

The



Kolkata Gazette

सत्यमेव जयते
Extraordinary
Published by Authority

PHALGUNA 7]

FRIDAY, FEBRUARY 26, 2016

[SAKA 1937]

PART IV—Bills introduced in the West Bengal Legislative Assembly; Reports of Select Committees presented or to be presented to that Assembly; and Bills published before introduction in that Assembly.

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No. 222 L.—26th February, 2016.—The Governor having been pleased to order, under rule 66 of the

Rules of Procedure and Conduct of Business in the West Bengal Legislative Assembly, the publication of the following Bill, together with the Statement of Objects and Reasons and the Financial Memorandum which accompany it, in the *Kolkata Gazette*, the Bill, the Statement of Objects and Reasons and the Financial Memorandum are accordingly hereby published for general information:—

Bill No. 4 of 2016

**Dunlop India Limited (Acquisition and Transfer of
Undertaking) Bill, 2016.**

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SCHEDULE

**DUNLOP INDIA LIMITED (ACQUISITION AND TRANSFER OF
UNDERTAKING) BILL, 2016.**

**A
BILL**

to provide for acquisition and transfer of undertaking of the Dunlop India Limited, a company registered under the Companies Act, 1956 with a view to securing the proper management of such undertaking so as to sub-serve the interest of the general public by ensuring the continued manufacture, production and distribution of automobile tyres and tubes including aero tyres, which are essential to the needs of the economy of the nation and for matters connected therewith or incidental thereto.

WHEREAS Dunlop India Limited, had been engaged in the manufacture and production of automobile tyres and tubes including aero tyres in the manufacturing units at *Ambattur*, Tamil Nadu and *Sahagunj*, West Bengal;

AND WHEREAS there has been a failure on the part of the existing management to settle dues of the employees;

AND WHEREAS there has been a failure on the part of the existing management to pay statutory dues and/or dues to the State Government and its agencies;

AND WHEREAS a declaration of "suspension of work" has kept the Sahaganj unit non-productive since October 2011 and the Ambattur unit had been closed in 1998;

AND WHEREAS by an order dated the 3^{1st} day of January, 2013, the Hon'ble High Court at Calcutta has directed winding up of the company and the said order has been re-affirmed by an order dated 2nd day of May, 2013 of a Division Bench of the High Court at Calcutta and a Special Leave Petition arising out of the said order dated 2nd day of May, 2013, passed by the Division Bench of the High Court at Calcutta are pending in the Hon'ble Supreme Court;

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Undertaking) Bill, 2016.*

(Chapter I.—Preliminary.—Clauses 1, 2.)

AND WHEREAS it has been the consistent stand of the State Government as recorded by way of affidavit filed in the Company Appeal, referred to above, that the factory at *Sahaganj* should be reopened and/or restarted as soon as possible to provide employment to all workers;

AND WHEREAS the revival of the company would serve public purpose and would be in national interest;

AND WHEREAS it is expedient to acquire the undertaking of the said company to ensure that the interest of the general public and of the employees of the undertaking were served by the continuance, by the undertaking of the said company, of the manufacture, production and distribution of tyre, tubes including aero tyres which are essential to the needs of the nation and to provide for matters connected therewith or incidental thereto;

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

CHAPTER I
PRELIMINARY

Short title and commencement.

1. (1) This Act may be called *Dunlop India Limited (Acquisition and Transfer of Undertaking) Act, 2016*.

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

Definitions.

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

- (a) “appointed day” means the date of commencement of this Act;
- (b) “Commissioner” means the Commissioner of Payment appointed under section 14;
- (c) “new Government company” means a Government company (including a subsidiary Government company) formed and registered under the Companies Act, 2013, in which the undertaking is directed to vest under sub-section (1) of section 6;
- (d) “prescribed” means prescribed by rules made under this Act;
- (e) “proprietors” means the *Dunlop India Limited*, a company registered under the Companies Act, 1956, with registered office at flat No. 1, 5th floor, 9, *Syed Amir Ali Avenue*, *Kolkata-700017*, and includes the liquidator appointed by the High Court at Calcutta;
- (f) “Schedule” means the Schedule appended to this Act;
- (g) “specified date”, in relation to a provision of this Act, means such date as the State Government may, by notification in the *Official Gazette*, specify for the purposes of that provision, and different dates may be specified for different provisions of this Act;
- (h) “undertaking” means the industrial undertaking known as “*Dunlop India Limited*.

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Undertaking) Bill, 2016.*

(Chapter II.—Acquisition and Transfer of the Undertaking.—Clauses 3, 4.)

(2) Words and expressions used herein and not defined, but defined in the Companies Act, 1956 or in the Companies Act, 2013, shall have the same meanings as respectively assigned to them in those Acts.

CHAPTER II
ACQUISITION AND TRANSFER OF THE UNDER TAKING

Acquisition and transfer of undertaking and its vesting in State Government.

3. Notwithstanding anything contained in any other law for the time being in force or in any agreement, custom or usage or in any other decree, judgement, decision or award of any court, tribunal or authority, on the appointed day, the undertaking and the right, title and interest of the proprietors in relation to the undertakings, shall, by virtue of this Act, stand transferred to and vest absolutely in, the State Government.

General effect of vesting.

4. (1) The undertaking shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges, and all property, moveable and immoveable, including, lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments, book debts 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 proprietors, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto.

(2) All properties as aforesaid which have vested in the State Government under section 3 shall, by force of such vesting, be freed and such discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting them, and any attachment, injunction, decree or order of any Court, tribunal or other authority restricting the use of such properties in any manner shall be deemed to have been withdrawn.

(3) Every mortgage of any property which has vested under this Act in the State 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.

(4) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (3) 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 interest, payment of the mortgage money or other dues, in whole or in part, out of the amount specified in section 7 and also out of the amounts referred to in section 8, but not such mortgage, charge, lien or other interest shall be enforceable against any such property which has vested in the State Government, or new Government company.

(5) Any licence or other instrument granted to the proprietors in relation to the undertaking which has vested in the State Government under section 3, at any time before the appointed day and in force immediately before that day, shall continue to be in force on and after such day in accordance with its tenor in relation to, and for the purposes of such undertaking, and, on and from the date of vesting of such undertaking

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Undertaking) Bill, 2016.*

(Chapter II.—Acquisition and Transfer of the Undertaking.—Clauses 5, 6.)

under section 3, or under section 6 in the new Government company, shall be deemed to be substituted in such licence or other instrument as if such licence or other instrument had been granted to the Corporation, or new Government company, and that the new Government company, shall hold it for the remainder of the period for which the proprietors would have held it under the terms thereof.

Proprietors to be
liable for prior
liabilities.

5. (1) Every liability of the proprietors in relation to the undertaking in respect of any period prior to the appointed day, shall be the liability of the proprietors and shall be enforceable against them and not against the State Government or where the undertaking is directed under section 6 to vest in a new Government company.

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

- (a) save as otherwise expressly provided in this section or in any other provision of this Act, no liability, shall be enforceable against the State Government or the Corporation, or, where the undertaking is directed under section 6 to vest in any other new Government company, against such new Government company;
- (b) no award, decree or order of any Court, tribunal or other authority in relation to the undertaking passed on or after the appointed day, in respect of any matter, claim or dispute, which arose before that day, shall be enforceable against the State Government or in the Corporation or, where the undertaking is directed under section 6 to vest in any other new Government company, against such new Government company;
- (c) no liability incurred by the proprietors before the appointed day, for the contravention of any provision of any law for the time being in force, shall be enforceable against the State Government or the Corporation, or, where the undertaking is directed under section 6 to vest in any other new Government company, against such new Government company;
- (d) notwithstanding anything contained in sub-sections (1) and (2) of section 12 or any other provisions of this Act, or any other law for the time being in force or any contract, agreement, settlement, award or decree or order of any Court, tribunal or other authority, no liability towards claims of whatever nature of any employee against the proprietors in respect of his employment in the undertaking for the period prior to the appointed day shall be enforceable against the State Government or the Corporation, or where the undertaking is directed under section 6 to vest in any other new Government company, against such new Government company.

Power to State
Government to
direct vesting of
undertaking in
new Government
company.

6. (1) Notwithstanding anything contained in section 3 and 4, where the undertaking vests, under section 3, in the Corporation, the State Government may, subject to such terms and conditions as it may think fit to impose, direct, by notification in the *Official Gazette*, that the undertaking and the right, title and interest of the proprietors in relation to the undertaking which had vested in the State Government shall instead of continuing to vest in the State Government, vest in a new Government company with effect from the date specified in the notification.

(2) Where the right, title and interest of the proprietors in relation to their undertaking vest, under sub-section (1), in the new Government company, such Government company shall, on and from the date of such vesting, be deemed to have become the owner in relation to such undertaking, and all the rights and liabilities of

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*(Chapter III.—Payment of Amounts.—Clauses 7, 8.—Chapter IV.—
Management, etc. of the Undertaking.—Clause 9.)*

the State Government in relation to the undertaking shall on and from the date of such vesting, be deemed to have become the rights and liabilities of such new Government company.

**CHAPTER III
PAYMENT OF AMOUNTS**

Payment of
amount.

7. For the transfer to, and vesting in, the State Government under section 3, of the undertaking and the right, title and interest of the proprietors in relation to the undertaking, there shall be paid by the State Government to the proprietors, such an amount as may be specified in *Official Gazette*, and in the manner specified in Chapter VI:

Provided that where any liability of the proprietors specified in the Schedule is discharged by the State Government according to the order of the priorities mentioned in the Schedule, the amount to be paid to the proprietors under this section shall stand reduced to that extent.

Payment of
further amount.

8. (1) The amount payable in accordance with the provisions of section 7, shall carry simple interest at the rate of four *per centum 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.

(2) The amount representing interest calculated at the rate specified in sub-section (1) shall be given by the State Government to the proprietors in addition to the amount specified in section 7.

(3) For the removal of doubts, it is hereby declared that the liabilities of the proprietors in relation to their undertaking which has vested in the State Government under section 3 shall be discharged from the amounts specified in section 7 and also from the amounts specified in sub-section (1) in accordance with the rights and interests of the creditors of the proprietors.

**CHAPTER IV
MANAGEMENT, etc., OF THE UNDERTAKING**

Management
etc., of
undertaking.

9. (1) The general superintendence, direction, control and management of the affairs and business of the undertaking, the right, title and interest in relation to which have vested in the State Government under section 3, shall where a direction has been issued by the State Government under sub-section (1) of section 6, vest in the new Government company or in such person and to such extent or limitations as the new Government company may, by order in writing, specify and thereupon the new Government company or, as the case may be, such person shall be entitled to exercise, to the exclusion of all other persons, all such power and do all such things as the proprietors were authorized to exercise and do in relation to their undertaking.

(2) Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, it shall be lawful for the new Government company to reorganize the functioning of the different units and offices of the undertaking and the employees

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Undertaking) Bill, 2016.*

*(Chapter IV.—Management, etc. of the Undertaking.—Clauses 10, 11.—
Chapter V.—Provisions Relating to Employees of the Proprietors.—Clause 12.)*

employed therein and thereby restructure such units and offices with such strength of employees as such new Government company deems fit.

Charge of
management of
undertaking to
deliver all assets
etc.

10. (1) On the vesting of the management of the undertaking in the new Government company all persons in charge of the management of the undertaking immediately before such vesting, including the liquidator appointed by the Court shall be bound to deliver to the State Government or the new Government company, as the case may be, all assets, books of account, registers and other documents to their possession or custody or under their control, relating to the undertaking.

(2) The State Government may issue such directions as it may deem desirable in the circumstances of the case to the new Government company, and such new Government company may also, if it is considered necessary so to do, apply to the State Government at any time for instructions as to the manner in which the management of the undertaking shall be conducted or in relation to any other matter arising in the course of such management.

Duty of person
to account for
assets, etc., in
their possession.

11. (1) Any person who has on the appointed day, in his possession or custody or under his control, any assets, books, documents or other papers relating to the undertaking, which have vested in the State Government or in the new Government company under this Act, shall be liable to account for the said assets, books, documents and other papers to the State Government or the new Government company, as the case may be, and shall deliver them to the State Government, or the new Government company or to such person or persons as the State Government or the new Government company may specify in this behalf.

(2) The State Government or the new Government company aforesaid may take, or cause to be taken, all necessary steps for securing possession of the undertaking which has vested in the State Government or the new Government company, under this Act.

(3) The proprietors shall, within such period as the State Government may allow in this behalf, furnish to that Government a complete inventory of all its properties and assets, as on the appointed day, pertaining to the undertaking which has vested in the State Government under section 3 or the new Government company and, for this purpose the State Government the new Government company shall afford to the proprietors all reasonable facilities.

CHAPTER V

PROVISIONS RELATING TO EMPLOYEES OF THE PROPRIETORS

Employment of
certain
employees.

12. (1) Every person who has been, immediately before the appointed day, employed in any of the undertakings of the Company shall become—

- (a) on and from the appointed day, an employee of a Company under the State Government, and
- (b) where the undertakings or the Company are directed, under sub-section (1) of section 6, to be transferred to a new Government company, an employee of such Government company on and from the date on such vesting or transfer, and shall hold office or service under the State

*Dunlop India Limited (Acquisition and Transfer of
Undertaking) Bill, 2016.*

*(Chapter V.—Provisions Relating to Employees of the Proprietors. Clause 13.—
Chapter VI.—Commissioner of Payments.)*

Government or the new Government company, as the case may be, with the same rights and privileges as would have been admissible to him if there had been no such vesting or transfer and shall continue to do so unless and until his employment under the State Government or new Government company, as the case may be, is duly determined or until his remuneration and other conditions are duly altered by the State Government or new Government company, as the case may be.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of services of any officer or other person employed in the undertakings of the company to the State Government or new Government company, as the case may be, 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.

14 of 1947.

Provident fund
and other funds.

13. (1) Where the proprietors have established a provident fund, superannuation fund, welfare fund or any other fund for the benefit of the persons employed in the undertaking, the monies relatable to the officers or other employees, whose services have been continued on appointment to the new Government company shall, out of the monies standing on the appointed day to the credit of such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and vested in, the new Government company.

(2) The monies which stand transferred under sub-section (1) to the new Government company shall be dealt with by the new Government company in such manner as may be prescribed.

CHAPTER VI
COMMISSIONER OF PAYMENTS

Appointment of
Commissioner of
Payments.

14. (1) The State Government shall, for the purpose of disbursing the amounts payable under sections 7 and 8 to the proprietors, by notification in the *Official Gazette*, 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 Act 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 with the same effect as if they have been conferred on that person directly by this Act and not by way of authorization.

(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 State
Government to
Commissioner.

15. (1) The State Government shall, within thirty days from the specified date pay in cash to the Commissioner for Payment to the proprietors, —

(a) an amount equal to the amount specified in section 7, after deducting therefrom any amount paid under clause (b) of sub-section (1) of section 12; and

(b) an amount equal to the amount payable to the proprietors under section 8.

*Dunlop India Limited (Acquisition and Transfer of
Undertaking) Bill, 2016.*

(Chapter VI.— Commissioner of Payments.— Clauses 16-18.)

(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 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) Records shall be maintained by the Commissioner in respect of the undertaking in relation to which payment has been made to him under this Act.

(4) The interest amount accruing on the amount standing to the credit of the deposit account referred to in sub-section (2) shall accrue to the benefit of the proprietors.

Certain powers
of State
Government or
new Government
company.

16. (1) The State Government or new Government Company, where a direction has been issued by the State Government under sub-section (1) of section 6, the new Government company, as the case may be, shall be entitled to receive up to the specified date, to the exclusion of all other persons, any money due to the proprietors, in relation to their undertaking which has vested in the State Government, or in the new Government company, and realised after the appointed day, notwithstanding that the realisation pertains to a period prior to the appointed day.

(2) The State Government or the new Government company, as the case may be, may make a claim to the Commissioner with regard to every payment made by it after the appointed day, not being payment made under the proviso to section 7, for discharging any liability of the proprietors, 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 State Government, or the new Government company.

(3) Save as otherwise provided in this Act, the liabilities of the proprietors in respect of any period prior to the appointed day, shall be the liabilities of the proprietors.

Claims to be
made to
Commissioner.

17. Every person having a claim other than the claim relating to gratuity or compensation for retrenchment or closure against the proprietors with regard to any of the matters specified in the Schedule pertaining to the undertaking, 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.

Priority of
claims.

18. The claims arising out of the 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 categories III and IV; and category III shall have precedence over category IV;
- (b) the claims arising out of matters specified in each category except category III 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;

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Undertaking) Bill, 2016.*

(Chapter VI.— Commissioner of Payments.— Clauses 19-20.)

- (c) the liabilities specified in category III shall be discharged in the manner agreed to by the State Government of one part with the banks and institutions of other part subject to the priorities specified in this section, in accordance with the terms of the secured loans and the priority *inter se* of such loans; and
- (d) the question of payment of a liability with regard to a matter specified in a lower category shall arise only if left after meeting all the liabilities specified in the immediately higher category.

Examination of claims.

19. (1) On receipt of the claims made under section 17, the Commissioner shall arrange the claims in the order of priorities specified in the Schedule and examine the same accordance with such order of priorities.

(2) If, on examination of the claims, the Commissioner is of opinion that the amount paid to him under his Act, is not sufficient to meet the liabilities specified in any lower category, he shall not be required to examine the claims in respect of such lower category.

Admission of rejection of claims.

20. (1) After examining the claims 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 or be excluded from the benefit of the disbursement made by the Commissioner.

(2) Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of such daily newspaper in the English language, and one issue of such daily newspaper in the Bengali 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 proprietors an opportunity of refunding the claims and after giving the claimant a reasonable opportunity of being heard, admit or reject, by order in writing, 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 an investigation under this Act, have the same powers as are vested in Civil Court under the Code of Civil Procedure, 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 affidavits; and
- (d) the issuing of any commission for the examination of witnesses.

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Undertaking) Bill, 2016.*

*(Chapter VI.— Commissioner of Payments.— Clauses 21-24. — Chapter VII.—
Miscellaneous.— Clauses 25, 26.)*

(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, 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 such decision to the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the registered office of the proprietors is situated.

**Disbursement of
money by
Commissioner to
claimants.**

21. After admitting a claim under this Act, the amount due in respect of such claim shall be credited by the Commissioner to the relevant fund or be paid to the person or persons to whom such amount is due, and on such credit or payment, the liability of the proprietors in respect of such claim shall stand discharged.

**Disbursement of
amounts to
proprietors.**

22. If, out of the monies paid to him in relation to the undertaking, there is a balance left after meeting the liabilities as specified in the Schedule, the Commissioner shall disburse such balance to the proprietors.

**Possession of
machinery etc.,
not belonging to
proprietors to
continue.**

23. Where the possession of any machinery, equipment or other property has vested in the State Government, or new Government company under this Act, but such machinery, equipment or other property does not belong to the proprietors, it shall be lawful for the State Government or such new Government company to continue to possess such machinery or equipment or other property on the same terms and conditions under which they were possessed by the proprietors immediately before the appointed day.

**Undisbursement
or unclaimed
amount to be
deposited with
general revenue
account.**

24. 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 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, and the order, if any, for payment of the claim, being treated as an order for the refund of revenue.

CHAPTER VII
MISCELLANEOUS

**Assumptions of
liabilities.**

25. (1) Where any liability of the proprietors arising out of any item specified in category I of the Schedule is not discharged fully by the Commissioner out of the amount paid under this Act, the Commissioner shall intimate in writing to the State Government the extent of the liability which remains undischarged and that liability shall be assumed by the State Government.

(2) The State Government may, by order, direct the new Government company to take over any liability assumed by the Government under sub-section (1) and on receipt of such direction, it shall be the duty of the new Government company to discharge such liability.

**Act of
overriding
effect.**

26. 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

*Dunlop India Limited (Acquisition and Transfer of
Undertaking) Bill, 2016.*

(Chapter VII.— Miscellaneous.— Clauses 27-30.)

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.

Contracts to
cease to have
effect unless
ratified by State
Government or
new Government
company.

27. Every contract entered into by the proprietors in relation to their undertaking, which has vested in the State Government under section 3, for any service, sale or supply, and in force immediately before the appointed day, shall on and from the expiry of one hundred and eighty days from the appointed day, cease to have effect unless such contract is, before the expiry of that period, ratified, in writing by the State Government, or new Government company, in which such undertaking has been vested under this Act, and in ratifying such contract, the State Government, or the new Government company, as the case may be, may make such alteration or modification therein as it may think fit:

Provided that the State Government, or the new Government company 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 interest of the State Government, or the new Government company; 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.

Protection of
action taken in
good faith.

28. No suit, prosecution or other legal proceeding shall lie against the State Government, or the new Government company or any officer or other employee of that Government, or the new Government company or other person authorised by the State Government or the new Government company for anything, including any damage caused or likely to be caused by anything, which is in good faith done or intended to be done under this Act.

Delegation of
powers.

29. (1) The State Government may, by notification in the *Official Gazette*, direct that all or any of the powers exercisable by it under this Act, other than the powers conferred by this section, section 33 and section 34, 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 persons to whom such power has been delegated shall act under the direction, control and supervision of the State Government.

Penalties.

30. Any person who, -

- (a) having in his possession, custody or control any property forming part of the undertaking wrongfully withholds such property from the State Government or the new Government company or any person or body of persons specified by the State Government, as the case may be, new Government company, in his behalf; or
- (b) wrongfully obtains possession of, or retains, any property forming part of the undertaking; or

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(Chapter VII.— Miscellaneous.— Clauses 31-33.)

- (c) wilfully withholds or fails to furnish to the State Government, or the new Government Company, as the case may be, or any person or body of persons specified by that Government, or the new Government company, any document relating to the undertaking, which may be in his possession, custody or control; or
- (d) fails to deliver to the State Government, or the new Government company, as the case may be, or to any person or body of persons specified by that Government, or the new Government company, any assets, books of account, registers or other documents in his possession, custody or control relating to the undertaking; or
- (e) wrongfully removes or destroys any property forming part of the undertaking; or
- (f) wrongfully prefers any claim under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate, shall, on conviction, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

Offences by companies.

31. (1) Where an offence under this Act has been committed by a company, every person, who, at the time when 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 (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 the 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.

Company not be wound up by court.

32. No proceeding for the winding up of the company, the right, title and interest in relation to the undertaking owned by which, have vested in the State Government or the new Government company under this Act shall lie or be proceeded with in any Court except with the consent of the State Government.

Power to make rules.

33. (1) The State Government may, by notification in the *Official Gazette*, make rules for carrying out the provisions of this Act.

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

- (a) the time within which, the manner in which, an intimation referred to in section 4 shall be given to the Commissioner;
- (b) the manner in which the monies in any provident fund or other fund under section 13 shall be dealt with;
- (c) any other matter which is required to be, or may be, prescribed.

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(Chapter VII.— Miscellaneous.— Clause 34.)

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be, after it is made, before the House of the State Legislature, 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, then on publication of such decision in the *Official Gazette*, the rule shall 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.

Power to remove
difficulties.

34. If any difficulty arises in giving effect to the provisions of this Act, the State 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 the period of two years, from the date of commencement of this Act.

SCHEDULE

[See sections 2(h), 17, 18, 19, 20(1) and 22]

Order of Priorities for the Discharge of Liabilities of the Proprietors

Category I

All dues including gratuity of employees in the undertaking; arrears relating to contributors towards Provident Fund and contributions under the Employees' State Insurance Act, 1948, payable by the proprietors.

Category II

Arrears of excise duty, sales-tax, dues relating to electricity and dues of a local authority.

Category III

Secured creditors including banks and institutions.

Category IV

- (i) Sundry creditors.
- (ii) Other liabilities.

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STATEMENT OF OBJECTS AND REASONS.

Dunlop India Limited, had been engaged in the manufacture and production of automobile tyres and tubes including aero tyres in the manufacturing units at *Ambattur*, Tamil Nadu and *Sahaganj*, West Bengal. Dunlop India Limited was a pioneer in tyre industry. The company is facing economic ruination and complete effacement in view of lack of proper and efficient administration of business. Thousands of employees of the said company have not received their dues over a substantial period of time. Consequently, the employees are in acute financial distress.

2. In promoting revival of existing industries in the State of West Bengal, it has been ascertained that –

- (a) there has been a failure on the part of the existing management to settle dues of the employees;
- (b) there has been a failure on the part of the existing management to pay statutory dues and/or dues to the State Government and its agencies;
- (c) a declaration of “suspension of work” has kept the Sahaganj unit non-productive since October 2011 and the *Ambattur* unit had been closed in 1998.

3. It is expedient in public interest to enact a legislation to provide for acquisition and transfer of undertaking of the Dunlop India Limited, a company registered under the Companies Act, 1956 with a view to securing the proper management of such undertaking so as to sub-serve the interest of the general public by ensuring the continued manufacture, production and distribution of automobile tyres and tubes including aero tyres, which are essential to the needs of the economy of the nation and for matters connected therewith or incidental thereto.

4. Consequently, it is pertinent to mention that an order dated the 31st day of January, 2013, the Hon'ble High Court at Calcutta has directed winding up of the company and the said order has been re-affirmed by an order dated 2nd day of May, 2013 of a Division Bench of the High Court at Calcutta and a Special Leave Petition arising out of the said order dated 2nd day of May, 2013, passed by the Division Bench of the High Court at Calcutta are pending in the Hon'ble Supreme Court.

5. The Bill has been framed with the above objects in view.

Kolkata,

The, 26th February, 2016.

DR. AMIT MITRA.,

Member-in-charge.

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FINANCIAL MEMORANDUM.

There is financial implication involved in giving effect to the provisions of the Bill and necessary budgetary provisions shall be made in due course in consultation with the Finance Department, Government of West Bengal.

Kolkata,

The, 26th February, 2016.

DR. AMIT MITRA.,

Member-in-charge.

By order of the Governor,

MADHUMATI MITRA,

*Secy. to the Govt. of West Bengal,
Law Department.*