

THE ESSO UNDERTAKINGS ACQUISITION ACT, 1975**CONTENTS**

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THE ESSO UNDERTAKINGS ACQUISITION ACT, 1975

ACT NO. XVI OF 1975

[14th July, 1975]

An Act to provide for acquisition of undertakings in Bangladesh of ESSO Eastern Inc.

WHEREAS in pursuance of an offer made to it the Government have agreed to acquire the undertakings in Bangladesh of ESSO Eastern Inc. of the United States;

AND WHEREAS it is expedient to provide by law for such acquisition and for matters ancillary thereto;

It is hereby enacted as follows:-

Short title and commencement

1. (1) This Act may be called the ESSO Undertakings Acquisition Act, 1975.

(2) It shall be deemed to have come into force on the 14th day of March, 1975.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,-

(1) "appointed day" means the day specified in the notification under section 3;

(2) "ESSO" means ESSO Eastern Inc. of the United States;

(3) "ESSO undertakings" means the business in Bangladesh of ESSO of purchasing, distributing, marketing and reselling of petroleum products and the interests of ESSO in the issued and paid up share capital of the Standard Asiatic Oil Company Limited and includes-

(a) all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments 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 ESSO in relation to such undertakings;

- (b) all books of account, registers, records and all other documents of whatever nature relating thereto; and
- (c) all borrowings, liabilities and obligations of whatever kind then subsisting of ESSO in relation to such undertakings,

but does not include-

- (i) any trade mark, and any right of ESSO to use any trade mark in Bangladesh;
- (ii) all patents and designs, if any, registered in Bangladesh in the name of ESSO or ESSO's affiliates; and
- (iii) confidential and proprietary information material, and information and material pertaining to trade secrets furnished by ESSO to such undertakings or procured by ESSO for use in connection with such undertakings from any other source.

3. The Government may, by notification in the *official Gazette*, declare that it acquires on the day specified therein ESSO undertakings and thereupon ESSO undertakings and all right, title and interest of ESSO in such undertakings shall stand transferred to, and vest in, the Government.

Acquisition of
ESSO
undertakings

4. (1) All deeds, bonds, agreements, power-of-attorney, grants of legal representation and other instrument of whatever nature in relation to ESSO undertakings subsisting and having effect immediately before the appointed day to which ESSO is a party or which are in favour of ESSO shall be of as full force and effect against or in favour of the Government and may be enforced and acted upon as fully and effectually as if references in such deeds, bonds, contracts, agreements, powers, grants and instruments to ESSO were references to the Government:

Effect of
acquisition

Provided that in the case of any contract for any service, sale or supply in Bangladesh, the Government may, by order in writing, terminate the contract or make such alternation or modification of its terms as it may deem fit.

(2) All suits, appeals and other legal proceedings instituted by or against ESSO for the purpose of, or in relation to, ESSO undertakings, before the appointed day, shall be deemed to be suits, appeals and legal proceedings by or against the Government and may be continued and proceeded with accordingly.

(3) Where any property is held by ESSO for the purpose of, or in relation to, ESSO undertakings under any lease or under any right of tenancy the Government shall, without prejudice to the provisions of section 3, be deemed to have become, on the appointed day, the lessee or the tenant, as the case may be, in respect of such property as if the lease or tenancy had been granted to the Government and thereupon all rights under such lease or tenancy, including the right of renewal thereof, shall be deemed to have been transferred to, and vested in, the Government:

Provided that after the expiry of the term of any such lease or tenancy, the Government may continue to hold the property for such period as it may consider necessary on the same terms and conditions on which it was held immediately before such expiry as if the lease or tenancy had been renewed for such period.

(4) Where any question arises as to whether any property appertains to, or is held for the purpose of, or in relation to, ESSO undertakings or any rights, powers, liabilities, or obligations were acquired or incurred, or any contract, agreement or other instrument was made by ESSO for the purpose of, or in relation to, ESSO undertakings or whether any document relates to those purposes the question shall be referred to the Government whose decision thereon shall be final and binding.

Payment of
compensation

5. For the acquisition of ESSO undertakings under section 3 there shall be paid by the Government to ESSO as compensation such amount and in such manner as the Government may, after consultation with ESSO, determine.

Provisions
relating to
officers and
other employees
of ESSO

6. (1) Notwithstanding anything contained in any contract or agreement or in the conditions of service the permanent officers or other employees of ESSO for the purpose of, or in relation to, ESSO undertakings shall, on and from the appointed

day, continue to be in their respective employment as officers and employees of the Government on the same terms and conditions including the right to pension, gratuity and other privileges as were admissible to them immediately before such day:

Provided that the Government shall have power at any time to terminate the service, or alter the conditions of service, of any such officer or employee.

(2) Notwithstanding anything contained in any other law for the time being in force, no officer or employee whose services are transferred from ESSO to the Government under sub-section (1) or whose services are terminated or the terms and conditions of whose services are altered under that sub-section shall be entitled to any compensation whatsoever on account of such transfer, termination or alteration.

(3) Where any question arises as to whether any person was immediately before the appointed day a permanent officer or other employee of ESSO for the purpose of, or in relation to, ESSO undertakings, the question shall be referred to the Government whose decision thereon shall be final and binding.

7. (1) The moneys and other assets relating to the officers and employees referred to in sub-section (1) of section 6 shall, out of the moneys standing immediately before the appointed day to the credit of any provident, superannuation, welfare and other fund established by ESSO for the benefit of the persons employed by it for the purpose of, or in relation to, ESSO undertakings, stand transferred to, and vest in, the Government free from any trust that might have been constituted by ESSO in respect thereof.

Transfer of moneys etc., of the officers and other employees of ESSO

(2) In respect of moneys and other assets transferred to, and vested in it, under sub-section (1), the Government shall, as soon as may be, constitute one or more trusts having objects as similar to the objects of the trusts referred to in that sub-section as in the circumstances may be practicable so that the rights and interests of the beneficiaries of such trusts are not in any way prejudiced or diminished.

(3) Where all the moneys and other assets belonging to any trust are transferred to, and vested in, the Government, the trustees of such trust shall, on the date of such transfer and vesting, stand discharged from the trust except as regards things done or omitted to be done before such date.

Deliver of possession of property, etc.

8. (1) Where any property or other assets stand transferred to, and vested in, the Government under this Act-

- (a) every person who has in his possession, custody or control any such property or assets shall be liable to account for such property or assets and shall deliver the same to the Government or an officer authorised by it in this behalf;
- (b) every person who has in his possession, custody or control any books, documents or other papers relating to ESSO undertakings shall be liable to account for such books, documents and papers to the Government and shall deliver them up to the Government or the officer authorised by it in this behalf.

(2) Without prejudice to the provision of such sub-section (1), the Government may take all such steps as may be necessary to take possession or assume control of the properties, assets, books, documents and other papers referred to in that sub-section.

Penalty

9. Any person who-

- (a) wrongfully obtains possession of or retains, or, having in his possession, custody or control, wrongfully withholds, any property or other assets transferred to, and vested in, the Government under this Act; or
- (b) having in his possession, custody or control any books, register, document or other papers relating to ESSO undertakings wilfully withholds or fails to furnish or deliver the same to the Government or the officer authorised by it in this behalf; or
- (c) wilfully uses, removes or destroys any property or assets referred to in clause (a), or wilfully removes, mutilates or destroys any book, register, document or paper referred to in clause (b);

shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

10. (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 proceeded against and punished accordingly:

Offences by companies

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 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.

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.

11. No suit, prosecution or other legal proceeding shall lie against the Government or any officer for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith

12. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), no court shall take cognizance of any offence under this Act except on a complaint, in writing made by the Government or an officer authorised by it in this behalf.

Cognizance of offences

Power to
remove
difficulties

13. If any difficulty arises in giving effect to the provisions or carrying out the purposes of this Act, the Government may make such orders as it may consider necessary to remove the difficulty.

Repeal and
savings

14. (1) The ESSO Undertakings Acquisition Ordinance, 1975 (Ord. XIV of 1975), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken, including any order made, notification issued or direction given under any provision of the said Ordinance shall be deemed to have been done, taken, made, issued or given, as the case may be, under the corresponding provisions of this Act.

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