

**BRENTFORD ELECTRIC (INDIA) LIMITED (ACQUISITION
AND TRANSFER OF UNDERTAKINGS) ACT 1987**

36 of 1987

[15th September, 1987]

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SCHEDULE 1 :- THE SCHEDULE

BRENTFORD ELECTRIC (INDIA) LIMITED (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT 1987

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STATEMENT OF OBJECTS AND REASONS The Brentford Electric (India) Limited, Calcutta, (BEIL), established in 1964, has been in existence for about 23 years and has been engaged in the manufacture of regulators of up to 5000 KVA, rectifiers, special transformers, distribution transformers, etc. The products of the company are of high quality and are required for defence establishments, State Electricity Boards and atomic energy establishments. The company is at present employing about 200 persons. 2. BEIL started incurring losses from 1975 and ran into serious financial difficulties in 1976. The management of the company was taken over by the Central Government under S.18AA of the Industries (Development and Regulation) Act, 1961 and Andrew Yule and Company Limited, a Government company, was appointed as the 'authorised person' for managing its affairs. The period of take over of the management of BEIL was extended from time to time and is presently stands extended up to the 25th November, 1987. At the time of take over, the accumulated losses of BEIL were Rs, 90.37 lacs and its liabilities to third parties

aggregated to Rs. 87.33 lacs. However, the sales turnover of the company has improved considerably in the post-take-over period and it has been able to turn the corner by 1979-80, thus establishing that its operations are technically and commercially viable. During the years 1979-80, 1980-81, 1981-82 and 1985-86, the company earned profits. During the years 1982-83 and 1984-85, the undertaking incurred losses mainly due to labour problems and lock-out.

3. Considering the fact that the company had heavy losses on the date of take over, it is evident that it would never be able to service its old liabilities, though its current operations, without the drag of the pre-take-over liabilities, are viable (sic). The company cannot at the same time be run for an indefinite period under the provisions of Industries (Development and Regulation) Act, 1951.

4. Studies made to determine the future set up of the Company revealed that the undertakings of the Company should be nationalised in order to consolidate the gains of management and ensure uninterrupted supply of critical items required by defence establishments, etc. In view of the importance and high demand of the products manufactured by the company and the loss of employment to about 200 persons if the company were to be closed down, it is considered necessary to take over the undertakings of the company.

5. The Bill seeks to achieve the aforesaid object. Apart from providing for the acquisition and transfer of the undertaking of the company, the Bill provides for the payment of an amount for such acquisition, vesting of the undertakings of the company in the Government, appointment of a Commissioner of Payment for the purpose of disbursing the amount payable to the company and for other incidental and consequential matters. -Gaz. of Ind. 14-8-1987, Pt. II, S. 2, Ext, p. 15 (No. 33).

CHAPTER 1 PRELIMINARY

1. Short title and commencement :-

(1) This act may be called the Brentford Electric (India) Limited (Acquisition and Transfer of Undertakings) Act 1987.

2. Definitions :-

In this act, unless the context otherwise requires.

(b) "appointed day" means the 1st day of April, 1986.

(e) "notification" means a notification published in the Official

Gazette.

(f) "prescribed" means prescribed by rules made under this act.

(g) "specified date" in relation to any provisions of this act, means such date as the Central Government may, by notification specify for the purpose of that provision and dates may be specified for different provisions of this Act.

CHAPTER 2

ACQUISITION AND TRANSFER OF THE UNDERTAKINGS OF THE COMPANY

3. Transfer to, and vesting in, the Central Government of the Undertakings of the company :-

On the appointed day, the undertakings of the Company, and the right, title and interest of the Company in relation to its undertakings, shall, by virtue of this Act, stand transferred to and vest in the Central Government.

4. General effect of vesting :-

(1) The undertakings of the Company shall be deemed to include all assets, rights lease-holds, powers, authorities and privileges, and all property, moveable and immovable including lands, buildings, workshops stores, instruments, machinery and equipment cash balances, cash on hand, cheques, demand drafts, reserve funds, investments books debts, and all other rights and interest in, or arising out of, such property as were immediately before the appointed day in the ownership possession, power or control of the Company whether within or outside India, and all books of account, registers records and all other documents of whatever nature relating thereto.

(3) 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. Company to be liable for certain prior liabilities :-

(2) Any liability arising in respect of advances made to the Company for the supply of articles, or in respect of materials supplied to the Company, after the management of the undertakings of the Company had been taken over by the Central

Government shall, on and from the appointed day, be the liability of the Central Government or of Andrew Yule, as the case may be, and shall be discharged by that Government or Andrew Yule, a* and when payment for such advances or supplies becomes due and payable.

6. Power of Central Government to direct vesting of the undertakings of the Company in Andrew Yule :-

CHAPTER 3

PAYMENT OF AMOUNTS

7. Payment of amount :-

For the transfer to, and vesting in, the Central Government, under section 3 , of the undertakings of the , and the Company, and the right, title and interest of the Company in relation to its undertakings, there shall be paid by the Central Government to the Company in cash, and in the manner specified in Chapter VI, an amount of rupees thirty-seven lakhs and Fifty thousand.

8. Payment of further amounts :-

CHAPTER 4

MANAGEMENT, ETC., OF THE UNDERTAKINGS OF THE COMPANY

9. Management, etc., of the undertakings of the Company :-

The general superintendence, direction, control and management of the affairs and business of the undertaking of the Company, the right, title and interest in relation to which have vested in the Central Government under section 2 , shall, where a direction has been made by the Central Government under sub-section (1) of section 6 , vest in Andrew Yule, and thereupon Andrew Yule shall be entitled to exercise, to the exclusion of all other persons, all such powers and do all such things as the Company was authorised to exercise and do in relation to its undertakings.

10. Duty of persons in charge of management of the undertakings of the Company to deliver all assets, etc :-

(1) On the vesting of the management of the undertaking? Of the Company in Andrew Yule, all powers in charge of the management of the undertakings of the Company immediately before such vesting shall be bound to deliver to Andrew Yule all assets, books of account, registers or other documents in their custody relating to the undertakings of the Company.

(2) The Central Government may issue such directions as it may

deem desirable in the circumstances of the case to Andrew Yule as to its powers and duties and Andrew Yule may also, if it so desires, apply to the Central Government at any time for instructions as to the manner in which the management of the undertakings of the Company shall be conducted by it or in relation to any other matter arising in the course of such management.

11. Duty of persons to account for assets, etc., in their possession :-

(1) Any person who has, on the appointed day, in his possession or under his control, any assets, books, documents or other papers relating to any undertaking owned by the Company, which have vested in the Central Government or in Andrew Yule under this Act and which belong to the Company or would have so belonged, if the undertakings owned by the Company had not vested in the Central Government or Andrew Yule, shall be liable to account for the said assets, books, documents and other papers to the Central Government or Andrew Yule and shall deliver them to the Central Government or Andrew Yule or to such person or persons as the Central Government or Andrew Yule may specify in this behalf.

(2) The Central Government or Andrew Yule may take or cause to be taken all necessary steps for securing possession of the undertakings of the Company which have vested in the Central Government or Andrew Yule under this Act.

CHAPTER 5

PROVISIONS RELATING TO THE EMPLOYEES OF THE COMPANY

12. Continuance of employees :-

13. Provident fund and other funds :-

(1) Where the Company has established a provident fund, superannuation fund, welfare fund or any other fund for the benefit of the persons employed in any of its undertakings, the moneys relating to the officers or other employees, whose services have become transferred by or under this Act to the Central Government or Andrew Yule shall, out of the moneys standing, on the appointed day, to the credit of such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and vest in, the Central Government or Andrew Yule, as the case may be.

(2) The moneys which stand transferred under sub-section (1) to the Central Government or Andrew Yule, as the case may be, shall

be dealt with by that Government or Andrew Yule in such manner, as may be prescribed.

CHAPTER 6

COMMISSIONER OF PAYMENTS

14. Appointment of Commissioner of Payment :-

(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.

(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.

15. Payment by the Central Government to the Commissioner :-

(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) Records shall be maintained by the Commissioner in respect of the undertakings of the Company in relation to which payments have been made to him under this Act.

(4) Interest accruing on the amounts standing to the credit of the deposit account referred to in sub-section (2) shall enure to the benefit of the Company.

16. Certain powers of the Central Government or Andrew Yule :-

(I) The Central Government or Andrew Yule, 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 Company, in relation to its undertakings which have vested in the Central Government or Andrew Yule, and realised after the appointed day notwithstanding that the realisation pertains to a period prior to the appointed day.

(3) Save as otherwise provided in this Act, the liabilities of the Company, in respect of any transaction prior to the appointed day, which have not been discharged on or before the specified date, shall be the liabilities of the Company.

17. Claims to be made to the Commissioner :-

Every person having a claim against the Company with regard to any of the matters specified in the Schedule, pertaining to any of its undertakings, 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.

18. Priority of claims :-

The claims made under section 17 shall have priorities in accordance with the following principles namely:--

(a) Category I shall have precedence over all other categories and Category III shall have precedence over Category

(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;

(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.

19. Examination of claims :-

(2) If, on an examination of the claims, the Commissioner is of opinion that the amount paid to him under this 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.

20. Admission or rejection of claims :-

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

(2) Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of any daily newspaper in the English language having circulation in the major part of the country and 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.

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

21. Disbursement of money by the Commissioner to claimants :-

After admitting a claim 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.

22. Disbursement of amounts to the Company :-

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

(2) Where the possession of any machinery, equipment or other property has vested in the Central Government or -Andrew Yule under this Act, but such machinery, equipment or other property does not belong to the Company, it shall be lawful for the Central Government or Andrew Yule, to continue to possess such machinery or equipment or other property on the same terms and conditions under which they were possessed by the Company immediately before the appointed day.

23. Undisbursed or unclaimed amount to be deposited to 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 7
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. Contracts to cease to have effect unless ratified :-

Every contract entered into by the Company in relation to its undertaking which has vested in the Central 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 a period of one hundred and eighty days from the date on which this Act receives the assent of the President, cease to have effect unless such contract is, before the expiry of that period, ratified, in writing, by the Central Government or Andrew Yule in which such undertakings have been vested under this Act, and in ratifying such contract, the Central Government or Andrew Yule may make such alteration or Modification therein as it may think fit: Provided that

the Central Government or Andrew Yule 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 Central Government or Andrew Yule, and

(b) except after giving to 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.

26. Penalties :-

Any person who,-

(a) having in his possession, custody or control any property forming part of the undertakings of the Company, wrongfully withholds such property from the Central Government or Andrew Yule; or

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

(c) wilfully withholds or fails to furnish to the Central Government or Andrew Yule or any person or body Of persons specified by that Government or Andrew Yule, as the case may be, any document relating to the undertakings, which may be in his possession, custody or control; or

(d) fails to deliver to the Central Government or to Andrew Yule or any person or body of persons specified by that Government or Andrew Yule, as the case may be, any assets, books of account, registers or other documents in his possession, custody or control relating to the undertakings of the Company: or

(e) wrongfully removes or destroys any property forming part of the undertakings of the Company or prefers any claim under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees, or with both.

27. 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 responsible to, the company, for the conduct of the business of the Company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any defect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

28. 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 that Government or Andrew Yule or other person authorised by that Government or Andrew Yule 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 that Government or Andrew Yule or other person authorised by that Government or Andrew Yule 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.

29. 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 30 and 31, 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.

30. Power to make rules :-

(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, and if 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.

31. 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 this act receives the assent of the president.

SCHEDULE 1

THE SCHEDULE

[See section 17, section 19(1), section 20(1) and section 22(1)]

1 ORDER OF PRIORITIES

Category I- (a) Wages, salaries and other dues payable to the employees of the Company. (b) Deductions made from the salaries and wages of the employees of the Company for the provident fund, the Employees' State Insurance Fund, premium relating to the Life Insurance Corporation of India or for any other purpose. (c) Arrears in relation to contributions to be made by the Company to provident fund, the Employees' State Insurance Fund or under any other law for the time being in force providing for such contributions. Post-take-over management period.

Category II- Principal amount of loans advanced by- (i) the Central Government; (ii) a State Government; (iii) banks and financial institutions; (iv) any other source.

Category III- (a) Any credit availed of by the Company for the purpose of carrying on any trading or manufacturing operations, other than those specified in sub-section (2) of section 5. (b) Any dues of the State Electricity Boards or other Government or Semi-Government institutions against supply of goods or services, other than those specified in sub-section (2) of section 5. (c) Arrears of interest on loans and advances.

Category IV- (a) Revenue, taxes, cesses, rates or other dues to the Central Government, a State Government or any local authority. (b) Any other dues. Pre-take-over management period.

Category V- Principal amount of secured loans advanced by- (i) the Central Government; (ii) a State Government; (iii) banks and financial institutions.

Category VI- Principal amount of unsecured loans advanced by- (i) the Central Government; (ii) a State Government; (iii) banks and financial institutions.

Category VII- (a) Any credit availed of by the Company for the purpose of

| carrying on any trading or manufacturing operations. |