

CHAPTER X

Borrowing Powers

Powers of Corporation to borrow money

109. Powers of Corporation to borrow money.

(1) The Corporation may, with the previous sanction of the ¹[State] Government. from time to time, borrow or re-borrow and take up at interest by the issue of debentures or otherwise on the security of any immovable property vested in the Corporation on or proposed to be acquired by it under this Act or of all the taxes or of any tax which it is authorised to levy for the purposes of this Act or the Transport Undertaking, or of all or any of those securities any sum necessary for the purpose of-

- (a) defraying any costs, charges or expenses, incurred or to be incurred by it in the execution of this Act :
- (b) for discharging any loan contracted under this Act or any other loan or debt for the repayment of which the Corporation is liable;
- (c) generally for carrying out the purposes of this Act, including the advance of loans authorized thereunder:

Provided that-

- (i) no loan shall be raised for the execution of any work other than a permanent work, which expression shall include any work of which the cost should, in the opinion of the ¹[State] Government, be spread over a term of years;
- (ii) no loan shall be raised unless the ¹[State] Government has approved the terms on and the method by which the loan is to be raised and repaid;
- (iii) the period within which the loan is to be repaid shall in no case exceed sixty years, and, where a loan is raised for the repayment of a previous loan, the period within which the subsequent loan is to be repaid shall not extend beyond the unexpired portion of the period fixed for the repayment of the original loan, unless the ¹[State] Government so directs, and shall in no case extend beyond the period of sixty years from the date on which the original loan was raised.

(2) When any sum of money has been borrowed or re-borrowed under sub-section (1)-

- (a) no portion thereof shall, without the previous sanction of the ¹[State] Government, be applied to any purpose other than that for which it was borrowed; and
- (b) no portion of any sum of money borrowed or re-borrowed for the execution of any work shall be applied to the payment of salaries or allowances of any municipal officers or servants other than those who are exclusively employed upon the work for the construction of which the money was borrowed :

Provided that such share of the cost on account of the salaries and allowances of municipal officers or servants employed in part upon the preparation of plans and estimates or the construction or

¹ This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

Power of Corporation to borrow from banks against public securities

supervision of or upon the maintenance of the accounts of such work as the standing Committee may fix may be paid out of the sum so borrowed or re-borrowed.

110. Power of Corporation to borrow from banks against public securities.

Notwithstanding anything contained in section 109 the Corporation may borrow for the purposes of this Act from any bank or banks in which the surplus moneys at the credit of the Municipal Fund or the Transport Fund may be deposited, against any public securities in which for the time being the cash balances of the Corporation may be invested.

Corporation may take advances from banks and grant mortgages

²**[110A. Corporation may take advances from banks and grant mortgages.**

(1) Notwithstanding anything contained in sections 109 and 110, the Corporation may, with the previous sanction of the State Government and on such terms and conditions as the State Government may impose, take from any bank or banks, credit on cash account to be opened and kept with such bank or banks in the name of the Corporation for a sum as may be fixed by the State Government from time to time on the security of all or any of the taxes which the Corporation is authorized to levy for the purpose of this Act.

(2) The Corporation may also with the previous sanction of the State Government and on such terms and conditions as the State Government may lay down mortgage any lands or property vesting in or belonging to the Corporation in security of the payment of the amount of such credit or of the sums advanced from time to time on such cash account with interest thereon.]

When and how loan shall be repaid

111. When and how loan shall be repaid.

Every loan raised by the Corporation under section 109 shall be repaid within the time approved under proviso (ii) to sub-section (1) of the said section and by such of the Following methods as may be approved under the said proviso, namely-

- (a) by payment from a sinking fund established under section 112 in respect of the loan;
- (b) by equal payments of principal and interest;
- (c) by equal payments of principal;
- (d) in the case of a loan borrowed before the appointed day by annual drawings if such method was in operation for the repayment of such loan immediately before such day;
- (e) from any sum borrowed for the purpose under section 109 (1)(b); or
- (f) partly from a sinking fund established under section 112 in respect of the loan and partly from money borrowed for the purpose under section 109 (1) (b).

Maintenance and application of sinking fund

112. Maintenance and application of sinking fund.

(1) Whenever the repayment of a loan from a sinking fund has been sanctioned under proviso (ii) to sub-section (1) of section 109, the Corporation shall establish such a fund and shall pay into it, on such dates as may have been approved under the said proviso, such sum as

² Section 110 A was inserted by Guj. 8 of 1968, s. 3.

will, with accumulations of compound interest, be sufficient after payment of all expenses to pay off the loan within the period approved :

Provided that if at any time the sum standing to the credit of the sinking fund established for the repayment of any loan is of such amount that is allowed to accumulate at compound interest it will be sufficient to repay the loan within the period approved, then with the permission of the ³[State] Government further payments into such fund may be discontinued.

(2) The Corporation may apply a sinking fund, or any part thereof, in or towards the discharge of the loan for which such funds was established and, until such loan or part is wholly discharged, shall not apply the same for any other purpose.

Investment of sinking fund

113. Investment of sinking fund.

(1) All money paid into a sinking fund shall within one month of the date on which the payment was due to be made under sub-section (1) of section 112 be invested in public securities.

(2) All interest & other sums received in respect of any such investment shall be paid into the sinking fund and shall, within one month of receipt, be invested in the manner prescribed by sub-section (1).

(3) Money standing to the credit of two or more sinking funds may, at the discretion of the Corporation, be invested in a common fund, and it shall not be necessary for the Corporation to allocate the securities held in such investments among the several sinking funds.

(4) When any part of a sinking fund is invested in debentures issued by the Corporation or is applied in paying off any part of a loan before the period fixed for repayment, the interest which would otherwise have been payable on such debentures or on such part of the loan shall be paid into the sinking fund and invested in the manner laid down in sub-section (1).

(5) Any investment made under sub-section (1) may be varied from time to time or may be transferred from one sinking fund to another : Provided that the fund from which the transfer is made shall be reimbursed the value of such investment as on the date on which the transfer is made.

(6) During the year in which the loan for the repayment of which a sinking fund is established is due for repayment, the sum to be set apart as portion of the principal of such sinking fund and the sum received on account of interest on moneys forming part of such sinking fund may be retained by the Corporation in such form as it thinks fit.

Investment of sinking fund and surplus moneys in debentures issued by Corporation

114. Investment of sinking fund and surplus moneys in debentures issued by Corporation

(1) In respect of any sinking funds which by this Act the Corporation is directed or authorised to invest in public securities and in respect of any surplus moneys which by this Act the Commissioner or the Transport Manager on behalf of the Corporation is empowered to invest in like securities, it shall be lawful for the Corporation to

³ This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

reserve and set, apart for the purpose of any such investment any debentures issued or to be issued on account of any loan for which the sanction of the ⁴[State] Government shall have been duly obtained : Provided that the intention so to reserve and set apart such debentures shall have been notified to the ⁵[State] Government as a condition of the issue of the loan.

(2) The issue of any such debentures direct to and in the name of the Municipal Commissioner or the Transport Manager of the Transport Undertaking on behalf of the Corporation shall not operate to extinguish or cancel such debentures, but every debenture so issued shall be valid in all respects as if issued to and in the name of any other person.

(3) The purchase by, or the transfer, assignment or endorsement to, the Corporation or to the Commissioner or Transport Manager on behalf of the Corporation of any debenture issued by the Corporation shall not operate to extinguish or cancel any such debenture, but the same shall be valid and negotiable in the same manner and to the same extent as if held by, or transferred, assigned or endorsed to, any other person.

**Annual examination
of sinking funds**

115. Annual examination of sinking funds.

(1) All sinking funds established or maintained under this Act shall be subject to annual examination by the Accountant General, Bombay, who shall ascertain whether the cash and the value of the securities belonging thereto are actually equal to the amount which should be at the credit of such funds had investments been regularly made and had the rate of interest as originally estimated been obtained therefrom.

(2) The amount which should be at the credit of a sinking fund shall be calculated on the basis of the present value of all future payments required to be made to such fund under the provisions of this Act, on the assumption that all investments are regularly made and the rate of interest as originally estimated is obtained therefrom.

(3) The securities belonging to a sinking fund shall be valued for the purposes of this section at their current market value, except in the case of debentures issued under this Act or for any loan raised before the appointed day for which the Corporation is liable which shall always be valued at par, provided that the Corporation shall make good immediately any loss which may accrue on the actual sale of such debentures at the time of repayment of the loan.

(4) The Corporation shall forthwith pay into any sinking fund any amount which the Accountant General, Bombay, may certify to be deficient, unless the ⁶[State] Government specially sanctions a gradual readjustment.

(5) If the cash and the value of the securities at the credit of any sinking fund are in excess of the amount which should be at its credit, the Accountant General, Bombay, shall certify the amount of such excess sum and the Corporation may thereupon transfer the excess sum to the Municipal Fund :

⁴ This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

⁵ Same as 8.

⁶ Same as 9.

Provided that the Corporation may transfer such excess sum or such portion thereof as it may determine to the Transport Fund if the sinking fund from which the transfer is made pertains to a loan which has been raised in whole or part for the purposes of the Transport Undertaking.

(6) If any dispute arises as to the accuracy of any certificate made by the Accountant General, Bombay, under sub-section (4) or (5) the Corporation may, after making the payment or transfer, refer the matter to the ⁷[State] Government, whose decision shall be final.

Provisions for loans raised before the appointed day

116. Provisions for loans raised before the appointed day.

In the case of all loans raised before the appointed day for which the Corporation is liable the following provisions shall apply :-

- (a) if when such loans were raised the loans were made repayable from sinking funds, the Corporation shall establish sinking funds for the repayment of such loans and shall pay into such funds such sums on such dates as may have been fixed when the loans were raised;
- (b) all securities and cash held on the date immediately preceding the appointed day in sinking funds established for the repayment of such loans shall be held by the Corporation as part of the sinking funds established under clause (a);
- (c) the provisions of section 112 shall apply to such sinking funds;
- (d) if when any such loans were raised the loans were made repayable by equal payments of principal and interest or by equal payments of principal or by annual drawings, the Corporation shall make such payments or annual drawings on such dates and in such manner as may have been fixed when the loans were raised ;
- (e) the provisions of section 117 shall apply to such loans.

Attachment of Municipal fund or 'Transport Fund in default of repayment of loan

117. Attachment of Municipal fund or 'Transport Fund in default of repayment of loan.

(1) If any money borrowed by the Corporation or any interest or costs due in respect thereof is or are not repaid according to the conditions of the loan, the ⁸[State] Government, if it has itself given the loan, may, and in other cases shall, on the application of the lender, attach the Municipal Fund or the Transport Fund or a portion of the Municipal Fund or the Transport Fund.

(2) After such attachment no person, except an officer appointed in this behalf by the ⁹[State] Government, shall in any way deal with the attached Fund or portion thereof; but such officer may do all acts in respect thereof which any municipal authority, officer or servant might have done if such attachment had not taken place and may apply the proceeds in satisfaction of the arrears and of all interest and costs due in respect thereof and of all expenses caused by the attachment and subsequent proceedings:

Provided that no such attachment shall defeat or prejudice any debt for which the Fund or portion thereof attached was previously pledged in accordance with law, and all such prior charges shall be paid out of the proceeds of the Fund or portion thereof before any part of the

⁷ This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

⁸ Same as 11.

⁹ Same as 11.

proceeds is applied to the satisfaction of the liability in respect of which such attachment is made.

Form of debentures**118. Form of debentures.**

(1) Debentures issued under this Act shall be in such form as the Corporation may with the previous sanction of the ¹⁰[State] Government from time to time determine.

(2) The holder of any debenture in any form duly authorised under sub-section (1) may obtain in exchange therefore, upon such terms as the Corporation shall from time to time determine, a debenture in any other form so authorised.

(3) Every debenture issued by the Corporation under this act shall be transferable by endorsement.

(4) The right to payment of the moneys secured by any of such debentures and to sue in respect thereof shall vest in the holder for the time being without any preference by reason of some of such debentures being prior in date to others.

Coupons attached to debentures to bear signature of Chairman of Standing Committee and Commissioner**119. Coupons attached to debentures to bear signature of Chairman of Standing Committee and Commissioner.**

All coupons attached to debentures issued under this Act shall be signed by the Chairman of the Standing Committee and the Commissioner on behalf of the Corporation and such signatures may be engraved, lithographed or impressed by any mechanical process.

Debentures issued to two or more persons Jointly**120. Debentures issued to two or more persons Jointly.**

Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (X of 1872)-

(1) when any debenture or security issued under this Act is payable to two or more persons jointly, and either or any of them dies, the debenture or security shall be payable to the survivor or survivors of such persons :

Provided that nothing in this sub-section shall affect any claim by the legal representative of a deceased person against such survivor or survivors;

(2) when two or more persons are joint holders of any debenture or security issued under this Act, any one of such persons may give an effectual receipt for any interest or dividend payable in respect of such debenture or security unless notice to the contrary has been given to the Corporation by any other of such persons.

Issue of duplicate securities**121. Issue of duplicate securities.**

(1) When a debenture issued under this Act is alleged to have been lost, stolen or destroyed either wholly or in part and a person claims to be the person to whom but for the loss, theft or destruction it would be payable, he may, on application to the Commissioner, and on producing proof to his satisfaction of the loss, theft or destruction and of the justice of the claim, obtain from him an order-

(a) if the debenture alleged to have been lost, stolen or destroyed is payable more than six years after the date of publication of the notification referred to in sub-section (2),-

¹⁰ This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

(i) for the payment of interest in respect of the debenture pending the issue of a duplicate debenture, and

(ii) for the issue of a duplicate debenture payable to the applicant, or
(b) if the debenture alleged to have been lost, stolen or destroyed is payable not more than six years after the date of publication of the notification referred to in sub-section (2),-

(i) for the payment of interest in respect of the debenture without the issue of a duplicate debenture, and

(ii) for the payment to the applicant of the principal sum due in respect of the debenture on or after the date on which the payment becomes due.

(2) An order shall not be passed under sub-section (1) until after the issue of such notification of the loss, theft or destruction of the debenture as may be prescribed by the Corporation, and after the expiration of such period as may be prescribed by the Corporation, nor until the applicant has given such indemnity as may be required by the Corporation against the claims of all persons deriving title under the debenture lost, stolen or destroyed.

(3) A list of the debentures in respect of which an order is passed under sub-section (1) shall be published in the Official Gazette.

(4) If at any time before the Corporation becomes discharged under the provisions of section 124 from liability in respect of any debenture the whole of which is alleged to have been lost, stolen or destroyed, such debenture is found, any order passed in respect thereof under this section shall be cancelled.

122. Renewal of debentures.

(1) A person claiming to be entitled to a debenture issued under this Act may, on applying to the Commissioner and on satisfying him of the justice of his claim and delivering the debenture receipted in such manner and paying such fee as may be prescribed by the Commissioner, obtain a renewed debenture payable to the person applying.

(2) Where there is a dispute as to the title to a debenture issued under this Act in respect of which an application for renewal has been made, the Commissioner may-

(a) where any party to the dispute has obtained a final decision from a Court of competent jurisdiction declaring him to be entitled to such debenture, issue a renewed debenture in favour of such party,

(b) refuse to renew the debenture until such a decision has been obtained, or

(c) after such inquiry as is hereinafter provided and on consideration of the result thereof, declare by order in writing which of the parties is in his opinion entitled to such debenture and may, after the expiration of three months from the date of such declaration, issue a renewed debenture in favour of such party in accordance with the provisions of sub-section (1), unless within that period he has received notice that proceedings have been instituted by any person in a Court of competent jurisdiction for the purpose of establishing a title to such debenture.

Renewal of debentures

Explanation.- For the purpose of this sub-section the expression "final decision" means a decision which is not appealable or a decision which is appealable but against which no appeal has been filed within the period of limitation allowed by law.

(3) For the purposes of the inquiry referred to in sub-section (2) the Commissioner may himself record, or may request ¹¹[the Presidency Magistrate specially empowered by the State Government, in Greater Bombay, and elsewhere, the District Magistrate] to record or to have recorded, the whole or any part of such evidence as the parties may produce. The Magistrate to whom such request has been made may himself record the evidence or may direct any Magistrate subordinate to him to record the evidence and shall forward the record of such evidence to the Commissioner.

(4) The Commissioner or any Magistrate acting under this section may, if he thinks fit, record evidence on oath.

123. Liability in respect of debenture renewed.

Liability in respect of debenture renewed

(1) When a renewed debenture has been issued under section 122 in favour of any person, the debenture so issued shall be deemed to constitute a new contract between the Corporation and such person and all persons deriving title thereafter through him.

(2) No such renewal shall affect the rights as against the Corporation of any other person to the debenture so renewed.

124. Discharge in certain cases.

Discharge in certain cases

When a duplicate debenture has been issued under section 121 or when a renewed debenture has been issued under section 122 or when the principal sum due on a debenture in respect of which an order has been made under section 121 for the payment of the principal sum without the issue of a duplicate debenture has been paid on or after the date on which such payment became due, the Corporation shall be discharged from all liability in respect of the debenture in place of which a duplicate or renewed debenture has been so issued or in respect of which such payment has been made, as the case may be-

(a) in the case of a duplicate debenture, after the lapse of six years from the date of the publication of the notification referred to in sub-section

(3) of section 121 or from the date of the last payment of interest on the original debenture, whichever date is later;

(b) in the case of a renewed debenture, after the lapse of six years from the date of the issue thereof; and

(c) in the case of payment of the principal sum without the issue of a duplicate debenture, after the lapse of six years from the date of the publication of the notification referred to in sub-section (3) of section 121.

125. Indemnity.

Indemnity

Notwithstanding anything in section 122, the Commissioner may in any case arising thereunder-

(1) issue a renewed debenture upon receiving such indemnity in

¹¹ These words were substituted for the words beginning with the words "the Chief Presidency Magistrate" and ending with the words "First class" by Bom. 8 of 1954, s. 2, Sch., Part III.

favour of the Corporation and the Commissioner as he shall think fit against the claims of all persons claiming under the original debenture, or

(2) refuse to issue a renewed debenture unless such indemnity is given.

**Annual Statement
to be prepared by
Commissioner**

126. Annual Statement to be prepared by Commissioner.

(1) The Commissioner shall, at the end of each year prepare a statement showing-

(a) the loans borrowed in previous years for which the Corporation is liable and which have not been completely repaid before the commencement of the year, with particulars of the amount outstanding at the commencement of the year, the date of borrowing and the annual loan charges;

(b) the loans borrowed by the Corporation in the year with particulars as to the amount and the date of borrowing and the annual loan charges;

(c) in the case of every loan for which a sinking fund is maintained the amount of accumulation in the sinking fund at the close of the year showing separately the amount paid to the credit of the fund in the year:

(d) the loans repaid in the year and in the case of the loans repaid in instalments or by annual drawing, the amounts, repaid in the year, and the balance due at the close of the year;

(e) the particulars of securities in which the sinking funds have been invested or reserved thereof.

(2) Every such statement shall be laid before a meeting of the Corporation and shall be published in the Official Gazette and a copy of such statement shall be sent to the ¹²[State] Government and to the Accountant General, ¹³[Gujarat].

¹² This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

¹³ This word was substituted for word 'Bombay' by the Gujarat, Adaptation of Laws (State and Concurrent Subjects) Order, 1960.