

THE BANGLADESH INLAND WATER TRANSPORT CORPORATION ORDER, 1972

(PRESIDENT'S ORDER NO. 28 OF 1972).

[26th March, 1972]

WHEREAS it is expedient to provide for the establishment of a Corporation for the purpose of operation, promotion and development of coastal and inland shipping and water transport services and for the vesting in that Corporation of the assets and liabilities of the East Pakistan Shipping Corporation and of certain companies, firms and individuals carrying on coastal and inland Shipping and water transport business in Bangladesh and for matters connected therewith or incidental thereto;

NOW, THEREFORE, in pursuance of the Proclamation of Independence of Bangladesh, read with the Provisional Constitution of Bangladesh Order, 1972, and in exercise of all powers enabling him in that behalf, the President is pleased to make the following Order:-

1. (1) This Order may be called the Bangladesh Inland Water Transport Corporation Order, 1972.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force at once.

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

(a) "assets" includes all rights, powers, authorities and privileges, all property, movable and immovable, including lands, buildings, works, workshops, dockyards, vessels, cash balances, bank deposits, reserve funds, investments and all other rights and interests in, or arising out of, such property and all books of accounts, registers, records and all other documents, whatever nature relating thereto;

(b) "Board" means the Board of Directors of the Corporation;

(c) "Chairman" means the Chairman of the Board;

(d) "Corporation" means the Bangladesh Inland Water Transport Corporation established by this Order;

(e) "Director" means a Director of the Corporation;

(f) "East Pakistan Shipping Corporation" means the East Pakistan Shipping Corporation established under the East Pakistan Shipping Corporation Ordinance, 1964 (E. P. Ord. No. III of 1964);

(g) "Government" means the Government of the People's Republic of Bangladesh;

(h) "Prescribed" means prescribed by rules or regulations made under this Order;

(i) “vessel” means every description of vessel ordinarily plying on coastal or inland waters and propelled wholly or in part by steam, electricity or other mechanical power, and includes an oil tanker, tug, dump barge and any other craft not mechanically propelled which is towed or pushed by a mechanically propelled vessel, but does not include-

(i) any craft made of wooden hull;

(ii) passenger launches; and

(iii) Cargo launches below the capacity of 150 tons.

3. (1) On the coming into force of this Order, there shall be established a Corporation to be called the Bangladesh Inland Water Transport Corporation for carrying out the purposes of this Order.

(2) The Corporation shall be a body corporate, having perpetual succession and a common seal with power, subject to the provisions of this Order, to acquire, hold and dispose of property, both movable and immovable, and shall by the said name sue and be sued.

(3) The Corporation shall establish its head office at Dacca.

4. 1[(1) The authorised capital of the Corporation shall be 2[Taka 45 crores] divided into 3[4500,000] shares of Taka one hundred each of which not less than fifty-one per cent shares shall be subscribed for by the Government and the remaining shares shall be offered for public subscription in such manner and at such time as the Government may determine.]

(2) Notwithstanding anything contained in clause (1), the Corporation may, for carrying on all or any of its functions, have separate capital raised by loan or grant from, or in such other manner as may be approved by, the Government.

5. (1) Subject to the rules and regulations made under this Order, the general direction and administration of the affairs and business of the Corporation shall vest in a Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Corporation.

(2) The Board in discharging its functions shall act on commercial considerations having due regard to public interest generally and shall be guided on questions of policy involving national interest by such instructions as may be given to it by the Government from time to time.

6 (1) The Board shall consist of a Chairman and not more than four other Directors to be appointed by the Government:

Provided that till such time as the Board is fully constituted, the Chairman shall exercise the powers, perform the functions and discharge the duties of the Corporation.

(2) No act or proceeding of the Board shall be invalid merely on the ground of existence of any vacancy in, or any defect in the constitution of, the Board.

7. (1) The Chairman and the other Directors shall be appointed by the Government for such period and on such terms and conditions as the Government may determine.

(2) The Chairman shall be a whole-time officer and the chief executive officer of the Corporation.

(3) The Government shall appoint 4[three of the other Directors to be whole-time officers] of the Corporation.

(4) The Chairman and the other whole-time 5[Directors] shall divest themselves of any directorship held by them in any other Corporation or in any company otherwise than on behalf of the Corporation.

8. No person shall be or shall continue to be a Director who-

(a) is or at any time has been adjudicated insolvent; or

(b) is found to be a lunatic or of unsound mind; or

(c) is or at any time has been convicted of an offence which, in the opinion of the Government, is an offence involving moral turpitude; or

(d) is a minor; or

(e) absents himself from three consecutive meetings of the Board without leave of absence granted by the Chairman, or, in the case of the Chairman, by the Government.

9 The Chairman and the other Directors shall exercise such powers, perform such functions and discharge such duties as may be prescribed.

10 (1) The meetings of the Board shall be held at such times and at such places as may be prescribed:

Provided that a meeting may also be otherwise convened by the Chairman when he so thinks fit.

(2) To constitute a quorum at a meeting of the Board not less than three Directors including the Chairman shall be present.

(3) At a meeting of the Board each Director shall have one vote, and in the event of equality of votes the Chairman shall have a second or casting vote.

(4) No Director shall vote on any matter in which he is directly or indirectly interested.

(5) If for any reason the Chairman is unable to be present at a meeting of the Board, a Director authorised in writing by the Chairman shall preside at the meeting.

11 The Board may appoint such committee or committees as it thinks fit to assist in the efficient discharge of its functions.

12 (1) It shall be the function of the Corporation to provide safe and efficient shipping and water transport services on coastal and inland water routes and to carry out all forms of activities connected with or ancillary to such shipping and water transport.

(2) Without prejudice to the generality of the foregoing provision, the Corporation shall, in particular, have power-

(a) to acquire, charter, hold or dispose of vessels;

(b) to operate inland and coastal oil tankers;

(c) to operate passenger and cargo services including lighterage on coastal and inland waters:

(d) to operate ferry services;

(e) to establish and maintain dockyard and repair workshop;

(f) to do all other things connected with or ancillary to any of the matters referred to in sub-clauses (a) to (e).

13 . The Corporation may open deposit accounts with any scheduled bank or banks.

14 The Corporation may invest its funds in such securities of the Government or in such other manner as may be prescribed.

15 The Corporation may, with the prior approval of the Government, borrow money in Bangladesh or in foreign currency.

16 (1) The Corporation shall maintain proper accounts and shall prepare annual statement of accounts, including the profit and loss account and balance-sheet, in accordance with such general directions as may be issued, and in such form as may be prescribed, by the Government.

(2) The accounts of the Corporation shall be audited by not less than two auditors, being chartered accountants within the meaning of the Chartered Accountants Ordinance, 1961 (Ordinance X of 1961), who shall be appointed by the Government.

(3) Every auditor appointed under clauses (2) shall be given a copy of the annual balance-sheet and other accounts of the Corporation and shall examine it together with the account books and vouchers relating thereto; and shall have a list delivered to him of all books kept by the Corporation, and shall at all reasonable times have access to the books, accounts and other documents of the Corporation, and may in relation to such accounts examine any Director or officer of the Corporation.

(4) The auditors shall report to the Government upon the annual balance-sheet and accounts, and in their report they shall state whether, in their opinion, the balance-sheet contains all necessary particulars and is properly drawn up so as to exhibit a true and correct view of the state of the

Corporation's affairs, and if they have called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

(5) The Government may, at any time, issue directions to the auditors requiring them to report to it upon the adequacy of measure taken by the Corporation for the protection of the interest of the Government and of the creditors of the Corporation or upon the sufficiency of their procedure in auditing the affairs of the Corporation, and may, at any time, enlarge or extend the scope of the audit or direct that different procedure in audit shall be adopted or that any other examination shall be made by the auditors or any other person or persons if, in its opinion, the interest of the Government so requires.

17 (1) The Corporation shall furnish to the Government such returns, reports and statements as the Government may from time to time require.

(2) The Corporation shall, as soon as possible after the end of every financial year, furnish to the Government a statement of accounts audited by the auditors under Article 16 together with an annual report on the conduct of its affairs for that year and on its proposal for the next ensuing financial year.

(3) The copies of the audited accounts and annual report received by the Government under clause (2) shall be published in the official Gazette and shall be laid before the Legislature.

18 The Corporation shall, by such date in each year as may be prescribed by rules, submit to the Government for approval a statement, to be called the Annual Budget Statement, in the prescribed form for each financial year showing the estimated receipts and expenditure and the sums which are likely to be required from the Government during that financial year.

19 After making provision for bad and doubtful debts, depreciation of assets and such other matter as may be prescribed by regulations, the Corporation may, out of its net annual profits, establish a reserve fund and any surplus remaining thereafter shall be paid to the Government.

20 The Board may, by general or special order in writing, direct that such of its powers shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by the Chairman or such Director or officer as may be specified therein.

21 . (1) Every Director shall be indemnified by the Corporation against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wrongful act or default.

(2) A Director shall not be personally responsible for the acts of any other Director or of any officer, consultant, adviser, auditor or employee of the Corporation or for any loss or expenses resulting to the Corporation by reason of the insufficiency or deficiency in value of or title to any property or security acquired or taken on behalf of the Corporation, or by anything done by him in good faith in the execution of the duties of his office.

22 No provision of law relating to the winding up of companies shall apply to the Corporation and the Corporation shall not be wound up save by order of the Government and in such manner as it may direct.

23 Notwithstanding anything contained in any other law for the time being in force or in any memorandum or articles of association, deed or other instrument, on the commencement of this Order,—

(a) all assets of the East Pakistan Shipping Corporation and the Pakistan River Steamers Limited shall stand transferred to, and vested in, the Corporation;

(b) all debts and liabilities incurred, all obligations undertaken, all contracts entered into, and all agreements made, by or with the East Pakistan Shipping Corporation and the Pakistan River Steamers Limited shall stand transferred to, and be deemed to have been incurred, undertaken, entered into or made by or with, the Corporation;

(c) all assets belonging to any public or private limited company or any firm or any individual engaged in coastal or inland shipping or water transport business, vested in the Government under the Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972 (P. O. No. 16 of 1972), including in particular those enumerated in the Schedule to this Order, shall stand transferred to, and vested in, the Corporation 6[and the liabilities of such company, firm or individual in respect of such assets determined under Article 9 of that Order shall be the liabilities of the Corporation].

(d) all suits and other legal proceedings instituted by or against the East Pakistan Shipping Corporation and the Pakistan River Steamers Limited before the commencement of this Order shall be deemed to have been instituted by or against the Corporation and may be continued or proceeded with accordingly.

24 If, after assessment of the assets and liabilities of any company, firm or individual transferred to the Corporation under Article 23, the value of the assets exceed the value of the liabilities, the Government shall, in respect of the excess pay, such compensation as it may determine to such person as it may find to be entitled thereto:

Provided that no compensation shall be payable in respect of any assets which have already vested in the Government by or under any law.

25 (1) The Corporation may appoint such officers, consultants, advisers, auditors, and employees as it considers necessary for the efficient performance of its functions on such terms and conditions as it may determine.

(2) The Corporation may employ such officers or other employees of the East Pakistan Shipping Corporation or of the Pakistan River Steamers Limited or of the Company, firm or individual whose assets have vested in the Corporation under Article 23 as it may specify.

(3) Notwithstanding anything contained in any other law for the time being in force or in any rules, regulations or contract relating to the terms and conditions of service, a person employed under clause (2) shall serve on such terms and conditions as the Corporation may determine.

(4) If the terms and conditions of service determined by the Corporation under clause (3) are not acceptable to any officer or employee, such officer or employee shall have the option not to accept the employment under the Corporation.

26 The Government may, by notification in the official Gazette, make rules for the purpose of giving effect to the provisions of this Order.

27 (1) The Board may, with the previous approval of the Government, make regulations, not inconsistent with the provisions of this Order and the rules, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Order.

(2) All regulations made under this Article shall be published in the official Gazette and shall come into force on such publication.

28 The East Pakistan Shipping Corporation Ordinance, 1964 (E. P. Ord. No. III of 1964), is hereby repealed.

1 Clause (1) was substituted by section 2 of The Bangladesh Inland Water Transport Corporation (Amendment) Ordinance, 1976 (XXVII of 1976)

2 The words and figure "Taka 45 crores" were substituted for the words and figure "Taka 5 crores" by section 2 of The Bangladesh Inland Water Transport Corporation (Amendment) Ordinance, 1979 (VII of 1979)

3 The figure "4500,000" were substituted for the figure "500,000" by section 2 of The Bangladesh Inland Water Transport Corporation (Amendment) Ordinance, 1979 (VII of 1979)

4 The words "three of the other Directors to be whole-time officers" were substituted for the words "one of the other Directors to be a whole-time officer" by section 2 of the Bangladesh Inland Water Transport Corporation (Amendment) Act, 1973 (Act No. XIII of 1973)

5 The word "Directors" was substituted for the word "Director" by section 2 of the Bangladesh Inland Water Transport Corporation (Amendment) Act, 1973 (Act No. XIII of 1973)

6 The words "and the liabilities of such company, firm or individual in respect of such assets determined under Article 9 of that Order shall be the liabilities of the Corporation" were inserted by section 2 of The Bangladesh Inland Water Transport Corporation (Amendment) Act, 1975 (Act No. XIX of 1975)