



CHAPTER xvii.

An Act to provide for the Distribution of Surplus Capital A.D. 1897.
of the Assam Railways and Trading Company Limited
and for other purposes. [3rd June 1897.]

WHEREAS the Assam Railways and Trading Company Limited incorporated in the year 1881 under the Companies Act 1862 as a Company limited by shares and herein-after called "the Company" owns and works a railway from Debrugarh to the Dehing River and a branch from Makum Junction to Talup in the Province of Assam under an agreement dated the twenty-sixth day of May one thousand eight hundred and eighty and made and entered into between the Secretary of State for India in Council of the one part and David Thomas Shaw Francis Finlayson Evan Alexander Jack John Horne and Patrick Playfair of the other part by virtue of which the Secretary of State for India had the right to purchase the said railways at the expiration of the first five years from the date of opening the main line and has the right of purchasing the same at subsequent intervals of five years:

And whereas the original capital of the Company as stated in its memorandum of association was three hundred and ninety-three thousand seven hundred and fifty pounds divided into thirty-five thousand preferred shares of ten pounds each called "A" Shares and forty-three thousand seven hundred and fifty deferred shares of one pound each called "B" Shares:

And whereas one of the objects of the Company contained in its said memorandum of association is to apply the proceeds of the sale or realisation of any of the railways of the Company for the time being in or towards payment off of the amounts for the time being credited as paid up on the "A" Shares and a bonus thereon of twenty per centum:

And whereas under the articles of association of the Company as originally framed it was provided (Article 5) that the holders of the said "A" Shares should be entitled to receive out of the net

A.D. 1897. profits of the Company in priority to any other payment of dividend a cumulative dividend of eight per centum per annum on the amount for the time being paid on the shares held by them after which any surplus net profits should belong to the holders of the shares of the Company other than "A" Shares and that in the event of a dissolution of the Company the holders of "A" Shares should be entitled to receive in full out of the assets the amount paid on their shares in priority to the claims of the holders of "B" Shares to be repaid any amount in respect of their "B" Shares and (Article 8) that the Company should apply the whole or any part of the proceeds of the sale of any railway of the Company for the time being to the Secretary of State for India in or towards payment pro rata to the "A" shareholders of the amount for the time being credited as paid up on their shares and of a bonus on the amounts so paid up from time to time of twenty per centum and that the "A" shareholders should accept the sums so to be paid off by the Company and should on payment of the full amount credited as paid up on the "A" Shares and a bonus of twenty per centum thereon surrender their shares to the Company and the Company should accept such surrenders:

And whereas soon after the incorporation of the Company the whole of the said "A" Shares and "B" Shares were issued:

And whereas the Company during the years one thousand eight hundred and eighty-four and one thousand eight hundred and eighty-five under powers contained in the articles of association issued as fully paid seven thousand new "A" Shares of ten pounds each ranking in equality with the "A" Shares of the original capital but in fact upon six thousand two hundred and fifty of the said new "A" Shares namely those numbered in the Company's books 35,001 to 41,000 and 41,401 to 41,650 only eight pounds per share was paid and on seven hundred and fifty of the said shares being those numbered 44,201 to 44,950 only four pounds per share was paid:

And whereas in the year one thousand eight hundred and eighty-six the Company under the powers contained in its articles of association issued eight thousand new shares of ten pounds each called "Pre-preference A Shares 1886" numbered 50,001 to 58,000 entitling the holders to receive out of the net profits of the Company in priority to any other payment of dividend a cumulative preferential dividend of eight per centum per annum on the amount for the time being paid up and also to be repaid in full together with bonus (if any) on such shares in preference to and before any payment should be made to any other shareholders in the Company on account of their shares in the capital thereof:

And whereas all the said "Pre-preference A Shares 1886" were issued as fully paid although in the case of seven thousand nine hundred of such shares the numbers of which cannot now be distinguished only nine pounds ten shillings was in fact paid thereon : A.D. 1897.

And whereas in the year one thousand eight hundred and ninety-three the Company under the powers contained in its articles of association created twenty-five thousand New Six per Centum Preference Shares of ten pounds each entitling the holders to a preferential dividend at the rate of six per centum per annum on the amounts paid thereon respectively out of the net profits of the Company after providing for the dividend on the "Pre-preference A Shares 1886" and to repayment of the amounts paid up thereon out of the assets after repayment of the money paid up on the said "Pre-preference A Shares 1886" and the bonus (if any) payable in respect thereof :

And whereas fifteen thousand of the last-mentioned twenty-five thousand shares have been subscribed and paid for in cash and further issues of such shares may be made :

And whereas the shares issued as aforesaid as fully paid but in respect of which less than the nominal amount has been in fact paid were taken when the shares of the Company were not marketable by persons desirous of assisting the Company and the subscription therefor has been of great advantage to it :

And whereas as such shares were allotted certificates were issued to the allottees declaring the same to be fully paid :

And whereas such shares have been the subject of frequent dealings and are now largely held by persons who have bought them upon the faith of such certificates without notice of the facts herein-before recited :

And whereas the capital of the Company is now as follows :—

Description of Share.	Authorised.	Issued.
	£	£
"A" Shares of the original capital	350,000	350,000
"B" Shares of the original capital	43,750	43,750
New "A" Shares created by resolution of July 1884 upon the terms that they should rank in equality with the original "A" shares -	150,000L.	
Less subsequently cancelled	80,000L.	
	70,000	70,000
"Pre-preference A Shares 1886" created by resolution of 1886 -	80,000	80,000
New 6 per cent. Preference Shares created by resolution of 1893	250,000	150,000
Balance		100,000
	793,750	793,750

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And whereas the Company has issued debentures for sums amounting in the aggregate to three hundred and sixty-three thousand seven hundred pounds and further debentures will be issued from time to time but the Company has no debts which cannot be met as they fall due :

And whereas having regard to the present earnings of the Company's railway it is possible that the power given under the said agreement to purchase the said railways may be exercised by the Secretary of State for India :

And whereas the terms upon which the said New "A" Shares "Pre-preference A Shares" and "New Six per Centum Preference Shares" respectively have been issued are inconsistent with the provisions of the memorandum of association and in the event of a sale of the Company's railway it would be impossible without lengthened litigation to determine the rights of the holders of those classes of shares :

And whereas it is apprehended that the power purported to be given the Company by its articles of association to pay off or redeem its shares is invalid and no scheme of reduction of capital or for the re-construction or re-organisation of the Company under the Companies Acts 1862 to 1890 could be carried out without first determining the respective rights of the holders of the several classes of shares :

And whereas the Company owns and carries on collieries and other property and businesses of considerable value in addition to its railway and any proceedings for winding up under the said Acts would be injurious to the interests of all classes of shareholders :

And whereas it is expedient that all questions arising in consequence of the terms upon which the shares of the Company have been issued and upon the aforesaid provisions of its articles of association should be put an end to :

And whereas on the sixth day of January one thousand eight hundred and ninety-seven a copy of the Bill (as deposited) for this Act was sent to each member of the Company at his or her registered address and at a general meeting of the Company and separate meetings of holders of each of the several classes of shares held respectively on the fourteenth day of January one thousand eight hundred and ninety-seven for the purpose of considering the said Bill a resolution was passed approving the said Bill and authorising the directors to promote the same with the view of obtaining an Act in the terms thereof subject to such alterations as Parliament might be pleased to make therein :

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Act, 1897.

And whereas at similar meetings held on the twenty-ninth day of January one thousand eight hundred and ninety-seven the said resolution was confirmed : A.D. 1897.

And whereas the votes recorded at the said meetings were as follows :—

MEETING OF THE 14TH JANUARY 1897.

	Votes for.	Votes against.
General meeting	63,082	None
Meeting "A" shareholders	24,488	None
Meeting "B" shareholders	29,165	None
Meeting Pre-Preference shareholders	2,785	None
Meeting New Six Per Cent. shareholders	6,644	100

MEETING OF THE 29TH JANUARY 1897.

	Votes for.	Votes against.
General meeting	59,270	None
Meeting "A" shareholders	23,722	None
Meeting "B" shareholders	26,797	None
Meeting Pre-Preference shareholders	2,975	None
Meeting New Six Per Cent. shareholders	5,776	None

And whereas the objects above mentioned cannot be attained without the authority of Parliament :

May it therefore please Your Majesty that it may be enacted and be it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

1. This Act may be cited as the Assam Railways and Trading Company's Act 1897. Short title.

2. Subject and without prejudice to the rights in winding up of the now existing creditors of the Company (other than creditors in respect of debts owing to them as members) the shares set forth in the schedule hereto shall be deemed to be and as from their issue respectively to have been fully paid. Certain shares to be deemed fully paid up.

3. In the event of sale of the Company's railways to the Government of India under the provisions of the said agreement Distribution of proceeds in case of

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—
purchase by
Government
of India.

the net proceeds of sale shall so far as they will extend be applied in the manner following and in the following order of priority:—

- (A) First in redemption of the Company's debentures;*
- (B) Secondly in redemption of the "Pre-preference A Shares 1886" by the payment to each holder of a sum equal to one hundred and twenty per centum of the nominal amount of the "Pre-preference A Shares 1886" held by him with interest at the rate of eight per centum per annum on the nominal amount of such shares as from the expiration of the period in respect of which the then last dividend shall have been paid thereon to the date of payment;
- (C) Thirdly in or towards repayment to each holder of New Six per Centum Preference Shares for the time being issued of the amount credited as paid upon such shares held by him with interest thereon at the rate of six per centum per annum as from the expiration of the period in respect of which the then last dividend shall have been paid thereon until the date of repayment;
- (D) Fourthly in or towards payment to the holders of the Eight per Centum Preference "A" Shares of any dividend in arrear in respect thereof at the date of the receipt of the notice of the intention of the Secretary of State to purchase;
- (E) Fifthly in or towards payment to the holders of the Eight per Centum Preference "A" Shares of the amount credited as paid on such shares held by them with interest thereon at the rate of eight per centum per annum as from the period in respect of which the dividend shall have been paid thereon under the last preceding sub-section until the date of payment and in addition a bonus of twenty per centum of the nominal amount of the same shares:

Provided always that if the proceeds of sale shall be insufficient for paying off wholly the shares of any class upon the terms aforesaid such proceeds shall be applied in part payment of all the shares of the class at the same rate the amount of the bonus (if payable) being in each case twenty per centum on the capital repaid.

Company
may give
notice to
pay off
certain shares
in certain
events.

4. The Company may if and so soon as it receives an intimation from the Secretary of State for India that he proposes to exercise his said power of purchase give to the holders of the shares of all or any one or more of the classes of shares mentioned in the last preceding section notice that the Company will pay off the same wholly or in part upon the terms mentioned in the last preceding

section upon a date to be fixed by such notice and not being earlier than three calendar months from the service of the notice and stating where the money will be paid and as from the date so fixed for payment the holders of the shares mentioned in the notice in the case of shares to be wholly paid off shall cease to be members in respect thereof unless on presentation of their certificates at the place appointed payment of the sum payable be refused.

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5. So soon as the shares of any class shall be wholly paid off under this Act the Company may reduce its capital by cancelling such shares in the same way as if such shares had not been issued or agreed to be issued to any person or in the case of shares partly paid off the Company may in like manner and without confirmation by the High Court of Justice reduce its capital by the amount so paid off each share being reduced by the amount repaid on capital account.

Shares when paid off may be cancelled and capital reduced.

6. The provisions of this Act shall form part of the regulations of the Company but nothing herein contained shall be deemed to prevent the Company from modifying or altering its memorandum or articles of association as hereby varied in accordance with the provisions of the Companies Acts 1862 to 1890.

Provisions of Act to form part of regulations of Company.

7. The Company shall lodge with the Registrar of Joint Stock Companies a printed copy of this Act and it shall be filed in the same way as special resolutions are directed to be filed under the Companies Act 1862 and if such copy is not so lodged within three months from the passing of this Act the Company shall incur a penalty not exceeding two pounds for every day after the expiration of the said period of three months during which the copy is omitted to be forwarded and every director and manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty and every penalty under this section shall be recoverable summarily.

Copy of Act to be lodged with Registrar of Joint Stock Companies.

8. The costs charges and expenses of and incidental to preparing applying for and obtaining this Act shall be paid by the Company.

Costs of Act.

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The SCHEDULE.

7,000 "A" Shares of 10*l.* each numbered from 35,001 to 41,000 from 41,401 to 41,650 and from 44,201 to 44,950.

8,000 "Pre-preference A Shares 1886" of 10*l.* each numbered 50,001 to 58,000.

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