

The Minister in reply stated

"I am not aware of having received any such Report"

On a further Supplementary he replied

"just now made enquiries I paid that I was not aware of this particular representation"

With your permission, Sir, I am in a position to produce in this connection the acknowledgment of the petition (to which I had referred) by the Ministry of Home Affairs dated October 31, 1957 which reads as follows —

"I am directed to acknowledge your letter, dated the 12th October, 1957 addressed to the Home Minister regarding Andhra Pradesh-Madras border adjustments

Sd/- R N Kalis,
Section Officer"

The Minister of State in the Ministry of Home Affairs (Shri Datar). I regret the error The concerned officer who looked into all these things was not here at that time and he was on leave and the other officer who was here stated that he had not received it I regret it

PAYMENT OF WAGES (AMENDMENT) BILL.*

The Deputy Minister of Labour (Shri Abid Ali): Sir I beg to move for leave to introduce a Bill further to amend the Payment of Wages Act 1936

Mr. Speaker: The question is. That leave be granted to introduce a Bill further to amend the Payment of Wages Act, 1936

The Motion was adopted

Shri Abid Ali: Sir I introduce the Bill.

THE CAPITAL ISSUES (CONTROL)
AMENDMENT BILL

The Deputy Minister of Finance (Shri B R Bhagat): Sir, I beg to move

"That the Bill further to amend the Capital Issues (Control) Act, 1947, be taken into consideration"

The House will recall that early in 1956 Parliament had agreed to make the Capital Issues (Control) Act a permanent measure Experience during the years that the Control has been in existence and, particularly, during the last few years, has indicated the desirability of more clearly defining certain provisions of the Act so as to make the control fully effective

Apart from the main object of the control, which is to prevent the diversion of investible resources to non-essential projects or to projects which are being conducted in an undesirable manner, one of the incidental uses to which this control has been put is the control over the issue of bonus shares by companies by capitalisation of profits and reserves Capitalisation of reserves would not, however, involve issue of new shares where the reserves are capitalised only to credit partly paid up shares as fully paid or to increase the par value of shares already issued

It may be mentioned that by an Order made under this Act, a general exemption has been granted, among others, in favour of the issue of securities not exceeding Rs 5 lakhs in value during any period of one year This exemption, however, is not applicable to the issue of bonus shares the issue of which requires consent irrespective of the value of the bonus shares to be issued Government have in the past taken the view—a view which is in accord with the recommendation of the Taxation Enquiry Commission

[Shri B. R. Bhagat].

that Government should exercise control over the issue of bonus shares to avoid over-capitalisation—that consent is required under the Act not only for capitalisation of the reserves for the issue of unissued shares as bonus shares, but also for capitalising profits or reserves either for the purpose of crediting partly paid up shares into fully paid shares or for increasing the par value of shares already issued, for the reason that such transactions contain an element of bonus. Several companies have accepted this view and have applied for consent, but, recently, there have arisen a few cases where the companies took a different view that consent of Government is not necessary. It is proposed, therefore, to place the matter beyond doubt by amending the definition of the term 'issue of capital' so as to include the capitalisation of profits or reserves for the purpose of converting partly paid up shares into fully paid shares or for increasing the par value of shares already issued

Similarly, it has all along been the intention that the control should cover the execution of mortgages or hypothecation bonds and several companies have been applying to Government each year for consent to the execution of mortgages or issue of hypothecation bonds. However, a view was recently expressed that the word 'issued' in section 2(b) of the Act was used in the sense of 'putting into the money market' and that it was not used in relation to 'instruments creating a charge or lien on the assets' or 'instruments acknowledging loan to or indebtedness of the company and guaranteed by a third party or entered into jointly with a third party' in the sense of securities 'created' or 'executed' but in the same sense in which it was used in relation to the "shares, stocks, bonds and debentures". It was further held that the expression "other instruments" section 2 (b) (iii) of the Act does not have reference to mortgages or hypothecation bonds, Section

2 of the Act, therefore, is proposed to be amended so as to clarify the position in respect of the creation of mortgages, hypothecations, pledges or other instruments creating a charge or lien on the property of the company.

The interpretation of section 4 of the Act dealing with the control over prospectuses and other advertisements has also given rise to some difficulty, because the expression 'public offer', 'prospectus' and 'private company' have not been defined in the Act. It is also intended to make this section applicable to an offer made by a company to existing holders of securities of the company in question or to members of any other company specified in the offer.

By another minor amendment being made by clause 3 of the Bill, it is proposed to take power to revoke the consent or recognition accorded or vary any of the provisions of consents once granted, provided, of course, that before an order of revocation is passed the company concerned shall be given reasonable opportunity to show cause why such order should not be made. This has become desirable in view of the fact that in some cases the objects for which companies had obtained consent may not subsist after the consent had been obtained. For example, several companies who have obtained a licence for manufacture under the Industries (Development and Regulation) Act and also consent under the Capital Issues (Control) Act for the issue of the capital, have had their licences revoked in terms of section 12 of the former Act. In such cases, Government have, at present, no power to revoke or modify the consent order although the manufacturing licence had been revoked.

Again, section 8 is being amended to remedy an obvious drafting omission. A view has been expressed that this section, which deals with the making of false statements, has

reference only to false statements made when complying with any requisition under section 7 of the Act or in making applications for consent and would not be applicable to a false statement made in connection with any of the other provisions of the Act.

Although Government are empowered to condone offences involved in the issue of securities without their prior approval, Government have at present no powers to condone offences involved in the acceptance or payment of consideration for such securities. Thus, while condonation of the former offence would by itself regularise the latter kind of offence, there might be stray cases where an innocent party who, in good faith, had accepted securities issued unauthorisedly, could not be saved from being penalised even where it is not considered necessary to penalise that party without going to the extent of condoning the main offence. It is therefore desirable that Government should have an independent power of condonation in such cases.

Another minor amendment proposed to be made is in respect of section 7 of the Act empowering Government to call for information to enable them to collect fuller particulars of the total capital issued by companies and to prescribe a time limit within which the information called for is to be furnished.

Opportunity has also been taken to incorporate a few other amendments which are mostly of a drafting nature. Section 2 of the Act has been amplified not only to expand the existing definitions of certain terms but also to define terms like 'company', 'private company', 'prospectus' and 'public offer'.

Sir, with these words, I move:

Mr. Speaker: Motion moved:

"That the Bill further to amend the Capital Issues (Control) Act, 1947, be taken into consideration."

Shri Prabhat Kar (Hooghly): Sir, I support this Bill; but in order to ensure effective control the Government should come forward with further amendments of the Companies Act. It goes without saying that in any approach to the overall economy, in the condition of today, control of capital issue is an essential operation. We do not, therefore, hesitate to support the Government's measure. But our difficulty is with the Government's manner of doing things than with their wishes or intention.

We have had a revision of the Company law nearly two years ago, but lacunae and loop-holes persist. Until the lacunae and the loop-holes are plugged, all talk about the public sector controlling the strategic heights of economy cannot be secured.

No doubt, this Bill intends to put some control on capital issues. The hon. Deputy Finance Minister has explained that although the issue of bonus shares already required prior permission, the conversion of partly paid up shares into fully paid up shares or increasing the par value of the shares was not so elaborately or explicitly there in the main Act and that is the reason why this amending Bill has been brought forward.

But, Sir, I would say that in view of the fact that the private sector today enjoys the maximum benefit in this country and the private sector rules the field of economy, it is necessary that in view of our planned economy some more control should be effected.

Sir, we know that very recently the Governor of the Reserve Bank of India in his speech in San Francisco reassuring the United States businessmen said that the private sector here ruled the country's economy and had a dominant role in the industrialisation of the country, and there is a possibility of the foreign capital to come into this country and have free movement. Now, if we are serious

[Shri Prabhat Kar]

about our planned economy it is necessary that in spite of the fact that today we need not stress upon the nationalisation of all the industries—we agree that the private sector should remain—but there should be control in respect of every branch of it.

Sir, we know of the lapses and lacunae in the Companies Act. The Managing agency system has been bid a good bye but we are aware that today there are selling agencies and purchasing agencies established—the same group of persons earning perhaps more now—and the purpose for which the Companies Act was amended has not been fulfilled. It is high time that the Finance Minister should think in terms of bringing a comprehensive amendment to the Companies Act. Take, for instance, some foreign companies. The Assam Oil Company, for instance, in 1954 earned a net profit of 14·9 per cent of its capital investment. In 1955 it earned a profit of £6,46,000 i.e., 25·4% of its capital investment. So it is necessary that not only there should be a control on the capital there should be a proper control on the profits itself. I welcome the Bill as presented before the House, but I take this opportunity to urge that the Finance Minister should, at an early date, bring forward a comprehensive amendment to the Companies Act so that the private sector—although they may be given free hand in the business—should move in the manner that the country's planned economy may not suffer.

I would also point out that the hon. Finance Minister should have placed before the House a statement showing in how many cases the companies have taken advantage of the lacunae in this Act and should have informed the amounts involved in these cases, as the House is always prepared to strengthen the hands of the Government. While introducing certain progressive legislation it is

necessary that the House should be taken into confidence instead of simply making certain vague statements. With these words, Sir, I welcome this Bill.

Shri Naushir Bharucha (East Khandesh): Mr. Speaker, Sir, I think that once we accept planned economy and the principle of controlling capital issues a measure of this type becomes inevitable. One has no quarrel with the Bill in so far as it seeks to plug certain loop-holes in the principal Act, and, I think, the Bill was overdue.

As a matter of fact, Clause 2 of the amending Bill defines issues of capital as covering capitalisation of profits or reserves for the purpose of converting partly paid-up shares into fully paid-up shares or increasing the par value of shares already issued. If we examine the principal Act it will be found that the definition of issue capital, which only meant issuing of any securities whether for cash or otherwise, did not cover cases of the type contemplated by the present Bill. In fact, I am surprised how such a lacunae could remain in the principal Act for so long because one of the methods of procuring additional capital is to cover up partly paid up shares and regard them as fully paid-up shares. In that way reserves can be capitalised and the purpose of controlling capital issues could be defeated. Therefore, it is certainly very desirable that this loop-hole should be plugged.

Sir, I am also in favour of amendment of the definition with regard to the hypothecation or mortgage instruments. It is conceivable, in principal Act, the words "other instruments" mentioned in Section 2(b) certainly does not cover cases of mortgages because that says:

(iv) other instruments creating a charge or lien on the assets of the company;

[Shri Naushir Bharucha]

once that is done, the consent is given, then, that peculiar suspense and suspicion ought not to be created. Otherwise it will be impossible for a company to function. I submit that these are extraordinary powers.

The hon. Minister said that this was a minor matter. It is not a minor matter. It is of fundamental importance. It will upset all the programmes and all the plans any company may have. It is very necessary that there should be some finality prescribed to the consent given to the issue of capital. Let the Government think ten times before they give the consent. But once it is given, it has got to be held sacrosanct. It ought not to be permitted to be revoked. In this way, shareholders will be completely ruined. Small middle-class people who have invested their life-savings in companies will be affected. Suddenly, when this type of revocation order comes, thousands and thousands of poor, small shareholders will be ruined completely.

Let us have by all means a perfect Act, as far as is humanly possible to have, to see that no loopholes are there. This was a loophole and we welcome the measure which plugs the loophole. But on the pretext of plugging the loophole Government goes still further and wants to have extraordinary powers which are unheard of, which are with retrospective effect, and which will completely paralyse and cripple a company. I am very much against that.

With regard to the other provisions, I have got nothing to say. If fuller returns and information are required, certainly they must be given, because without the information given to the Government, it is not possible for the Government to see if any of the provisions have been violated. Therefore, with the exception of clause 3 of the Bill to which I strongly object, I welcome the Bill based as it is on principles which we have already accepted, namely, there has got to be

a planned economy, and in that case, capital issues must certainly be controlled.

Mr. Speaker: May I ask this of the Minister? In all cases where previous sanction is sought to be revoked, is it done without prejudice to all that has happened in pursuance of the consent order? How is it that a provision has not been made here to that effect? Whatever has happened in pursuance of a consent or recognition order will be affected. What is the meaning of revoking that also whatever might be the future?

Shri B. R. Bbagat: It is not that if the capital has not been issued that can be revoked. But when the company, in pursuance of the consent, issues the capital, and enters into some contract that the hon. Member has mentioned, certainly the Government will take into account that fact, and capital issue cannot be revoked.

Mr. Speaker: Where is the proviso? Provided that, whatever has happened and if steps have been taken and capital has been issued, this will not be in derogation of what has happened under the consent given, so that it may be for the future only.

Shri Bimal Ghose (Barrackpore): I think it is implied. I think the idea was, when certain new facts come into the possession of the Government, that something has been done fraudulently and that a situation has arisen which would adversely affect the interests of anything that might have been done, then the Government might enter into the affair.

Shri Naushir Bharucha: No fraud is mentioned.

Mr. Speaker: There may be altered circumstances. The Government require all this money for a particular sector, public sector, and therefore, it may not be desirable that in future years the profit should be capitalised.

Shri Bimal Ghose: Today licences are issued. It does not materialise, because it will take sometime, and during that time the Government may revoke the licence.

Mr. Speaker: Whatever has happened in the meanwhile.

Shri B. R. Bhagat: Usually, a period is given for the issue of capital. Even now, although the Government has not the power to suggest to the company, all the companies have accepted the suggestion that if the object of the consent does not exist, for which the consent has been given, where the situation has changed or the market is not such as they desire, for such eventualities, power may be taken. Such powers are taken in those circumstances. Even now, similar powers exist....

Shri Naushir Bharucha: Where are the similar powers? Which are the Acts?

Shri B. R. Bhagat: ...in the Industries (Development and Regulation) Act and also in the United Kingdom, in respect of capital issues, similar powers are taken. It is only an enabling power.

Mr. Speaker: Without any proviso, that would not affect the situation which has altered in pursuance of the previous consent or recognition?

Shri B. R. Bhagat: Certainly no Government will say that if the contract has been entered into, the power will be revoked. Even today, when the IFC gives loans and when loans are sanctioned, the company or the corporation takes some more time for contracts, etc., it is binding on the Government.

Mr. Speaker: If there is no amendment to this effect, the hon. Minister will make it clear in his statement.

Shri Somani (Dausa): Mr. Speaker, Sir, it is generally recognised that there is need under the present circumstances to continue to regulate and control the issue of capital at a

time when our resources are small and there is every need and desirability to canalise these resources into planned development. My friend from the Communist Party raised certain issues about the working of the Companies Act and certain profits which the various companies are making through certain loopholes in the working of the Act. I do not think this is the occasion, when we are dealing with certain specific clauses of the Capital Issues Control (Amendment) Bill, to deal with those things, which are of a general character about the functioning of the companies in the private sector.

As I said, there is need to regulate the functioning of the private sector so that its working and resources may be utilised in the desired channels. Still, there are factors which come in the way of development if these restrictions go too far. Therefore, we have to strike a golden mean under which, while to the extent desirable the functioning of the private sector is regulated, at the same time, its development is not retarded.

Coming to the specific clause of the present Bill, I agree with the clarification which is being made, that is, to include "in the issue of securities" profits or reserves for the purpose of converting partly paid shares as fully paid or for increasing the par value of the shares. I don't think any objection can be raised to this point. Therefore, I have no objection to that amendment.

But I would like to draw the attention of the Deputy Minister to the observations that have already been made by my preceding speaker, Mr. Bharucha, regarding amendments to section 3 of the principal Act. It is being sought to be amended so as to enable the Government to revoke the consent or recognition accorded under any of the provisions of that Act. It is necessary to remember that if after the necessary consent has been given to the party concerned when the party enters into certain commitments or

[Shri Somani]

takes certain action in accordance with that consent, then, naturally, any action on the part of the Government to revoke or even to modify the terms of the consent will create a very awkward situation. It is, therefore, necessary that this clause should be amended in a manner which will not create any such situation.

One can visualize a situation where any company or party, which is holding that consent has not taken any action under that consent in view of certain circumstances which have arisen, and the Government under their powers amending or revoking that consent within a certain period because in that case the company has not taken any action or made any commitments. But the way in which this clause is being sought to be amended enables the Government to revoke or modify the consent even in cases where commitments have been entered into or where certain action has been taken by the company or party concerned, which has received that consent.

I would, therefore, like to draw the attention of the Government the serious repercussion which such power in the hands of the Government may have upon the smooth functioning of the companies by the difficulties which might be created.

I would also like to seek some clarification from the hon. Minister about mortgages. In clause 2(1) (e) the definition of "securities" has been amended to include creation of mortgage deeds, instruments of pawn, pledge or hypothecation and any other instruments, creating or evidencing a charge or lien on the assets of the company". So far as mortgages are concerned, the mortgagees would themselves take proper precautions and there are also provisions in the Companies Act for the registration of mortgages to protect the interests of the public and others as well. So, I don't think there is any necessity for

the prior sanction of the Capital Issues Department for the creation of mortgages. Therefore, I would like to know from the hon. Minister the need for extending the scope of this definition.

Shri Nathwani (Sorath): This Bill is intended to plug certain loopholes in the principal Act and it seeks to enlarge the scope of the definitions of the terms "issue of capital" and "securities". It proposes to remove uncertainties or doubts created by those definitions.

I am afraid, as the definition of the term "issue of capital" stands at present, the purpose is likely to be defeated. The definition is sought to be enlarged by including "capitalisation of profits or reserves for the purpose of converting partly paid-up shares into fully paid-up shares". I stop here to ask one question. Suppose a share of the nominal value of Rs. 100 is issued and on that only Rs. 25 is paid. Now, if the company converts that partly paid-up share into a fully paid-up share, it would amount to an issue of capital. But, if the company merely converts into paid-up to the extent only of Rs 99, then it would not amount to an issue of capital. Therefore, my first submission is that the inclusive part of the definition should be so amended as to cover converting partly paid-up shares into further paid-up shares, whether fully or not. That is my first suggestion.

My second point is about the definition of the term "securities". In the Statement of Objects and Reasons it is stated that from the very beginning the object was to include "the execution of mortgages or hypothecations" and the definition is so extended or enlarged as to put the matter beyond doubt. But, I am afraid, that purpose is not likely to be achieved by the present definition. "Securities" includes *inter alia* "mortgage deeds, instruments of pawn, pledge or

hypothecation and any other instruments, creating or evidencing a charge or lien". Sir, as you know, there are various methods of creating a mortgage. One of the well-recognized methods is by depositing the title deeds of an immovable property in certain cities.

Now, when an equitable mortgage is created by deposit of title deeds, there is no mortgage deed as such. But, subsequently, a memorandum is prepared, which is known as the memorandum of equitable mortgage. I am afraid that such documents are not covered by the expression "any other instruments, creating or evidencing a charge or lien". "Charge or lien" is definitely distinct from mortgage. In the Transfer of Property Act we have got the definition of the term "charge" and that definition specifically excludes mortgage. Therefore, my suggestion is that if you want to include all instruments, whether creating or evidencing the mortgage, pawn, pledge or hypothecation or lien, you can do it by stating that "instruments creating or evidencing mortgage, pledge, pawn, hypothecation, charge or lien". Unless you so change the definition, I am afraid, your object to cover all mortgages would not be achieved and the present practice of avoiding the principal Act by creating securities in the form of equitable mortgages will continue.

I associate myself with what the previous speakers have said as regards clause 3. Government seeks to take very wide powers, but the intention has been not to affect the transactions which might have been entered into pursuant to that consent or recognition. And I hope the Government will come forward and enact a suitable proviso to that effect, or at any rate give an undertaking not to disturb transactions which have taken place in pursuance of such consent or recognition. This is all that I have to say.

Shri Bimal Ghose: A lot of things have changed since 1947 when this Act was first introduced, and I see that even at that time you had opposed that Bill. But times have changed

Mr. Speaker: Did I oppose the Capital Issues Bill?

Shri Bimal Ghose: Yes, in 1947. Mr. Liaquat Ali Khan introduced the Bill then.

Mr. Speaker: Not after 1947. There is change of circumstances.

Shri Bimal Ghose: Yes, and we are now for planned investment, and this has become necessary. But there were one or two doubts about this Bill which I wanted to be clarified

I should first say that it is unfortunate that although we had an amendment in 1956, these things were not thought of then. These are not new things, and it is unfortunate that we have amendments after amendments to Bills to provide for things which should have been known at the time when the amendments were last brought forward.

The first was a doubt to which Mr. Nathwani had referred, namely whether this would provide for the contingency if reserves are capitalised not for fully converting shares but making them still partly paid up but increasing the value by taking money from reserves. The doubt is whether it will cover that. That was one of the doubts that I had in my mind.

The second was with reference to the second objective of this Bill, namely the bringing of mortgages and hypothecations within the ambit of the Bill. I am not quite clear whether this will also affect mortgages and hypothecation for taking loans for working capital purposes or whether it is only for loans or public issues for raising capital,

[Shri Bimal Ghose]

for what we call fixed capital purposes. Now, it would appear that this is only for public issue of capital, not for working capital purposes or loans for working capital. I should like the point to be cleared as to whether it would also affect the position of a company which wants to take a loan from a bank against mortgage or hypothecation. I am not a lawyer, that is my difficulty. And if it does, then it will very much adversely affect the working of ordinary trading companies. Because, if I want to take a loan for working capital of the concern and I have to go to the Capital Issue Department and obtain prior approval, it would make the working of trading companies extremely difficult. So I should like to know as to whether that is also included. If it is not included, then I have nothing against the Bill—although I do not see how that can be done as a public issue except through a debenture, and debenture is already provided for.

Then, what is the way in which a public issue of capital can be made for raising capital from the market by mortgage deeds or by hypothecation I should like to know that. As I said, if it also includes ordinary loans, then I am certainly opposed to it, because it would make the working of companies extremely difficult. If companies have to approach Government every time a loan has to be taken against mortgage or hypothecation, it would make an extremely difficult situation. So I should like Government to explain that position to me.

Finally, there is one other general thing that I should like to say, and that is this. We have provided for regulating the issue of capital. We have all agreed to such regulation of capital issues. But what happens after Government have given their consent for regulation of capital issue? Have they any machinery to see that the capital issue power which the Government have or the authority to raise capital which they

have given to certain companies is being properly used? Because, the purpose of capital issue is not merely to regulate the direction of the investment but also to see that the money which is raised is not frittered away. What is the machinery that the Government have to see that the money raised by different companies is not frittered away? Even today my friend Shri Feroze Gandhi raised the question of the company of Mundhra and investments in various types of companies. That is capital being utilised in a very bad way, where we are not getting the full advantage of the resources we have. What machinery do Government have, once they have permitted capital issue, of seeing that the companies are being properly run or that the capital raised is being channelized to certain directions and we are getting the best results? What is the administrative machinery that Government have for linking up all the different things, so that right from the time of issue of capital down to the formation of the company and its administration thereafter Government can see that things are proceeding as they had planned?

I know that the Government have sufficient power in their hands either through companies administration or capital issue or through any other kind of measure. They have sufficient power. But even so, things are happening today in the market which certainly are not desirable. Not that Government do not know of these happenings. But even if they do know and if these things happen, are we to understand that Government have not sufficient power in their hands to prevent such happenings? If not, we are willing to give those powers. But it is certainly desirable that Government should take a general view of the whole situation and see that capital that is raised is not frittered away in undesirable directions.

The Minister of Finance (Shri T. T. Krishnamachari): The main point that seems to have provoked such an amount of comment is the amendment to section 3, the additional sub-section (6). Here the power that is taken by Government is to revoke consent or recognition accorded under any of the provisions of this section. I think you pointed out what are the limitations to the exercise of this power. Under circumstances where this power should not be exercised in a manner detrimental to the interests of the company, where the company has proceeded to take certain action as a result of the consent given. May I in all humility point out to you that the proviso is comprehensive? The proviso enjoins upon the Government giving the party a reasonable opportunity of showing cause why such an order should not be made. I would like the House to note the proviso. If the conditions implied in the proviso are not fulfilled, Government will be exposing themselves to a question of review by judicial authority, if their action is *mala fide*. In fact, certain things have to be taken for granted. If under a misapprehension certain action has been taken by a company, you can ask them to show cause; but if they say they have taken this action because they felt it would be the best, nothing could be done, except perhaps administering a warning. Nothing could be done even under this section by the Government unless it is going to be extremely unreasonable, to the detriment of the party concerned in which case we have the court still to function.

Then the question was raised by my friend Mr. Nathwani, and very legitimately too, in regard to the construction of two clauses in the definition clause. I agree that in regard to the issue of capital, there might be a loophole. I cannot see how it can be amended unless we make it an elaborate one. Normally, the cases which have come before the Government are cases where it has

been converted into fully paid up capital. If it is partially paid up capital and recourse is had to this device, may be, we may not be able to stop it. I am not quite sure that that can be met by any amendment to this particular section now. I am afraid we have to see how it operates.

13 hrs.

So far as securities are concerned, two doubts have been raised. One is raised by Shri Nathwani that a particular type of mortgage, equitable mortgage would not come within the mischief of this particular definition in spite of the fact that there is a further amplification to mortgage deeds, instruments of pawn, pledge or hypothecation which says, any other instruments, creating or evidencing a charge of lien on the assets of the company. I am not a lawyer. The question of creating a lien will certainly come in the case of an equitable mortgage. From the mere fact that there has been a specific mention of a mortgage deed, whether that covers every case or this type of mortgage should be left out is a matter which is, again, open to question. I do not think there is any need for further strengthening the particular definition.

My hon. friend Shri Bimal Ghose has always got a vision much beyond our own capacity on this side. He said, there was an amendment last year, why was not the Government forward looking or outward looking enough to find out what all will happen and why there is an amendment now? I plead guilty to the charge. The Government's capacity to think ahead is somewhat limited.

The second fact that he mentioned—he mentioned, unfortunately, a number of facts—arises out of mistaking this particular enactment that we are seeking to amend to something which he has in mind, taking his experiences in regard to some other enactment and dovetailing it.

[Shri T. T. Krishnamachari]

This is purely a matter of capital issue. Capital issue is not a matter which ultimately governs the company law. Capital issue is a matter connected with the monetary policy of the Government, whether they are going to permit capital issues, in which case, of what nature and how they propose to control the market. The administration of the consequences of capital issues falls within the purview of company law. I think my hon. friend is trying to take it away from its proper normal setting on to the company law side of it.

Undoubtedly, he is, perhaps, right in whatever he has said about the acts of commission and commission on the part of the Government in regard to the company law. I am quite prepared to admit that he has made out a case. The case will have to be examined and answered or admitted as the case may be. But, it is totally a different question. Undoubtedly, his knowledge ranges over a wide field. In this particular instance, we have to have a narrow vision of the orbit in which Government propose to act, namely, control capital issues for a purpose—administration of company law is something totally different—namely, in order that capital issues might conform to the monetary policy that the Government has for the time being, whatever it may be. Therefore, I do not think my hon. friend Shri Bimal Ghose has made out any case either for amendment of this provision or for any explanation because what he has been asking is something else and has no relevancy to this particular provision before the House. Therefore, I hope the House will accept the explanation.

Shri Bimal Ghose: One point: I wanted to know whether this will also apply to the working capital.

Mr. Speaker: He wanted to know that.

Shri T. T. Krishnamachari: The position is, there is no estoppel here. The question of working capital does not come in. I may tell you, so far as this is concerned, there are certain capital issues or augmentation of capital contemplated by different methods. We have, perhaps, a case in mind, which it is not possible for me to divulge. I do not think the normal working of a company is going to be affected by this.

Shri Bimal Ghose: Does that also come within the purview of this? Suppose I am a company and I want to borrow from a bank.

Shri T. T. Krishnamachari: I do not think Government is likely to interfere in matters of normal working of companies by means of this. It is intended only where capital is being augmented by mortgage. As I said, we have a case in mind and we find that we are completely powerless to prevent that company from raising a very large amount of money. I can give him this assurance that we will not—after all, it is a question of operation—allow this to operate against a company finding normal finance.

Shri Bimal Ghose: Do I understand that the Act would embrace also all those cases but that is not the intention of the Government to so operate that? That is the point.

Mr. Speaker: The question will be this. The hon. Minister may consider. So long as this Act stands, in every case, an application has to be sent to the Government for augmenting the capital or taking a loan for expenses. In each case, the sanction of the Government has to be obtained. The hon. Minister says that sanction may not be withheld. Also he has at the back of his mind and he feels that an application need not be made. It is not so. Possibly rules may be made in the first instance,—the rules can be changed.

from time to time—under what circumstances regarding these mortgages application should be made and permission of Government should be obtained.

Shri T. T. Krishnamachari: May I tell the House that in the original Act which this Act seeks to amend, securities are not comprehensive, but nevertheless include what my hon. friend has in mind, that is section 2 (b).

“‘Securities’ means any of the following instruments issued, or to be issued, by or for the benefit of a company, whether incorporated in the States or not, namely:

- (i) shares, stocks and bonds;
- (ii) debentures;
- (iii) other instruments creating a charge or lien on the assets of the company; and
- (iv) instruments acknowledging loan to or indebtedness of the company and guaranteed by a third party or entered into jointly with a third party.”

More or less, item (iii) above would cover what my hon. friend has in mind. It has not been pointed out to us that the Act has been operated in such a manner as to prevent anybody creating a charge or lien for the purpose of running a company.

Shri Bimal Ghose: I do not quite understand what the hon. Minister said. Under the old Act, it was only section 4 which had reference to offering publicly for sale of any securities and the provision was made applicable. When you took a loan from the bank, it was not publicly offering for sale any securities.

Shri T. T. Krishnamachari: Under the Capital Issues Exemption Order, loans and advances given by banks are totally exempt.

Mr. Speaker: Even now it is covered. Mortgages are impliedly

covered. They create a charge or lien, a stronger lien or a stronger charge.

Shri T. T. Krishnamachari: As I have said now, under the Rules, as the Chair rightly pointed out, we have the Capital Issues Exemption Order in which it is said that loans and advances given by banks are exempt.

Mr. Speaker: Already, it is there.

Shri T. T. Krishnamachari: It is 4 (a).

“The following shall be exempt from the provisions of sub-section (1) of section 3, clause (a) of sub-section (2) of section 3 and sub-section (4) of section 5:—

“The issue and acceptance of securities other than debentures being an issue made by a person in the ordinary course of his business and solely for the purpose of that business to another person carrying on the business of banking or to such other persons nominee in respect of advances or overdrafts from time to time granted or to be granted by such other person.”

Mr. Speaker: Under what rule is it issued?

Shri T. T. Krishnamachari: Rules framed under the Act.

Mr. Speaker: I would like to know under what section of the original Act that rule has been framed.

Shri T. T. Krishnamachari: There is rule-making power, section 14.

Mr. Speaker: Power of exemption is given?

Shri T. T. Krishnamachari: Rule-making power is given.

Mr. Speaker: Can it include power to exempt?

Shri Naushir Bharucha: Yes. It includes. Section 12 is so widely worded. It says:

“The Central Government may by notification in the official

[Shri Naushir Bharucha]

Gazette make rules for carrying out the purposes of this Act."

Shri T. T. Krishnamachari: Section says that the Government may provide for the granting of exemption or condone a contravention. Specifically, it is stated there.

Mr. Speaker: Specifically? All right.

Shri Bimal Ghose: Is it also covered by the proviso to clause 2? What is the meaning exactly in this Bill of the proviso:

"Provided that the foregoing provisions shall not be taken as requiring any offer to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result directly or indirectly in the securities becoming available for the subscription or purchase by persons other than those receiving the offer...."

Not being a lawyer I do not understand the language so much. That is why I am trying to get the point clarified.

Mr. Speaker: Offering securities to the public. It is not to the general public, it is only for a mortgage to the bank. It may come under that also. I think so.

Shri Naushir Bharucha: I think it should be referred to a committee. There are so many complications in it. One week's time is not going to make any material difference. We can pass it after a week.

Shri Bimal Ghose: Government can take it up tomorrow. I am only trying to point out the difficulties.

Shri T. T. Krishnamachari: I am equally in the same position as the hon. Member, very much in the hands of the draftsmen, but if the hon. Member will read the second part of that proviso carefully, I do not think it will cause much confusion.

Mr. Speaker: There is an exemption provision, and then there is also notice being given under clause 3 before any revocation takes place, and then its applying to mortgages or not may come under the proviso. In the working of the Act nothing has happened so far adversely.

Mr. Speaker: The question is:

"That the Bill further to amend the Capital Issues (Control) Act, 1947, be taken into consideration."

The motion was adopted.

Clauses 1—8

Mr. Speaker: There are no amendments to this Bill.

The question is:

"That clauses 1 to 8, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clauses 1 to 8 the Enacting Formula and the Title were added to the Bill.

Shri B. B. Bhagat: I move:

"That the Bill be passed".

Mr. Speaker: Motion moved:

"That the Bill be passed."

Shri Naushir Bharucha: I May be permitted to make some observations with regard to clause 3.

It may be that in practice the Government will be very reasonable in revoking the consent or recognition accorded, under the provisions of this particular section. The hon. Finance Minister has pointed out that there is a certain safeguard incorporated, namely that the company will be given an opportunity to show cause. I am afraid this safeguard is not enough.

I should like the hon. Finance Minister to tell us categorically on the floor of the House, what are those particular cases which he has in mind on the basis of which the Government would revoke a consent once given. If it is a matter of fraud or gross or material misrepresentation in obtaining the consent or abandonment of the purpose for which the capital issue was obtained or misuse of such issues, why can we not put that down here, or at least will the hon. Finance Minister give an assurance on the floor of the House that this clause is intended only to be brought into use in case of fraud, gross or material misrepresentation or abandonment of the purpose for which the capital was obtained or misuse of such issues? I think even a clarification on a point like this, while it is not law in the eyes of law, will certainly help administrative practice to be followed along particular lines, and that will practically secure a safeguard which otherwise I do not see at all in this case.

I do appeal to the hon. Finance Minister at least to make the position clear, as to what are the cases in which this extraordinary power is sought to be wielded by Government.

Shri T. T. Krishnamachari: It would also mean in a particular case where no effective steps are taken and no damage is done, then the consent might also be withdrawn. I would not say that it would be circumscribed by the point mentioned by the hon. Member. The only thing that we can give an assurance about is that the powers will not be utilised to the detriment of the parties concerned where their actions have been completely *bona fide*. Even under the Industries (Development and Regulation) Act we have power to ask for people to whom licences have been given whether they have taken effective steps. You might get a capital issue consent, and it might just lie dormant. We do not want that sort of thing to come up some time later. It might be for a large amount and not for a small amount. And then

we would say: "You have not taken effective steps. Show cause why we should not revoke the consent"—because consent cannot be given indefinitely. There is no question of limitation here operating otherwise we should put a provision here and say that the consent that is given is only valid for a year or six months as the case may be unless it is extended. We have not taken any power of that nature. If the hon. Member says: "You better imagine all contingencies and put down", then legislation, with all the latitude that this House generally allows, will become meaningless.

Mr. Speaker: Consent can be given conditionally also?

Shri T. T. Krishnamachari: Yes.

Mr. Speaker: All profits need not be ploughed back?

Shri T. T. Krishnamachari: Yes, that is mentioned in clause 3(b). Varying of the conditions is possible.

Shri Naushir Bharucha: You have the right to vary that consent. First you say that 40 to 50 per cent. of the profits can be capitalised. Afterwards you say suddenly two per cent. You have got a right to do it.

Mr. Speaker: The only point for consideration is this. I am concerned only about subordinate legislation, how far that power is given. Even the Government must be interested in limiting the exercise of the power in case somebody should think of doing it arbitrarily, that is in so far as transactions have taken place in pursuance of the consent. I think reasonably it may be expected that they ought not to be adversely affected whatever may happen for the future.

Shri T. T. Krishnamachari: I think the proviso is itself a sufficient safeguard. Once we ask them to show cause, we cannot merely reject it even when the explanation offered is a

[Shri T. T. Krishnamachari]

genuine one. There it is a matter where immediately we shall attract the intervention of the courts.

Mr. Speaker: All that I can suggest is that the Government may consider this, of course, after gaining experience in this regard as to whether any particular forms of rules or instructions can also be framed under the rules here.

Shri T. T. Krishnamachari: I shall certainly bear in mind the direction of the Chair.

Mr. Speaker: The question is:

"That the Bill be passed."

The motion was adopted.

CENTRAL EXCISE AND SALT (AMENDMENT) BILL

The Deputy Minister of Finance (Shri B. R. Bhagat): I beg to "move:

"That the Bill further to amend the Central Excises and Salt Act, 1944, be taken into consideration."

This is a non-controversial Bill. It is proposed in the Bill to amend the Central Excises and Salt Act, 1944 in the following manner:

- (i) delete the proviso in clause 16 of sub-section (2) of section 37, and
- (ii) amend Explanation No. 2 to Item 12 of the First Schedule.

13.18 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

The proviso referred to was in fact borrowed from the Iron and Steel Duties Act, 1934 which was consolidated along with other similar Acts into the Central Excises and Salt Act, 1944, and it specifically lays down the quantum of rebate to be granted on the

duty paid on steel ingots and articles of iron manufactured from such ingots on export out of India. This quantum is related to the excise duty in force in 1944 when the Central Excises and Salt Act was passed, that is Rs. 4 per ton. In the Finance (No. 2) Act of 1957 the excise duty on steel ingots has been raised to Rs. 40 per ton. It will, therefore, be necessary to revise correspondingly the quantum of rebate. This will necessitate an amendment of the clause in question.

In respect of other excisable goods, however, the quantum of rebate has been specified in the Act, but has been left to be regulated by the rules. It is, therefore, proposed to bring the position in regard to steel ingots into line with that prevailing in respect of the other excisable commodities by deleting this particular proviso in the clause in question.

It is also proposed in the Bill to amend Explanation No. 2 in Item No. 12 of the First Schedule to the Central Excises and Salt Act. In Item No. 12 the term "cotton fabrics" is defined to mean all varieties of fabrics manufactured either wholly from cotton or partly from cotton and partly from wool, rayon or art silk.

The rate of excise duty depends upon the average count of yarn. For the purpose of determining the average count of yarn, certain rules have been laid down in Explanation II under the item. In respect of the fibres other than cotton, in commercial practice, the idea of 'count' i.e. a ratio between weight and length of yarn is expressed in different terminology. For example, in the case of rayon art silk, the expression used is a "denier" and in the case of wool, it is called "Yorkshire Skein". On purely technical grounds some doubts have therefore been expressed as to how far the use of the expression 'count' in the tariff can be actually related to yarns made out of other fibres. To put the matter beyond