Electricity Act, 1910

Section 07A - DETERMINATION OF PURCHASE PRICE

1) Where an undertaking of a licensee, not being a local authority, is sold under sub-section (1) of Sec. 5-, the purchase price of the undertaking shall be the market value of the undertaking at the time of purchase or where the undertaking has been delivered before the purchase under sub-section (3) of the section, at the time of the delivery of the undertaking and if there is any difference or dispute regarding such purchase price, the same shall be determined by arbitration. (2) The market value of an undertaking for the purpose of sub-section (1) shall be deemed to be the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him, for the purpose of the undertaking, other than (i) a generating station declared by the licence not to form part of the undertaking for the purpose of purchase, and (ii) service-line or other capital work or any part thereof which have been constructed at the expense of consumers, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant and the state of repair thereof and to the circumstance that they are in such position as to be ready for immediate working and to the suitability of the same for the purpose of the undertaking but without any addition in respect of compulsory purchase or of goodwill or of any profits which may be or might have been made from the undertaking or of any similar consideration. (3) Where an undertaking of a licensee, being a local authority, is sold under sub-section (1) of Sec. 5-, and purchase price of the undertaking shall be such as the State Government, having regard to the market value of the undertaking at the date of delivery of the undertaking, may determine. (4) Where an undertaking of a licensee is purchased under Sec. 6-, the purchase price shall be value thereof as determined in accordance with the provisions of sub-sections (1) and (2) : Provided that there shall be added to such value such percentage, if any, not exceeding twenty per centum of the value as may be specified in the licence on account of compulsory purchase.] STATE AMENDMENTS Assam Amendment of Sec. 7-A.- For Sec. 7-A of the principal Act, the following section shall be substituted, namely : "7-A. Determination of amount payable.-Where an undertaking of a licensee is sold under sub-section (1) of Sec. 5 or purchased under Sec. 6, the amount payable for the undertaking shall be the book-value of the undertaking at the time of purchase or where the undertaking has been delivered before the purchase under sub-section (3) of Sec. 5, at the time of the delivery of the undertaking. (2) The book-value of an undertaking for the purpose of sub-section (1) shall be deemed to be the depreciated book-value as shown in the audited balance-sheet of the licensee under the law for the time being in force, of all lands, buildings, works, materials and plant of the licensee, suitable to and used by him for the purpose of the undertaking, other than (i) a generation station declared by the licen- see not to form part of the undertaking for the purpose of purchase, and (ii) service lines or other capital works or any part thereof which have been constructed at the expense of the consumers, but without any addition in respect of compulsory purchase or of goodwill or any profits which may be or might have been made from the undertaking or of any similar consideration. (3) Notwithstanding anything contained in any licence or any 11instrument, order, agreement or law for the time being in force in respect of any additional sum by whatever name may it be called, payable to a licensee for compulsory purchase, the licensee shall be entitled only to a solatium of ten per centum of the book-value as determined under sub-sections (1) and (2) for compulsory purchase of his undertaking under Sec. 6. (4) No provision of any Act for the time being in force including the other provisions of this Act and of any rules made there under or of any instrument including licence having effect by virtue of any of such Act or any rule made there under, shall, in so far as it is inconsistent with any of the provisions of this section, have any effect." [Assam Act IX of 1972 (w.e.f. 27th September, 1972).] Bihar insertion of new Sec. 7-A In Act IX of 1910.- After Sec. 7 of the said Act, the following section shall be added, namely : "7-A. State Government may take possession and control of undertaking before purchase is effected.-(1) Notwithstanding any- thing contained in any law for the time being in force, the State Government may,- (a) when it elects under Cl. (d) of Sec. 5 to purchase an undertaking, or (b) if it elects under sub-section (2) of Sec. 7 to purchase an undertaking, on the expiry of the period of notice required to

be given under sub-section (4) thereof, pending the purchase of the undertaking, at any time by order require the licensee to deliver possession of such undertaking to such officer as the State Government may appoint in that behalf on or before such day as may be specified in that order, and the licensee shall comply with such order. On failure of the licensee to comply with such order, the State Government may forthwith enter into possession of such undertaking. (2) On the date of compliance with the order or the day specified therein, whichever is earlier, the provision of Cl. (e) of Sec. 5 or sub-section (3) of Sec. 7, as the case may be, shall without prejudice to the right of the licensee to payment of the value of the undertaking apply to such undertaking as if the purchase had been effected." [Bihar Act 29 of 1950. Sec. 5.] Gujarat.-In the Indian Electricity Act. 1910 (9 of 1910) (in its application to the State of Gujarat,) (hereinafter referred to as "the principal Act"), after Sec. 7, the following section shall be inserted namely : "7-AA. Power to take forcible delivery of possession of undertaking.-(1) If a licensee upon whom a notice requiring him to deliver the undertaking to the designated purchaser has been served in pursuance of sub-section (3) of Sec. 5 or a notice exercising the option of purchasing the undertaking has been served under Sec. 6, refuses or fails to deliver the undertaking as required under sub-section (3) of Sec. 5 or under sub-section (6) of Sec. 6, as the case may be, the State Electricity Board, the State Government or the local authority. as the case may be, may, by order in writing, require the licensee to deliver on or before such date as may be specified in the order, the possession of the undertaking, including, all its property, effects, actionable claims, books of accounts and other documents, to such officer as the State Electricity Board, the State Government or the local authority, as the case may be, may appoint in that behalf and the licensee shall comply with such order. On failure of the licensee to comply with such order, such officer may, forthwith enter into possession of such undertaking and may take or cause to be taken such steps and use or cause to be used force as may in the opinion of such officer be reasonably necessary for that purpose. (2) On the entry into possession under sub-section (1) by the officer concerned, the provisions of Sec. 7 shall apply as if the undertaking had been delivered to the State Electricity Board, the State Government or the local authority, as the case may be, under sub-section (3) of Sec. 5 or sub-section (6) of Sec, 6, as the case may be." [Gujarat Act 3 of 1974, Sec. 2.] In Sec. 7-AA of the principal Act,- (i) in sub-section (1), for the words, brackets and figures "or under subsection (6) of Sec. 6" the words brackets, figures and letter "or under sub-section (5-A) of Sec. 6" and shall be deemed to have been substituted with effect from 2nd day of March, 1976 ; (ii) in subsection (2), for the words, brackets and figures "or sub-section (6) of Sec. 6" the words, bracket, figures and letter "or sub-section (5-A) of Sec. 6" shall be substituted and shall be deemed to have been substituted with effect from the 2nd March, 1974." [Gujarat Act 18 of 1976, Sec. 4]. Madhya Pradesh.- A new section for Sec. 7-A of the principal Act, shall be substituted which is as follows : "7-A. Determination of amount payable.- (1) Where an under- taking of a licensee is sold under subsection (1) of Sec. 5, or purchased under Sec. 6, the amount payable for the undertaking has been delivered before the purchase under sub-section (3) of Sec. 5 at the time of delivery of the undertaking. (2) The book-value of an undertaking for the purpose of sub- section (1) shall be deemed to be the depreciated book-value as shown in the account rendered by the licensee in accordance with the provisions of Sec. 11 of all lands, buildings, works, materials and plant of the licensee suitable to and used for him for the purpose of the undertaking other than- (i) a generating station declared by the licence not to form part of the undertaking for the purpose of purchase, and (ii) service-lines or other capital works or any part thereof, which have been constructed at the expense of the consumers ; but without any addition in respect of compulsory purchase or of goodwill or of any profit which may be or might have been made from the undertaking or of any similar consideration. (3) Notwithstanding anything contained in any licence or any instrument, order, agreement or law for the time being in force in respect of any additional sum by whatever name may it be called, payable to a licensee for compulsory purchase, the licensee shall be entitled only to a solatium often per cent. of the book-value as deter- mined under sub-sections (1) and (2) for compulsory purchase of his undertaking under Sec. 6. (4) No provision of any Act for the time being in force including licence having effect by virtue of any such Act or any rule made there under, shall in so far as it is inconsistent with any of the provisions of this section, have any effect." [M.P. Act 19 of 1974. Sec. 4.] Maharashtra-Insertion of new Sec. 7-A in Act IX of 1910.- After Sec. 7 of the said Act, the following new section shall be added, namely: "7-A. Provincial Government may take possession and control of undertaking before purchase is effected.- (1) Notwithstanding any- thing contained in any law for the time being in force, the Provincial Government may,- (a) when it elects under Cl. (d) of Sec. 7 to purchase an undertaking, or (b) if it elects under sub-section (2) of Sec. 7 to purchase an undertaking, on the expiry of the period of notice required to be given under sub-section (4) thereof, pending the purchase of the undertaking at any time by order require the licensee to deliver possession of such undertaking to such officer as the Provincial Government may appoint in that behalf on or before such day as may be specified in the order, and the licensee shall comply with such order. On failure of the licensee to comply with such order, the Provincial Government may forthwith enter into possession of such undertaking. (2) On the date of compliance with the order, or the day specified therein whichever is earlier provisions of Cl. (e) of Sec. 5 or sub-section (3) of Sec. 7, as the case may be, shall without prejudice to the right of the licensee to payment of the value of the undertaking, apply to such undertaking as if the purchase has been effected." Possession taken before the coming into force of this Act deemed to be possession taken under new Sec. 7-A.-Where the Provincial Government has before the coining into force of this Act taken possession of any undertaking pending the purchase thereof by it under the said Act, such possession snail be deemed to have been taken in pursuance of an order issued under Sec. 7-A of the said Act. [Maharashtra Act 18 of 1949, Secs. 3 and 5.] Maharashtra-Substitution of new section for Sec. 7-A of Act IX of 1910.- For Sec. 7-A of the principal Act, the following new section shall be substituted, namely: "7-A. Determination of amount.-(1) Where an undertaking of a licensee is sold under sub-section (1) of Sec. 5 or purchased under Sec. 6. the amount payable for the undertaking shall be the book-value of the undertaking at the time of delivery of the undertaking. (2) The book-value of an undertaking for the purposes of sub-section (1) shall be deemed to be the depreciated book-value as shown in the accounts rendered by the licensee in accordance with the provisions of Sec. 11, of all lands, buildings, works, materials and plant of the licensee, suitable to and used for him, for the purpose of the undertaking other than- (i) a generating station declared by the licence not to form part of the undertaking for the purpose of purchase ; and (ii) the service-line or other capital works or any part thereof, which have been constructed at the expense of the consumers, but without any addition in respect of compulsory purchase or of goodwill or of any profits which may be or might have been made from the undertaking or of any similar consideration. (3) Notwithstanding anything contained in any licence or any instrument, order, agreement or law for the time being in force, in respect of any additional sum by whatever name may it be called, payable to a licensee for compulsory purchase, the licensee shall be entitled only to a solatium of ten per centum of the book-value as determined under sub-sections (1) and (2), for compulsory purchase of his undertaking under Sec. 6. (4) No provision of any Act for the time being in force, including the other provisions of this Act and of any rule made there under or of any instrument including any licence having effect by virtue of any such Act, or any rule made there under, shall, in so far as it is in- consistent with any of the provisions of this section, have any effect. (5) (a) The amount payable to a licensee under sub-section (1) shall be payable in cash either in lump sum or in annual instalments as the State Government may fix. (b) Where any such amount is payable in instalments, the unpaid amount where its payment has become due shall carry interest at the rate referred to in sub-section (7) of Sec. 6." (Maharashtra Act 44 of 1966, Sec. 4.] In Sec. 7-A of the Indian Electricity Act, 1910 (IX of 1910) in its application to the State of Maharashtra, in sub-section (5), for Cl. (b), the following clause shall be substituted, namely : "(b) Where any such amount is payable in instalments, the interest shall be payable, at the rate referred to in sub-section (7) of Sec. 6, for the period from the date of delivery of the undertaking to the date of payment of the last instalment. With the first instalment, such interest shall be paid on the whole amount from the delivery of the undertaking to the date of payment of instalment, with each subsequent instalment, such interest shall be paid on the amount due after payment of the last preceding instalment for the period from the payment of the last preceding instalment to the date of the succeeding instalment." Uttar Pradesh amendment of new Secs. 7-A and 7-AA for Sec. 7-A.-For Sec. 7-A of the principal Act, the following sections shall be substituted, namely: "7-A. Determination of amount.- (1) Where an undertaking of a licensee37[has been purchased by the State Electricity Board in consequence of revocation of his licence under sub-section (2) of Sec. 4 or] is sold under sub-section (1) of Sec. 5 or is purchased under Sec. 6, the amount payable there for shall be determined as hereinafter provided. (2) The gross amount payable to such licensee shall be aggregate value of the amounts specified below : (i) the book-value of all completed works in beneficial use pertaining to the undertaking and taken over by the State Electricity Board, the State Government or local authority, as the case may be (excluding works paid for by consumers), less depreciation calculated in accordance with the Sixth Schedule read with the Seventh Schedule to the Electricity (Supply) Act, 1948; (ii) the book-value of all works in progress taken over, excluding works paid for by the consumers or prospective consumers: (iii) the book-value of all stores, including spare parts taken over, and in the case of used stores and spare parts if taken over such sum as may be decided upon by the special officer referred to in sub-section (6) (hereinafter referred to as the special officer); (iv) the book-value of all other fixed assets in use on the date of vesting under Sec. 7, hereinafter referred to as the vesting date, and taken over, less depreciation calculated in accordance with said Schedules: (v) the book-value of all plants and equipments existing on the vesting date, if taken over but no longer in use owing to wear and tear or to obsolescence, to the extent such value has not been written off in the book of the licensee, less depreciation calculated in accordance with the said Schedules.(3) A sum equal to ten per cent. of the amounts assessed under Cls. (i) to (iv) of sub-section (2) shall be paid to the licensee in respect of compulsory purchase under Sec. 6. (4) When any asset is acquired by the licensee after the expiry of the period to which the latest annual accounts, relate, the book- value of the asset shall be such as may be decided upon by the special officer: Provided that before deciding the book-value of any such asset, the licensee shall be given an opportunity by the special officer of being heard, after giving him a notice of at least fifteen days therefore. (5) The purchaser shall be entitled to deduct the following sums from gross amount payable under the foregoing sub-section to a licensee- (a) the amount, if any, already paid in advance ; (b) where the purchaser is the State Electricity Board the amount due, if any, including interest thereon, from the licensee to the Board, for energy applied by the Board before the vesting date; (c) all amounts and arrears of interest, if any, thereon, due from the licensee to the State Government or the State Electricity Board; (d) the amount, if any, equivalent to the loss sustained by the purchaser by reason of property or rights belonging to the undertaking not having been handed over to the purchaser, the amount of such loss being deemed to be the amount by which the market value of such property or rights exceeds the amount payable therefore under this section, together with any income which might have been realized by the purchaser, if the property or rights had been handed over on the vesting date: (e) the amount of all loans due from the licensee to an: corporation as defined in the Uttar Pradesh Public Money (Recovery of Dues) Act. 1972, and arrears of interest, if an thereon; (f) all sums paid by the consumers by way of security deposit and arrears of interest due thereon on the vesting date. in so far as they have not been paid over by the licensee to the purchaser, less the amounts which according to the books of the licensee are due from the respective consumers to the licensee for energy supplied by him before that date; (g) all advances from consumers and prospective consumers, and sums which have been or ought to be set aside to the credit of the consumers, in so far as such advances or sums have not been paid over by the licensee to the purchaser: (h) the amount remaining in Tariffs and Dividends Control Reserve, Contingencies Reserve and the Development Reserve, in so far as such amounts have not been paid over by the licensee to the purchaser;38[(i) all amounts on account of provident fund. gratuity, or pension, if any, in relation to persons in the employment of the licensee immediately before the appointed date and apportioned in proportion to the period of service rendered by such persons in the employment of the licensee]. (6) The State Government shall appoint, by order in writing, a person having adequate knowledge and experience in matter relating to accounts, to be special officer to assess the net amount payable under this section to the licensee, after making the deductions mentioned in this section. (7) (a) The special officer may call for the assistance of such officers and staff of the State Government or the State Electricity Board or the licensee as he may deem fit in assessing the net amount payable. (b) The special officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act 5 of 1908), when trying a suit, in respect of the following matters: (i) enforcing the attendance of any person and examining him on oath; (ii) compelling the production of documents; and (iii) issuing commissions for the examination of witnesses. The special officer shall also have such further powers as may be specified by the State Government by notification in the Gazette. (8) Where the gross amount payable to the licensee is equal to or less than the total amount to be deducted under this section no payment shall be made to the licensee by the purchaser. [Uttar Pradesh Act 16 of 1975, Sec. 5.] In Sec. 7-A of the principal Act,- (i) in sub-section (1). after the word and figure "Sec.6", the words, figure and letter "or acquired under Sec. 6-A" shall be added; (ii) in sub-section (2)- (a) In Cl. (i), for the words and brackets "(excluding works paid for by consumers)", the words and brackets "(excluding works constructed at the cost of local bodies for street lighting and works paid for by consumers)" shall be substituted and be deemed to have been substituted with effect from 5th February, 1975: (b) in Cl. (iv). for the word and figure "Sec. 7" the words. figures and letter, "Sec. 6-A or Sec. 7" shall be substituted; (iii) in sub-section (3), after the words and figure "purchase under Sec. 6", the words, figure and the letter "or acquisition under Sec. 6-A" shall be added; (iv) for sub-section (8), the following sub-section shall be substituted and be deemed to have been substituted from 4 th February, 1975, namely: "(8) Where the gross amount payable to the licensee is- (a) equal to the total amount to be deducted under this section, no payment shall be made to the licensee by the purchaser;(b) less than the total amount to be deducted under this section the difference between the gross amount so payable and the total amount to be deducted shall on a certificate of the special officer be recoverable as arrears of land revenue": (v) after sub-section (8), the following sub-section shall be added and be deemed to have added been from 4th February, 1975, namely: "(9) Where any amounts not belonging to it have been deducted by the purchaser under Cl. (c), Cl. (e), Cl. (f) or Cl. (g) of sub-section (5) or recovered under sub-section (8), the liability of the licensee towards the State Government or other bodies or consumers, or prospective consumers, as the case may be, shall, to the extent of the deduction and recoveries so made, stand discharged and the purchaser shall in substitution of the licensee become liable towards them to that extent." [Uttar Pradesh Act 14 of 1976, Sec. 5.) In the Indian Electricity Act, 1910, after Sec. 7-A the following section shall be inserted namely: "7-AA. Power to take forcible delivery of possession of undertaking.-(1) On failure of the licensee to deliver the undertaking in compliance with provisions of sub-section (3) of Sec. 5 or sub-section (6) of Sec. 6, as the case may be, the officer appointed under the said provisions may forthwith enter into possession of such undertaking and may take or cause to be taken such steps and use or cause to be used such force as may, in the opinion of such officer be reasonably necessary for that purpose. (2) On the entry into possession under sub-section (1), by the officer concerned, the provisions of Sec. 7 shall apply as if the undertaking had been delivered to the State Electricity Board, the State Government or the local authority, as the case may be, under sub-section (3) of Sec.5 or sub-section (6) of Sec. 6, as the case may be." [Uttar Pradesh Act 16 of 1975, Sec. 5.) West Bengal.- After Sec. 7-A of the principal Act. the following section shall be Inserted: "7-B. Special provision for safeguarding the interest of the employees.-(1) Notwithstanding anything to the contrary contained elsewhere in this Act or in any other law for the time being in force, where an undertaking is sold under Sec. 5 or Sec. 6, any amount that may be due on account of salary or wages, leave salary or leave wages, bonus, gratuity, retrenchment compensation, contribution to provident fund or on similar or other account from the licensee to the employee employed in the affairs of the undertaking on the date on which the undertaking is delivered to the intending purchaser under sub-section (3) of Sec. 5 or sub-section (6) of Sec. 6, as the case may be, whichever is earlier, shall be deemed to be debt due to the employee. (2) The debt referred to in sub-section (1) shall, on adjustment of the amount if any due from the employee to the licensee on the date referred to in sub-section (1), have preference to all other debts and obligations except mortgage, and shall be payable out of the purchase price after deduction there from of the amount that may be due from the licensee under mortgage, if any. (3) If, however, the purchase price, after deduction there from of the amount that may be due under mortgage, if any, falls short, wholly or in part, of the debt due on adjustment to the employee, the purchaser or the intending purchaser, as the case may be, shall be liable to pay such debt due to the employee to the extent of such shortage. (4) The licensee shall, Determination of purchase price Page 6 of 6 within such period as may be specified in this behalf by the State Government by notification in the official Gazette, submit to the purchaser or the intending purchaser, as the case may be. a statement containing the following particulars- (a) the amount due under different heads of account to each employee from the licensee, (b) the amount, if any, due to the licensee from each such employee with reason there for, and (c) the amount due on adjustment to each employee, and shall furnish to each employee a copy of such portion of the statement as relates to such employee. (5) An employee may, within fifteen days of the receipt of the copy of the statement relating to him, submit in writing his objection thereto to the purchaser or the intending purchaser, as the case may be and send a copy of the objection to the licensee. (6) If no objection is submitted by an employee under sub-section (5), the amount shown on adjustment to be due to him in the statement shall be deemed to be the amount determined to be due to him. (7) On receiving an objection under sub-section (5) the purchaser, or the intending purchaser, or any person duly authorized by him in this behalf, as the case may be, shall give notice to the employee and the licensee of the date fixed for hearing of the objection and, after hearing the employee and the licensee and taking into account the evidence adduced, shall determine the amount due to the employee. If the licensee falls to appear at the hearing, the amount due to the employee shall be determined ex parte. If the employee fails to appear at the hearing the objection shall stand rejected. (8) If a purchaser, or the intending purchaser, or the person duly authorized by him in this behalf, as the case may be, is of opinion. on the application of the employee or the licensee or of his own motion, that some relevant facts had not been disclosed or considered at the time of the determination under sub-section (6) or sub-section (7), he may review the matter and determine the amount due to the employee. (9) The determination of the amount due to the employee under sub-section (6) or sub-section (7) with modification, if any, under sub-section (8) shall be final and conclusive and shall not be called in question in any Court or Tribunal or any other authority. (10) The purchaser or the intending purchaser, as the case may be, shall, on the final determination of the amount due to the employee, pay to him in terms of the provisions of sub-section (2) or subsection (3), as the case may be, the amount so determined to be due to him. If any amount due to any employee remains unpaid, the same shall be deposited by the purchaser or the intending purchaser as the case may be, in any branch of the State Bank of India and shall be payable to the employee or his legal representative. (11) The provisions of this section shall also apply to an undertaking which has been sold under Sec. 5 or Sec. 6 but the sale has not been completed prior to the date of commencement of the Indian Electricity (West Bengal) Amendment Act, 1980." [Vide Act XLIII of 1980.]