on and from the expiry of a period of one hundred and eighty days from the date on which the Ordinance was promulgated, cease to have effect unless such contract is, before the expiry of that period, ratified in writing by the National Textile Corporation, and in ratifying such contract, the National Textile Corporation may make such alterations or modifications therein as it may think fit:

Provided that the National Textile Corporation shall not omit to ratify a contract and shall not make any alteration or modification in a contract—

(*a*) unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of the textile undertaking concerned, and

(*b*) except after giving the parties to the contract a reasonable opportunity of being heard and except after recording in writing its reasons for refusal to ratify the contract or for making any alteration or modification therein.

27. Penalties.—Any person who,—

(*a*) having in his possession, custody or control any property forming part of any of the textile undertakings, wrongfully withholds such property from the National Textile Corporation; or

(*b*) wrongfully obtains possession of, or retains any property forming part of any of the textile undertakings; or

(*c*) wilfully withholds or fails to furnish to the National Textile Corporation or any person or body of persons specified by that Corporation, any document or inventory relating to any of the textile undertakings which may be in his possession, custody or control; or

(*d*) wilfully fails to deliver to the National Textile Corporation any inventory or property and assets forming part of any of the textile undertakings; or

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(*e*) fails to deliver to the National Textile Corporation or any person or body of persons specified by that Corporation, any assets, books of account, registers or other documents in his possession, custody or control relating to any of the textile undertakings; or

(*f*) wrongfully removes or destroys any property forming part of any of the textile undertakings or prefers any claim under this Act which he knows or has reason to believe to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to ten thousand rupees.

28. Offences by companies.—(*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 preceded 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 office 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 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.

29. Protection of action taken in good faith.—(*1*) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of, or other person authorised by, that Government or the National Textile Corporation or any Subsidiary Textile Corporation or any officer of, or other person authorised by, such Corporation for anything which is in good faith done or intended to be done under this Act.

(*2*) No suit or other legal proceeding shall lie against the Central Government or any officer of, or other person authorised by, that Government, or the National Textile Corporation or any Subsidiary Textile Corporation or any officer of, or other person authorised by, such Corporation 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.

30. Delegation of powers.—(*1*) The Central Government may by notification, direct that all or any of the powers exercisable by it under this Act, other than the powers conferred by this section and sections 31 and 32, may also be exercised by such person or persons as may be specified in the notification.

(*2*) Whenever any delegation of power is made under sub-section (*1*), the person to whom such power has been delegated shall act under the direction, control and supervision of the Central Government.

31. Power to make rules.—(*1*) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(*a*) the time within which, and the manner in which, an intimation referred to in sub-section (*4*) of section 4 shall be given;

(*b*) the manner in which the moneys in any provident fund or other fund, referred to in sub-section (*2*) of section 13 shall be dealt with;

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(*c*) any other matter which is required to be, or may be, prescribed.

(*3*) 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.

32. Power to remove difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the Ordinance was promulgated.

33. Repeal and saving.—(*1*) The Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Ordinance, 1986 (5 of 1986), is hereby repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

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THE SCHEDULE

[*See* sections 18, 19, 20 (*1*), 21 (*1*), 22 (*2*) and 25 (*1*)]

ORDER OF PRIORITIES FOR THE DISCHARGE OF LIABILITIES OF THE COMPANY

PART I

Category I

Employees' dues on account of unpaid salaries, wages, provident fund, Employees' State Insurance contribution or premiums relating to the Life Insurance Corporation of India and any other amounts due to employees in respect of any period whether before or after the date of taking over of the textile undertakings.

Category II

Secured loans obtained from nationalised banks and public financial institutions, other than the National Textile Corporation, in respect of any period whether before or after the date of taking over of the textile undertakings.

Category III

Any credit availed of for trade or manufacturing purposes during the post-take over management period.

Category IV

Revenue, taxes, cesses, rate or other dues to the Central Government, State Government and local authorities for the period after the date of taking over of the textile undertakings.

PART II

Category V

Revenue, taxes, cesses, rate or other dues to the Central Government, State Government and local authorities or State Electricity Boards for the pre-take over management period.

Category VI

Any credit availed of for trade or manufacturing purposes during the pre-take over management period.

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