

Twelfth Kerala Legislative Assembly
Bill No. 324

**THE KERALA SPINNERS, ALAPPUZHA (ACQUISITION
AND TRANSFER OF UNDERTAKING) BILL, 2010**

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A

BILL

to provide for the acquisition and transfer of the Kerala Spinners, Ltd., Komalapuram, Alappuzha and for the acquisition and transfer of the right, title and interest of the owners in respect of the undertaking with a view to reorganizing and reviving the undertaking and for matters connected therewith or incidental thereto.

Preamble.— WHEREAS, it is expedient to provide for the acquisition and transfer of the Kerala Spinners, Ltd., Komalapuram, Alappuzha and for the acquisition and transfer of the right, title and interest of the owners in respect of the undertaking with a view to reorganizing and reviving the undertaking and for matters connected therewith or incidental thereto ;

BE it enacted in the Sixty first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title and commencement.*—(1) This Act may be called the Kerala Spinners, Alappuzha (Acquisition and Transfer of Undertaking) Act, 2010.

(2) It shall be deemed to have come into force on 19th day of November, 2009.

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

(a) “appointed day” means the 7th day of September, 2006 ;

(b) “authorised person” means the person or body of persons appointed under section 18AA of the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), to take over the management of the Sick Textile undertakings ;

(c) “bank” means, “the Indian Overseas Bank”, a Scheduled Bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934. (Central Act 2 of 1934) ;

(d) “Commissioner” means the Commissioner of payments appointed under section 16 ;

(e) “owner” when used in relation to the sick textile undertaking, means the person or firm who or which was, immediately before the take-over of the management of the undertaking under section 18AA of the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), the immediate proprietor or lessee or occupier of the sick textile undertaking or any part thereof ;

(f) “prescribed” means prescribed by rules made under this Act ;

(g) “sick textile undertaking” means the textile undertaking specified in the First Schedule and has been declared as a sick company by the Board for Industrial and Financial Reconstruction (BIFR) ;

(h) “specified date” means such date as the Government may, for the purpose of any provision of this Act, by notification in the Gazette, specify and different dates may be specified for different provisions of this Act ;

(i) “State Textile Corporation” means the Kerala State Textile Corporation Limited formed and registered under the Companies Act, 1956, (Central Act 1 of 1956) ;

(j) “textile company” means a company specified in column (3) of the First Schedule as owning the undertaking specified in the corresponding entry in column (2) of that Schedule ;

(k) “subsidiary textile corporation” means a company formed by the State Textile Corporation as its subsidiary ;

(2) Words and expressions used but not defined in this Act and defined in the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), shall have the meanings respectively assigned to them in that Act.

(3) Words and expressions used but not defined either in this Act or in the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), but defined in the Companies Act, 1956 (Central Act 1 of 1956), shall have the meanings respectively assigned to them in the Companies Act, 1956 (Central Act 1 of 1956).

CHAPTER II

ACQUISITION OF THE RIGHTS OF
OWNERS OF SICK TEXTILE UNDERTAKING

3. *Acquisition of rights of owners in respect of sick textile undertaking.*—(1) On the appointed day, the sick textile undertaking and the right, title and interest of the owner in relation to such sick textile undertaking shall, by virtue of this Act, stand transferred to, and shall vest absolutely in the State Government.

(2) The sick textile undertaking which stands vested in the State Government under sub-section (1) shall, immediately after it has so vested, stand transferred to, and vest in the State Textile Corporation.

4. *General effect of Vesting.*—(1) The sick textile undertaking referred to in section 3 shall be deemed to include all assets, rights lease-holds, powers, authorities and privileges and all property, movable and immovable including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the possession, power or control of the authorised person and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to include the liabilities and obligations specified in sub-section (2) of section 5.

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

(3) Where any licence or other instrument in relation to the sick textile undertaking had been granted at any time before the appointed day to an owner by the Central Government or a State Government or any other authority, the State Textile Corporation shall, on and from the appointed day, be deemed to be substituted in such licence or other instrument in place of the owner referred to therein as if such licence or other instrument had been granted to the State Textile Corporation and it shall hold such licence or the sick textile undertaking specified in such other instrument for the remainder of the period for which the owner would have held such licence or the sick textile undertaking under such other instrument.

(4) Every mortgagee 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.

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

(6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any matter specified in sub-section (2) of section 5 in respect of the sick textile undertaking, instituted or preferred by or against the textile company or the authorised person, is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the sick textile undertaking or of anything contained in this Act but the suit, appeal or other proceedings may be continued, prosecuted and enforced by the State Textile Corporation.

5. Owner to be liable for certain prior liabilities.—(1) Every liability other than the liability specified in sub-section (2), of the owner of the sick textile undertaking, in respect of any period prior to the appointed day shall be the liability of such owner and shall be enforceable against him and not against the State Government or the State Textile Corporation.

(2) Any liability arising in respect of—

(a) loans advanced by the Central Government or the State Government to the sick textile undertaking (together with interest due thereon) after it has been declared as a sick company by the Board for Industrial and Financial Reconstruction (BIFR) ;

(b) amounts advanced to the sick textile undertaking after it has been declared as a sick company by the Board for Industrial and Financial Reconstruction (BIFR) by the State Textile Corporation together with interest due thereon ;

(c) wages, salaries and other dues of employees of the sick textile undertaking, in respect of any period after the company has been declared as a sick company by the Board for Industrial and Financial Reconstruction (BIFR) shall on and from the appointed day, be the liability of the State Government and shall be discharged, for and on behalf of that Government, by the State Textile Corporation as and when repayment of such loans or amounts become due or as and when such wages, salaries 'or other dues become due and payable.

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

(a) save as otherwise expressly provided in this section or in any other section of this Act, no liability, other than the liability specified in sub-section (2), in relation to the sick textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the State Government or the State Textile Corporation ;

(b) no award, decree or order of any court, tribunal or other authority in relation to this sick textile undertaking passed after the appointed day in respect of any matter, claim or dispute, in relation to any matter not referred to in sub-section (2) which arose before that day, shall be enforceable against the State Government or the State Textile Corporation ;

(c) no liability of the sick textile undertaking or any owner thereof for the contravention, before the Company has been declared as a sick company by the Board for Industrial and Financial Reconstruction (BIFR) of any provision of a law for the time being in force, shall be enforceable against the State Government or the State Textile Corporation.

6. *State Textile Corporation to form subsidiary corporations.*—(1) The State Textile Corporation may, if it considers it necessary to do so, form subsidiary corporations under the Companies Act, 1956 (Central Act 1 of 1956), and register them under that Act.

(2) The State Textile Corporation may, by order In writing, transfer the sick Textile undertaking or part thereof to a subsidiary textile corporation and any such transfer shall be subject to such terms and conditions as may be specified in the said order.

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

(4) On the transfer to a Subsidiary Textile Corporation of the sick textile undertaking or any part thereof, the liabilities required to be discharged, by the State Textile Corporation under sub-section (2) of section 5 shall, in so far as they relate to the sick textile undertaking or part thereof so transferred to the Subsidiary Textile Corporation, be discharged, on and from the date of such transfer, by the Subsidiary Textile Corporation as and when any such liability is required to be discharged.

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

7. Shares to be issued by the State Textile Corporation for the value of the assets transferred to it by State Government.—(1) An amount equal to the value of the assets of the sick textile undertaking transferred to, and vested in, the State Textile Corporation under sub-section (2) of section 3, shall be deemed to be the contribution made by the State Government to the equity capital of the State Textile Corporation ; and for the contribution so made, the State Textile Corporation shall issue (if necessary after amending its memorandum and articles of association) to the State Government paid-up shares, in its equity capital, having a face value equal to the amount specified against the sick textile undertaking in the corresponding entry in column (4) of the First Schedule.

(2) Where any liability is assumed by the State Government under sub-section (1) of section 25, they may call upon the State Textile Corporation to issue (if necessary, after amending the memorandum and articles of association of the Corporation) to the State Government additional paid-up shares, in its equity capital having a face value equal to the amount of the liability assumed by the State Government under the said sub-section.

CHAPTER III

PAYMENT OF AMOUNT

8. Payment of amount to owners of the sick textile undertaking.—(1) The owner of the sick textile undertaking shall be given by the State Government, in cash and in the manner specified in Chapter VI for the transfer to, and vesting in, it under sub-section (1) of section 3, of such sick textile undertaking and the right, title and interest of the owner in relation to this sick textile undertaking, an amount equal to the amount specified against it in the corresponding entry in column (4) of the First Schedule.

(2) In addition to the amount referred to in sub-section (1) there shall be given by the State Government, in cash, to the owner of the sick textile undertaking, simple interest at the rate of four percent per annum on the amount specified against such owner in the corresponding entry in column (4) of the First Schedule 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.

9. *Payment of further amount.*—(1) Every Textile Company shall be given by the State Government for the deprivation of management of its undertaking an amount of one thousand rupees per annum for the period commencing on the date on which the management of the undertaking which has been declared as sick by the Board of Industrial and Financial Reconstruction (BIFR) and ending on the appointed day.

(2) The amount calculated in accordance with the provisions of sub-section (1) shall carry simple interest at the rate of four percent per annum for the period commencing on the appointed day and ending on the date on which the payment of such amount is made by the State Government to the Commissioner.

(3) The amounts determined in relation to this textile company in accordance with the provisions of sub-sections (1) and (2) shall be given by the State Government to the textile company in addition to the amount specified in the First Schedule against that company.

CHAPTER IV

MANAGEMENT, ETC. OF THE SICK TEXTILE UNDERTAKING

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

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

12. *Accounts.*—The State Textile Corporation shall maintain the accounts of the sick textile undertaking in accordance with the provisions of the Companies Act, 1956 (Central Act 1 of 1956).

CHAPTER V

PROVISIONS RELATING TO EMPLOYEES OF SICK TEXTILE UNDERTAKING

13. *Employment of certain employees to continue.*—(1) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), and has been immediately before the appointed day, employed in the sick textile undertaking shall become, on and from the appointed day, an employee of the State Textile Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such sick textile undertaking had not been transferred to, and vested in, the State Textile Corporation and shall continue to do so unless and until his employment in the State Textile Corporation is duly terminated or until his remuneration, terms and condition of employment are duly altered by the State Textile Corporation.

(2) Every person who is not a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), and who has been, immediately before the appointed day, employed in the sick textile undertaking shall, in so far as such person is employed in connection with the sick textile undertaking which has vested in the State Textile Corporation, become, on and from the appointed day, an employee of the State Textile Corporation and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same under the sick textile undertaking if it had not vested in the State Textile Corporation and shall continue to do so unless and until his employment in the State Textile Corporation is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the State Textile Corporation.

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

(4) Where, under the terms of any contract of service or otherwise, any person whose services become terminated or whose services become transferred to the State Textile Corporation by reason of the provisions of this Act is entitled to any arrears of salary or wages or any payment for any leave not availed of or other payment, not being a payment by way of gratuity or pension, for any period prior to the date of declaration as a sick company by the Board of Industrial and Financial Reconstruction (BIFR) such person may, except to the extent such liability has been taken over by the State Government under section 5, enforce his claim against the owner of the sick textile undertaking but not against the State Government or the State Textile Corporation.

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

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

15. *Transfer of employees to Subsidiary Textile Corporation.*—Where the sick textile undertaking or any part thereof is transferred under this Act to a Subsidiary Textile Corporation, every person referred to in sub-section (1) and sub-section (2) of section 13, shall on and from the date of such transfer, become an employee of the Subsidiary Textile Corporation, and the provisions of sections 13 and 14 shall apply to such employee as they apply to an employee of the State Textile Corporation as if references in the said sections to the State Textile Corporation were references to the Subsidiary Textile Corporation.

CHAPTER VI

COMMISSIONER OF PAYMENTS

16. *Appointment of Commissioner of Payments.*—(1) For the purpose of disbursing the amounts payable to the owner of the sick textile undertaking, specified in the First Schedule, the State Government shall, by notification in the Gazette appoint a person as they may think fit to be the Commissioner of Payments ;

(2) The State Government may appoint such other persons as they 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 powers 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 shall be defrayed out of the Consolidated Fund of the State of Kerala.

17. Payment by State Government to the Commissioner.—(1) The State Government shall, within thirty days from the specified date, pay in cash to the Commissioner, for payment to the owner of the sick textile undertaking, an amount equal to the amount specified against the sick textile undertaking in the First Schedule and shall also pay to the Commissioner such sums as may be due to the owner of the sick textile undertaking under sub-section (2) of section 8 and section 9.

(2) A separate account shall be opened by the State Government in favour of the Commissioner and every amount paid under this Act to the Commissioner shall be deposited by him in that account and thereafter such account shall be operated by the Commissioner.

(3) Separate records shall be maintained by the Commissioner in respect of the sick textile undertaking 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 account referred to in sub-section (2) shall ensure to the benefit of the owners of the sick textile undertaking.

18. Claims to be made to the Commissioner.—Every person having a claim against the owner of the sick textile 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 may entertain the claim within a further period of thirty days but not thereafter.

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

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

(b) The claims specified in each of the categories, except Category V, 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 liabilities specified in Category V shall be discharged 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 a surplus is left after meeting all the liabilities specified in the immediately higher category.

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

(2) If, on examination of the claims, the Commissioner is of the 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 liabilities in respect of such lower category.

21. *Admission or rejection of the claims.*—(1) After examining the claim with reference to the priority set out in the Second Schedule, the Commissioner shall fix a certain date on or before which every claimant shall file the proof of his claim otherwise 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 a daily newspaper in the English Language and one issue of a daily newspaper in the 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 time specified in the advertisement.

(3) Any claimant who fails to file the proof of his claim within the time specified by the Commissioner shall be excluded from the disbursement made by the Commissioner.

(4) The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the owner of the sick textile undertaking an opportunity of refuting the claim and after giving the claimants a reasonable opportunity of being heard, in writing, admit or reject the claim in whole or in part.

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

(a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) discovery and production of any document or other material object producible as evidence ;

(c) reception of evidence on affidavits ;

(d) appointment of commissions for the examination of witnesses.

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

(7) A claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against the decision to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the sick textile undertaking is situated.

22. *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 credited by the Commissioner to the relevant fund or be paid to the person or persons to whom such sums are due and on such credit or payment the liability of the owner in respect of such claim shall stand discharged.

23. *Disbursement of amounts to the owner of sick textile undertaking.*—(1) If out of the moneys paid to him in relation to the sick textile undertaking, there is a balance left after meeting the liabilities as specified in the

Second Schedule, the Commissioner shall disburse such balance to the owner of such sick textile undertaking.

(2) Before making any payment to the owner of the sick textile undertaking under sub-section (1), the Commissioner shall satisfy himself as to the right of such person to receive the whole or any part of such amount, and in the event of there being a doubt or dispute as to the right of the person to receive the whole or any part of the amount referred to in section 8, the Commissioner shall refer the matter to the court and make the disbursement in accordance with the decision of the court.

(3) For the removal of doubts, it is hereby declared that the entries in column (3) of the First Schedule shall not be deemed to be conclusive as to the right, title and interest of any person in relation to the sick textile undertaking specified in the corresponding entries in column (2) of the said Schedule, and evidence shall be admissible to establish the right, title and interest of any person in relation to such sick textile undertaking.

(4) Where any machinery, equipment or other property in the sick textile undertaking has vested in the State Textile Corporation but such machinery, equipment or other property does not belong to the owner of such sick textile undertaking, the amount specified in column (4) of the First Schedule against such sick textile undertaking shall, on a reference made to it by the Commissioner, be apportioned by the court between the owner of such sick textile undertaking and the owner of such machinery, equipment or other property having due regard to the value of such machinery, equipment or other property on the appointed day.

Explanation :—In this section, “court”, in relation to the sick textile undertaking, means the principal civil court of original jurisdiction within the local limits of whose jurisdiction, the sick textile undertaking is situated.

24. *Undisbursed or unclaimed amounts to be deposited to the general revenue account.*—Any money paid to the Commissioner which remains undisbursed or unclaimed for a period of three years from the last day on which the disbursement was made, shall be transferred by the Commissioner 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

25. *Assumption of liability.*—(1) Where any liability of the sick textile undertaking arising out of any claim specified in Category I, Category II or Category III or Category IV in the Second Schedule is not discharged fully by the Commissioner out of the amount paid to him 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 liability assumed by the State Government under sub-section (1) shall be discharged by payment of the amount of the liability in negotiable bonds redeemable after the expiry of ten years and carrying simple interest at the rate of seven and a half percent per annum with effect from the appointed day.

26. *Act to over-ride all other enactments.*—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 authority.

27. *Contracts to cease to have effect unless ratified by State Textile Corporation.*—(1) Any contract entered into by the owner or occupier of the sick textile undertaking 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 date of commencement of this Act, cease to have effect unless such contract is, before the expiry of that period, ratified, in writing, by the State Textile Corporation, and in ratifying such contract the State Textile Corporation may, with the previous approval of the State Government, make such alterations or modifications therein as it may think fit :

Provided that State Textile Corporation shall not omit to ratify a contract, and shall not make any alteration or modification in a contract 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 sick textile undertaking.

(2) The State Textile Corporation shall not omit to ratify a contract, and shall not make any alteration or modification therein except after giving to the parties to the contract a reasonable opportunity of being heard and except after recording in writing its reason for refusal to ratify the contract or for making any alteration or modifications therein.

28. *Penalties.*—Any person who,—

(a) having in his possession, custody or control any property forming part of the sick textile undertaking or wrongfully, withholds such property from the State Government or the State Textile Corporation, or any person authorised by that Government or Corporation, as the case may be, in this behalf ; or

(b) wrongfully obtains possession of, or retains any property forming part of the sick textile undertaking or willfully withholds or fails to furnish to the State Government, the State Textile Corporation, or any person specified by that Government or Corporation, as the case may be, any document relating to such sick textile undertaking which may be in his possession, custody or control or fails to deliver to the State Textile Corporation or any person specified by that Corporation any assets, books of account, registers or other documents in his custody relating to the sick textile undertaking ; or

(c) Wrongfully removes or destroys any property forming part of the sick textile undertaking or prefers any claim under the 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.

29. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be 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 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 a company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) and includes in it a firm or a Co-operative Society or other association of individuals ; and

(b) “director” in relation to a firm, means a partner in the firm.

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

31. *Delegation of powers.*—(1) The State Government may, by notification in the Gazette, direct that all or any of the powers exercisable by them under this Act other than the power under section 34 may also be exercised by any 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 State Government.

32. *Power to remove difficulties.*—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 such difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

33. *Declaration as to the policy of the State.*—It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clause (b) of article 39 of the Constitution.

Explanation :—In this section “State” has the same meaning as in Article 12 of the Constitution.

34. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry 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 and the manner in which an intimation referred to in sub-section (4) of section 4 shall be given ;

(b) the manner in which moneys in any provident or other fund referred to in section 14 shall be dealt with ;

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

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session, for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any amendment in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such amended form or be of no effect, as the case may be ; so however, that any such amendment or annulment shall be without prejudice to the validity of anything previously done under that rule.

35. *Repeal and Saving.*—(1) The Kerala Spinners, Alappuzha (Acquisition and Transfer of Undertaking) Ordinance, 2010 (9 of 2010) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

THE FIRST SCHEDULE

[See sections 2(g), 2(j), 4(5) and 8]

<i>Sl. No.</i>	<i>Name of the sick textile undertaking</i>	<i>Name of the Owner</i>	<i>Amount (in Rupees)</i>
(1)	(2)	(3)	(4)
1.	Kerala Spinners Ltd. Komalapuram, Alappuzha.	Kerala Spinners Ltd. Komalapuram, Alappuzha.	454.67 lakhs (Excluding liabilities)

THE SECOND SCHEDULE

(See sections 19, 20, 21 and 25)

ORDER OF PRIORITIES FOR THE DISCHARGE OF LIABILITIES IN
RESPECT OF THE SICK TEXTILE UNDERTAKING

PART I

Category—1

Arrears in relation to provident fund, salaries and wages, and other amounts, due to an employee for the pre-take over management period.

PART II—OTHER LIABILITIES

(A) POST-TAKEOVER MANAGEMENT PERIOD

Category—II

- (a) Loans advanced by a Bank.
- (b) Loans advanced by an Institution other than a Bank.
- (c) Any other loan.
- (d) Any credit availed of for purposes of trade or manufacturing operations.

Category—III

(a) Revenue, taxes, cesses, rates or any other dues to the Central Government or a State Government.

(b) Any other dues.

(B) PRE-TAKEOVER MANAGEMENT PERIOD

Category—IV

Principal amounts of the secured loans advanced by any nationalised Bank or public financial institution.

Category—V

Secured loans other than those specified under Category IV.

Category—VI

Revenue, taxes, cesses, rates or any other dues to the Central Government, a State Government, a local authority or a State Electricity Board.

Category—VII

- (a) Any credit availed of for purpose of trade or manufacturing operations.
- (b) Any other dues.

Category—VIII

Interest amounts on the secured loans advanced by any nationalised Bank or public financial institution.

STATEMENT OF OBJECTS AND REASONS

The Kerala Spinners Limited, Alappuzha is a textile mill constituted at Komalapuram in Alappuzha on 2nd January 1964. Production process was commenced in it on 4th August 1969. Though during the initial years the Company was functioning on profit, thereafter due to maladministration and carelessness profit reduced and on 23rd March 2003, the Company was locked out. As a result of this the livelihood of 500 workers and their family were adversely affected and they fell into poverty. On 7th September 2006, the Board for Industrial and Financial Reconstruction declared the said Company as a sick undertaking and the Indian Overseas Bank was appointed as Operating Authority and they were directed to submit the draft Scheme for rehabilitation before 31 st December 2006. But the Operating Authority failed to do so.

In order to make a solution in the case of Kerala Spinners Ltd. and to revive the company through new industrial ventures and thereby to create more employment opportunities, Government have convened a number of meetings with the company management and the Trade Union representatives. But due to the contradictory attitude of the management and Company, a practical solution could not be traced out. The management of the Mill has not co-operated with the efforts taken by the Government to solve this problem. They have been constantly trying to delay the problem and to keep it unsolved at the cost of the poor workers.

Government have decided that it is necessary to take over the company so as to protect the interest of the workers who are suffering for the last six years without any income due to the adamant attitude of the management of the Kerala Spinners Ltd. and also to save an industry of the State.

Since the Legislative Assembly of State of Kerala was not in session and the above proposal has to be given effect to immediately, The Kerala Spinners, Alappuzha (Acquisition and Transfer of Undertaking) Ordinance, 2009 (Ordinance No. 24 of 2009) was promulgated by the Governor of Kerala on the 17th day of November 2009.

A Bill to replace the said Ordinance by an Act of the Legislature could not be introduced in and passed by the Legislative Assembly of the State of Kerala during its session on 29th December, 2009.

In order to keep alive the provisions of the said Ordinance the Kerala Spinners, Alappuzha (Acquisition and Transfer of Undertaking) Ordinance, 2010 (9 of 2010) was promulgated by the Governor of Kerala on 29th January, 2010.

The Bill seeks to replace the said Ordinance by an Act of the State Legislature.

FINANCIAL MEMORANDUM

Clause 3(1) of the Bill seeks to provide that on the appointed day ie., 7th day of September, 2006 Kerala Spinners, Alappuzha being the sick textile undertaking, the right, title and interest of the owner in relation to this company shall by virtue of. this Bill stand transferred to and shall vest absolutely in the State Government. Clause 3(2) provides that immediately after it has so vested, stand transferred to and vest in the State Textile Corporation.

Clause 8 of the bill seeks to make provision for payment of amount in cash and in the manner specified in chapter VI of the Bill to the owners of the sick textile undertaking amount equal to the amount specified in column 4 of the First Schedule which amounts to 454.67 lakhs rupees out of the Consolidated Fund of the State. In addition to the above, clause 8(2) of the Bill seeks to provide that the State Government shall give simple interest at the rate of four percent per annum from the appointed day ie., 7th day of September 2006 till such date the above mentioned amount is paid.

Chapter VI of the Bill seeks to appoint Commissioner of Payments for disbursing amounts payable to the owner of the sick textile undertaking. Clause 23 of the Bill provides that if out of the moneys paid to the Commissioner, there is any balance left after meeting the liabilities specified in Second Schedule of the Bill, the Commissioner shall disburse such balance to the owner of the sick textile undertaking. An estimate of the liabilities as on 31st March 2009 as specified in the Second Schedule has been drawn up based on the audited balance sheet for the year ended 2003-04 which in total amounts to 1559.16 lakh rupees. Since this amount 1559.16 lakhs of estimated liabilities is more than the amount payable to the owner viz., 454.67 lakh rupees, it appears that no amount need to be paid to the owner from the Consolidated Fund of the State.

Clause 25(1) of the Bill provides that where any liability of the sick textile undertaking arising out of any claim specified in Category I, Category II, Category III or Category IV in the Second Schedule is not fully discharged by the Commissioner out of the amount paid to him under this Bill, 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.

Clause 25(2) provides that the liability thus assumed under clause 25(1) of the Bill, shall be discharged by payment of the amount of the liability in negotiable bonds redeemable after the expiry of ten years and carrying simple interest at the rate of seven and a half percent per annum with effect from the appointed day ie. 7th day of September 2006.

The actual expenditure that will have to be incurred from the Consolidated Fund of the State on the above account cannot be estimated at present with any degree of accuracy as it will depend upon the quantum of undischarged liability which cannot be anticipated now.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (h) of clause 2 of the Bill seeks to empower the Government, to specify a date as a specified date for the purpose of any provision of the Act and different dates may be specified for different provisions of the Act, by notification in the Gazette.

2. Sub-clause (4) of clause 4 of the Bill seeks to empower the Government to prescribe within which time and in which manner the intimation is to be given to the Commissioner by a mortgagee of any property vested in the Government under the Act and any person holding any charge, lien or other interest on such property regarding such mortgage, charge, lien or other interest.

3. Sub-clause (2) of clause 14 of the Bill seeks to empower the Government to prescribe the manner of appropriation of the moneys by the Corporation which stand transferred under sub-clause (1) of clause 14 to the State Textile Corporation,.

4. Clause 16 of the Bill seeks to empower the Government, by notification in the Gazette, to appoint and to provide salaries and allowances to the Commissioner of Payments for disbursing the amounts payable to the owner of the sick textile undertakings.

5. Sub-clause (1) of clause 31 of the Bill seeks to empower the Government, by notification in the Gazette, to direct that all or any of the powers exercisable by Government under the Act other than the powers under section 34 may also be exercisable by person or persons as may be specified in the notification.

6. Clause 32 of the Bill seeks to empower the Government to issue orders, not inconsistent with the provisions of Act to remove any difficulties that may arise in giving effect to the provisions of the Act.

7. Sub-clause (1) of clause 34 of the Bill seeks to empower the Government, by notification in the Gazette, to make rules to carry out the provisions of the Act.

8. The matter in respect of which notifications or orders may be issued or rules may be made are matters of procedure and are of routine or administrative in nature. Further, the rules after they are made, will be subject to scrutiny by the Legislative Assembly. The delegation of the legislative power is, thus, of a normal character.

ELAMARAM KAREEM

(True Translation)

NOTES ON CLAUSES

Clause 2.—This clause seeks to define certain words and expressions used in the Bill.

Clause 3.—This clause seeks for the acquisition rights of owners of sick textile undertaking, by the Government.

Clause 4.—This clause seeks to describe the general effect of transferring and vesting of sick textile undertaking which is vested in the State Government to State Textile Corporation.

Clause 5.—This clause seeks to provide for that the owner of the sick textile undertaking will be liable for certain prior liabilities.

Clause 6.—This clause seeks to provide for that the State Textile Corporation may form subsidiary corporations and seeks that transfer, etc. by order in writing the sick textile undertaking or part thereof to a subsidiary textile corporation.

Clause 7.—This clause seeks to provide for that shares to be issued by the State Textile Corporation for the value of the assets transferred to it by State Government.

Clause 8.—This clause seeks to provide for the payment of an amount to the owners of the sick textile undertaking for transferring their right to Government.

Clause 9.—This clause seeks to provide for the payment of further amount to sick textile undertaking in addition to the amount mentioned in clause 8.

Clause 10.—This clause seeks to provide for the matters regarding the management, etc., of the sick textile undertaking.

Clause 11.—This clause seeks to provide for that the persons in charge of management of the sick textile undertaking shall be bound to deliver all their assets, etc. to State Textile Corporation.

Clause 12.—This clause seeks to provide for that the State Textile Corporation shall maintain the accounts of the sick textile undertaking in accordance with the provisions of the Companies Act, 1956 (Central Act 1 of 1956).

Clause 13.—This clause seeks to provide for the continuance of certain employees in the sick textile undertaking in employment.

Clause 14.—This clause seeks to provide for the establishment of provident fund and other funds for the benefit of persons employed in the sick textile undertaking.

Clause 15.—This clause seeks to provide for matters regarding the transfer of employees to Subsidiary Textile Corporation.

Clause 16.—This clause seeks to provide for matters regarding the appointment of Commissioner of Payments.

Clause 17.—This clause seeks to include the provisions for payment by State Government to the Commissioner.

Clause 18.—This clause seeks to provide for the claims to be made before the Commissioner.

Clause 19.—This clause seeks to provide for matters deciding the priority of claims.

Clause 20.—This clause seeks to provide for the matters regarding the examination of claims.

Clause 21.—This clause seeks to provide for the matters regarding the admission or rejection of the claims.

Clause 22.—This clause seeks to provide for matters regarding the disbursement of money by the Commissioner to the claimants.

Clause 23.—This clause seeks to include the provisions for the disbursement of amounts to the owners of sick textile undertaking.

Clause 24.—This clause seeks to provide for the deposit of undisbursed and unclaimed amounts to the general revenue accounts.

Clause 25.—This clause seeks to provide for the assumption of liability of the sick undertaking by the State Government.

Clause 26.—This clause seeks to include the provision that the Act shall over-ride all other enactments.

Clause 27.—This clause seeks to provide that contracts shall cease to have effect unless ratified by the State Textile Corporation.

Clause 28.—This clause seeks to provide for the matters relating to penalty for offences and for the violation of provisions.

Clause 29.—This clause seeks to provide for the procedure and penalty for offences by Companies.

Clause 30.—This clause seeks to provide for protection to the State Government or any officer of the Government or the authorised person or the State Textile Corporation or any subsidiary Textile Corporation or the person authorised by any such Corporation, in respect of the acts done in good faith under this Act.

Clause 31.—This clause seeks to empower the Government to delegate, by notification in the Gazette, all or any of the powers exercisable by the State Government under this Act to any person or persons.

Clause 32.—This clause seeks to empower the Government to do anything, by order, not inconsistent with this Act for removing any difficulty that may arise in giving effect to the provisions of the Act.

Clause 33.—This clause seeks to provide for giving effect to the policy of the State.

Clause 34.—This clause seeks to empower the Government to make rules for the implementation of the provisions of the Act.

Clause 35.—This clause seeks to repeal the Kerala Spinners, Alappuzha (Acquisition and Transfer of Undertaking) Ordinance, 2010 (9 of 2010).
