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GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

West Bengal Act XV of 1960

THE ORIENTAL GAS COMPANY ACT, 1960.

[*Passed by the West Bengal Legislature.*]

[Assent of the President was first published in the *Calcutta Gazette, Extraordinary*, of the 1st October, 1960.]

[1st October, 1960.]

An Act to provide for the taking over for a limited period of the management and control, and the subsequent acquisition, of the undertaking of the Oriental Gas Company Limited.

WHEREAS it is expedient to provide for increasing the production of gas and improving the quality thereof for supply to industrial undertakings, hospitals and other welfare institutions, to local authorities for street lighting and to the public in general for domestic consumption and for that purpose to provide for the taking over for a limited period of the management and control, and the subsequent acquisition, of the undertaking of the Oriental Gas Company Limited and for certain other matters incidental and ancillary thereto;

It is hereby enacted in the Eleventh Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the Oriental Gas Company Act, 1960.

Short
title and
commence-
ment.

(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

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

Definitions.

- (1) "Calcutta" means the area described in Schedule I to the Calcutta Municipal Act, 1951, as amended by notification under section 594 of that Act together with such other area or areas as may, from time to time, be specified by the State Government by notification in the *Official Gazette*;
- (2) "Company" means the Oriental Gas Company Limited referred to in Act V of 1857;
- (3) "undertaking of the Company" means the properties of the Company, movable or immovable, other than cash balances and reserve funds but including

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of 1951.

(Sections 3, 4.)

works, workshops, plants, machineries, posts, pipes, pipe-lines, appliances, apparatus, accessories, furniture, equipments and stores, and lands appertaining thereto, actually in use immediately before the commencement of this Act, or intended to be used, in connection with the production of gas or supply thereof in Calcutta and its environs;

(4) "year" means a financial year.

Taking
over of
the
manage-
ment and
control of
the under-
taking
of the
Company.

3. The State Government may, by notification in the *Official Gazette* (a copy of which shall be served on the Company), take over for a period of five years with effect from such date as may be specified in the notification (hereinafter referred to as the appointed day), not being earlier than seven days from the date of publication of the notification in the *Official Gazette*, the management and control of the undertaking of the Company for the purposes, and in accordance with the provisions, of this Act.

Transfer.

4. With effect from the appointed day and for a period of five years thereafter—

- (a) the undertaking of the Company shall stand transferred to the State Government for the purpose of management and control;
- (b) the Company and its agents, including managing agents, if any, and servants shall cease to exercise management or control in relation to the undertaking of the Company;
- (c) all contracts, excluding any contract or contracts in respect of agency or managing agency, subsisting immediately before the appointed day and affecting the undertaking of the Company shall cease to have effect or to be enforceable against the Company, its agents or any person who was a surety thereto or had guaranteed the performance thereof and shall be of as full force and effect against or in favour of the State of West Bengal and shall be enforceable as fully and effectively as if instead of the Company the State of West Bengal had been named therein or had been a party thereto:

Provided that—

- (i) except where the State Government by notification in the *Official Gazette* otherwise directs, the provisions of this clause shall not apply to any contract which was executed after the 1st day of January, 1958;
- (ii) any transfer by way of sale, exchange, gift, mortgage, lease or otherwise, affecting the undertaking of the Company or any part thereof, made between the date of commencement of

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(Section 5.)

this Act and the appointed day shall have no effect whatsoever and shall stand cancelled, so, however, that such cancellation shall not affect any rights which the transferor and the transferee may otherwise have against each other;

- (d) subject to the provisions of clause (c), any proceeding pending or any cause of action existing before the appointed day in relation to the undertaking of the Company may be continued or enforced by or against the State of West Bengal and shall cease to be continued or enforced by or against the Company, its agents, sureties or guarantors;
- (e) persons employed by the Company in connection with the undertaking of the Company and continuing in office immediately before the appointed day shall be employed by the State Government on such terms and conditions, not being less advantageous than what they were entitled to immediately before the appointed day, as may be determined by the State Government:

Provided, that the State Government may, if it considers any such person to be unsuitable, discharge him, so, however, that, in the case of any such person who has been in continuous service under the Company for not less than one year immediately before the appointed day, the provisions of section 25FF of the Industrial Disputes Act, 1947, shall be applicable, that is to say, such discharge shall not take effect until the State Government has—

- (i) given him notice or paid him wages in lieu of notice, as provided in clause (a), and
- (ii) paid him compensation as provided in clause (b),

of section 25F of the said Act.

5. (1) On the transfer of the undertaking of the Company to the State Government, for the purpose of management and control, under clause (a) of section 4, every person, including a transferee referred to in the proviso to clause (c) of section 4, in whose possession, custody or control the undertaking of the Company or any part thereof may be, shall forthwith deliver possession of the undertaking of the Company or part thereof, as the case may be, to the State Government.

Delivery of possession of undertaking of the Company to the State Government and penalty.

(2) If any person refuses or fails to comply with the provisions of sub-section (1), an officer authorised by the State Government in this behalf, shall,—

- (a) if he is a Magistrate, enforce the delivery to the State Government of possession of the undertaking

(Sections 6, 7.)

of the Company or any part thereof, in respect of which such refusal has been made or failure has been committed, or

(b) if he is not a Magistrate, apply to a Magistrate or, within the town of Calcutta, as defined in section 3 of the Calcutta Police Act, 1866, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the delivery to the State Government of possession of the undertaking of the Company or part thereof, as the case may be.

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IV of
1866.

(3) Whoever refuses or wilfully obstructs the delivery to the State Government of possession of the undertaking of the Company transferred to the State Government, for the purpose of management and control, under clause (a) of section 4, or any part thereof, shall, on conviction before a Magistrate, be punishable, without prejudice to any other penalty to which he may be liable under any other law for the time being in force, with fine which may extend to one thousand rupees.

Running
and use of
the under-
taking
of the
Company.

6. (1) The undertaking of the Company shall be run by the State Government and shall be used and utilised by the State Government for purposes of production of gas and supply thereof to industrial undertakings, hospitals and other welfare institutions, to local authorities for street lighting and for other purposes, if any, and to the public in general for domestic consumption, and for this purpose the State Government shall have all the powers of the Company under Act V of 1857.

(2) The State Government may for effectively carrying out the purposes of this Act add, at its own cost, to the undertaking of the Company such new works, workshops, plants, machineries, posts, pipes, pipe-lines, appliances, apparatus, accessories, furniture, equipments, stores, lands, buildings, erections or fixtures as it may consider necessary.

Acquisi-
tion
of the
under-
taking
of the
Company
and trans-
fer of its
manage-
ment and
control to
the Com-
pany in
case of
non-acqui-
sition.

7. (1) The State Government may, if it so thinks fit, at any time within the period of five years referred to in section 4, acquire the undertaking of the Company by notification published in the *Official Gazette* for the purposes of this Act.

(2) On the publication of the notification under sub-section (1), the undertaking of the Company shall, on and from the beginning of the day on which the notification is so published, vest absolutely in the State Government free from all incumbrances.

(3) If the undertaking of the Company be not acquired by the State Government in accordance with the provisions of sub-section (1), the State Government shall, on the expiry of the period of five years referred to in section 4, by order

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(Section 8.)

made in this behalf, transfer the management and control of the undertaking to the Company after removing or disposing of such additions to the undertaking as may have been made by the State Government at its own cost in accordance with the provisions of sub-section (2) of section 6, unless the Company agrees to pay the amount being the cost of such additions less such depreciation as may be agreed upon or, in the absence of agreement, determined by a Tribunal appointed for the purpose. The amount so agreed upon or determined shall be paid by the Company to the State Government within such time as may be agreed upon or allowed by the Tribunal and until such payment, the amount shall be a charge on the undertaking of the Company.

8. (1) In respect of the taking over of the management and control, under section 3, or acquisition under section 7, of the undertaking of the Company, there shall be paid by the State Government to the Company compensation to be determined under sub-section (2), as follows, that is to say,— Compensation.

(a) in the case of the taking over of the management and control of the undertaking of the Company, the annual compensation payable shall be a sum calculated at two *per centum* of the sum representing the purchase price of the undertaking of the Company reduced by such depreciation as may be allowed by the Tribunal referred to in sub-section (2) after considering the period and the nature of the use and the present condition of the properties concerned on the appointed day;

(b) in the case of acquisition of the undertaking of the Company, the total compensation payable shall be,—

a sum representing the purchase price of the undertaking of the Company reduced by such depreciation as may be allowed by the Tribunal referred to in sub-section (2) after considering the period and the nature of the use and the present condition of the properties concerned on the date of vesting in the State Government under section 7,

or

a sum representing eight times the average net income of the undertaking of the Company over a period of five complete years preceding the year in which the undertaking of the Company has been transferred to the State Government under clause (a) of section 4 for the purpose of management and control,

whichever is less.

(Section 8.)

Explanation.—In this sub-section—

- (i) “purchase price of the undertaking of the Company” means the aggregate of the prices of the different parts of the undertaking of the Company at the respective dates on which such parts were purchased, acquired or constructed by the Company;
- (ii) “net income of the undertaking of the Company” means the difference between the amount of gross revenue receipts and other general receipts accountable in the assessment of Indian income-tax arising from, and ancillary or incidental to, the business of the Company and the amount of expenditure incurred on the following—
 - (a) rents, rates and taxes,
 - (b) interest on loans and security deposits,
 - (c) maintenance and repair,
 - (d) collection charges,
 - (e) cost of management, including the remuneration of managing agents, if any,
 - (f) other expenses admissible under the law for the time being in force in the assessment of Indian income-tax and arising from, and ancillary or incidental to, the business of the Company, and
 - (g) such other expenses as may be prescribed by rules made under this Act.

(2) The compensation payable in respect of the taking over under section 3 of the management and control, or in respect of the acquisition under sub-section (1) of section 7, of the undertaking of the Company or the amount payable by the Company under sub-section (3) of section 7 for the additions made by the State Government at its own cost to the undertaking of the Company shall be determined by a Tribunal which shall be appointed by the State Government consisting of a person who is or has been a Judge of a High Court, or a District Judge or an Additional District Judge and such Tribunal shall make an award in respect of the compensation so determined.

(3) The State Government may appoint one or more persons possessing knowledge of any matter relating to the inquiry to assist the Tribunal in determining the compensation.

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(Sections 9, 10.)

Act V
of 1908.

(4) The Tribunal shall have the powers of a civil court while trying suits under the Code of Civil Procedure, 1908, in respect of the following matters:—

- (a) summoning and enforcing the attendance of any person and examining him on oath,
- (b) requiring the discovery and production of documents,
- (c) receiving evidence on affidavits, and
- (d) issuing commissions for the examination of witnesses or documents.

(5) Any party aggrieved by the award of the Tribunal made under sub-section (2) may appeal to the High Court within thirty days from the date of such award.

9. (1) In the case of the taking over of the management and control of the undertaking of the Company, the State Government shall pay to the Company the amount of the compensation determined under section 8 in cash—

Manner of
payment
of com-
pensation.

- (a) in respect of the period prior to the date of the award, within sixty days from the date of the award made by the Tribunal, or, as the case may be, from the date of the order of the High Court in the case of an appeal, and

- (b) thereafter, annually on the close of the year in respect of which the compensation is payable.

(2) In the case of acquisition of the undertaking of the Company, as soon as possible after the date of the award made by the Tribunal, or, as the case may be, the date or the order of the High Court in the case of an appeal, the State Government shall pay to the Company the amount of compensation determined under section 8 in bonds carrying interest at the rate of three *per centum per annum* with effect from the date of issue and payable in twenty equal annual instalments:

Provided that the State Government may at any time or from time to time pay one or more instalments, even before such payment is due, with interest up to the date of payment after giving notice in the *Official Gazette* of its intention to do so:

Provided further that interest on such instalment or instalments shall cease on the expiry of the date of payment if payment of such instalment or instalments be not taken in pursuance of the notice referred to above.

10. (1) The State Government may make rules for carry- out the purposes of this Act.

Power to
make rules.

(Section 11.)

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

- (a) the manner of service of the copy of the notification under section 3 on the Company,
- (b) the procedure to be followed by the Tribunal in determining the amount of compensation under section 8,
- (c) the determination of expenses referred to in item (g) of paragraph (ii) of the *Explanation* to sub-section (1) of section 8.

Removal
of diffi-
culties.

11. If any difficulty arises in giving effect to the provisions of this Act, the State Government may take such steps or issue such orders not inconsistent with this Act as it may consider necessary for removing the difficulty.