

12.47 hrs.

**METAL CORPORATION OF INDIA
(ACQUISITION OF UNDERTAKING)
BILL**

**The Minister of Mines and Metals
(Shri S. K. Dey):** Sir, I beg to move*:

"that the Bill to provide for the acquisition of the undertaking of the Metal Corporation of India Limited for the purpose of enabling the Central Government in the public interest to exploit, to the fullest extent possible, zinc and lead deposits in and around the Zawar area in the State of Rajasthan and to utilise those minerals in such manner as to subserve the common good, be taken into consideration."

Hon. Members are already aware of the background of this matter. My esteemed colleague, Shri Sanjiva Reddy, while moving the earlier Bill in November, 1965, described at some length the circumstances which compelled Government to acquire the undertaking of the Metal Corporation of India. I shall, therefore, only briefly recapitulate the events leading up to the decision of Government to take over and run this Undertaking as a public sector project.

The ancient Zawar Mines which were relatively unknown or in disuse were opened up by the Utilisation Branch of the Geological Survey of India during the last world war. Later in 1944, a private company, Eastern Smelting and Refining Co., obtained lease over these areas. Subsequently, this Company promoted a new company called the Metal Corporation of India Ltd. and a regular lease was obtained in the name of the Metal Corporation of India in 1950. The Metal Corporation of India worked these deposits on a very modest scale since 1950 and even in 1960 the production was only 5,00 tonnes per day.

In January 1960 this company obtained an Industrial Licence to set up a 15,000 tonne capacity Zinc Smelter at Udaipur including corresponding development of mines and recovery of bye-products. In May 1961 Industrial Licence was amended to provide for establishment of a 18,000 tonne capacity smelter and corresponding quantities of bye-products. The whole project was based on the assumption that about 1400 to 1500 tonnes of ore per day containing about 5 per cent zinc would be necessary for the production of 15,000 tonnes of metals. However, it was later on found that the average grade of the ore would be only about 3.5 per cent. These two factors— increase in Smelter Capacity and drop in grade of ore— led to the increase of project estimates from Rs. 670 lakhs to Rs. 1263 lakhs. The company however did not make arrangements for finance before embarking on this programme of expansion. It was only towards September 1963 that the Corporation came up with the revised Capital Estimates involving an increase of about Rs. 593 lakhs. The company initially suggested that it should be granted a loan of Rs. 3 crores to finance the additional expenditure and that it would find the balance of finance through additional equity and internal resources. Subsequently, in July 1964 the company raised the requirement of loan to Rs. 6 crores.

At this stage it may be mentioned that the Industrial Finance Corporation had by then already granted a loan of Rs. 1 crore and stood guarantee to the extent of Rs. 4.5 crores in respect of equipment ordered on deferred payment terms. Thus, in effect, the company wanted to construct a project costing Rs. 12.63 crores with a loan finance of Rs. 11.5 crores, viz. practically with no resources of its own: quite an extraordinary phenomenon. Government examined in detail the techno-economic aspects of the project and came to the conclusion that the company would require another Rs. 7 crores in addition to the loans already granted for bare completion of the project. In spite of this, in

*Moved with the recommendation of the President.

view of the strategic importance of lead and zinc, Government were prepared to assist the company in all possible ways consistent with the public interest. But the company had already failed to meet instalments of repayment that had fallen due. The company was also unable to pay the customs duties and port dues and even take delivery of the equipment which it had ordered and which had arrived at the Bombay Port. The company was unable to raise any amount of equity capital of its own. There was, therefore, no justification or basis for granting any additional loans.

At this point I might make a reference to a question on which the company has made a lot of propaganda, namely, prices given for zinc and lead were low and that therefore the company was starved of resources. The company has challenged the validity of the executive orders issued by Government in this regard in a court of law and the matter is *sub-judice*. I will not, therefore, refer to any point at issue before the Court but would like to mention that the company was all along allowed free sale of its lead production. It had been realising exorbitant prices for lead (for example it sold lead at Rs. 4200 to Rs. 4400 per ton during 1964 when the imported material could be obtained at about Rs. 1400 to Rs. 1600 per ton). Even the price of zinc which was fixed in accordance with the advice of the Tariff Commission was higher than that at which the steel companies, to whom this zinc metal was allotted, could have imported the material.

Regardless of this controversy, Government were anxious to find a satisfactory method of helping the company to get on with the project. Negotiations were held with the Metal Corporation of India for more than a year. The representatives of the company continued to harp on their demand of a loan of Rs. 6 crores, although they were unable to raise any equity finance of their own. The question of acquisition by an agree-

ment was also discussed but no acceptable basis could be found. It became abundantly clear that while the company was not in a position to raise the necessary finance of its own it somehow expected Government to grant financial accommodation to it on its own terms, because zinc was scarce and Government was keen on the promotion of indigenous production.

While negotiations were in progress the financial position of the company became very precarious. Not only did it fail to meet the repayments that had fallen due, it failed to find funds to clear the consignments of imported machinery from the Bombay Port. The construction contractors stopped work and the French consultants left and the entire project came to a standstill. On the other hand the Pakistani aggression forcefully underscored the vulnerability of defence effort to scarcity of lead and zinc and added a compelling urgency to the need for producing zinc metal from our own mines in Rajasthan. It was in these circumstances that Government was forced to undertake acquisition by enacting special legislation, viz. The Metal Corporation of India (Acquisition of Undertaking) Act, 1965 (No. 44 of 1965).

As the House is aware the *vires* of this Act was challenged in the Punjab High Court. The High Court delivered its judgment on 14-3-1966 declaring the said Act to be violative of Article 31(2) of the Constitution, because in its opinion the principles laid down in respect of one particular item, namely, plant, machinery and other equipment in Para II(b) of the Schedule to the said Act were not relevant principles and could not ensure the payment to the owner a just equivalent of the properties acquired, as required under the Constitution. As the judgment related to interpretation of Article 31(2) as amended by the Constitution (Fourth Amendment) Act 1954, the Union of India preferred an appeal before the Supreme Court. In a judgment delivered on 5-9-1966,

[Shri S. K. Dey]

the Supreme Court upheld the decision of the Punjab High Court and declared the said Act as unconstitutional.

In this connection I should like to emphasise that the High Court or the Supreme Court did not question the *bona fides* of the legislation. The only point on which the Courts found the Act bad in law was concerning the principles laid down in Para II(b) of the Schedule for determination of compensation.

That the acquisition was in public interest has been admitted by all. Zawar mines are the only important zinc source in the country and it is a matter of national importance that their potential should be developed without any delay. The Metal Corporation of India who held the area on lease did not have and could not muster resources for the purpose. They held the mines for over two decades and in spite of it their total achievement did not go beyond the present rate of production of 5000 tonnes of zinc metal per annum and that also from concentrates which had to be sent abroad for smelting.

The events subsequent to 22-10-1965—the day of acquisition—have amply vindicated the acquisition. Construction work which had come to a stop was restarted after overcoming numerous difficulties.

Shri Hari Vishnu Kamath (Hoshangabad): Sir, on a point of order. Before you leave the Chair, may I mention it? The Minister has been reading his written speech; he can make it a little more interesting by interspersing a few observations off-hand, *ex tempore*. He need not read it mechanically; it becomes very boring.

Shri S. K. Dey: I am sorry; I will make it completely *ex tempore* when I answer the points raised. But here, because there are many law points. . . .

Mr. Speaker: Order, order. The Minister has the right to make his own speech like that.

Shri Hari Vishnu Kamath: But he can look at you, taking his eyes off the script, off and on.

Mr. Speaker: The Minister might continue his speech.

13 hrs.

[SHRI SHAM LAL SARAF in the Chair.]

Shri S. K. Dey: The shaft sinking work had stopped in August, 1964. A fresh contract for this vital job has been signed with a competent engineering firm and the work is going ahead. Consignments of machinery, plant and equipment lying uncleared in Bombay docks since 1964 have been cleared, brought to site, checked and are being erected. The French consultants who had gone away because of complete stoppage of work are coming to resume the work shortly. A new agreement has been already signed. All old liabilities have been settled and a measure of confidence has now been infused in the minds of creditors, staff, labour, etc. By 31-8-1966 a sum of Rs. 5.68 crores had been made available to Hindustan Zinc Ltd., the Government Company, in charge of this project for restarting unfinished jobs and undertaking new development tasks.

After the acquisition of the undertaking had been held invalid by the Courts, it became urgently necessary to provide a legal basis for all actions taken by the Central Government and the Hindustan Zinc Ltd. since the date of original acquisition, i.e. 22-10-1965. It would have been highly detrimental to the public interest to pull out, stop the construction work in progress or let the project revert to the chaos it was in, under the old management. The judgment of the Supreme Court was delivered on 5-9-1966 and the last session of the Parliament concluded on 7-9-1966. It was therefore hardly possible to come to the Parliament with fresh legislative proposals. In the circumstances, the President had to promulgate an Ordinance on 13-9-1966 acquiring the undertaking with effect from the date of the original acquisition i.e. 22-10-65.

I should like to say a few words about the principles of valuation of plant, equipment and machinery which is the main ground of challenge to previous enactment. These items of equipment are to form part of a project which is yet to be completed and taken separately and by themselves would be of no general interest. Further, the project itself was incomplete and even in a completed stage would be unique. The value of this equipment, therefore, could not easily be determined by comparison with other projects or with reference to the marketability of the equipment. Therefore, very careful study was made and earnest attempts made to arrive at an equitable basis of valuation. Ultimately it was felt that there could be no fairer basis than to pay the actual amount spent by the Metal Corporation of India on the acquisition of new plant and machinery. These constitute the bulk of the assets of the undertaking. As far as old plant, machinery and equipment were concerned, it was thought that as they were old and had been in use for several years, their value, depreciated under Income Tax Laws, would be a fair basis for valuation. Hence the provisions of the old Act. These old and worn out items of equipments are comparatively a small part of the total assets. The Courts have, however, held that these principles cannot ensure just compensation; but they have not given any positive indication of what should be the basis of valuation. However, after a careful study of the Supreme Court's judgment we came to the conclusion that it would be fair and equitable to pay the compensation on the basis of value at or about the time of the acquisition and that such value should be governed by conditions prevailing in the market. I have already referred to an inherent difficulty or arriving at a market value of the special purpose plant and machinery, as in this case, designed for this particular project. However in reference to the views of the Courts we propose to make an effort to determine such a value. In case of difficulties or differences of

opinion a reference will be made to the Tribunal so that a fair and acceptable valuation can be arrived at. The tribunal would consist of a High Judicial Officer.

Shri Hari Vishnu Kamath: What do you mean? A High Court Judge?

Shri S. K. Dey: Yes. It means from the judiciary, a High Court or Supreme Court Judge.

Mr. Chairman: Not necessarily a High Court Judge.

Shri Hari Vishnu Kamath: He does not want to commit himself.

Shri S. K. Dey: It will be so.

It is hoped that the valuation would be fair and just to the Government as well as to the company.

As acquisition would have retrospective effect, provision has been made for payment of interest on the value of net assets as they stood on 22-10-65.

In conclusion I should like to assure the House that the proposed mode of compensation has been evolved with due regard to the judgments of the High Court and the Supreme Court. I may also add that Section 10 provides for compensation being determined by agreement. I have already initiated action for working out the compensation and a special team of officers will be put on this job. It is my intention that as soon as this preliminary work of valuation has been done a negotiating team should be formed to negotiate and come to an agreed settlement on the amount of compensation with the Metal Corporation of India. I hope it would be possible to arrive at a mutually satisfactory solution through such negotiations and a reference to the Tribunal would become unnecessary.

[Shri S. K. Dey]

I would offer my apology to Mr. Kamath for the fact that I had to pursue a method of presentation totally alien to my nature. But the hon. member will understand that this is a highly controversial subject and anything that I say here may be quoted in any further possible litigation that may arise. One thing I do not claim to know anything about is law. Therefore, it was necessary for me to be cautious and I saw no other alternative but to read from a typescript. I am sorry for that.

I commend the Bill for consideration and approval by the House.

Mr. Chairman: Motion moved:

"That the Bill to provide for the acquisition of the undertaking of the Metal Corporation of India Limited for the purpose of enabling the Central Government in the public interest to exploit, to the fullest extent possible, zinc and lead deposits in and around the Zawar area in the State of Rajasthan and to utilise those minerals in such manner as to subserve the common good, be taken into consideration.

Shri Hari Vishnu Kamath: What is the time allotted?

Mr. Chairman: Two hours.

Shri Hari Vishnu Kamath: It should be at least 3 hours.

Shri S. M. Banerjee (Kanpur): Sir, normally we do support the taking over of any private concern by the Central Government in the larger interests of the country and for the efficient running of that concern. You will remember that the previous Bill which was brought before the House was criticised by almost all the members starting from my respected friend, Mr. A. C. Guha to myself. Practically all party speakers spoke against the Bill. I still remember the statement of my hon. friend, Shri Daji, who said that this is nothing but prostitution of nationalisation.

Shri Hari Vishnu Kamath: On a point of order, Sir. I am sure you will agree that the opener of the debate, particularly if he is from the opposition must have quorum in the House.

Mr. Chairman: The bell is being rung.

The Bell has stopped ringing. There is no quorum yet. The Bell may be rung again.

There is quorum now. The hon. Member, Shri Banerjee, may continue his speech.

Shri S. M. Banerjee: Sir, I was saying that I still remember the expression used by my hon. friend, Shri Daji, when this matter came up before this House on the last occasion, when the Ordinance came before this House, where he said that this is nothing but prostitution of nationalisation.

Sir, we pointed out on the last occasion why the Ordinance was issued by the Government and why this Bill had to be brought. The history of this minor corporation, this Metal Corporation of India, is very old. This particular Ordinance has a history behind it. One of the biggest industrialists of this country, who has a pull in this Government, wanted to have a majority share in this Metal Corporation of India. Because the Managing Director and the other directors of the Corporation refused to oblige this big industrialist, Mr. Birla, he brought pressure on the Government and this Ordinance was brought. It was amply explained in this House that no fruitful purpose would be served by nationalisation only of this minor corporation unless all the concerns of non-ferrous metals are nationalised. This was the main question raised during that discussion, and it was very ably mentioned by my hon. friend, the Chairman of the Estimates Committee, Shri A. C. Guha. It is most unfortunate that Shri S. K. Dey, for whom I have the greatest regard, is piloting this

Bill knowing fully well that this House or the Members of this House are opposed to this Bill. As I said, because the Metal Corporation of India, because the persons who are running this concern, could not oblige a particular businessman who has a pull with this Government, this Ordinance was brought and this Bill is now brought to replace it. That is why the Ordinance was opposed and now this Bill is being opposed.

Even after two judgments of the High Court and the Supreme Court this Bill has been brought. The Supreme Court gave a judgment—I speak subject to correction—on 6th September 1966. I agree with the hon. Minister that that judgment only related to the quantum of compensation. But why was this Bill not brought then? We had over six or seven days then. Why could not they bring this Bill then? I want an answer from the hon. Minister.

When the country is facing almost an economic crisis, how can it pay Rs. 30 crores compensation to the Metal Corporation of India? What this public undertaking has been doing is evident from the Financial Memorandum where it is said:

“It may, however, be mentioned that as on 31st March, 1965 (the latest date for which balance-sheet is available) the total paid up capital and the reserves and surpluses of the Company were of the order of Rs. 2.98 crores, and besides, the Company had taken secured loan of the order of Rs. 4.99 crores and unsecured loan of the order of Rs. 1.26 crores.”

Out of this Rs. 5 crores spent by this Government about Rs. 4.36 crores were spent only for clearing back-loans. It is a peculiar thing. Government has spent about Rs. 5 crores—more than Rs. 5 crores but Rs. 5 crores at one time—and out of that, 90 per cent has been spent only for clearing back-loans. When this concern was re-

commended a loan of Rs. 4 crores by the technical committee duly recommended by the Planning Commission, why was not that amount paid?

I am all for nationalisation. I want nationalisation of all key industries, especially of metals like zinc which are much needed in the country. That should be nationalised. But nationalisation at what cost? After passage of this Bill if agreement is not arrived at, what will be the amount of compensation? It is said that it will be referred to an impartial tribunal. The Tribunal will be of a retired High Court Judge or some other member. I do not impute any motive on any member of that Tribunal. But what were the provisions made, apart from compensation?

Immediately after the take-over the first Managing Director of the Hindustan Zinc Limited declared in a Press conference that the zinc smelter would be put into operation on and from November 1965. In August 1966, the succeeding Managing Director declared before another Press conference that the zinc smelter would be put into operation on 1st January 1967. Still I doubt very much whether any agreement has been reached with the French collaborators. A team of French collaborators were to visit this country—supposed to be experts—visit this project, talk to the Government and enter into agreement. I want to know whether any agreement has been reached with the French collaborators; if so, whether a copy of the agreement will be laid on the Table of the House.

Now I come to the question of compensation. What will be the amount of compensation? If the date is changed, if the date after devaluation is taken into account, it will be to the tune of Rs. 32 crores to Rs. 40 crores. Can this Government pay Rs. 32 crores or 40 crores to the shareholders at the cost of the public, at the cost of the tax-payer who has paid through his nose?

Mr. Chairman: He should conclude now.

Shri S. M. Banerjee: Sir, I may be given another five minutes.

Mr. Chairman: Only two minutes.

Shri S. M. Banerjee: There will not be many speakers on this Bill.

Mr. Chairman: That is to be seen. Only two hours are allotted for this.

Shri Hari Vishnu Kamath: But there is one hour up your sleeves.

Mr. Chairman: That will depend on the enthusiasm of the members. Now, he should try to conclude.

Shri S. M. Banerjee: I will invite the attention of the hon Minister to the arbitration award given in the case of Jessop & Company. What is that award? Rs. 160 for each share. It means that Shri S. P. Jain and other shareholders are going to get about Rs. 26 crores as compensation. Is it worth that? If it is so important, for defence purposes in an emergency, I would like to know the amount of zinc from this mine which was used during the Chinese aggression and during the Pakistani aggression. I doubt very much whether any zinc from this mine was used during that period.

So, I feel that this was taken over with the *mala fide* intention, because the then Minister was interested in big business. That is why it was taken over. Because the persons who are controlling this unit did not agree to the pressure; they could not be bullied, politically, morally or socially; they did not agree to the terms and that is why it was taken over. So, the hon. Minister has to answer to this House, and through this House to the entire country, whether this Government is in a position today to pay Rs. 30 crores or 40 crores of compensation. If they cannot pay it, what is going to happen?

Could we not possibly have an agreement? Let them have an agreement with the concern, with the Managing Director. Let there be equal shares and let there be an attempt to run this concern on a joint venture basis. Because, otherwise the country will not be able to pay Rs. 30 crores. I hope the hon. Minister will apply his mind to this problem and do the needful. I hope he will ensure that the hard-earned money of the tax-payers is not wasted merely on the basis of the whim of a particular Minister, who is now not in the Ministry. With these few words, I would request the hon. Minister to throw some light on this particular aspect of the point.

Shri S. K. Dey: If I may ask for an elucidation...

Mr. Chairman: He may do that at the end.

Shri V. B. Gandhi (Bombay Central South): Mr. Chairman, I am surprised at the attitude that the previous speaker, Shri S. M. Banerjee, has taken. He has been going off somewhat at a tangent. So far as we are concerned, we support this Bill. We also endorse the action that the Ministry has taken in having the President promulgate an Ordinance. Action has been taken very promptly and, I am sure, promptness was called for in a case like this, because what was involved was the activities of the undertaking, and this could not be allowed to be interrupted.

We all know that India does not possess adequate quantities of indigenous lead and zinc and it is very important that the mining and development of the project should not be allowed to be interrupted. That is what the administration has achieved. The zinc smelter, which has now been promised and towards which efforts have long been directed, is yet to come and we have to see that it is achieved without much further delay for after all, a zinc smelter will help in saving valuable foreign exchange. It was also necessary to do something about it, be-

cause already a considerable investment has been made in the acquisition of this undertaking. Something like Rs. 453.5 lakhs has been invested in the capital of the new company, the Hindustan Zinc Limited, and also something like Rs. 2.65 crores has been invested in advances to that company.

This matter was taken to the courts by the Metal Corporation and the Government did very well in going in appeal before the Supreme Court. The courts have considered this matter and we all know that the courts have not questioned the *bona fides* of this legislation; nor have they questioned the competence of this Parliament in undertaking legislation of this kind. The dispute really arises out of the principles which have been laid down for determining the amount of compensation to be paid to the Metal Corporation of India. The principles for determination of compensation have been laid down in the 1965 Act. They are being repeated in the present Bill, of course, with necessary changes in the light of the judgment of the courts.

I have not had the opportunity to go through the judgments of the courts, but I have read the two Schedules, the one appended to the 1965 Act and the one appended to the present Bill. Reading the two Schedules together, one feels that the question involved really was whether the compensation will be determined on the principle of actual cost and written down value of the property taken over or on the market value of the property and assets taken over.

I for one do not quite understand how Government came to think of offering the actual cost incurred by the company in acquiring the plant, machinery, equipment etc. and also in asking the metal Corporation to accept the written-down value according to the Income-tax Act. We should readily concede, in fairness, that the present circumstances are such that no company would be agreeable to

accept under these circumstances the actual cost as the basis of calculating compensation.

What is the situation in the country today? Let me take a very simple illustration. Let us say, there is a spanner and a screwdriver, two very simple tools, and suppose that the Metal Corporation has a number of spanners and screwdrivers to be turned over to the Government who acquire this undertaking. Screwdrivers and spanners, even if they are used, are not easily worn out and they do not become useless through use. A present screwdriver old or new will fetch perhaps five times the price that it cost the Metal Corporation when it was purchased by it, say, about ten years ago. Screwdrivers and spanners are scarce today. They are difficult to obtain and their imports are restricted; therefore, their value is certainly not what it cost the Metal Corporation ten years ago when it purchased the tools.

In view of all these things, I was just wondering whether the Government has had any experience of such transactions, of acquisition of undertakings in which they have offered compensation on the basis of actual cost and written-down value, in any previous instance. If they do not have any experience or instance of that kind, of previous offers made and accepted, it is rather surprising that Government should have thought of making such an offer this time. Perhaps, from the very beginning the market value, which is the principle which now the courts have also agreed to, namely, that the market value should be offered to the Metal Corporation, that should have been offered and that would perhaps have saved us the trouble and the expense of litigation.

Dr. L. M. Singhvi (Jodhpur): Mr. Chairman, the story of the Bill before us is a story of delays and hurried Ordinances and of leisurely amending legislation. Unfortunately, the doubts expressed by some of us at the time

[Dr. L. M. Singhvi]

when the Ordinance was being debated and when the original legislation was discussed here in the House have come only too true.

Although the take-over was effected on the 22nd October, 1965, it seems that very little progress has been accomplished so far. From the financial memorandum appended to this Bill it seems that a sum of about 21.2 lakhs had already been spent between 22nd October, 1965 and 10th January, 1966, and from the reports that I have it seems that this company has very little to show for it on the credit side of the ledger.

I do not know if all the information that I have received is correct or not, but if that is correct, it is a matter of considerable dismay and concern among us. For example, we are told that although considerable time has elapsed, very little progress has been made in getting the whole thing going in the way in which it was promised to this House that it would be got going. It seems that in spite of all this time that has been spent, even the foreign collaborators have not materialised on the scene and there is evidence to show that the machinery which was supposed to be imported and installed here was installed with considerable delay and tardiness.

It seems that through this Bill a mistake is sought to be rectified and this is welcome. This is as it should be in a democratic system of government, that is, when the Government is told by the Supreme Court that a certain part of the legislation or a certain enactment is *ultra vires* of the Constitution, is bad in law, the Government comes to this House to rectify the situation. It is only right that in a case such as this the hon. Minister disclosed to us also the extent and the magnitude of the financial stakes of the country in this undertaking.

It seems to me quite clear from the financial memorandum appended to this Bill as also from the statement of the Minister that the stakes are

very considerable and very significant, and unless we are promised that this unit will function efficiently and effectively, I think the House would continue to feel a considerable measure of concern.

I am told that the lines of management control have not altogether been clear in this unit, that a managing director, who was appointed for this purpose, stayed most of the time in Delhi rather than going to the scene of operations, that even now, apart from considerable labour unrest for which the management is not necessarily and always responsible—I concede that—in terms of management and effective functioning of the unit there is much that is left to be desired. I hope that the Minister, when he rises to reply in this matter, would be able to clear the atmosphere in this respect and would be able to tell us somewhat more about the functioning of the company so far, about the magnitude of our stakes in this new company and how efficiently or how inefficiently this unit has functioned since its take-over because it seems to me that what we are embarking on is a fairly large acquisitioned undertaking and unless the economic justification is put forward before this House, the House would not be justified in concurring with the Government merely because they are seeking to rectify a situation which the Supreme Court has declared to be untenable.

It seems to me that the provision of a tribunal in the present Bill is a welcome provision. If no agreement can be reached, that would perhaps be the sanest and the most effective way of arriving at a financial settlement in respect of this nationalised unit. But I hope that things can get going fast enough in the matter of functioning of this unit. When I raised this question on the last occasion, some Members of the House and, I am sure, the hon. Minister would recall that it was conceded on behalf of the Government—I believe, it was my hon. friend, Shri T. N. Singh, who conceded it in the course of the ques-

tions that I put—that the Government had been put to a loss of nearly a crore of rupees in foreign exchange because of the delays in respect of this unit. I think, that is a matter of record. I should think that continued delay and inefficiency in a unit such as this which, according to the Minister and rightly, is a unit of national importance—it is important also in our defence effort—are dispensed. Therefore, I hope that the Government is able to give a complete justification on the basis of the functioning of the unit as well as what is proposed to be done about energising the functioning of this unit in the near future.

Shri Narendra Singh Mahida (Anand): Mr. Chairman, Sir, necessity is the mother of invention. So, I put this Bill as a necessary measure for lead and zinc, because if we were not short of lead and zinc, I do not think the Government would have been keen to acquire a company and pay a heavy compensation to it. But our defence and other needs are so urgent that they have brought about this Bill and taken possession of the Metal Corporation.

I welcome this Bill. I am glad that in clause 5, they have made some provisions respecting officers and employees of the company. That is a wise decision and we are assured that we shall not change them overnight because we have taken over the company.

In clause 6, we have provided that Directors and managing agents are not entitled to compensation. Compensation as a whole of course, the Tribunal will decide. But the managing agents will not be able to force a decision on us. There is a new trend of our policy, whereby we are doing away with the managing agency system and enforcing a decision on them. That is a quite correct one.

Clause 7 is a very important one in which there is a provision for duty to deliver possession of property ac-

quired and documents relating thereto. I have seen in respect of some companies, when we took over the companies, the managing agents do not handover their documents and agreements. There is the well-known case of the Jayanti Shipping co. in which we had to run after the managing agents to acquire important papers.

In clause 9, we have incorporated the right of Government to disclaim certain agreements because there are various agreements with various companies which they have made for their interest, which the Government may not take over.

The most important clause is 10 which provides compensation for acquisition of the undertaking. Any democratic Government will not take over properties without paying compensation. It is a very wise decision that the Government have appointed a tribunal to look into this, and when there is a case of difference of opinion, we shall be able to straighten up the affairs.

With these words, I wish the company a long life and wish that for a number of years, it produces lead and zinc which are very necessary to us.

श्री श्री० सि० सहगल (जंजगीर): मभा-
पति महोदय, मैं दि मेटल कारपोरेशन आफ
इंडिया (ऐंबिविजिशन आफ ग्रन्डरटेकिंग)
बिल, 1966, का समर्थन करता हूँ और उसके
समर्थन में अपने कुछ विचार रखना चाहता
हूँ ।

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और जो हमारा डिफेन्स डिपार्टमेंट है, वह लेड
और जिंक के बारे में बहुत बुरी तरह से सफर
कर रहे हैं। इसलिये यह जरूरी था कि यह
कदम उठाया जाये। जब एक प्राइवेट ग्रन्डर-
टेकिंग ने, जो काम उसको करना था उसे पूरा
नहीं किया और जितनी चीजों की जरूरत थी

[श्री प्र० सिंह सहगल]

वह उनको वह नहीं दे सकी, ऐसी हालत में यदि इस तरह का एक कारपोरेशन बनाया जाये तो हमें उसका स्वागत करना चाहिये और खासकर मंत्री महोदय को धन्यवाद देना चाहिये कि वह इस बिल को लाये हैं।

आज करीब-करीब बीस सालों से यह जो काम यहाँ चल रहा था वह प्राइवेट सेक्टर के हाथ में था। उन लोगों को जिस तरीके से हमें गुड्स को डिलीवर करना चाहिये था, उस तरह से चुंकि उन्होंने नहीं किया और जिक और लेड डिपॉजिट्स से जो फारेन एक्स्चेन्ज हमें मिलना चाहिये था वह नहीं मिलता, इसलिये यह कदम उठाना आवश्यक था। यदि आप देखेंगे तो आपको पता चलेगा कि मेटल कारपोरेशन बिल इंडिया ने 1965 के उस एक्ट 44 को एक रिट पिटिशन के जरिये से पंजाब हाई कोर्ट में चेलन्ज किया। पंजाब हाई कोर्ट ने 14 मार्च, 1966 को फैसला देते हुए कहा कि यह एक्ट कांस्टीट्यूशन के आर्टिकल 31(2) को बायोलिट करता है इसलिये नाजायज है। इसके बाद यूनियन आफ इंडिया की तरफ से सुप्रीम कोर्ट में पंजाब हाई कोर्ट के फैसले के खिलाफ अपील की गई, लेकिन सुप्रीम कोर्ट ने भी अपने 5-9-66 के जजमेंट में पंजाब हाई कोर्ट के फैसले को अग्रहोल्ड किया और उस एक्ट को अनकांस्टीट्यूशनल डिक्लेयर किया। इन सारी चीजों का कर लिया गया है। उसके बाद गवर्नमेंट के पास और कोई रास्ता नहीं रह जाता सिवा इसके कि वह इस बिल को लाये। हमका जो फारेन एक्स्चेन्ज मिल सकता है उसको लेने के लिये इसके अतिरिक्त और कोई तरीका नहीं है, इसलिये मैं इस बिल का पूरी तरह स्वागत करता हूँ।

इसके साथ साथ मैं कहना चाहता हूँ कि इस बिल के पांचवें क्लॉज में आपने जो निर्णय लिया है इस कम्पनी के ऑफिसर्स और एम्प्लॉयीज के सम्बन्ध में वह बहुत वाजिब कदम है। मैं समझता हूँ कि जो कमेटी बनेगी वह इसे ज़रूर देखेगी।

इसके अलावा जो यह रक्खा गया है कि जो भी डाइरेक्टर्स होंगे या मैनेजिंग एजेन्ट्स होंगे वह कम्पेन्सेशन के लिये एन्टाइटल्ड नहीं होंगे, यह बहुत ठीक रास्ता अपनाया गया है। इसका कारण यह है कि यदि इस तरह से आप मैनेजिंग एजेन्ट्स और डाइरेक्टर्स को कम्पेन्सेशन देते चले जायेंगे तो हम जो नया रास्ता अपनाना चाहते हैं जनता की ज़रूरतों को पूरा करने का, उनको पूरा नहीं कर सकेंगे। इस लिये यह जो क्लॉज रक्खा गया है, मैं उसका स्वागत करता हूँ। इन शब्दों के साथ मैं इस विधेयक का समर्थन करता हूँ।

Shri S. K. Dey: Mr. Chairman, Sir, I am sorry that my friends from the Opposition who had raised quite a number of questions are not here to hear my reply.

Mr. Chairman: All the same, it is recorded.

Shri S. K. Dey: As I have stated earlier and, as the House is fully aware, it is not that we are acquiring the company for the first time. The company was acquired in the year 1965 and it is in operation under hundred-per-cent Government control. So, I could not quite understand what my friend, Shri S. M. Banerjee, had in mind when he wanted us seriously to consider whether it is worth-while acquiring this or not acquiring this. It has been taken possession of and it is under operation and it fits strictly into the pattern of policies followed by the Government in regard to mining and exploitation of non-ferrous metals.

What we have to consider is whether this Bill, as it has been presented, complies with the requirements envisaged by the judgment of the Supreme Court. We have studied this matter very thoroughly in the Ministry of Law and elsewhere and we are convinced that what has been provided for here will constitute adequate compensation to the original owners. I am very sorry that Shri S. M. Banerjee repeated the allegations that this undertaking was taken over because of some pressure from Birla or somebody else and that the intentions

of the Government were *mala fide*. The fact that no private individual, big or small, anywhere in the country has anything whatsoever to do with this Corporation and that it is running as a hundred-per-cent public-sector organisation ever since it was taken over will vindicate the position of the Government as was enunciated by my esteemed predecessor when he introduced the Bill in the first instance in the year 1965.

Shri S. M. Banerjee raised the question that the Supreme Court's judgment was given on the 6th September and why could we not introduce the Bill before the Parliament adjourned. I have already mentioned in my introduction to the consideration of this Bill that the Supreme Court delivered the judgement on the 5th September and the Parliament adjourned on the 7th September; the interval was too short for drafting a new Bill, studying the implications of the Supreme Court's judgment and bringing it before the Parliament. The ordinance was inescapable if the undertaking which was in operation was to continue operating without serious dislocation.

Mr. Banerjee enquired whether there has been any agreement with the French collaborators. I am very happy to report that we sent a team of our officers to France when we failed to come to an agreement with them through negotiations by correspondence and we have finalised a fresh agreement with Krebs & Co., of Paris and Penarroya of Paris who are the technical consultants for this job; they have already been paid an advance and the specialists of this Organisation are arriving in India before the end of November, according to the latest advice received from them to supervise the work of erection and finalisation of the smelter which is already under erection by our own engineers.

Mr. Banerjee asked how could Government pay compensation after devaluation.

The question of payment according to the prices prevailing after devaluation does not arise because the Company was taken over long prior to devaluation and the compensation will be payable only with respect to the date on which the undertaking was acquired; of course, by also paying suitable interest for the interval before we are in a position to pay the compensation, as I have already explained.

I have already answered his question about the *mala fide* of intentions on the part of my esteemed predecessor. I do not believe I have to labour this point any further.

Mr. Gandhi asked whether Government have the experience of taking over undertakings of this type. I may state that Government has always been taking over undertakings from different people: for instance, the Rehabilitation Ministry had to take over a large number of undertakings for rehabilitation of displaced persons; the L.I.C. has taken over quite a number of undertakings; and these are being run by Government under its control.

We provided compensation according to our best judgment, based on past experience, but this was questioned by the High Court and later on endorsed by the Supreme Court. We have no escape out of what the Supreme Court has delivered as its judgment and, therefore, we have tried to adjust it according to the Supreme Court's judgment.

Dr. Singhvi raised quite a number of questions. He mentioned that the story of the undertaking was a story of delays, ordinances and so on. I would not deny the fact that the story of this undertaking, namely, the Metal Corporation of India, has been one of inordinate delays and very little action for years together; for nearly 20 years, this Corporation was in action and they did very little; it was only lately that they became alive and began to put some ginger into the undertaking.

[Shri S. K. Dey]

and even that was found wanting when heavy investments were called for; they were totally unable to raise the independent finances necessary or to provide the necessary management that was called for. Since the Government took over, many preliminary steps have been taken. The hon. members of this House, I am sure, will appreciate the fact that zinc mine and zinc smelter are matters in which we do not have much of experience in this country and whatever expertise we have will be more of a theoretical nature than of a practical one because we do not have any previous experience to go by; that has been one of the reasons for the delay. Secondly, when an organisation of this nature changes its management from private control to public control, there is bound to be a period of adjustment, during transition, of employees, of methods of work and of labour to the new patterns of operation. Then practically everything had stopped; as I mentioned in my introduction, the building contractors had stopped work; the contractors who were laying the shaft had stopped work; expensive and specialised equipment and equipment which we do not manufacture in this country had arrived at the docks and been lying exposed to the vagaries of the weather and not taken delivery of for want of finance. All these difficulties had to be overcome.

I would very briefly like to state the progress in some of the fundamental work that had to be done. Mining equipment valued at about Rs. 80 lakhs, which was lying in the Bombay Port for two years without being taken delivery of by the previous management, has been lifted and been transported to the site. As I have already mentioned, the previous management had given the contract for shaft sinking work to Cementation Company; it had stopped its work; now a fresh contract has been finalised with the same company after a long interval of time; that company has

resumed its work. Lead-lining work of the zinc smelter has also recommenced. Water and power supplies for the project have been ensured through agreement with the Rajasthan Government. A fresh agreement has been signed with the French collaborators and they are coming. The liabilities of the Metal Corporation of India to the extent of about Rs. 472.48 lakhs were discharged by the Hindustan Zinc Limited. Then the Corporation has interviewed the technical experts—whatever we could secure in this country through applications invited through Press; selections have been made and technical specialists are coming forward to work in the project. The question of lack of clarity in the line of command should not arise because we are just at the beginning of the operation. As I have said, the efforts of our local engineers deserve to be commended. Despite the absence of adequate experience they have done in a good job of installing the smelter, the concentrator and other things with the instructions given in the books accompanying the equipment.

14 hrs.

The House is perhaps aware that some time ago, I think about a couple of months ago, about 14 Members of this House, both from the Opposition and from . . .

Mr. Chairman: I think it would save a little time if only the points raised by the hon. Members who have spoken are met.

Shri S. K. Dey: I was mentioning about the visit of 14 Members of Parliament. They have also seen this undertaking in actual action, and they have made some recommendations which we have found very useful and we have acted on most of the recommendations.

Dr. L. M. Singhvi had said that the managing director was mostly in

Delhi. I do not know. We have a managing director in Shri Nagendra Bahadur who has his headquarters at Udaipur and he stays there most of the time and we find it difficult to get him here to Delhi. In fact, even today. . .

Mr. Chairman: He may have seen him in Delhi.

Shri S. K. Dey: He may have seen his predecessor or someone else. I do not know.

He was asking for the economic justification for the costly project. The economic justification is very simple. We have to have lead and zinc in this country. If our industries, both defence and others, are not to grind to a halt in the absence of these scarce raw materials, for which we have been almost exclusively dependent on imports from outside, it is very necessary that we should have them within the country. If a country were to be dependent on such scarce commodities from outside even for its defence effort, then that is a very risky venture and I am quite sure that no one would recommend that when we have resources of our own which we can develop, the country should not go forward and do it.

A question was raised about the total implications of this and what we were investing in this enterprise. As far as the total expenditure to be incurred by Government as a result of the acquisition is concerned, I may mention that the corporation was implementing a project which was estimated to cost about Rs. 12.60 crores. The estimates had, however, been made by corporation some time ago, in 1963, and they would require upward revision due to devaluation, damaged and missing equipment, interest charges, delays in completion etc. In addition, the corporation had assets of the book value of about Rs. 1.7 crores in the form of the lead smelter at Tundoo, the mining and milling equipment at Zawar and

stocks of concentrates of metals etc. The total non-recurring expenditure involved in the acquisition would, therefore, be equal to the actual cost of the implementation of the project, namely Rs. 12.6 crores (original estimate) plus the actual value of the other assets with a book value of Rs. 1.7 crores. The total non-recurring expenditure without revision of the project estimate and at the book value of the other assets will, therefore, be of the order of Rs. 14.3 crores. The compensation payable to the corporation is included in the total expenditure I have just mentioned. The actual amount of compensation, however, will depend upon the valuation of the assets and liabilities in accordance with the principles laid down in the Schedule.

I may mention that we have since discovered fairly heavy deposits of zinc and lead and allied metals in areas outside Zawar where the Metal Corporation of India was operating this project, and it is expected that once this project gets into strides, the concentrator and the smelter would be in operation to their full capacity, and that we should be able, based on this experience, to expand the capacity to take care of deposits which we have since located elsewhere and which we would also be mining.

Shri Narendra Singh Mahida made a comparison with the Jayanti Shipping Co. The question of Jayanti Shipping Co. does not arise because this is a 100 per cent public sector corporation with no managing agency. The managing director is appointed by Government, and there is a board of directors . . .

Shri Narendra Singh Mahida: My point was only in regard to the documents. The Jayanti Shipping Co. did not hand over their documents to us. So, I said that we should be careful to have all the documents and all the agreements, etc., from them.

Shri S. K. Dey: I am very grateful to the hon. Members for supporting this measure and for no one questioning the *bona fides* of the action taken by Government.

Shri S. M. Banerjee: May I know whether the market value of the assets will considerably increase as on the 13th September, 1966, due to devaluation and whether...

Mr. Chairman: That point has already been replied to. The hon. Member was not here at that time.

Shri S. K. Dey: I have answered that point already.

Shri Narendra Singh Mahida: May I know whether the Rajasthan Government have made any contribution towards this project in any form?

Shri S. K. Dey: I would say that there is no financial contribution by them, but certainly the Rajasthan Government will be expected to provide water that we require for the project, and electricity, and also help us in maintaining law and order and settling labour problems etc.

Mr. Chairman: The question is:

"That the Bill to provide for the acquisition of the undertaking of the Metal Corporation of India Limited for the purpose of enabling the Central Government in the public interest to exploit, to the fullest extent possible, zinc and lead deposits in and around the Zawar area in the State of Rajasthan and to utilise those minerals in such manner as to subserve the common good, be taken into consideration."

The motion was adopted.

Mr. Chairman: There are no amendments. So, I shall put all the clauses together to vote.

The question is:

"That clauses 1 to 18, the Schedule, the Enacting Formula and the Title stand part of the Bill".

The motion was adopted.

Clauses 1 to 18, the Schedule, the Enacting Formula and the Title were added to the Bill.

Shri S. K. Dey: I beg to move:

"That the Bill be passed".

Mr. Chairman: The question is:

"That the Bill be passed".

The motion was adopted.

14.09 hrs.

COMPANIES (AMENDMENT) BILL

The Minister of Law (Shri G. S. Pathak): I beg to move:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration."

This Bill replaces with slight modification an Ordinance which was passed some time ago.

I shall very briefly give to this House a summary of the amendments which are sought to be made by this Bill and then I shall state with reference to a few provisions what the principles involved are.

Now, the broad features of the amendments are these:

(1) It has been made clear that it is only the blank form of transfer of shares which should be presented to the prescribed authority for date-stamping before it is executed by the transferor;