

THE KERALA MARITIME BOARD BILL, 2014

(As passed by the Assembly)

A

*BILL*

*to provide for the constitution of the Kerala Maritime Board for the non-major ports in the State of Kerala and to vest administration, control and management of such ports and certain undertakings in that Board and matters connected therewith.*

*Preamble.*—WHEREAS, it is expedient to constitute the Kerala Maritime Board for non-major ports in the State of Kerala and to vest administration, control and management of such ports and certain undertakings in the Board;

BE it enacted in the Sixty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Maritime Board Act, 2014.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 13th day of November, 2014.

(4) It applies to all non-major ports, excluding the Fishing Harbours and Fish Landing Centres in the State, to which the Indian Ports Act, 1908 (Central Act 15 of 1908) applies on the date of the commencement of this Act and the State Government may, by notification, apply the provisions of this Act to any other non-major ports in the State to which the Indian Ports Act, 1908 (Central Act 15 of 1908) is extended by the State Government under section 4 of that Act and with effect from such date, as may be specified in the notification.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) “appointed day” in relation to any non-major port, means the day on which this Act is made applicable to that port;

(b) “Board” means the Kerala Maritime Board established under section 3;

KNPP. 1571/2014.

(c) “Chairman” means the Chairman of the Board appointed under section 3 and includes the person appointed under section 4 of the Act as Chairman;

(d) “Chief Executive Officer” means the Officer appointed under sub-section (1) of section 13 of the Act as the Chief Executive Officer;

(e) “dock” includes all basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipways, gridirons, moorings, transit sheds, warehouses, godowns, open plots and other works and things appertaining to any dock and also the portion of the sea enclosed or protected by the arms of breakwater and outer anchorage including breakwaters and outer anchorage or groynes of a harbour;

(f) “foreshore” in relation to a port, means the area between the high watermark and the low watermark relating to that port;

(g) “goods” includes livestock and every kind of movable property but does not include fish caught by traditional fishermen by mechanised boats or other vessels;

(h) “Government” means the Government of Kerala;

(i) “high watermark” in relation to a port, means a line drawn through the highest point reached by ordinary spring tides during any season of the year at that port;

(j) “immovable property” includes wharfage-rights and all other rights exercisable on, over or in respect of any land, wharf, dock or pier;

(k) “Kerala State Maritime Development Corporation” means the Kerala State Maritime Development Corporation registered under the Companies Act, 1956 (Central Act 1 of 1956);

(l) “Kerala State Maritime Society” means the Kerala State Maritime Society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (12 of 1955);

(m) “land” includes the bed of sea, below high watermark and also things attached to the earth or permanently fastened to anything attached to the earth ;

(n) “low watermark” in relation to a port, means a line drawn through the lowest point reached by ordinary spring tides at any season of the year at that port;

(o) “master” in relation to any vessel or craft making use of any non-major port, means any person having for the time being in charge or control of such vessel or craft, as the case may be, except a pilot, harbour master, dock master or berthing master of that port;

(p) “member” means a member of the Board or its Committees, as the case may be;

(q) “non-major port” or “port” means a port other than a major port declared as such by the Central Government under any law, to which this Act applies within such limits as may, from time to time, be defined by the Government under the Indian Ports Act, 1908 (Central Act 15 of 1908);

(r) “notification” means a notification published in the official gazette;

(s) “owner”,—

(i) in relation to goods, means and includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods; and

(ii) in relation to any vessel or craft making use of any port, means and includes any port owner, charterer, consignee or mortgagee in possession thereof;

(t) “pier” includes any stage, stairs, landing place, hard jetty, floating barge or pontoon and any bridges or other works connected therewith;

(u) “port approaches”, in relation to any port, means those parts of the navigable rivers and channels leading to the port in which the Indian Ports Act, 1908 (Central Act 15 of 1908) is in force and in addition includes the road and rail infrastructures within the port limits;

(v) “prescribed” means prescribed by rules made under this Act;

(w) “public securities” means,—

(i) promissory notes, debentures, stock or other securities of the Central Government or of any State Government:

Provided that, securities both the principal and the interest whereof have been fully and unconditionally guaranteed by any such Government shall be deemed, for the purpose of this clause, to be the securities of that Government; and

(ii) debentures or other securities for money issued by or on behalf of any Municipality, Improvement Trust or Port Trust under the authority of any law for the time being in force in the State and includes the Securities;

(x) “rate” means and includes any toll, dues, rent, fee or charge leviable under this Act;

(y) “regulations” means the regulations made by the Board under this Act;

(z) “rules” means the rules made by the Government under this Act;

(za) “securities” means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (Central Act 42 of 1956);

(zb) “State” means the State of Kerala;

(zc) “undertakings” means the Kerala State Maritime Development Corporation and the Kerala State Maritime Society transferred to and vested in Government under section 10 of the Act;

(zd) “vessel” includes anything made for the conveyance, mainly by water, of human beings or of goods;

(ze) “wharf” includes any wall or stage and any part of the land or foreshore that may be used for loading or unloading goods for the embarkation or disembarkation of passengers and any wall enclosing or adjoining the same.

## CHAPTER II

### ESTABLISHMENT OF KERALA MARITIME BOARD

3. *Establishment of Kerala Maritime Board.*—(1) As soon as may be after the commencement of this Act, the Government may, by notification, establish a Board to be called the Kerala Maritime Board.

(2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract and may by the said name sue and be sued.

(3) The head office of the Board shall be at Thiruvananthapuram.

(4) The Board shall consist of the following members, namely:—

- |                                  |                                    |
|----------------------------------|------------------------------------|
| (a) Chief Minister               | .. <i>Ex-officio</i> Chairman      |
| (b) Minister for Ports           | .. <i>Ex-officio</i> Vice-Chairman |
| (c) Minister for Water Resources | .. <i>Ex-officio</i> Member        |

- (d) Minister for Transport .. *Ex-officio* Member
- (e) Minister for Fisheries .. *Ex-officio* Member
- (f) Chief Secretary .. *Ex-officio* Member
- (g) Secretary to Government, .. *Ex-officio* Member  
Water Resources Department
- (h) Secretary to Government, .. *Ex-officio* Member  
Transport Department
- (i) Secretary to Government, .. *Ex-officio* Member  
Fisheries & Ports Department
- (j) Secretary to Government, .. *Ex-officio* Member  
Finance Department
- (k) Secretary to Government, .. *Ex-officio* Member  
Environment Department
- (l) One representative from the .. *Ex-officio* Member  
Indian Navy to be nominated  
by the Central Government
- (m) One representative from the .. *Ex-officio* Member  
Indian Coast Guard to be  
nominated by the Central  
Government
- (n) One representative from the .. *Ex-officio* Member  
Ministry of Shipping
- (o) One representative from .. *Ex-officio* Member  
Indian Customs Department  
to be nominated by the  
Central Government
- (p) Chairman, Cochin Port Trust .. *Ex-officio* Member
- (q) Chief Executive Officer, .. *Ex-officio* Member  
Vizhinjam International  
Seaport Limited
- (r) Chief Engineer in charge .. *Ex-officio* Member  
of Harbour Engineering  
wing of the State
- (s) Chief Executive Officer .. Member Secretary.  
of the Board

4. *Absence of Chairman.*—If the Chairman is absent or on leave, the Vice Chairman and in the absence of both the Chairman and the Vice Chairman, such person as the Government may appoint, shall act as the Chairman.

5. *Meeting of the Board.*—(1) The Board shall hold meetings at such times and places and shall subject to the provisions of sub-sections (2), (3) and (4), follow such procedure in regard to the transaction of business at its meetings as provided by the regulations.

(2) The Chairman and in his absence the Vice Chairman and in the absence of both the Chairman and the Vice Chairman, any person chosen by the members present from amongst themselves, shall preside at the meeting of the Board.

(3) Number of members necessary to constitute a quorum at a meeting be one-third.

(4) The number of members necessary to constitute a quorum at a meeting shall be such as may be provided in the regulations and no business shall be transacted at any meeting unless the members constituting the quorum are present throughout such meeting.

6. *Committees of the Board.*—(1) The Board may, from time to time, constitute from amongst its members one or more Committees, consisting of such number as the Board may consider necessary, for the purpose of discharging such of its duties and functions as may be delegated to such Committee or Committees by the Board.

(2) A Committee constituted under sub-section (1) shall meet at such time and at such place and shall follow such procedure in regard to the transaction of business at its meetings, including the quorum as may be provided by the regulations.

7. *Defects in appointment not to invalidate acts, etc.*—No act or proceedings of the Board or of any of its Committees shall be invalid merely by reason of,—

(a) any vacancy therein or any defect in the constitution thereof; or

(b) any disqualification of or any defect in the appointment of, a person acting as member thereof; or

(c) any irregularity in its procedure not affecting the merits of the act or proceedings.

8. *Delegation of powers.*—The Board may, with the previous approval of the Government, direct that such of the powers and duties conferred or imposed upon the Board by or under this Act as may be specified in such direction may also be exercised or performed by the Chief Executive Officer subject to such conditions and restrictions as may be specified in such direction.

9. *Duties of the Chairman, the Vice Chairman and the Chief Executive Officer.*—(1) It shall be the duty of the Chairman, the Vice Chairman and the Chief Executive Officer to attend every meeting of the Board unless prevented by sickness or other reasonable cause.

(2) The Chief Executive Officer shall, as soon as possible, but not later than fifteen days of the meeting transmit to the Government and to all members of the Board a copy of the minutes of every meeting of the Board and shall furnish to the Government such reports, returns, documents or other information as it may, from time to time, call for.

(3) The Chief Executive Officer shall exercise supervision and control over the acts of all employees of the Board in the matters of executive administration and in matters concerning the accounts and records of the Board.

### CHAPTER III

#### VESTING AND TRANSFER OF UNDERTAKINGS

10. *Undertakings to vest in Government.*—(1) Notwithstanding anything contained in any other law for the time being in force or in any contract or other document, with effect on and from the appointed day, the undertakings, namely the Kerala State Maritime Development Corporation registered under the Companies Act, 1956 (Central Act 1 of 1956) and the Kerala State Maritime Society registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act 12 of 1955) shall by virtue of this Act, stand transferred to and vest in the Government.

(2) The undertakings vested in the Government shall include the properties, rights, liabilities and obligations specified below, namely:—

(i) all the assets in relation to the undertakings and all the documents relating to the undertakings;

(ii) all the rights, liabilities and obligations in relation to the undertakings under any agreement entered into before the appointed day.

(3) If, on the appointed day, any suit, appeal or other proceeding of whatever nature instituted or preferred by or against the undertakings, is pending, the same shall not abate, shall not be discontinued or be, in any way, prejudicially affect by reason of such transfer or of anything contained in this Act, but the suit, appeal or other proceedings may be continued, prosecuted or enforced by or against the State Government or the Board.

11. *Transfer of undertakings to the Board.*—The Government may, by order, transfer the undertakings vested in them under section 10 to the Board on such terms and conditions as may be specified in the order and on such transfer, the undertaking together with all assets, liabilities, rights and obligations vested in or devolved on the Government under sub-section (1) of section 10, shall vest in or devolve on the Board.

12. *Transfer of existing employees, Provident Fund etc.*—(1) Every officer or other employee who was immediately before the appointed day employed in connection with the undertakings, shall, on the appointed day become an officer or an employee, of the Government or the Board as the case may be, and shall hold his office by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the undertakings had not been transferred to and vested in the Government or the Board, as the case may be, and shall continue to do so unless and until his employment under the Government or the Board, as the case may be, is duly terminated or until his remuneration or terms and conditions of service are duly altered by the Government or the Board, as the case may be.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947), or in any other law for the time being in force, the transfer of the services of any officer or other person employed in the undertakings shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(3) Where the undertakings have established a provident fund, superannuation fund or any other fund for the benefits of the persons employed by such undertakings, the amounts in respect of the officer or other employees whose services have become transferred, by or under this Act to the Government or to the Board, shall, out of the amounts standing as on the

appointed day to the credit of such provident fund, superannuation fund or other fund, stand transferred to and vest in the Government or the Board, as the case may be.

(4) The amounts which stand transferred under sub-section (1) to the Government or the Board, as the case may be, shall be dealt with by that Government or Board in such manner as may be prescribed.

#### CHAPTER IV

#### STAFF OF THE BOARD

13. *Chief Executive Officer of the Board.*—(1) The Government may, by notification, appoint the Chief Executive Officer of the Board.

(2) The qualification, salary, allowances and other conditions of service of the Chief Executive Officer shall be such as may be prescribed.

14. *Controller of Finance and Accounts, officers and employees of the Board.*—(1) The Board shall, with the previous sanction of the Government, in writing appoint a person possessing the qualification such as may be prescribed to be the Controller of Finance and Accounts. The Government may sanction such appointment on such terms and conditions as it thinks fit.

(2) The Board may with the previous sanction of the Government in writing create such other posts and appoint on deputation or otherwise such other officers and employees as it considers necessary for the efficient performance of the functions of the Board and determine by regulations their conditions of appointment and service and remuneration payable to them:

Provided that, no person shall be appointed as a Pilot at any port who is not for the time being authorised by the Government under the Indian Ports Act, 1908 (Central Act 15 of 1908) to pilot vessels at that port.

(3) Notwithstanding anything contained in this section, the Board may, with the previous approval of the Government in writing, appoint on deputation an employee of the Hydrographic Survey Wing to the Board subject to usual terms and conditions of deputation as may be issued by Government from time to time.

(4) Save as otherwise provided in this Act, the rules and the regulations made thereunder, the provisions of the Kerala Service Rules, the Kerala State and Subordinate Services Rules, 1958, the Kerala Government Servants' Conduct Rules, 1960 and the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 as amended from time to time, shall *mutatis mutandis* apply to the employees of the Board appointed under this Act.

(5) The amounts standing in the credit of the employees referred to in sub-section (1) of section 12 in any pension, provident fund, gratuity or like funds constituted for them shall be transferred by the Government to the Board along with any accumulated interest due till the appointed day and with the accounts relating to such funds and the Board shall to the exclusion of the Government, be liable for payment of pension, provident fund, gratuity or other like sums as may be payable to such employees at the appropriate time in accordance with the conditions of their service.

15. *Power to grant leave, etc. to employees of the Board.*—(1) Subject to the provisions in the regulations, the power of granting extension of service, granting leave, suspending, reducing, removing or dismissing or of disposing of any other question relating to the service of the employees of the Board including the power of dispensing with services of any such employee otherwise than by reason of the misconduct of such employee, shall be exercised by the Board or such authority as may be provided by the regulations.

(2) Any officer or employee of the Board aggrieved by an order involving his reduction in rank, removal or dismissal may, within such time and in such manner as may be provided for by regulations, prefer an appeal to the Government.

#### CHAPTER V

#### PROPERTY AND CONTRACTS

16. *Transfer of assets and liabilities of Government to the Board.*—As from the appointed day, in relation to any port,—

(a) all property, assets and funds and all rights to levy rates vested in the Government for the purposes of the ports immediately before such day, shall vest in the Board;

(b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the Government immediately before such day, for or in connection with the purposes of the ports, shall be deemed to have been incurred, entered into and engaged to be done by, with or for, the Board;

(c) all non-recurring expenditures incurred by the Government for or in connection with the purposes of the ports up to such day and declared to be capital expenditure by the Government shall be treated as the capital provided by the Government to the Board;

(d) all rates, fees, rents and other sums of money due to the Government in relation to the ports immediately before such day, shall be deemed to be due to the Board;

(e) all suits and other legal proceedings instituted by or against the Government immediately before such day for any matter in relation to ports may be continued by or against the Board;

(f) every employee serving under the Government immediately before such day solely or mainly for or in connection with the affairs of non-major ports shall become an employee of the Board, and shall hold his office or service therein by the same tenure and upon the same terms and conditions of service as he should have held the same if the Board had not been established and shall continue to do so unless and until his employment in the Board is terminated or until his tenure, remuneration or terms and conditions of service are duly altered by the Board by regulation:

Provided that, the tenure, remuneration and terms and conditions of service of any such employee shall not be altered to his disadvantage without the previous sanction of the Government.

*Explanation.*—For the purpose of this section other than the proviso, the term “Government” means the Directorate of Ports.

17. *Transfer of employees of the Directorate of Ports to the Board.*—Save as otherwise provided, officers and other employees of the Directorate of Ports shall, on and from the appointed day, become the officers and employees of the Board and shall hold office by the same tenure and upon the same remuneration and terms and conditions of service, and with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to them, if the same had not been transferred to the Board, and shall continue to do so unless and until their employment under the Board is duly terminated or until his tenure, remuneration or terms and conditions of service are duly altered by the Board by regulation.

18. *Transfer of accumulation in provident fund and other like funds.*—The sums standing to the credit of the provident fund accounts and to the superannuation funds and other like funds, if any, of the persons referred to in section 17 shall be transferred to the Board by the Directorate of Ports and the liability in respect of the said funds, shall be the liability of the Board.

19. *Existing rates etc., to continue until altered by the Board.*—As from the appointed day, all rates, fees and other charges in relation to any port shall unless and until altered by the Board with the provisions of this Act, continue to be levied and collected, at the same rate at which they were being levied and collected by the Government before such day.

20. *Repayment of capital with interest.*—The Board shall repay, at such intervals and on such terms and conditions as the Government may determine, the amount which is treated under clause (c) of section 16 as capital provided by the Government, with interest at such rates as may be fixed by the Government and such repayment of capital or payment of interest shall be deemed to be part of the expenditure of the Board.

21. *Procedure when land cannot be acquired by agreement.*—Where any land is required for the purposes of the Board, the Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) and on payment by the Board of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Board.

22. *Contracts by the Board.*—With respect to the making of contracts by the Board for the purposes of this Act, the following provisions shall apply, namely:—

(a) every contract shall be made on behalf of the Board by the Chief Executive Officer or an officer authorised by the Board;

(b) no contract for the acquisition or sale of immovable property or for the lease or licence of any such property for a term exceeding thirty years, shall be made unless it is previously approved by the Government, on such terms and conditions as it may think fit;

(c) no contract for leasing or licensing waterfront, jetty, waterway and corresponding infrastructural facilities thereof for a term exceeding five years shall be made unless it is previously approved by the Government, on such terms and conditions as it may think fit;

(d) the form and the manner of executing contracts on behalf of the Board shall be such as may be prescribed;

(e) no contract which is not made in accordance with the provisions of this Act and the rules or the regulations made thereunder shall be binding on the Board.

CHAPTER VI

WORKS AND SERVICES TO BE PROVIDED AT  
NON-MAJOR PORTS BY THE BOARD

23. *Powers of the Board to execute works and provide appliances.*—

(1) The Board may, subject to any other law for the time being in force, execute such works, within or beyond the limits of port and provide such appliances as it may deem necessary or expedient.

(2) Such works and appliances may include,—

(a) wharves, quays, docks, stages, jetties, piers, place of anchorage and other works within the port or port approaches or on the foreshore of the port or port approaches in the State, with all such convenient arches, drains, landing places, stairs, fences, roads, bridges, tunnels and approaches and buildings required for the residence of the employees of the Board as the Board may consider necessary;

(b) buses, locomotives, rolling stock, sheds, hotels, warehouses and other accommodation for passengers and goods and other appliances for carrying passengers and for conveying, receiving and storing goods landed, or to be shipped or otherwise;

(c) moorings and cranes, scales and all other necessary means and appliances for loading and unloading of vessels;

(d) reclaiming, excavating, enclosing and raising any part of the foreshore of the port or port approaches which may be necessary for the execution of the works authorised by this Act or otherwise for the purposes of this Act;

(e) such breakwaters and other works as may be expedient for the protection of the port;

(f) dredgers and other machines for cleaning, widening, deepening and improving any portion of the port approaches or of the foreshore of the port or port approaches;

(g) lighthouses, light ships, beacons, buoys, pilot boats and other appliances necessary for the safe navigation of the port and the port approaches in so far as it relates to State functions;

(h) vessels, tugs, boats, barges and launches and lighters for the use within and beyond the limits of the port, whether in territorial waters or otherwise, for the purpose of towing or rendering assistance to any vessel whether entering or leaving the port or bound elsewhere and for the purpose of saving or protecting life or property and for the purpose of landing, shipping or transshipping passengers or goods under section 27;

(i) sinking of tube wells and equipment maintenance and use of boats, barges and other appliances for the purpose of supply of water at the port;

(j) engines and other appliances necessary for extinguishing of fires;

(k) lands abutting the sea coast including creeks;

(l) ferry boats and other works and equipment appertaining to the running ferry service at or between the ports;

(m) construction of models and plans for carrying out hydraulic studies;

(n) dry docks, slipways, boat basins and workshop to carry out repairs or overhauling of vessels, tugs, boats, machinery or other appliances;

(o) carrying out hydrographic survey within the port areas and in other areas as decided by the Board, and providing necessary vessels, equipments and facilities for the same;

(p) container handling facilities.

24. *Power of the Board to undertake certain works.*—(1) The Board may undertake to carry out on behalf of any person any works or services or any class of works or services, on such terms and conditions as may be agreed upon between the Board and the person concerned.

(2) The Board may, if it considers necessary or expedient in the public interest so to do, lend any of its vessels or appliances or the services of any of its employees to any person for such period not exceeding three months and on such terms and conditions as may be agreed upon between the Board and the person concerned.

25. *Control over fishing vessels.*—Every fishing vessel plying within the non-major ports including channels and basins thereof, shall be subject to the general control of the Board.

26. *Power of the Board to order sea-going vessels to use docks, wharves etc.*—(1) When any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage erected at, any port or port approaches under the provisions of this Act has been completed with sufficient warehouses, sheds and appliances for receiving, landing or shipping goods or passengers from and upon sea-going vessels, the Board may, after obtaining the approval of the Collector of Customs and by notification published in three consecutive issues of the Official Gazette, declare that such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage is ready for receiving, landing and shipping or for landing or for shipping goods or passengers from and upon sea-going vessels.

(2) As from the date of the publication of such notification for the third time, it shall be lawful for the Board, from time to time, when there is room at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage to order to come alongside of such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage for the purpose of landing and shipping goods or passengers or for landing or for shipping the same, any sea-going vessel within the port or port approaches which has not commenced to discharge goods or passengers or which being about to take in goods or passengers has not commenced to do so:

Provided that, before making such order the Board shall have regard, as far as possible, to the convenience of such vessel and of the shippers in respect of the use of any particular dock, berth, wharf, quay, stage, jetty, pier or place of anchorage:

Provided further that, if the Board is not the Conservator of the Port, the Board shall not itself make the order as aforesaid but shall require the Conservator of the Port or other person exercising the rights, powers and authorities of the Conservator of the port to make such order.

27. *If accommodation sufficient, all sea-going vessels compelled to use docks, wharves etc.*—When sufficient number of docks, berths, wharves, quays, stages, jetties or piers have been provided at any port or port approaches as aforesaid, the Board may, after obtaining the approval of the Collector of Customs and by notification published in three consecutive issues of the Official Gazette, direct that no goods or passengers shall be landed or shipped from or upon any sea-going vessel within the non-major port or port approaches otherwise than at such docks, berths, wharves, quays, stages, jetties or piers, except with the sanction of the Board and in accordance with such conditions as the Board may specify.

28. *Power to order vessels not to come alongside of, or to be removed from docks, wharves etc.*—Any officer appointed by the Board in this behalf, may, in case of emergency or for any reason which appears to him sufficient, by notice in writing, order the master or owner or agent of any sea-going vessel not to bring such vessel alongside of, or to remove such vessel from any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage belonging to or under the control of the Board and if, such notice is not complied with, the Board may charge in respect of such vessel such sum as it thinks fit, not exceeding ten thousand rupees for each day of twenty four hours or portion of such day, during which such vessel remains at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage:

Provided that, in the case of a vessel ordered to be removed, such charge shall not commence to be made till after the expiry of twelve hours from the service of such notice as aforesaid on the master or owner or agent of the vessel.

29. *Power of Government to exempt vessels from obligation to use wharves, etc.*—Notwithstanding anything contained in section 26 or 27, the Government may, if in its opinion, it is necessary in the public interest so to do, by general or special order, from time to time, permit certain specified vessels or classes of vessels to discharge or ship goods or certain specified goods or classes of goods at such place in a port or within the port approaches, in such manner, during such period and subject to such payments to the Board and on such conditions as the Government may think fit.

30. *Board to declare when vessels, other than sea-going vessels compelled to use dock, wharves etc.*—(1) When any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage for receiving, landing or shipment of goods or passengers from or upon vessels, not being sea-going vessels has

been made and completed with all proper appliances in that behalf, the Board may, after obtaining the approval of the Collector of Customs, by order published in the Official Gazette,—

(i) declare that such dock, berth, quay, stage, jetty, pier or place of anchorage is ready for receiving, landing or shipment of goods or passengers from or on vessels not being sea-going vessels; and

(ii) direct that within certain limits to be specified therein it shall not be lawful without the express sanction of the Board, to land or ship any goods or passengers, out of or into, any vessel not being sea-going vessel of any class, specified in such order, except at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage.

(2) As from the date of the publication of the order mentioned in sub-section (1), it shall not be lawful, without the consent of the Board, for any vessel of such class,—

(i) to land or ship any goods or passengers at any place within the limits so specified except such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage;

(ii) while within such limits, to anchor, fasten or lie within twelve nautical miles from the seashore.

(3) If after the publication of such order, any such vessel, while within the limits so specified, so anchor, fasten or lie, it shall be lawful for the Board to cause the same to be removed out of the said limits at the expense of the master or owner or agent of the vessel.

31. *Performance of services by the Board or other person.*—(1) The Board shall have power to undertake the following services, namely:—

(a) stevedoring, landing, shipping or transshipping passengers and goods between vessels in port and the wharves, piers, quays or dock belonging to or in the possession of the Board;

(b) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises;

(c) carrying passengers within the limits of the port or port approaches, by such means and subject to such restrictions and conditions as the Government may think fit to impose; and

(d) piloting, hauling, mooring, re-mooring, hooking or measuring of vessels or any other service in respect of vessels.

(2) The Board may, if so requested by the owner, take charge of the goods for the purpose of performing the service or services and shall give a receipt in such form as the Board may specify.

(3) Notwithstanding anything contained in this section, the Board may authorise any person to perform any of the services mentioned in sub-section (1) on such terms and conditions as may be agreed upon.

(4) No person authorised under sub-section (3) shall charge or recover for such service any sum in excess of the amount leviable according to the scale framed under sections 32, 33 or 35 of this Act.

(5) Any such person shall, if so required by the owner, perform in respect of the goods any of the services and for that purpose take charge of the goods and give receipt in such form as the Board may specify.

(6) The responsibility of any such person for the loss, destruction or deterioration of goods of which he has taken charge shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872 (Central Act 9 of 1872).

(7) After any goods have been taken charge of and a receipt given for them under this section, no liability for any loss or damage which may occur to them shall attach to any person to whom a receipt has been given or to the master or owner of the vessel from which the goods have been landed or transshipped.

32. *Responsibility of the Board for loss, etc., of goods.*—(1) Subject to the provisions under this Act, the responsibility of the Board for the loss, destruction or deterioration of goods of which it has taken charge shall,—

(i) in the case of goods received for carriage by railway, be governed by the provisions of the Railways Act, 1989 (Central Act 24 of 1989); and

(ii) in other cases, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872 (Central Act 9 of 1872), omitting the words “in the absence of any special contract” in section 152 of that Act:

Provided that, no responsibility under this section shall attach to the Board,—

(a) until a receipt mentioned in sub-section (2) of section 31 is given by the Board; and

(b) after the expiry of such period as may be provided by the regulations from the date of taking charge of such goods by the Board.

(2) The Board shall not be in anyway responsible for the loss, destruction or deterioration of, or damage to, goods of which it has taken charge, unless notice of such loss or damage has been given within such period as may be provided by the regulations made in this behalf from the date of taking charge of such goods by the Board under sub-section (2) of section 31.

33. *Accommodation to be provided for officers of Customs in wharves, etc., appointed under Customs Act, 1962.*—(1) Where the Collector of Customs has, under the provisions of any Act for the levy of duties of customs, appointed any such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, warehouse or shed or a portion of any warehouse or shed provided at any port under the provisions of this Act for the use of sea-going vessels to be an approved place for the landing or shipping of goods or a warehouse for the storing of dutiable goods on the first import thereof without payment of duty, within the meaning of the Customs Act, 1962 (Central Act 52 of 1962), the Board shall set apart and maintain such place on or adjoining such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage or in such warehouses or shed or portion thereof, for the use of officers of Customs as may be necessary.

(2) Notwithstanding that any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, warehouse or shed or portion thereof at any port has, under the provisions of sub-section (1), been set apart for the use of the officers of Customs at the port, all rates and other charges payable under this Act in respect thereof or for the storage of goods therein, shall be payable to the Board, or to such person or persons as may be appointed by the Board to receive the same.

34. *Power to permit erection of private wharves, etc., within the limits of a port subject to condition.*—(1) No person shall make, erect or fix within the limits of a port or port approaches any dock, berth, wharf, quay, stage, jetty, pier, place of anchorage, erection or mooring or undertake any reclamation of foreshore within the said limits except with the previous permission in writing of the Board and subject to such terms and conditions if any, as the Board may specify:

Provided that, where the previous permission is sought by a Government Department or an undertaking owned or controlled by Government, a decision thereon shall be taken and communicated within sixty days from the date of receipt of such request:

Provided further that, where the Board fails to communicate the decision taken thereon within the stipulated time, permission shall be deemed to have been granted to the Government Department or undertaking, as the case may be.

(2) If any person makes, erects or fixes any wharf, dock, quay, stage, jetty or pier, erection or mooring or undertakes any reclamation of foreshore in contravention of sub-section (1), the Board may, by notice, require such person to remove it within such time as may be specified in the notice and if the person fails to do so, the Board may cause it to be removed at the expense of that person.

35. *Compensation payable in certain cases where use of any private wharf, etc., rendered unlawful.*—(1) Where, as a result of an order published under section 26 or section 27 the use of any wharf, dock, berth, quay, stage, jetty, pier or place of anchorage, made, fixed or erected by any person is rendered unlawful, the Board may, after hearing the person concerned by order, close, remove, fill-up or destroy such wharf, dock, berth, quay, stage, jetty, pier or place of anchorage or permit the use thereof to such person on payment of such rates and charges as the Board may, with the previous sanction of the Government, determine.

(2) Save as otherwise provided under sub-section (3), no person shall be entitled to claim compensation for any injury, damage or loss caused or alleged to have been caused by an order made under sub-section (1).

(3) If it is proved to the satisfaction of the Board that any such wharf, dock, berth, quay, stage, jetty, pier or place of anchorage was made, fixed or erected by any person with the previous permission of the authority competent to grant such permission, he shall be paid by the Board compensation, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say:—

(a) in computing the compensation, there shall not be taken into account any rates or other charges which such person shall be liable to pay for using any wharf, dock, berth, quay, stage, jetty, pier or place of anchorage, provided by the Board;

(b) the amount of compensation shall be calculated with reference to the cost of construction of such wharf, dock, berth, quay, stage, jetty, pier or place of anchorage;

(c) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(d) where no such agreement can be reached, the Government shall appoint an Arbitrator, a person who is, or has been, or is qualified for appointment as a Judge of High Court;

(e) the Government may, in any particular case, nominate a person possessing special knowledge of any matter relating to any case under inquiry to assist the Arbitrator in determining any question which has to be decided by him under this section, and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose;

(f) at the commencement of the proceeding before the Arbitrator, the Board and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;

(g) the Arbitrator shall after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specify the person or persons to whom such compensation shall be paid;

(h) where there is a dispute as to the person or persons who are entitled to the compensation, the Arbitrator shall decide such dispute and if the Arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof among such persons;

(i) nothing in the Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996) shall apply to arbitrations under this section;

(j) the Arbitrator appointed under this section, while holding arbitration proceedings under this Act shall have all the powers of a civil court while trying a suit under the Code of Civil procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of documents;

(iii) receiving evidence on affidavits;

(iv) issuing commissions for examination of witness or documents.

(k) every award shall also state the amount of costs incurred in the arbitration proceedings under this section and by what persons and in what proportions they are to be paid;

(l) any person aggrieved by an award of the Arbitrator made under this section may, within thirty days from the date of the award, prefer an appeal to the High Court within whose jurisdiction the port is situated:

Provided that, the High Court may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

## IMPOSITION AND RECOVERY OF RATES AT PORTS

36. *Scales of rates for services performed by the Board or other person.*—

(1) The Board shall, from time to time, frame by regulations a scale of rates at which and a statement of the conditions under which, any of the services specified hereunder shall be performed by itself or any person authorized under section 28 at or in relation to port or port approaches,—

(a) transshipping of passengers or goods between vessels in the port or port approaches;

(b) stevedoring, landing and shipping of passengers or goods from or to such vessels, to or from any wharf, quay, jetty, pier, dock, berth, mooring, stage or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches;

(c) craning or portage of goods on any such place;

(d) wharfage, storage or demurrage of goods on any place;

(e) hydrographic survey in harbours, port areas, coastal areas, inland waterways and other water bodies; and

(f) any other service in respect of vessels, passengers or goods excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act, 1908 (Central Act 15 of 1908).

(2) Different scales of rates and conditions may be framed for different classes of goods and vessels and for different ports.

37. *Scales of rates and statement of conditions for use of property belonging to the Board.*—(1) The Board shall, from time to time, also frame a scale of rates on payment of which and a statement of conditions under which any property belonging to, or in the possession or occupation of the Board or, any place within the limits of the port or port approaches may be used for the purposes specified hereunder:—

(a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock or anchorage, land, building or place as aforesaid by vessels;

(b) entering upon or plying for hire or any wharf, quay, pier, dock, land, building, road, bridge, approach or place as aforesaid by animals or vehicles carrying passengers or goods;

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents;

(d) any other use of any land, building, works, vessels or appliance belonging to or provided by the Board.

(2) Different scales of rates and conditions may be framed for different classes of goods and vessels and for different ports.

38. *Consolidated rates of combination of services.*—The Board may, from time to time, frame a consolidated scale of rates for any combination of the services specified in section 31 or for any combination of such service or services with any use or permission to use any property belonging to, or in the possession or occupation of the Board, as specified in section 32.

39. *Power to levy concessional rates in certain cases.*—In framing scales of rates under any of the foregoing provisions of this Chapter, the Board may prescribe a lower rate in respect of,—

(a) coastal goods, that is to say, goods other than imported goods as defined in the Customs Act, 1962 (Central Act 52 of 1962) carried in a vessel from one Indian port to another Indian port:

Provided that, the Board shall not make any discrimination between one Indian port and another such port in prescribing a lower rate under this section.

(b) other goods in special cases.

40. *Prior sanction of Government to rates and conditions.*—Every scale of rates and every statement of conditions framed by the Board under the foregoing provisions of this Chapter shall be submitted to the Government for sanction and shall have effect when so sanctioned and published by the Board in the Official Gazette.

41. *Power of Government to require modification or cancellation of rates.*—  
(1) Whenever the Government considers it necessary in the public interest so to do, it may, by order in writing, direct the Board to cancel any of the scales in force or modify the same within such period as it may specify.

(2) If the Board fails or neglects to comply with such direction within the specified period, the Government may cancel any of such scales or make such modifications therein as it may think fit:

Provided that, before so cancelling or modifying any scale, the Government shall consider any objection or suggestion which may be made by the Board during the specified period.

(3) When in pursuance of this section, any of the scales has been cancelled or modified, such cancellation or modification shall be published and notified by the Government in the Official Gazette and shall thereupon have effect accordingly.

42. *Remission of rates of charges.*—The Board may, in special cases, and for reasons to be recorded in writing, exempt either wholly or partly any goods, vehicles or vessels or class of goods, vehicles or vessels from the payment of any rate or of charge leviable in respect thereof according to any scale of rates in force under this Act or remit the whole or any portion of such rate or charge so levied.

43. *Refund of excess charges.*—No person shall be entitled to a refund of an excess charge made by the Board unless his claim to the refund has been preferred in writing by him or on his behalf to the Board within six months from the date of payment duly supported by all original relevant documents:

Provided that, the Board may, of its own motion, refund excess charges made in its bills at any time.

44. *Notice of payment charges short levied or erroneously refunded.*—  
(1) When the Board is satisfied that any charge leviable under this Chapter has been short levied or erroneously refunded, it may issue a notice to the person who is liable to pay such charge or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that, no such notice shall be issued after the expiry of three years,—

(a) when the charge is short levied, from the date of the payment of the charge;

(b) where a charge has been erroneously refunded, from the date of the refund.

(2) The Board may, after considering the representation, if any, made by the person to whom notice has been issued under sub-section (1), determine the amount due from such person and thereupon such person shall pay the amount so determined.

45. *Time for payment of rates on goods.*—The rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of the Board or to be shipped for export or to be transshipped shall be payable before the goods are removed, shipped or transshipped.

46. *Board's lien for rates.*—(1) For the amount of all rates leviable by the Board under this Act, in respect of any goods and for the rent due to the Board for any building, plinths, stacking areas or other premises on or in which any goods may have been placed, the Board shall have a lien on such goods and may seize and detain the same until such rates and rent are fully paid.

(2) Such lien shall have priority over all other liens and claims, except for general average and for the shipowner's lien upon the said goods for freight and other charges where such lien exists and for money payable to the Central Government under any law for the time being in force, relating to customs other than by way of penalty or fine and to the Government under any law for the time being in force.

47. *Shipowner's lien for freight and other charges.*—(1) If the master or owner of any vessel or his agent at or before the time of landing from such vessels any goods at any dock, wharf, quay, stage, jetty, berth, mooring or pier belonging to, or in occupation of, the Board, gives to the Board a notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the shipowner, to an amount to be mentioned in such notice, such goods shall continue to be liable to such lien to such amount.

(2) The goods shall be retained in the custody of the Board at the risk and expense of the owners of the goods until such lien is discharged as hereinafter mentioned and godown and storage rent shall be payable by the party entitled to such goods for the time during which they may be so retained.

(3) Upon the production before any officer appointed by the Board in that behalf of a document purporting to be a receipt for, or release from, the amount of such lien, executed by the person by whom or on whose behalf such notice has been given, the Board may permit such goods to be removed after taking reasonable care with respect to the authenticity of such document.

(4) The provisions of this section shall not be applicable to fishermen operating traditional vessels and mechanised vessels in the fishing harbours and fish landing centres.

48. *Sale of goods.*—(1) The Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the landing of the animals or the goods as the Board may think fit, sell by public auction or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing sell by tender, private agreement or in any other manner such goods or so much thereof as in the opinion of the Board may be necessary,—

(a) if any rates payable to the Board in respect of such goods have not been paid; or

(b) if any rent payable to the Board in respect of any place on or in which such goods have been stored has not been paid; or

(c) if any lien of any shipowner for freight or other charges of which notice has been given has not been discharged and if the person claiming such lien for freight or other charges has made to the Board an application for such sale.

(2) Before making such sale, the Board shall give ten days notice of the same by publication thereof in the Official Gazette and also in at least one of the newspapers having wide circulation in the locality:

Provided that, in the case of animals and perishable or hazardous goods, the Board may give such shorter notice and in such manner as provided in the regulation.

(3) If the address of the owner of the goods has been stated in the manifest of the goods or in any of the documents which have come in the possession of the Board or is otherwise known, notice shall also be given to him by letter delivered at such address or sent by post or by e-mail but the title of a *bona fide* purchaser of such goods shall not be invalidated by reason of the omission to send such notice nor shall any such purchaser be bound to inquire whether notice has been sent.

(4) Notwithstanding anything contained in this section, controlled goods may be sold at such time and in such manner as the Government may direct.

*Explanation.*—In this section and in section 49 “controlled goods” means goods, the price or disposal of which is regulated under any law for the time being in force.

49. *Disposal of goods not removed from premises of Board within the time limit.*—(1) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed on their custody the Board may, if the address of the owner or such person is known, cause a notice to be served upon him by letter delivered at such address or sent by post or by e-mail or if the notice cannot be so served upon him or his address is not known, cause a notice to be published in the Official Gazette and also in at least one of the local newspapers having wide circulation in the locality requiring him to remove the goods forthwith and stating that in default of compliance therewith, the goods are liable to be sold by public auction or by tender, agreement or in any other manner:

Provided that, where all the rates and charges payable under this Act in respect of any such goods have been paid, no notice of removal shall be so served or published under this sub-section unless two months have expired from the date on which the goods were placed in the custody of the Board.

(2) The notice referred to in sub-section (1) may also be served on the agents of the vessel by which such goods were landed.

(3) If such owner or person does not comply with the requisition in the notice, served upon him or published under sub-section (1), the Board may, at any time after the expiration of two months from the date on which such goods were placed in its custody, sell the goods by public auction or, in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by tender, agreement or in any other manner such goods or so much thereof in the opinion of the Board may be necessary after giving notice of the sale in the manner specified in sub-sections (2) and (3) of section 48.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (3),—

(a) the Board may in the case of animals and perishable or hazardous goods give notice of removal of such goods although, the period of one month or as the case may be, of two months specified in sub-section (1) has not expired or give such shorter notice of sale in such manner as in the opinion of the Board the urgency of the case requires;

(b) controlled goods may be sold in accordance with the provisions of sub-section (4) of section 48.

(5) The Government may, if it deems necessary so to do in the public interest, by notification, exempt any goods or classes of goods from the operation of this section.

50. *Application of sale proceeds.*—(1) The proceeds of every sale under section 48 or section 49 shall be applied in the following order,—

(a) in payment of the expenses of the sale;

(b) in payment, according to their respective priorities, of the liens and claims exempted in sub-section (2) of section 46 from the priority of the lien of the Board;

(c) in payment of the rates and expenses of landing, removing, storing or warehousing the same and of all other charges due to the Board in respect thereof including demurrage other than the penal demurrage payable in respect of such goods for a period of four months from the date of landing;

(d) in payment of penalty or fine due to the Central Government under any law for the time being in force relating to customs;

(e) in payment of any other sum due to the Board.

(2) The surplus, if any, shall be paid to the importer, owner or consignee of the goods or to his agent, on an application made by him in this behalf within six months from the date of the sale of the goods.

(3) Where no application has been made under sub-section (2), the surplus shall be applied by the Board for the purpose of this Act.

51. *Recovery of rates and charges by distraint of vessel.*—(1) If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any regulations or orders made in pursuance thereof, refuses or neglects to pay the same or any part thereof on demand, the Board may distraint or arrest such vessel and tackle, apparel and furniture belonging thereto or any part thereof and detain the same until the amount so due to the Board, together with such further amount as may accrue for any period during which the vessel is under distraint or arrest, is paid.

(2) In case any part of the said rates or penalties or of the cost of the distress or arrest or keeping of the same, remains unpaid for a period of five working days next after any such distress or arrest has been so made, the Board

may cause the vessel or other thing so distrained or arrested to be sold and with the proceeds of such sale, shall satisfy such rates, or penalties and costs, including the cost of the sale remaining unpaid, rendering the surplus if any, to the master of such vessel on demand:

Provided that ten days notice shall be given to the party before the sale.

52. *Grant of port clearance after payment of rates, realisation of damages etc.*—If the Board gives to the officer of the Central Government whose duty is to grant the port clearance to any vessel at the port, a notice stating,—

(i) that an amount specified therein is due in respect of rates, fines, penalties or expenses chargeable under this Act or under any regulations or orders made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board of such vessel; or

(ii) that an amount specified therein is due in respect of any damage referred to in section 98 and such amount together with the cost of proceedings for the recovery thereof before a Magistrate under that section has not been realised, such officer shall not grant such port-clearance until the amount so chargeable or due has been paid or, as the case may be, the damages and cost have been realised.

#### CHAPTER VIII

##### BORROWING POWERS OF THE BOARD

53. *Power to raise loans.*—(1) The Board may raise loans, with the previous sanction of the Government on such terms and conditions as may be prescribed by Government for the purposes of this Act.

(2) Loans may be raised by the Board in the open market on the securities issued by it or may be obtained from the Government or a Bank approved by the Government.

54. *Securities.*—(1) The Board may, with the sanction of the Government, provide by regulations, the form in which the securities of the Board shall be issued by the Board and the mode in which, and the conditions subject to which, they may be transferred.

(2) The holder of any security in any form may obtain in exchange thereof, upon such terms as the Board may, from time to time, determine, a security in other form provided by the regulations.

(3) The right to sue in respect of money secured by the securities shall be exercisable by the holders thereof for the time being without preference in respect of priority of date.

55. *Right of joint or several payees of Securities.*—(1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (Central Act 9 of 1872),—

(a) when any security is payable to two or more persons jointly and either or anyone of them dies, such security shall be payable to the survivor or survivors of those persons; and

(b) when any such security is payable to two or more persons severally and either or any of them dies, the security shall be payable to the survivor or survivors of those persons or to the representatives of the deceased or to any of them.

(2) Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any security to which sub-section (1) applies.

(3) For the purposes of this section, a body incorporated or deemed to have been incorporated under the Companies Act, 1956 (Central Act 1 of 1956), or any other enactment for the time being in force, whether within or outside India shall be deemed to die when it is dissolved.

56. *Power of two or more joint holders to give receipt.*—Where two or more persons are joint holders of any security, any of those persons may give a valid receipt for any interest payable in respect of such security unless notice to the contrary has been given to the Board by any other holders.

57. *Endorsement to be made on Security itself.*—Notwithstanding anything contained in section 15 of the Negotiable Instruments Act, 1881 (Central Act 26 of 1881), no endorsement of a security which is transferable by endorsement shall be valid unless made under the signature of the holder inscribed on the back of the security itself.

58. *Endorsement of security not liable for amount thereof.*—Notwithstanding anything contained in the Negotiable Instruments Act, 1881 (Central Act 26 of 1881), a person shall not be, by reason only of his having endorsed any security liable to pay any money due either as principal or as interest thereunder.

59. *Impression of signature on securities.*—(1) The signature of the person authorised to sign the securities on behalf of the Board, may be printed, engraved or lithographed or impressed by such mechanical process as the Board may direct.

(2) A signature so printed, engraved, lithographed, impressed or otherwise shall be valid as if it had been inscribed in the proper handwriting of the person so authorised.

60. *Issue of duplicate security.*—(1) When any security 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 Board and on producing proof to its satisfaction of the loss, theft or destruction and justness of the claim, and on payment of such fee, if any, as may be provided by regulations, obtain from the Board an order for,—

- (a) the issue of duplicate security payable to the applicant; and
- (b) the payment of interest in respect of the security said to be lost, stolen or destroyed pending the issue of a duplicate security.

(2) An order shall not be passed under sub-section (1) until after the issue by the Board of the notification of the loss, theft or destruction in the manner provided by regulations.

(3) A list of securities in respect of which an order is passed under sub-section (1) shall be published in such manner as the Board may provide in the regulations.

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

61. *Conversion of Securities.*—(1) The Board may, subject to such conditions as may be provided by regulations, on the application of a person claiming to be entitled to Security or Securities issued by it, on being satisfied of the justness of the claim and on delivery of the Security or Securities received in such manner and on payment of such fee, if any, as it may be provided by regulations, convert, consolidate or subdivide the Security or Securities, and issue to the applicant a new Security or Securities, accordingly.

(2) The conversion, consolidation or subdivision referred to in sub-section (1) may be into a Security or Securities of the same or different classes or of the same or different loans.

62. *Discharge in certain cases.*—Notwithstanding anything contained in the Limitation Act, 1963 (Central Act 36 of 1963),—

(i) on payment of the amount due on a Security on or after the date on which payment becomes due; or

(ii) when a duplicate Security has been issued under section 60; or

(iii) when a new Security or Securities has or have been issued upon conversion, consolidation or subdivision under section 61;

the Board shall be discharged from all liabilities in respect of the Security or Securities so paid or in place of which a duplicate or new Security or Securities has or have been issued,—

(a) in the case of payment, after the lapse of six years from the date on which payment was due;

(b) in the case of duplicate Security after the lapse of six years from the date of the publication under sub-section (3) of section 60 of the list in which the Security is first mentioned or from the date of the last payment or interest on the original Security, whichever, is later;

(c) in the case of new Security issued upon conversion, consolidation or subdivision after the lapse of six years from the date of the issue thereof.

63. *Security for loans taken by the Board.*—All loans raised by the Board under this Act shall be a first charge on,—

(1) the property vested or which may hereafter during the currency of the loans become vested in the Board other than,—

(i) any sum set apart by the Board as sinking fund for the purpose of paying off any loan or for the payment of pension to its employees; or

(ii) the provident or pension fund established by the Board; and

(2) the rates leviable by the Board under this Act.

64. *Remedies of Government in respect of loans made to the Board.*—The Government shall have in respect of loans made by it to the Board the same remedies as holders of Securities issued by the Board and Government shall not be deemed to possess any prior or greater rights in respect of such loans than holders of such Securities:

Provided that, when the terms of any such loan made before the appointed day expressly provide that the loan shall have priority over all other loans in the matter of repayment by the Board, such loan shall have priority.

65. *Power of the Board to repay loans before due date.*—The Board may with the previous sanction of the Government, apply any sums out of the amounts which may come into its hands under the provisions of this Act and which can be so applied without prejudicing the Security of other holders of the Securities, in repaying to Government any sum which may remain due in respect of the principal of any loan although the time fixed for the repayment of the same may not have arrived:

Provided that, no such repayment shall be made of any sum less than ten thousand rupees and that if such repayment is made, the amount of interest in each succeeding instalment shall be so adjusted as to represent exactly the interest due on the outstanding principal.

66. *Establishment of sinking fund.*—(1) If in respect of a loan raised by the Board under this Act, which is not repayable before the expiration of one year from the date of the loan, the Government by an order in writing so directs, the Board shall set apart half yearly, out of its income, as a sinking fund, a sum sufficient to liquidate the loan within a period which shall not in any case, unless the previous consent of the Government has been obtained, exceed twenty-five years but the maximum period shall not in any case exceed forty years:

Provided that, a sinking fund need not in the absence of any stipulation to that effect be established in the case of loans taken by the Board from the Central Government or any State Government.

(2) Where any sinking fund has, before the appointed day, been established by any authority in respect of a loan raised by it, for which the Board is liable under this Act, the sinking fund so established by that authority shall be deemed to have been established by the Board under this section.

67. *Investment and application of sinking fund.*—(1) The sums so set apart by the Board under sub-section (1) of section 66 and the sums forming part of any sinking fund referred to in sub-section (2) of that section shall be invested in public Securities or in such other Securities as the Government may approve in this behalf and shall be held by the Board in trust for the purposes of this Act.

(2) The Board may apply the whole or any part of the sums accumulated in any sinking fund in or towards the discharge of the amounts for the repayment of which the fund has been established:

Provided that, it pays into the fund in each year and accumulates, until the whole of the amounts borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied.

68. *Annual examination of sinking fund.*—(1) A sinking fund established for the liquidation of any loan shall be subject to annual examination by such person as may be appointed by the Government in this behalf and the persons so appointed shall ascertain whether the cash and the current market value of the Securities at the credit of the fund are actually equal to the amount which would have been accumulated if, investment had been regularly made and the rate of interest as originally estimated had been obtained thereon.

(2) The Board shall pay forthwith into the sinking fund any amount which the person appointed under sub-section (1) to conduct the annual examination of the fund may certify to be deficient unless the Government specifically sanctions a gradual re-adjustment.

(3) If the cash and current market value of the Securities at the credit of a sinking fund are in excess of the amount which should be at its credit, the person appointed under sub-section (1) shall certify the amount of the excess and the Board may, with the previous sanction of the Government, reduce or discontinue the half yearly contributions to the sinking fund required under section 66.

69. *Power of the Board to take temporary loans or overdrafts.*— Notwithstanding anything contained in this Act, the Board may,—

(i) borrow amounts by means of temporary overdraft or otherwise by placing the Securities held by the Board in its reserve funds or on Security of the fixed deposits of the Board in its banks;

(ii) obtain advances from such banks on pledge or hypothecation of its current assets without the previous sanction of the Government:

Provided that, such temporary overdrafts or other loans,—

(a) shall not at any time have a longer currency than six months; and

(b) shall not be taken without the previous sanction of the Government, if at any time in any year the amount of such overdrafts, or other loans exceeds such amount not exceeding ten lakhs of rupees, as the Government may fix in this behalf:

Provided further that, all amounts so borrowed by overdrafts or otherwise shall be expended for the purposes of this Act.

70. *Power of the Board to borrow money from International Bank for Reconstruction and Development or from other foreign institutions.*—Notwithstanding anything contained in this Act, but subject to any other law for the time being in force in this behalf, the Board may, with the previous sanction of the Government and on such terms and conditions as may be approved by the Government, raise for the purposes of this Act, loans in any currency or currencies from the International Bank for Reconstruction and Development or from any other Bank or Institution in any country outside India, and no other provision of this Chapter shall apply to or in relation to any such loan unless the terms and conditions of the loan or the approval thereof by the Government or otherwise provided so.

## CHAPTER IX

### REVENUE AND EXPENDITURE

71. *General Fund of the Board.*—The Board shall have and maintain its own fund called the General Fund of the Board to which shall be credited all amounts received by or on behalf of the Board under the provisions of this Act and all amounts received by it from the Government by way of grants, subventions, loans and advances, and as the Conservator of Ports and of their approaches or as the body appointed under section 36 of the Indian Ports Act, 1908 (Central Act 15 of 1908).

72. *Application of amounts in General Fund.*—(1) The amounts credited to the General Fund under section 71 shall be applied by the Board in payment of the following charges, namely:—

(a) the interest and instalments of principal due in respect of any loan that may have been raised or obtained by the Board or for the payment of which the Board may be liable and payments to the sinking fund established for such loan;

(b) the salaries, fees, remunerations, allowances, pensions, gratuities, compassionate allowances or other amounts due to officers and other employees of the Board;

(c) the contributions, if any, payable to the Central or State Government on account of pension and leave allowance of any officer lent to the Board by such Government;

(d) the cost and expenses, if any, incurred by the Board in the conduct and administration of any provident fund, welfare fund, loan or special fund established by the Board;

(e) the contributions, if any, duly authorised to be made, by regulations made under this Act, to any such fund referred to in clause (d);

(f) such sums as may, from time to time, be agreed upon by the Board and the Government or the Central Government or any other authority as a reasonable contribution payable by the Board towards the expenses in connection with the watch and ward functions of the Police Force or the Central Industrial Security Force or any other Force which the Government or the Central Government or any other authority, as the case may be, may establish and maintain for the protection of the port and the docks, warehouses and other property of the Board;

(g) the cost of repairs and maintenance of the property belonging to or vested in, the Board and all charges upon the same and all working expenses;

(h) the cost of the execution and provision of any new work or appliance specified in section 23 which the Board may determine to charge to revenue;

(i) any expenditure incurred under section 24;

(j) any other expenditure which may be incurred by the Board generally for the purposes of this Act;

(k) any other charge which may on the application of the Board or otherwise be specially sanctioned by the Government or for which the Board may be legally liable.

(2) All amounts standing at the credit of the Board which cannot immediately be applied in the manner or for the purpose specified in sub-section (1) shall,—

(a) be deposited in any Nationalised Bank or Treasury Savings Bank or financial institution controlled and managed by the Government as the Board may decide; or

(b) be invested in any specialised scheme in Nationalised Banks or in such public Securities as may be determined by the Board and the said securities shall be held in trust by the Board for the purposes of this Act.

73. *Power to transfer amounts from General Fund to specified account and vice-versa.*—The Board may, with the previous sanction of the Government, apply any sum out of the amounts credited to the General Fund of the Board towards meeting deficits, if any, in the particular or specified accounts such as pilotage account, if so maintained or transfer the whole or part of any surplus funds in such particular accounts to the General Fund of the Board.

74. *Establishment of Reserve Funds.*—The Board may, from time to time, set apart such sums out of its surplus income as it thinks fit as a reserve fund or funds for the purpose of expanding existing facilities or creating new facilities at the ports or for the purpose of providing against any temporary decrease of revenue or increase of expenditure arising from transient causes or for purposes of replacement or for meeting expenditure arising from loss or damage from fire, cyclones, shipwrecks or other accident or for any other emergency arising in the ordinary conduct of its works under this Act:

Provided that, the sums set apart annually in respect of and the aggregate at any time of, any such reserve fund or funds shall not exceed such amount as may, from time to time, be fixed in that behalf by the Government.

75. *Power to reserve Maritime Board Securities for Board's own investments.*—(1) For the purpose of any investment which the Board is authorised to make under this Act, it shall be lawful for the Board to reserve and set apart any Securities to be issued by it on account of any loan to which the consent of the Government has been given:

Provided that, the intention to so reserve and set apart such Securities has been notified as a condition to the issue of the loan.

(2) The issue by the Board of such Securities direct to and in the name of the Board shall not operate to extinguish or cancel such Securities, but every Security so issued shall be valid in all respects as if issued to, and in the name of, any other person.

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

*76. Prior sanction of Government to charge expenditure to capital.—*(1) No expenditure shall be charged by the Board to capital without the previous sanction of the Government:

Provided that, the Board may without such sanction charge to capital expenditure not exceeding such limit as may be specified and subject to such conditions as may be imposed by the Government.

(2) Nothing in sub-section (1) shall be deemed to require the further sanction of the Government in any case where the actual expenditure incurred as a charge to capital exceeds the expenditure sanctioned in this behalf by the Government unless the excess is more than ten per cent of the expenditure so sanctioned.

*77. Works requiring sanction of the Board or Government.—*(1) No new work or appliance, the estimated cost of which exceeds such amount as may be fixed by the Government in this behalf, shall be commenced or provided by the Board nor shall any contract be entered into by the Board in respect of any such new work or appliance until a plan of an estimate for such work or appliance has been submitted to, and approved by the Board and in case the estimated cost of any such new work or appliance exceeds such amount, as may, from time to time, be fixed by the Government in this behalf, sanction of the Government to the plan and estimate shall be obtained before such work is commenced or appliance provided.

(2) Nothing in sub-section (1) shall be deemed to require further sanction of the Government in any case where the actual expenditure incurred does not exceed by more than ten per cent of the estimated cost so sanctioned.

78. *Power of Chief Executive Officer to direct execution of work.*—Notwithstanding anything contained in section 77, the Chief Executive Officer may direct the execution of any work the cost of which does not exceed such maximum limit as may be fixed by the Government in that behalf and may enter into contracts for the execution of such works but in every case the Chief Executive Officer shall, as soon as possible, make a report to the Board of any such direction given or contract entered into by him.

79. *Power of the Board to compound or compromise claims.*—The Board may compound or compromise any claim or demand or any action or suit instituted by or against it for such sum of money or other compensation as it deems sufficient:

Provided that, no settlement shall be made under this section without the previous sanction of the Government if such settlement involves the payment by the Board of a sum exceeding such amount as may be specified by the Government in this behalf.

80. *Writing off loss.*—(1) Subject to such conditions as may be specified by the Government, where the Board is of the opinion that any amount due or any loss, whether of money or of property, incurred by the Board is irrecoverable, the Board may, with the previous approval of the Government, sanction the writing off finally of the said amount or loss:

Provided that, no such approval of the Government shall be necessary where such irrecoverable amount or loss does not exceed in an individual case, twenty-five thousand rupees or in the aggregate in any year, rupees five lakhs.

(2) Notwithstanding anything contained in sub-section (1), where the Chief Executive Officer is of opinion that any amount due to or any loss, whether of money or of property, incurred by the Board is irrecoverable, the Chief Executive Officer may sanction the writing off finally of such amount or loss provided that such amount or loss does not exceed, in an individual case, five thousand rupees or in the aggregate in any one year, one lakh rupees and in every such case, the Chief Executive Officer shall make a report to the Board giving reasons for such sanction.

81. *Power etc., of the Board as Conservator.*—All the powers, authorities and restrictions in respect of the work authorised under this Act, shall apply to the works which may be executed by the Board as the Conservator of the Port

or as the body appointed under sub-section (1) of section 36 of the Indian Ports Act, 1908 (Central Act 15 of 1908) and also to the sanction of such works, the estimate thereof and the expenditure thereunder.

82. *Budget Estimates.*—(1) The Board shall on or before the thirty-first day of January in each year, hold a special meeting at which the Chief Executive Officer of the Board shall present an estimate of the income and expenditure of the Board for the next financial year, in such form as the Government may specify.

(2) a copy of such estimate shall be sent by post or otherwise to each member of the Board so as to reach him not less than ten clear days prior to the date appointed for the special meeting referred to in sub-section (1).

(3) The Board shall consider the estimate at such meeting and may provisionally approve it with or without modification.

(4) The Board shall, on or before the tenth day of February, cause a copy of such estimate as provisionally approved by it, to be sent to the Government.

(5) The Government may sanction the estimate or may return it with remarks and may call for such additional information as it may deem necessary.

(6) When an estimate is returned under sub-section (5), the Board shall proceed to reconsider the estimate with reference to such remarks and shall furnish such additional information as the Government may call for and shall, if necessary, modify or alter the estimate and resubmit it to the Government.

(7) The Government shall sanction the estimate with or without modifications.

(8) Where such estimate is not sanctioned by the Government before the commencement of the financial year to which it relates, the Government may authorise the Board to incur such expenditure as may be necessary in the opinion of the Government until such time as the approval of the estimate by the Government is communicated to the Board.

83. *Preparation of supplementary estimates.*—The Board may in the course of any year for which an estimate has been sanctioned by the Government cause one or more supplementary estimates for the residue of such year to be prepared and the provisions of section 82 shall, so far as may be, apply to such estimate as if it were an original annual estimate.

84. *Reappropriation of amount in estimates.*—Subject to any directions which the Government may give in this behalf, any sum of money or part thereof, of which the expenditure has been authorised in an estimate for the time being in force sanctioned by the Government and which has not been so spent, may at any time be reappropriated by the Board to meet any excess in any other expenditure authorised in the said estimate.

85. *Adherence to estimate except in emergency.*—(1) Subject to the provision of section 83, no sum exceeding such amount as the Government may fix in this behalf shall, save in cases of emergency, be expended by, or on behalf of, the Board unless such sums are included in any estimate of the Board at the time in force which has been finally sanctioned by the Government.

(2) If any sum exceeding such limit as may have been fixed in this behalf under sub-section (1) is so expended by the Board on a pressing emergency, the circumstances shall be forthwith reported by the Chief Executive Officer to the Government together with an explanation of the way in which it is proposed by the Board to cover such extra expenditure.

86. *Accounts and audits.*—(1) The Board shall maintain proper accounts and other relevant records and prepare the annual statement of accounts including the balance sheet in such form as may be approved by the Government.

(2) The accounts of the Board shall be audited once in every year and if so required by the Government concurrently with the compilation of such accounts by an auditor appointed by the Government in consultation with the Comptroller and Auditor General of India and any amount payable to such Auditor by the Board in respect of such audit shall be debitable to the General Fund of the Board.

(3) The Auditor shall have the same rights, privileges and authority in connection with the audit of the accounts of the Board as the Comptroller and Auditor General of India has in connection with the audit of the Government accounts and in particular, shall have the right to demand production of book of accounts, connected vouchers and other documents of the Board.

87. *Publication of audit report.*—(1) Within fourteen days after the audit and examination of the accounts of the Board have been completed, the Auditor shall forward copies of the audit report to the Government and to the Board.

(2) The Government shall cause every audit report to be laid before the Legislative Assembly as soon as may be after such report is received by the Government.

88. *Board to remedy defects and irregularities pointed out in audit report.*— The Board shall forthwith take into consideration any defects or irregularities that may be pointed out by the Auditor, in the audit report on the income and expenditure of the Board and shall take such action thereon as the Board may think fit and shall also send a report of the action taken to the Government.

89. *Government to decide difference between the Board and Auditors.*— If there is difference of opinion between the Board and the Auditor on any point included in the audit report and the Board is made unable to accept and implement the recommendations, if any, made by him on such point, the matter shall forthwith be referred to the Government which shall pass final orders thereon and the Board shall be bound to give effect to such orders.

#### CHAPTER X

##### SUPERVISION AND CONTROL OF GOVERNMENT

90. *Administration report.*—(1) As soon as may be after the first day of April in every year and not later than such date as may be fixed in this behalf by the Government, the Board shall submit to the Government a detailed report of the administration of the ports during the preceding year ending on the thirty-first day of March, in such form as the Government may direct.

(2) The Government shall cause every annual administration report to be laid before the Legislative Assembly as soon as may be, after such report is received by the Government.

91. *Submission of statement of income and expenditure to Government.*— (1) The Board shall annually, or often, or if directed by the Government so to do, submit statement of its income and expenditure in such form and at such time as the Government may direct.

(2) A copy of all such statements shall be open to inspection of the public at the office of the Board during office hours on payment of such fee for each inspection as may, from time to time, be fixed by the Board.

92. *Power of Government to supersede the Board.*—(1) If, at any time, the Government is of opinion,—

(a) that on account of grave emergency, the Board is unable to perform the duties imposed on it by or under the provisions of this Act or any other law; or

(b) that the Board has persistently made default in the performance of the duties imposed upon it by or under the provisions of this Act or of any other law and as a result of such default, the financial position of the Board or the administration of the ports has deteriorated considerably, the Government may, by notification, supersede the Board for such period, not exceeding six months at a time, as may be specified in the notification:

Provided that, before issuing a notification under this sub-section for the reasons mentioned in clause (b), the Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of the notification under sub-section (1) superseding the Board,—

(a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members of the Board;

(b) all the powers and duties which may, by or under the provisions of this Act, or of any other law, be exercised or performed by or on behalf of the Board shall, until the Board is reconstituted under clause (b) or clause (c) of sub-section (3), be exercised and performed by such person or persons as the Government may direct;

(c) all property vested in the Board shall, until the Board is reconstituted under clause (b) or (c) of sub-section (3), vest in the Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Government may,—

(a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or

(b) reconstitute the Board by fresh appointment and in such case, any person who has vacated his office under clause (a) of sub-section (2) shall not be deemed to have disqualified for appointment; or

(c) reconstitute the Board by appointment only for such period as it may consider necessary and in such a case the persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed to have disqualified for such appointment merely because they were members of the Board when the Board was superseded:

Provided that, the Government may, at any time before the expiration of the period of supersession, whether as originally specified under sub-section (1) or as extended under this sub-section, take action under clause (b) or clause (c) of this sub-section.

(4) The Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before the Legislative Assembly at the earliest possible opportunity.

93. *Directions by Government.*—(1) The Government may, from time to time, issue to the Board such general or special directions of policy as they may deem necessary or expedient for the purposes of carrying out the objects of this Act and the Board shall be bound to follow and act upon such directions:

Provided that, the Board shall be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Government whether a question is one of policy or not shall be final.

(3) The Government may issue direction to Kerala Maritime Board to develop non-major ports in accordance with the provisions of the Indian Ports Act, 1908 (Central Act 15 of 1908) and the amended Act, if any, by the Government of India.

94. *Declaring of port limits.*—The port limits for the non-major ports proposed to be developed may be prepared in consultation with the Ministry of Shipping, Government of India so as to ensure co-ordinated and sustainable development of port facilities with waterways and user facilities.

#### CHAPTER XI

#### PENALTIES

95. *Persons employed under this Act to be public servants for certain purposes.*—Every person employed by the Board under this Act shall, for the purposes of sections 166 to 171, 184, 185 and 409 of the Indian Penal Code, 1860 (Central Act 45 of 1860) and for the purposes of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988), be deemed to be a public servant within the meaning of section 21 of the said Code.

96. *Penalty for contravention of sections 26, 27, 28 and 30.*—Whoever contravenes the provisions of any order issued under sections 26, 27 or 28 of this Act or fails to comply with any condition imposed under section 30 shall, on conviction, be punishable with fine which may extend to ten thousand rupees and where the contravention or failure is a continuing one with further fine which may extend to one thousand rupees for each day after the first, during which such contravention or failure continues.

97. *Penalty for setting up wharves, quay, etc., without permission.*—Any person who contravenes the provisions of section 34 shall, on conviction, be punishable with fine which may extend to ten thousand rupees for the first contravention, and with a further fine which may extend to one thousand rupees for each day after the first during which the contravention continues.

98. *Penalty for evading rates, etc.*—Any person who with the intention of evading payment of the rates lawfully due in respect of any goods or vessels carrying any goods, to the Board,—

(a) understates or incorrectly gives the weight, quantity, value or description of such goods, or the tonnage of such vessel in any document presented to any employee of the Board for the purpose of enabling him to determine such rates; or

(b) removes or attempts to remove or abets the removal of such goods or such vessel, shall, on conviction, be punishable with fine which may extend to twice the amount of rates so due subject to a minimum of five hundred rupees.

99. *Recovery of value of damage to property of the Board.*—If, through negligence of any person having the guidance or command of any vessel, or of any mariner or persons employed on such vessel, any damage is caused to any dock, wharf, quay, mooring, stage, jetty, pier or other work in the possession of the Board or any movable property belonging to the Board, the amount of such damage shall, on the application of the Board, be recoverable together with the cost of such recovery by distress and sale under a Magistrate's warrant, of a sufficient portion of the boat's masts, spares, ropes, cables, anchors or stores belonging to such vessel:

Provided that, no Magistrate shall issue such warrant until the master of the vessel has been duly summoned to appear before him and, if he appears, until he has been heard:

Provided further that, no such warrant shall be issued if the vessel was at the time under the orders of a duly authorised employee of the Board and the damage caused was attributable to the order, improper act or omission of such employee.

100. *Member or employee of the Board not to acquire share or interest.*—Any person who, being a member or an employee of the Board, acquires, directly or indirectly, any share or interest in any contract or employment with, by or on behalf of the Board, shall be deemed to have committed an offence under section 168 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

101. *Other Offences.*—Any person who contravenes any of the provisions of this Act, or of any rule, regulation or order made thereunder for the contravention of which no penalty is expressly provided thereunder, shall, on conviction, be punishable with fine which may extend to two thousand rupees.

102. *Cognizance of offences.*—(1) No court inferior to that of a Judicial Magistrate of the First Class shall try any offence punishable under this Act or any rule or regulation made thereunder.

(2) No court shall take cognizance of an offence under this Act except on a report in writing by the Chief Executive Officer.

103. *Offences by Companies, Body corporates and Co-operative Societies.*—(1) If the person committing an offence under this Act is a company, body corporate or co-operative society, every person who, at the time the offence was committed was in-charge of, and was responsible to, the company, body corporate or co-operative society for the conduct of the business of such company, body corporate or co-operative society, as well as the company, body corporate or co-operative society, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, body corporate or co-operative society and it is proved that the offence has been committed with the consent or connivance of or that the commission of the offence is attributable to any negligence on the part of any Director, Manager, Secretary or other officer of the company, body corporate or co-operative society such Director, Manager, Secretary or other officer of the company, body corporate or co-operative society shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purpose of this section,—

(a) “company” means a company incorporated under the Companies Act, 2013 (Central Act 18 of 2013).

(b) “body corporate” means a group of people authorised by law to act as a legal personality and having its own powers, duties and liabilities and includes a company incorporated outside India.

(c) “co-operative society” means a society registered under any law relating to co-operative societies.

(d) “director” in relation to a firm, means a partner in the firm.

## CHAPTER XII

### MISCELLANEOUS

104. *Constitution of State Ports Consultative Committee.*—(1) The Government may, by notification, constitute a State Ports Consultative Committee consisting of members of the Board and such other persons, being not less than ten and not more than twenty as the Government may appoint from amongst persons who are, in the opinion of the Government, capable of representing the interests of the Chamber of Commerce, Shipping, Sailing, Vessels, Customs, Railways, Road Transport, Labour, Communications, Manufacturers of Marine Products, Operators of Ports, Fisheries and Industries, so however that, there shall be at least one member from each of the aforesaid interests.

(2) The Vice Chairman of the Board shall be the *ex-officio* Chairman of the Committee.

(3) Such officer of the Board as the Government may appoint in this behalf shall act as the Secretary to the Committee.

(4) The Committee constituted under sub-section (1) shall have the following functions, namely:—

(a) to advise the Board on all general questions pertaining to the non-major ports;

(b) to advise the Board in respect of any scheme pertaining to the development of any non-major port;

(c) to review the administration of non-major ports and to suggest ways and means of improving their work;

(d) to suggest ways and means to remove any difficulty experienced by the Board in its administration of non-major ports;

(e) to make *suo motu* recommendation to the Board in regard to any matter relating to administration of the non-major ports;

(f) to report to the Board on such matters as may be referred to it either by the Government or the Board for its opinion.

(5) The Government may by rules provide for,—

(a) the calling of the meetings of the Committee and the procedure of meetings;

(b) duties of the Secretary of the Committee;

(c) term of office of persons appointed to be the members of the Committee, travelling allowance and daily allowance to the members of the Committee and rates, thereof.

(6) Any person appointed to the Committee to represent any of the aforesaid interest may resign from the membership by tendering his resignation in writing to the Chairman and the resignation shall take effect from the date on which it is received by the Chairman who shall give intimation of the vacancy to the Government.

105. *Local Advisory Committee.*—(1) The Government may, from time to time, constitute for such ports as it may determine, Local Advisory Committees consisting of such number of persons as it may think fit in each case and on such terms and conditions as may be prescribed.

(2) The Board may, if it thinks fit, consult the Local Advisory Committee concerned on any business coming before it and shall do so in respect of such business as the Government may, by general or special order in this behalf, specify or when required by the regulation so to do.

(3) The Port Officer appointed under the Indian Ports Act, 1908 (Central Act 15 of 1908) shall be the *ex-officio* Chairman of a Local Advisory Committee.

(4) The Local Advisory Committee shall meet at such intervals as may be prescribed and for the transaction of urgent business on such other occasions as the Chairman of the Board may require.

(5) The number of the members necessary to constitute a quorum at a meeting of a Local Advisory Committee shall be such as the Government may specify.

(6) The recommendations of the Local Advisory Committee may be placed before the next Board meeting.

106. *Limitation of proceedings in respect of things done under this Act.*—No suit or other proceedings shall be commenced against the Board or any member or employee thereof for anything done, or purporting to have been done, in pursuance of this Act until the expiration of one month after notice in

writing has been given to the Board or to such member or employee stating the cause of action or after six months after the accrual of the cause of action.

107. *Protection of acts done in good faith.*—No suit or other legal proceedings shall lie against the Board or any member or employee thereof in respect of anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder, or for any damage sustained by any vessel in consequence of any defect in any of the mooring, hawsers or other things belonging to, or under the control of the Board.

108. *Power to make rules.*—(1) The Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rule may be made for all or any of the following matters, namely:—

(a) the terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 13;

(b) the form and manner of executing contracts under section 22;

(c) the terms and conditions on which the Board with the previous sanction of the Government may raise loans under sub-section (1) of section 53;

(d) the terms and conditions of appointment of persons as member of a Local Advisory Committee under sub-section (1) of section 105; and

(e) any other matter which is to be or may be prescribed by rules.

(3) All rules made under this Act shall be subject to the condition of previous publication:

Provided that, if the Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with previous publication of any rule to be made under this section.

(4) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session for a total period of fourteen days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

109. *Power to make regulations.*—The Board may, with the previous approval of the Government, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act and without prejudice to the generality of this power, such regulations may provide for all or any of following matters, namely:—

(a) the time and place of the meetings of the Board or its committees, the procedure to be followed for the transaction of business at such meetings and the number of members necessary to constitute the quorum at such meetings;

(b) the appointment, promotion, suspension, removal and dismissal of its officers and employees;

(c) leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances of the officers and employees, the establishment and maintenance of a provident fund or any other fund for their welfare;

(d) the time within which and the manner in which appeals may be preferred under sub-section (2) of section 15 and the procedure for deciding such appeals;

(e) the terms and conditions of service of persons who become employees of the Board under clause (f) of section 16;

(f) any other matter which is incidental to or necessary for the purpose of regulating the appointment and conditions of service of its employees;

(g) the form of receipt to be given under sub-section (2) of section 31;

(h) the period within which notice may be given under sub-section (2) of section 32;

(i) the safe, efficient and convenient use, management and control of the docks, wharves, quays, jetties, buildings and other works constructed or acquired by or vested in, the Board, or of any land or foreshore acquired by, or vested in, the Board, under this Act;

(j) the reception, portorage, storage and removal of goods brought within the premises of the Board, for the exclusive conduct of these operations by the Board or persons employed by the Board, and for declaring the procedure to be followed for taking charge of goods which may have been damaged before landing, or may be alleged to have been so damaged;

(k) keeping clean the port, river or basins or the bank of the river and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon;

- (l) the mode of payment of rates leviable by the Board under this Act;
- (m) regulating, declaring and defining the docks, wharves, quays, jetties, stages and piers vested in the Board on which goods shall be landed from vessels and shipped on board vessels;
- (n) regulating the manner in which and the conditions under which the loading and unloading of all vessels within, the port or port approaches shall be carried out;
- (o) regulating the lighterage of cargo between ships or between ships and shore or between shore and ships;
- (p) the exclusion from the premises of the Board of disorderly or other undesirable persons and of trespassers;
- (q) ensuring the safety of the port;
- (r) generally for the efficient and proper administration of the ports;
- (s) the person, if any, authorised to sign and the mode of affixing the corporate seal and of attestation of documents relating to Securities issued or to be issued by the Board;
- (t) the manner in which payment of interest in respect of such Securities to be made, recorded and acknowledged;
- (u) the circumstances and the manner in which Securities may be renewed;
- (v) the circumstances in which such Securities must be renewed before further payment of interest thereon can be claimed;
- (w) the form in which such Securities delivered for renewal, conversion, consolidation or sub-division are to be received;
- (x) the proof which is to be produced by a person applying for duplicate Securities;
- (y) the form and manner of publication of the notification mentioned in sub-section (2) of section 60 and the manner of publication of the list mentioned in sub-section (3) of that section;
- (z) the nature and amount of indemnity to be given by a person applying for the payment of interest on the Securities alleged to have been wholly or partly lost, stolen or destroyed, or for the issue of duplicate Securities;

(za) the conditions subject to which Securities may be converted, consolidated or sub-divided;

(zb) the amount for which stock certificate may be issued;

(zc) generally all matters connected with the grant of duplicate, renewal, conversion, consolidation and sub-division of Securities;

(zd) the fees to be paid in respect of the issue of duplicate Securities and of the renewal, conversion, consolidation and sub-division of Securities;

(ze) the fees to be levied in respect of the issue of stock certificate;

(zf) any other matter, which is to be, or may be, provided by regulations.

110. *Provisions with respect to regulations.*—(1) No regulation made by the Board under this Act shall have effect until the same has been published by the Board in the Official Gazette.

(2) Any regulation made under this Act, may provide that a breach thereof shall, on conviction, be punishable with fine which may extend to two hundred rupees and where the breach is a continuing one, with further fine which may extend to fifty rupees for every day during which such breach continues.

111. *Power of Government to direct to make regulations.*—(1) Whenever the Government considers necessary in the public interest so to do, it may, by order in writing thereof, direct the Board to make any regulations for all or any of the matters specified in section 109 or to amend any regulation, within such period as the Government may specify in this behalf:

Provided that, the Government may extend the period specified by it by such further period or periods as it may consider necessary.

(2) If the Board, fails or neglects to comply with such directions within the period allowed under sub-section (1), the Government may make the regulations or amend the regulations, as the case may be, either in the form specified in the direction or with such modification thereof as the Government may think fit:

Provided that, before so making or amending the regulations the Government shall consider any objection or suggestion made by the Board within the said period.

(3) Where in pursuance of sub-section (2) any regulations have been made or amended, the regulations so made or amended shall be published by the Government in the Official Gazette and shall thereupon have effect accordingly.

112. *Power of Government to make first regulations.*—Notwithstanding anything contained in this Act, the first regulations under this Act shall be made by the Government by notification.

113. *Posting of certain regulations etc.*—The text of the regulations made under clause (a) to (r) of section 109 and the scale of rate framed together with a statement of conditions framed by the Board under Chapter VII shall be prominently posted by the Board in Malayalam and English and in regional languages on special boards to be maintained for the purpose at the wharves, docks, piers and other convenient places on the premises of the Board.

114. *Saving of right of Central Government and Local Self Government Institutions to use wharves, etc., for collection of duties and power of Customs Officers.*—Nothing in this Act shall affect,—

(i) the right of the Central Government to collect customs duties or of any local self government institution to collect duties at any dock, berth, wharf, quay, stage, jetty or pier in the possession of the Board; or

(ii) any power or authority vested in the customs authorities under any law for the time being in force.

115. *Application of provisions of this Act to aircraft.*—The provisions of this Act shall also apply to all aircrafts making use of any port while on water in the same manner as they apply in relation to vessels.

116. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the Government may, by general or special order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty:

Provided that, no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

117. *Repeal and Savings.*—The Kerala Maritime Board Ordinance, 2014 (28 of 2014) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under this Act.

---