

## The Industries (Development and Regulation) Act, 1951

### ✓ Objectives Of IDRA, 1951:

- A) The Act was enacted for -1) development, and 2) regulation for certain industries (i.e. the 38 industries covered in schedule to this Act).
- B) However, the Act also provides for control of these industries.

### □ Definitions :

#### 1) An existing industrial undertaking means -

✓ (a) in the case of an IUT pertaining to any of the industries specified in the First Schedule as originally enacted, an IUT *which was in existence on the commencement of this Act* or for the establishment of which effective steps had been taken before such commencement, and

✓ (b) in the case of an IUT pertaining to any of the industries *added* to the First Schedule by an amendment thereof, an IUT *which is in existence on the coming into force of such amendment* or for the establishment of which effective steps had been taken before the coming into force of such amendment.

#### ✓ 2) Factory :

A factory means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on -

(i) *with the aid of power*, provided that fifty or more workers are working or were working thereon on any day of the preceding 12 months; or

(ii) *without the aid of power*, provided that one hundred or more workers are working or were working thereon on any day of the preceding 12 months and provided further that in no part of such premises any manufacturing process is being carried on with the aid of power.

3) An industrial undertaking means any UT pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government.

- 4) A new article, in relation to an IUT which is registered or in respect of which a licence or permission has been issued under this Act, means -
- (a) any article which falls under an item in the First Schedule other than the item under which articles ordinarily manufactured or produced in the IUT at the date of registration or issue of the licence or permission, as the case may be, fall;
  - (b) any article which bears a mark as defined in the Trade Marks Act, 1940 or which is the subject of a patent, if at the date of registration or issue of the licence or permission, as the case may be, the IUT was not manufacturing or producing such article bearing that mark or which is the subject of that patent.
- 5) A small scale industrial undertaking means an IUT which, in accordance with the requirements specified u/s 11B(1), is entitled to be regarded as a SSI UT for the purposes of this Act.
- 6) An ancillary industrial undertaking means an IUT which, in accordance with the proviso to sec.11B(1) and the requirements specified under that sub-section, is entitled to be regarded as an ancillary IUT for the purposes of this Act.

**Power of CG to specify the requirements to be complied with by SSI UTs -- (Sec. 11B)**

- (1) ~~CG~~ may, with a view to ascertaining which ancillary and SSI UTs need supportive measures, or exemptions or other favourable treatment under this Act *to enable them* to maintain their viability and strength *so as to be effective in -*

- (a) ~~promoting~~ in a harmonious manner the industrial economy of the country and easing the problem of unemployment, and
- (b) ~~securing~~ that the ownership and control of the material resources of the community are so distributed as best to subserve the common good,

*specify*, having regard to the factors mentioned in sub-section (2), *by notified order*, the requirements which shall be complied with by an IUT to enable it to be regarded, for the purposes of this Act, as an ancillary, or a small scale IUT and different requirements may be so specified for different purposes or with respect to IUTs engaged in the manufacture or production of different articles :

*Provided that* no IUT shall be regarded as an ancillary IUT unless it is, or is proposed to be, engaged in -

- (i) the manufacture of parts, components, sub-assemblies, tools or intermediates; or
- (ii) rendering of services, or supplying or rendering, not more than fifty per cent of its production or its total services, as the case may be, to *other units* for production of other articles.

(2) The factors referred to in sub-section (1) are the following, namely :-

- (a) the investment by the IUT, in - (i) plant and machinery, or (ii) land and buildings;
- (b) the nature of ownership of the IUT;
- (c) the smallness of the number of workers employed in the IUT;
- (d) the nature, cost and quality of the product of the IUT;
- (e) foreign exchange, if any, required for the import of any P&M by the IUT; and
- (f) such other relevant factors as may be prescribed.

(3) A copy of every notified order proposed to be made under sub-section (1) *shall be laid in draft 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 aforesaid, *both Houses agree in disapproving* the issue of the proposed notified order, *or both Houses agree in making any modification* in the proposed notified order, the notified order shall not be made, or, as the case may be, shall be made only in such modified form as may be agreed upon by both the Houses.

### THE CENTRAL ADVISORY COUNCIL & DEVELOPMENT COUNCILS

#### Establishment and constitution of Central Advisory Council and its functions.- (Sec.5)

- ✓ (1) For the purpose of advising it on matters concerning the development and regulation of scheduled industries, CG may, by notified order, establish a Council to be called the Central Advisory Council.
- (2) Advisory Council shall consist of *a Chairman, and* such other members, *not exceeding 30* in number, all of whom shall be appointed by CG from among persons who are in its opinion *capable of representing the interests of-*
  - (a) *owners* of IUTs in scheduled industries;
  - (b) *persons employed* in IUTs in scheduled industries;
  - (c) *consumers* of goods manufactured or produced by scheduled industries;
  - (d) *such other class of persons* including primary producers, as in the opinion of CG, ought to be represented on the Advisory Council.
- (3) The term of office of, the procedure to be followed in the discharge of their functions by members of the Advisory Council, shall be such as may be prescribed.
- (4) CG shall consult the Advisory Council in regard to ---
  - (a) the making of any rules, other than the first rules to be made under sub-section(3); and

- (7)
- (b) may consult the Advisory Council in regard to any other matter connected with the administration of this Act in respect of which CG may consider it necessary to obtain the advice of the Advisory Council.

**Establishment and constitution of Development Councils and their functions – (Sec.6)**

- (1) CG may, by notified order, establish *for any scheduled industry or group of scheduled industries*, a body of persons to be called a D.C. which shall consist of members who in the opinion of CG are-
- (a) persons capable of representing the interests of *owners of IUTs* in scheduled industry(s);
  - (b) *persons having special knowledge* of matters relating to the technical or other aspects of the scheduled industry(s);
  - (c) persons capable of representing the interests of *persons employed in IUTs* in the scheduled industry(s);
  - (d) persons not belonging to any of the aforesaid categories, who are capable of representing *the interests of consumers* of goods manufactured or produced by scheduled industry(s).
- (2) The number and the term of office of, and the procedure to be followed in the discharge of their functions by members of a D.C. shall be such *as may be prescribed*.
- (3) Every D.C. shall be considered as a body corporate by such name as may be specified in the notified order establishing it, and may hold and transfer property and shall by the said name sue and be sued.
- (4) D.C. shall perform *such functions* of a kind specified in the Second Schedule *as may be assigned to it by CG* and for whose exercise by D.C. it appears to CG expedient to provide in order to increase the efficiency or productivity in the scheduled industry or group of scheduled industries for which the D.C. is established.
- (5) D.C. shall *also* perform such other functions as it may be required to perform by or under any other provision of this Act.

**Reports and Accounts of D.C.s.-**

- D.C. shall prepare and transmit to CG and the Advisory Council, annually, a report setting out what has been done in the discharge of its functions during the FY last completed.
- The Report shall include a statement of the account of the D.C. for that year, and shall be transmitted as soon as accounts therefor have been audited, together with a copy of any report made by the auditors on the accounts.
- A copy of each such report of a D.C. shall be laid before Parliament by CG.

**Imposition of cess on scheduled industries in certain cases –**

- CG may collect & hand over the cess in respect of the goods manufactured or produced by any sch. industry or group of scheduled industries to the D.C. established for that industry or group of industries, and where it does so, the D.C. shall utilise the said proceeds -



- (a) to promote scientific and industrial research with reference to the scheduled industry or group of scheduled industries in respect of which the D.C. is established;
- (b) to promote improvements in design and quality with reference to the products of such industry(s);
- (c) to provide for the training of technicians and labour in such industry(s);
- (d) to meet expenses in the exercise of its functions and its administrative expenses.

## REGULATION OF SCHEDULED INDUSTRIES

□ Registration of existing IUTs (Sec.10).....Redundant since 1991.

□ Licensing of new IUTs (Sec.11)

➤ No person or authority other than CG shall establish any new IUT, except under and in acc. with a licence issued in that behalf by CG:

✓ *Provided that* a Government other than CG may, with the previous permission of CG, establish a new IUT.

➤ A licence or permission may contain such conditions including, in particular, conditions as to the location of the IUT and the minimum standards in respect of size to be provided therein as CG may deem fit to impose.

□ Licence for producing or manufacturing New Articles (Sec.11A)

The owner of an IUT (not being CG) which is registered under section 10, or in respect of which a licence or permission has been issued under section 11 shall not produce or manufacture any new article unless --

✓ in the case of an IUT registered under section 10, he has obtained a licence for producing or manufacturing such new article; and

✓ in the case of an IUT in respect of which a licence or permission has been issued under section 11, he has had the existing licence or permission amended in the prescribed manner.

Revocation and amendment of licences in certain cases – (Sec.12)

◆ If CG is satisfied that any person or authority, to whom or to which, a licence has been issued under section 11, *has without reasonable cause, failed to establish or to take effective steps to establish the new IUT* in respect of which the licence has been issued within the time specified therefor or within such extended time as CG may think fit to grant in any case, it may revoke the licence.

◆ Subject to any rules that may be made in this behalf, CG may also *vary or amend* any licence issued under section 11.

*Provided that* no such power shall be exercised after effective steps have been taken to establish the new IUT in accordance with the licence issued in this behalf.

- ♦ The provisions of this section shall *also* apply in relation to a licence issued under sec. 11A or where a licence has been amended under that section, to the amendment thereof, as they apply in relation to a licence issued under section 11.

**Further provision for licensing of IUTs in special cases —(Sec.13)**

- (1) The owner of an IUT (other than CG) shall not -
- (a) in the case of an IUT required to be registered under section 10, but which has not been registered within the time fixed for the purpose under that section, carry on the business of that UT after the expiry of such period, or
  - (b) in the case of an IUT *the registration in respect of which has been revoked* under section 10A, carry on the business of the UT after the revocation, or
  - (c) in the case of an IUT to which the provisions of this Act *did not originally apply* but became applicable after the commencement of this Act for any reason, carry on the business of the UT after the expiry of *three months* from the date on which the provisions of this Act became so applicable (C.O.B.), or
  - (d) effect any **substantial expansion** of an IUT which has been registered or in respect of which a licence or permission has been issued, or
  - (e) **change the location** of the whole or any part of an IUT which has been registered, except under a licence issued in that behalf by CG, and, in the case of a State Government, except under and in accordance with the previous permission of CG.
- (2) The provisions of section 11(2) and section 12 shall also apply in relation to the issue of licences or permissions to any IUT referred to in this section.

**Explanation** - A substantial expansion means the expansion of an existing IUT which substantially increases the productive capacity of the UT, or which is of such a nature as to amount virtually to a new IUT, but does not include any such expansion as is normal to the UT having regard to its nature and the circumstances relating to such expansion.

## INVESTIGATION & CONTROL

### 1. Power of investigation into scheduled industries or IUTs (Sec.15)

Where CG is of the opinion that -

(a) in respect of any scheduled industry or IUT -

- (i) there has been, or is likely to be, *a substantial fall in the volume of production* in respect of any article or class of articles relatable to that industry or manufactured or produced in the IUT(s), as the case may be; for which, having regard to the economic conditions prevailing, there is no justification; or
- (ii) there has been, or is likely to be, *a marked deterioration in the quality* of any article(s) relatable to that industry or manufactured in the IUT(s), as the case may be, which could have been or can be avoided; or
- (iii) there has been or is likely to be *a rise in the price* of any article or class of articles relatable to that industry or manufactured or produced in the IUT(s), as the case may be, for which there is no justification; or
- (iv) it is *necessary to take any such action* as is provided in this Chapter *for the purpose of conserving any resources of national importance* which are utilised in the industry or the IUT(s), as the case may be; or

(b) any IUT is being managed *in a manner highly detrimental to the scheduled industry* concerned or to public interest,

then, CG may make or cause to be made a complete investigation into the circumstances of the case by such person(s) as it may appoint for the purpose.

### □ Power to investigate into the affairs of a company "In Liquidation" - (Sec.15A)

Where a company, owning an IUT, is being wound up by or under the supervision of High Court, and the business of such company is not being continued, CG may, if it is of opinion that it is necessary, *in the interests of the general public and, in particular, in the interests of production, supply or distribution of articles(s) relatable to the concerned scheduled industry, to investigate into the possibility of running or re-starting the IUT, make an application to HC praying for permission to make, or cause to be made, an investigation into such possibility* by such person(s) as that Government may appoint for the purpose.

Where an application is made by CG, *HC shall, notwithstanding anything contained in the Companies Act, 1956 or in any other law for the time being in force, grant the permission prayed for.*

□ Directions of CG on completion of investigation under Sec. 15- (Sec.16) *Scanner*

- ✓ If after making or causing to be made any such investigation as is referred to in Sec. 15, CG *is satisfied that* action under this section is desirable, it may issue such directions to the IUT(s) concerned as may be appropriate in the circumstances for all or any of the following purposes, namely :-
- (a) *regulating the production* of any article or class of articles by the IUT(s) and fixing the standards of production;
  - (b) requiring the IUT(s) to take such steps as CG may consider necessary to *stimulate the development* of the industry to which the UT(s) relates or relate;
  - (c) *prohibiting the IUT(s) from resorting to any act or practice* which might reduce its or their production, capacity or economic value;
  - (d) *controlling the prices*, or regulating the distribution, of any article(s) which have been the subject-matter of investigation.
- ✓ Where a case relating to any industry or IUT(s) is under investigation, CG may issue at any time any direction of the nature referred to in sub-section (1) to the IUT(s) concerned, and any such direction shall have effect until it is varied or revoked by CG.

Power of person to call for assistance in any investigation -

- (1) The person(s) appointed to make any investigation under section 15 [or section 15A] may choose one or more persons possessing special knowledge of any matter relating to the investigation to assist him or it, in holding the investigation.
- (2) The person(s) so appointed shall have all the powers of a civil court under CPC for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and compelling the production of documents and material objects, and the person(s) shall be *deemed to be a civil court for all the purposes of CrPC.*

Management or Control of IUTs by CG

Power of CG to assume control of an IUT in certain cases - (Sec.18A) *Scanner*

- (1) If CG is of opinion that -
  - (a) an IUT to which directions have been issued in pursuance of section 16 has failed to comply with such directions, or
  - (b) an IUT in respect of which an investigation has been made under section 15 (whether or not any directions have been issued to the UT in pursuance of section 16), is being managed in a manner *highly detrimental to the scheduled industry concerned or to public interest.*

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then CG may, by notified order, *authorise any person(s) to take over the management of the whole or any part of the UT* or to exercise in respect of the whole or any part of the UT such functions of control as may be specified in the order.

- 1) Any notified order issued under sub-section (1) shall have effect for *such period not exceeding five years* as may be specified in the order:

If CG is of opinion that it is expedient in the *public interest* that any such notified order should continue to have effect after the expiry of the period of five years aforesaid, it may *from time to time issue directions* for such continuance for such period, *not exceeding two years at a time*, as may be specified in the direction, so however that *the total period of such continuance (after the expiry of the said period of five years) does not exceed twelve years*; and where any such direction is issued, a copy thereof shall be laid, as soon as may be, before both Houses of Parliament.

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#### **Power to Take Over IUTs Without Investigation (Sec.18AA)**

Without prejudice to any other provision of this Act, if, from the documentary or other evidence in its possession, CG is satisfied, in relation to an IUT, that -

- (a) the persons in charge of such IUT have, by *reckless investments, or by creation of incumbrances on the assets of the IUT, or by diversion of funds*, brought about a situation which is *likely to affect the production* of articles manufactured or produced in the IUT, and that immediate action is necessary to prevent such a situation; or
- (b) it has been *closed for a period of not less than three months* (whether by reason of the voluntary winding up of the company owning the IUT or for any other reason) and *such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the IUT and the condition of the plant and machinery of such UT are such that it is possible to re-start the UT and such re-starting is necessary in the interests of the general public.*

it may, by a notified order, authorise any person(s) (*hereafter referred to as the authorised person*) to take over the management of the whole or any part of IUT or to exercise in respect of the whole or any part of the UT such functions of control as may be specified in the order.

*Nothing contained in this section shall apply to an IUT owned by a company which is being wound up by or under the supervision of the court.*

Where any notified order has been made under sub-section (1), the person(s) having for the time being, charge of the management or control of the IUT, whether by or under the orders of any court or any contract, instrument or otherwise, shall, notwithstanding anything contained in such order, contract, instrument or other arrangement, forthwith make over the charge of management or control, as the case may be, of the IUT to *the authorised person\*(AP)*.



*(The provisions of sections 18B to 18E shall, apply to, or in relation to, the IUT, in respect of which a notified order has been made under this section, as they apply to an IUT in relation to which a notified order has been issued under section 18A.)*

**Effect of notified order under section 18A (Sec.18B)**

- On the issue of a notified order under section 18A authorizing the taking over of the management of an IUT-
  - (a) all persons in charge of the management, including persons holding office as managers or directors of the IUT immediately before the issue of the notified order, shall be deemed to have vacated their offices as such;
  - (b) any contract of management between the IUT and any director thereof holding office as such immediately before the issue of the notified order shall be deemed to have terminated;
  - (c) Obsolete;
  - (d) the AP(s) shall take all such steps as may be necessary to take into his or their custody or control all the property, effects and actionable claims to which the IUT is or appears to be entitled, and all the property and effects of the IUT shall be deemed to be in the custody of the person or, as the case may be, the body of persons as from the date of the notified order; and
  - (e) the AP(s) shall be for all purposes the directors of the IUT which is a company, and shall alone be entitled to exercise all the powers of the directors of the IUT, whether such powers are derived from the said Act or from the memorandum or articles of association of the IUT or from any other source.
- The AP(s), shall take such steps as may be necessary for the purpose of efficiently managing the business of the IUT and shall exercise such other powers and have such other duties as may be prescribed.
- Where any person(s) has been authorized to exercise any functions of control in relation to an IUT, the UT shall be carried on pursuant to any directions given by the AP in accordance with the provisions of the notified order, and any person having any functions of management in relation to the UT or part thereof shall comply with all such directions.
- The AP(s) shall, notwithstanding anything contained in the MOA or AOA of the IUT, exercise his or their functions in accordance with such directions as may be given by CG so, however, that he or they shall not have any power to give any other person any directions under this section inconsistent with the provisions of any Act.

**Contracts in bad faith, etc., may be cancelled or varied – (Sec.18C)**

- The AP(s) may, with the previous approval of CG, make an application to any court having jurisdiction in this behalf for the purpose of cancelling or varying any contract or agreement entered into, at any time before the issue of the notified order under section 18A, between the



IUT and any other person *and the court may, if satisfied* after due inquiry that *such contract or agreement had been entered into in bad faith and is, detrimental to the interests of the IUT, make an order cancelling or varying* that contract or agreement, and the contract or agreement shall have effect accordingly.

**No right to compensation for termination of office or contract – (Sec.18D)**

- No person who ceases to hold any office by reason of the provisions contained in clause (a) of section 18B, or whose contract of management is terminated by reason of the provisions contained in clause (b) of that section, *shall be entitled to any compensation* for the loss of office or for the premature termination of his contract of management.

**Where the management of an IUT is taken over by CG, then –(Sec.18E)**

- (a) It shall not be lawful for the shareholders of such UT or any other person to nominate or appoint any person to be a director of the UT;
- (b) No resolution passed at any meeting of the shareholders of such UT shall be given effect to unless approved by CG;
- (c) No proceeding for the winding up of such UT or for the appointment of a receiver in respect thereof shall lie in any court except with the consent of CG.

**Power of CG to cancel notified order under section 18A –(Sec.18F)**

- If at any time it appears to CG on the application of the owner of the IUT or otherwise that the purpose of the order made under section 18A has been fulfilled or that for any other reason it is not necessary that the order should remain in force, CG may, by notified order, cancel such order and on the cancellation of any such order the management or the control, as the case may be, of the IUT shall vest in the owner of the UT.

<p align="center"><b>MANAGEMENT OR CONTROL OF IUTs OWNED BY COMPANIES “IN LIQUIDATION”</b></p>
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**Power of CG to authorise, with the permission of HC, persons to take over management or control of IUTs – (Sec.18FA)**

- (1) If CG is of opinion that there are possibilities of running or re-starting an IUT, in relation to which **an investigation has been made under section 15A**, and that such IUT should be run or re-started, as the case may be, for maintaining or increasing the production, supply or distribution of articles or class of articles relatable to the scheduled industry, needed by the General public, *that Government may make an application to HC praying for permission to*

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appoint any person(s) to take over the management of the IUT or to exercise in respect of the whole or any part of the IUT such functions of control as may be specified in the application.

- (2) Where such an application is made, HC shall make an order empowering CG to authorise : any person(s) to take over the management of the IUT or to exercise functions of control in relation to the whole or any part of the IUT, for a period not exceeding five years:

If CG is of opinion that it is expedient in the interests of the general public that the AP should continue to manage the IUT, or continue to exercise functions of control in relation to the concerned part, as the case may be, after the expiry of the period of five years aforesaid, it may make an application to HC for the continuance of such management or functions of control, for such period not exceeding two years at a time, as may be specified in the application and thereupon HC may make an order permitting the AP to continue to manage the IUT or to exercise functions of control in relation to the concerned part:

*Provided further that the total period of such continuance (after the expiry of the initial period of five years) shall not exceed twelve years.*

- (3) Where an order has been made by HC under sub-section (2), HC shall direct the Official Liquidator or any other person having, for the time being, charge of the management or control of the IUT, whether by, or under the orders of any court, or any contract or instrument or otherwise, to make over the management of such IUT or the concerned part, as the case may be, to the AP and thereupon the AP shall be deemed to be the Official Liquidator in respect of the IUT or the concerned part, as the case may be.
- (4) Before making over the possession of the IUT or the concerned part to the AP, the Official Liquidator shall make a complete inventory of all the assets and liabilities of the IUT or the concerned part, as the case may be, in the manner specified in section 18FG and deliver a copy of such inventory to the AP, who shall, after verifying the correctness thereof, sign on the duplicate copy thereof as evidence of the receipt of the inventory by him.
- (5) On taking over the management of the IUT, or on the commencement of the exercise of functions of control in relation to the concerned part, the AP shall take immediate steps to so run the IUT or the concerned part as to ensure the maintenance of production.
- (6) The AP may, on such terms and conditions and subject to such limitations or restrictions as may be prescribed, raise any loan for the purpose of running the IUT or the concerned part, and may, for that purpose, create a floating charge on the current assets of the IUT or the concerned part, as the case may be.
- (7) Where the AP is of opinion that the replacement or repair of any machinery of the IUT or the concerned part is necessary for the purpose of efficient running the IUT or such part, he shall make such replacement or repair, as the case may be.

(8) The loan obtained by the AP shall be recovered from the assets of the IUT or the concerned part, in such manner and subject to such conditions as may be prescribed.

(9) For the purpose of running the IUT, or exercising functions of control in relation to the concerned part, the AP may employ such of the former employees of the IUT whose services became discharged by reason of the winding up of the company owning such UT and every such person employed by the AP shall be deemed to have entered into a fresh contract of service with the company.

(10) The proceedings in the winding up of the company in so far as they relate to -

(a) the IUT, the management of which has been taken over by the AP under this section, or

(b) the concerned part in relation to which any function of control is exercised by the AP under this section,

shall, during the period of such management or control, remain stayed, and, in computing the period of limitation for the enforcement of any right, privilege, obligation or liability in relation to such UT or the concerned part, the period during which such proceedings remained stayed shall be excluded.

Success is one thing you can't buy  
for payment in cash.  
You have got to buy it  
on the instalment plan and  
make payments everyday.