

REPORT NO.

**250**



**PARLIAMENT OF INDIA**

**RAJYA SABHA**

**DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE  
ON TRANSPORT, TOURISM AND CULTURE**

**TWO HUNDRED FIFTIETH REPORT**  
**The Major Port Authorities Bill, 2016**

*(Presented to the Rajya Sabha on 18<sup>th</sup> July, 2017)*  
*(Laid on the Table of Lok Sabha on 18<sup>th</sup> July, 2017)*



**Rajya Sabha Secretariat, New Delhi**

**July, 2017/ Ashada 1939 (Saka)**

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**RAJYA SABHA SECRETARIAT**  
**NEW DELHI**

**July, 2017/ Ashada, 1939 (Saka)**

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\* To be appended at printing stage.

**COMPOSITION OF THE COMMITTEE  
(2016-2017)**

- 1. Shri Mukul Roy - Chairman**

**Rajya Sabha**

2. Shri Ritabrata Banerjee
3. Dr. K. Chiranjeevi
4. Dr. Prabhakar Kore
6. Shri Kiranmay Nanda
7. Shri Rangasayee Ramakrishna
8. Kumari Selja
9. Shri Rajeev Shukla
9. Shri Narendra Kumar Swain
10. Shri Lal Sinh Vadodia

**Lok Sabha**

11. Shri Subrata Bakshi
12. Shri Ram Charitra Nishad
13. Shri Vinod Chavda
14. Shri Rajeshbhai Naranbhai Chudsama
15. Kumari Arpita Ghosh
16. Shri Rahul Kaswan
17. Shri P. Kumar
18. Shri Harish Chandra Meena
19. Yogi Aditya Nath
20. Shri Kristappa Nimmala
21. Shri Rajesh Pandey
22. Shri Rajesh Ranjan
23. Shri P. Srinivasa Reddy
24. Shri Ram Kumar Sharma
25. Shri Prathap Simha
26. Shri Dushyant Singh
27. Shri Kunwar Haribansh Singh
28. Shri Rakesh Singh
29. Shri Shatrughan Sinha
30. Shri Manoj Tiwari
31. Shri K. C. Venugopal

**SECRETARIAT**

Shri J.G. Negi, Joint Secretary  
Shri Swarabji B., Director  
Shri Arun Kumar, Deputy Secretary  
Smt. Catherine John L., Under Secretary  
Shri P.P. Raumon, Committee Officer

## INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture, having been authorised by the Committee to present on its behalf, do hereby present this Two Hundred Fiftieth Report on The Major Port Authorities Bill, 2016 \*.

2. In pursuance of rules relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha referred\*\* the Bill as introduced in the Lok Sabha on the 16<sup>th</sup> December, 2016, to the Committee on 12<sup>th</sup> January, 2017 for examination and report within three months. On the request being made by the Chairman of the Committee, Hon'ble Chairman had granted extension of time for a period of three months, *i.e.*, upto 12<sup>th</sup> July, 2017.

3. The Committee took oral evidence of the Secretary, Ministry of Shipping and senior officers of Ministry of Law and Justice in its meeting held on the 25<sup>th</sup> April, 2017 on various provision of the Bill. The Committee also heard the views of the representatives of the stakeholders/employees' unions representatives of trade associations, Ship Owners' Associations, Shipping Lines Association, Private Ports Associations etc. on the 3<sup>rd</sup> May, 2017. The Committee also undertook a study visit to Ahmedabad, Mumbai and Kochi from 4<sup>th</sup> to 10<sup>th</sup> June, 2017 and heard the views of all the Major Port Trusts, Port Employee Unions and other stakeholders. The Committee also received written memoranda from various stakeholders and individuals.

4. The Committee considered and adopted the Report in its meeting held on the 12<sup>th</sup> July, 2017.

5. The Committee wishes to express its thanks to the Officers of Ministry of Shipping and Ministry of Law and Justice for placing before the Committee the material and information desired in connection with the Major Port Authorities Bill, 2016. The Committee also acknowledges the contribution of representatives of various stakeholders and individuals who submitted their valuable suggestions on the provisions of the Bill.

*NEW DELHI;*  
*July, 12, 2017*  
*21 Ashada, 1939*

*Mukul Roy*  
*Chairman,*  
*Department-related Parliamentary Standing*  
*Committee on Transport, Tourism and Culture,*  
*Rajya Sabha*

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\* Published in Gazette of India Extraordinary Part-II, Section-2, dated 16<sup>th</sup> December, 2016.

\*\*Rajya Sabha Parliamentary Bulletin Part-II No 56225, dated 13<sup>th</sup> January, 2017.

## ACRONYMS

CFS	:	Container Freight Station
CSR	:	Corporate Social Responsibility
FDI	:	Foreign Direct Investment
FEMA	:	Foreign Exchange Management Act
ICD	:	Inland Container Depot
IPPTA	:	Indian Private Ports and Terminals Association
JNPT	:	Jawharlal Nehru Port Trust
MPA Bill	:	Major Port Authorities Bill
MPT Act	:	Major Port Trust Act
PMO	:	Prime Minister Office
PPP	:	Public Private Partnership
RBI	:	Reserve Bank of India
TAMP	:	Tariff Authority for Major Ports

## REPORT

The Major Port Authorities Bill, 2016 (Annexure-I) was introduced in Lok Sabha on the 16<sup>th</sup> December, 2016. The Hon'ble Chairman, Rajya Sabha in consultation with Speaker, Lok Sabha, on 12<sup>th</sup> January, 2017, referred the Bill to the Department-related Parliamentary Standing Committee on Transport, Tourism and Culture for examination and report within three months. As the Committee could not take up the Bill immediately for discussion due to works related to examination of Demands for Grants 2017-18 of the Ministries of Civil Aviation; Culture; Road Transport and Highways; Shipping and Tourism during that period, so, the Committee in its meeting held on 10<sup>th</sup> April, 2017 decided to seek an extension of time for submission of the report on 'the Major Port Authorities Bill, 2016' to the Parliament from the Hon'ble Chairman of Rajya Sabha. Accordingly, the Committee placed its request before the Hon'ble Chairman of Rajya Sabha for extension of time and the latter granted extension of time for a further period of three months, i.e., upto 12<sup>th</sup> July, 2017 for submission of the report to the Parliament.

2. The 11 Major Ports in India, except Kamarajar Port Limited at Ennore, are autonomous statutory bodies functioning under the Major Port Trusts Act, 1963 (MPT Act). Kamarajar Port is functioning as a company. The Committee was informed by the Ministry of Shipping that a number of measures are being taken by the Government to augment capacity and improve the operational efficiency of Major Ports. However, under the restrictive ambit of the MPT Act, the Major Ports are finding it difficult to operate in a highly competitive environment and respond to market challenges. Even after delegating more powers and making some amendment to MPT Act, from time to time, the basic objective of offering efficient service to port users has not been achieved fully. The context in which MPT Act was introduced in 1960s has changed drastically and in recent times, there has been a paradigm shift with Non-Major Ports and private ports already accounting for more than 40% of the market share of the cargo handled. The Major Ports have lost around 33% of their market share in last two decades. Moreover, trans-shipment of containers is taking place in foreign ports such as Colombo, Singapore which causes great loss to Indian Ports.

3. Therefore, with a view to provide more autonomy and flexibility to Major Ports and to professionalize their governance, it is proposed to amend the Major Port Trust Act, 1963 comprehensively. Since the number of amendments is large, it is proposed to replace the existing MPT Act, 1963 with a new legislation viz. 'The Major Port Authorities Bill, 2016'.

4. The Bill, in its Statement of Objects and Reasons, mentions that the proposed Major Port Authorities Bill, 2016, *inter alia*, provides for the following, namely:—

(i) to constitute the Board of Port Authority for each Major Port in the place of the Board of Trustees;

(ii) the Board for each Major Port Authority shall consist of—a Chairperson, a Deputy Chairperson, one Member each from the (a) concerned State Government in which the Major Port is situated; (b) Ministry of Railways; (c) Ministry of Defence; and (d) Customs, Department of Revenue, minimum three and not exceeding four Independent Members, one Member representing the interest of the employees and one Member nominated by the Central Government;

(iii) to enable the Board of Port Authority—

- (a) to use its property, assets and funds in such manner and for such purposes as it may deem fit for the benefit of that Major Port;
  - (b) to enter into and perform any contract necessary for the performance of its functions under the proposed legislation;
  - (c) to make regulations for the purposes of operations, development and planning of the Major Port;
  - (d) to frame the scales of rates for assets and services available at Major Port;
  - (e) to claim lien on such goods and to seize and detain the same until such rates and rents are fully paid;
- (iv) to empower the Board of Port Authority to raise the loans and issue securities for the purposes of the capital expenditure and working capital requirements of such Port Authority;
- (v) empowering the Central Government—
- (a) to order survey or examination of the works of the Port Authority;
  - (b) to restore and complete the works at the cost of the Port Authority;
  - (c) to take over the management of the Port Authority in certain circumstances;
  - (d) to exempt certain specified vessels from obligation to use port assets in the interest or security of the nation or on account of a grave emergency; and
  - (e) to issue directions to every Port Authority;
- (vi) to constitute an Adjudicatory Board for adjudication of disputes among Major Ports, Public Private Partnership concessionaries and captive users. This Adjudicatory Board shall consist of a Presiding Officer and such other Members not exceeding two, as may be appointed by the Central Government; and
- (vii) to make a provision for Corporate Social Responsibility measures within the port limits.

5. The Committee heard the views of the Secretary, Ministry of Shipping, and other senior officials of the Ministry on the provisions of the Bill on the 25<sup>th</sup> April, 2017. The Committee also heard the views of the representatives of the stakeholders/unions representatives of Trade Associations, Ship Owners' Associations, Shipping Lines Association, Private Ports Associations etc. on the 3<sup>rd</sup> May, 2017 (Annexure-II). During its study visit to Ahmedabad, Mumbai and Kochi, the Committee heard the views of all the Major Ports and their employee unions and other stakeholders on the Bill. Besides, the individuals/organizations submitted written memoranda to the Committee on different aspects to various clauses of the Bill as given in Annexure-III. The Committee sought comments from the Ministry of Shipping on the points raised in various representations received by it. The Committee also considered the background note and replies to queries furnished by the Ministry of Shipping while preparing the report.

6. The Committee during deliberations enquired from the Ministry of Shipping the reasons for replacing the existing Major Port Trusts Act, 1963 with the new legislation. The Ministry replied that a number of measures had been taken by the Government in the past to augment capacity and improve the operational efficiency of the Major Ports. However, under the present ambit of the Major Port Trusts Act, 1963 ("MPT Act"), the

Major Ports are facing difficulty to operate in a highly competitive environment and respond to market challenges.

7. Under the present structure for Major Port Trusts (MPTs) the key reasons for their inability to compete with private ports as furnished by the Ministry of Shipping are –

- (a) The MPT Act was formulated on the ‘service model’ and not the ‘landlord model’;
- (b) constitution of the Board of Trustees under the MPT Act is very large and comprises of representatives of dependent interests such as port users, labour and trade associations which makes decision making process cumbersome and imbalanced;
- (c) MPTs have to approach the Government for approval of nearly all key and strategic decisions that causes significant delay in implementation of operational matters;
- (d) Inflexibility to fix tariffs makes Major Ports non-competitive with Minor Ports; and
- (e) Limited options in raising financial resources.

8. The Ministry of Shipping further stated that even after delegating more powers and making some amendments to MPT Act, from time to time, the basic objective of offering effective services to port users has not been fully achieved. With a view that the Major Ports function more efficiently the existing MPT Act is proposed to be changed with the new legislation viz., ‘The Major Port Authorities Bill, 2016’ (‘MPA Bill’). The main advantages of the MPA Bill include –

- Transformation of major ports from ‘service port’ model to ‘landlord port’ model.
- Efficient & effective Governance structure with only 11-12 Members
- Appointment of Independent Members for professional and better decision-making.
- Powers to Port Authorities to fix tariff would allow price competitiveness with private ports by removing the role of TAMP in tariff fixation
- Power to Port Authorities to take decision relating to day-to-day operations such as Master Planning, staffing, contracts, property usage, PPP agreements, etc. without need for Central Government approval.
- Power to raise loans / additional capital from Indian & foreign lenders (for facilitating /mobilising funds & attract investments).

9. As regards the major provisions included in the proposed Bill to achieve higher growth in cargo handling, the Ministry of Shipping informed that the market share of major ports has already improved in the last 2 years on account of modernization and Port efficiency operations. The Ministry also stated that the MPA Bill will help in a balanced manner for healthy growth of Major Ports and further submitted the proposed legislation will enable in : –

- a. Decision-making autonomy leading to speedier decision making;

- b. Infusion of professionalism in the composition of the Board and its procedure;
- c. Financial autonomy in tariff fixation; and
- d. Allowing implementation of the 'landlord' model.

10. During deliberations, the Committee asked about the port models the Ministry has studied while drafting the Bill. The Ministry of Shipping replied that the Ministry studied the mode of operation of the Port of Rotterdam, Netherlands and Port of Singapore which are governed through an independent 'Authority' which is an autonomous body and aims to provide conducive business environment and access to global maritime services to different port users/operators. These port authorities, amongst other functions, lease sites/land in the port to operators under long term lease and use the revenue to invest in the port infrastructure and also to meet its obligations such as interests and payments.

11. As regards the terminology 'service port' and 'landlord port' used in the Bill, the Ministry informed that these terms are used internationally to explain two different models of port operation. These words have only been used because in the international port practice, there are different models of development of ports. Presently, the major ports in India function as 'trust' and follow 'service port' based model wherein the Board of Port Trusts own the land and all available assets-fixed and mobile and performs all regulatory and port functions. Globally the ports are moving to landlord port model where the Port Authority will maintain ownership of the port while the infrastructure is leased to operators that provide and maintain their own superstructure and install own equipment to handle cargo. In return, the major ports will get a share of the revenue from the operator. The Ministry of Shipping during the deliberations informed the Committee that the Kamarajar Port (Ennore Port) is presently working under the 'Landlord Model' and is working satisfactorily.

12. The employee unions of the Major Ports in their written memoranda expressed their concern that the idea behind the conversion of Port Trust to Port Authority intended to convert the Ports as Companies under Company's Act on later stage and hand over the assets and liabilities to the newly created Company. In this context they have brought to the notice of the Committee that, a communication issued by the PMO's Office to the Secretary, Shipping dated 11.07.2014 in which it is categorically mentioned that appropriate Regulation should be made to enable corporatization of the Major Ports. Further several sections/clauses/provisos of the proposed enactment have been formulated in line with the provisions of the Company's Act. They further stated that a Port which is a National property and meant for public and social benefits, to change them into Companies and then hand it over to private investors would not be in Public interest, because when Ports were created, the State Government handed over the land and the people happily shifted from those places being enthused with patriotic feelings that the Port will come up to prosper them and the Nation, as well. Thousands of acres of land have been handed over by this way for a National cause. A Port is a National property and meant for Public and Social benefits, to change them into Companies and then hand it over to Private Investors would be against the interest of the Nation and the Public.

13. The Ministry of Shipping has furnished a written reply to the above apprehension of the employees union that there is no such provision in the MPA Bill, 2016 which provides for corporatization or privatization of major ports. The object of the MPA Bill, 2016 is to modernise the institutional structure of major ports by bringing

in autonomy, professionalism and strengthen decision-making. Accordingly, the issue of control of Major Ports by MNCs does not arise. It is however to be noted that 100% FDI is already permitted in the port sector under the 'automatic route' to develop individual berths in any of the 'ports'.

**14. The Committee has gone through the concern and apprehension of the various stakeholders regarding corporatization/privatization of the ports. But, there are some clauses which give impression that the proposed Bill provides the Government more teeth to allow private players in the port sector which may, in future take full control over the port activities.**

**15. The Committee recommends that the Ministry in the first instance, should remove the fears of the stakeholders on the issue of 'privatization of ports' and ensure that the administrative, managerial and financial control of the Port will remain with the Port managements.**

16. The Committee considered all the Clauses of the Major Port Authorities Bill, 2016 in detail. The succeeding paragraphs will explain the views of various stakeholders interacted with the Committee, the feedback received from the Ministry of Shipping, observations made by the Committee and its recommendations on various Clauses of the Bill.

#### **17. Clause 2**

2. (1) In this Act, unless the context otherwise requires,—

(a) "Adjudicatory Board" means the Board constituted by the Central Government under section 51;

(b) "Board" means the Board of Major Port Authority constituted by the Central Government in accordance with sub-section (1) of section 3 for each Major Port under this Act;

(c) "capital reserves" for the purpose of this Act, shall mean the total of the revenue excluding the reserves set forth in sub-section (1) of section 40 and the value of the current assets of the Board in the preceding financial year;

(d) "Chairperson" means the Chairperson of the Board appointed under sub-section (1) of section 4;

(e) "dock" includes all basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipways, gridirons, moorings, transit-sheds, warehouses, tramways, railways and other works and things appertaining to any dock, and also the portion of the sea enclosed or protected by the arms or groynes of a harbour;

(f) "foreshore", in relation to a Major Port, means the area between the highwater mark and the low-water mark relating to that Major Port;

(g) "goods" includes livestock and every kind of movable property; (h) "grave emergency" means a condition as determined by the Central Government wherein the Board is unable to discharge its duties appropriately and includes acts of sedition, non-performance, unlawful and illegal actions, negligence and financial misappropriation;

(i) "high-water mark", in relation to a Major Port, means a line drawn through the highest points reached by ordinary spring-tides at any season of the year at that Major 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) “Independent Member” means a Member of the Board appointed under sub-section (3) of section 4;

(l) “Indian Ports Act” means the Indian Ports Act, 1908;

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

(n) “low-water mark”, in relation to a Major Port, means a line drawn through the lowest points reached by ordinary spring-tides at any season of the year at that Major Port;

(o) “Major Port” or 'Major Port Authority' means the Major Port as defined in clause (8) of section 3 of the Indian Ports Act;

(p) “Major Port approaches”, in relation to a Major Port, means those parts of the navigable rivers and channels leading to the Major Port, where the Indian Ports Act is in force;

(q) “master”, in relation to any vessel or any aircraft making use of any Major Port, means any person having for the time being the charge or control of such vessel or such aircraft, as the case may be, except a pilot, harbour master, assistant harbour master, dock master or berthing master of the Major Port;

(r) “Member” means the Member of the Board appointed under section 4;

(s) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(t) “owner”,—

(i) in relation to goods, 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 any aircraft making use of any Major Port, includes any part-owner, charterer, consignee, or mortgagee in possession thereof;

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

*Explanation.*—For the purposes of this clause, the term “transhipper” means a floating craft or vessel, whether dumb or self-propelled, on which gears are provided for discharging cargo from a barge or wharf and loading it into a ship;

(v) “port assets” means any asset within the port limits including land, movable or immovable property or any other property, whether tangible or intangible, owned by or vested with the Board through the Central Government or the State Government,

as the case may be;

(w) “port limits” in relation to a Major Port, means the limits including any piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels or for the improvement, maintenance or good governance of the Major Port and its approaches whether within or without high-water-mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty yards of high-water mark and the area of such

Major Port as may be determined by the Central Government by way of notification from time to time;

(x) “port security” means the debentures, bonds or stock certificates issued by the Board in respect of any loan contracted by it under the provisions of this Act or issued by any other Authority for the payment of which the Board is liable under this Act;

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

(z) “Public Private Partnership project” means the projects taken up through a concession contract entered into by the Board of Major Port Authority under subsection (1) of section 21 based on a revenue or royalty sharing basis;

(za) “rate” includes any toll, due, rent, rate, fee, or charge leviable under this Act;

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

(zc) “vessel” includes anything made for the conveyance, by water, of human beings or of goods and a caisson;

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

(2) Words and expression used but not defined in this Act and defined in the Indian Ports Act shall have the same meanings respectively assigned to them in that Act.

18. Clause 2 of the Bill contains the definitions of various expressions used in the proposed legislation.

Some of the employee unions have suggested the following modifications to the definitions:

- i. “Central Government” means the Government of India represented by the Ministry of Shipping;
- ii. “Deputy Chairman” means the Deputy Chairman of the Board appointed;
- iii. “Functional Heads” means the heads of the department including the heads of operations, finance, works and business development in a Major Port who qualifies to become a Member;
- iv. “Government Nominee Member” means the Government Nominee Member appointed on the Board;
- v. “Labour Nominee Member” means the labour nominee member appointed on the Board;
- vi. “Major Port Trusts Act, 1963” means the erstwhile Major Port Trusts Act, 1963 (38 of 1963);
- vii. “Non-Port Related use” means any activity for the purposes other than the Port activity;
- viii. “Port Related use” means any activity for the purposes Port and its use;
- ix. “Rules” means rules made under or pursuant to this Act by the Central Government for the purposes of this Act.

19. The Ministry of Shipping replied that the above suggestions were noted by them and inclusion of definitions except ‘Functional Heads’ as suggested may be considered. The Ministry of Shipping has further stated that as regards the definition of ‘Functional Heads’, the same is now redundant as there is no provision for ‘Functional Heads’ in the MPA Bill.

**20. In view of the above, the Committee suggests that the following definitions may be added under this Clause:**

- (i) “Central Government” means the Government of India represented by the Ministry of Shipping;**
- (ii) “Deputy Chairman” means the Deputy Chairman of the Board appointed;**
- (iii) “Government Nominee Member” means the Government Nominee Member appointed on the Board;**
- (iv) “Labour Nominee Member” means the labour nominee member appointed on the Board under;**
- (v) “Major Port Trusts Act, 1963” means the erstwhile Major Port Trusts Act, 1963 (38 of 1963);**
- (vi) “Non-Port Related use” means any activity for purposes other than the Port activity;**
- (vii) “Port Related use” means any activity for the purposes Port and its use;**
- (viii) “Rules” means rules made under or pursuant to this Act by the Central Government for the purposes of this Act;**
- (ix) Definitions for the terms ‘Public Servant, Eviction and Staff’ may be included. In sub-clause (d), ‘Chairperson’ may be modified as “Chairperson and Deputy Chairperson”**

**21. During the deliberations of the Committee one of the stakeholders has brought to notice that Major Ports own vast land property even outside the port limits. Therefore, the definition for port assets should include all its assets such as land even outside the Port limits.**

**22. The Committee recommends that under Clause 2(v) in the definition of Port assets may be modified suitably to include any asset within the port limits including within or outside Port limits.**

**23. The Committee notes that Major Ports are owning vast land property. Therefore, port assets should include all its assets such as land even outside the Port limits. The Committee recommends that under Clause 2(v), “Port assets means any asset within the port limits including” may be replaced with the words “Port asset means any asset within or outside Port limits including”.**

**24. The Committee also recommends that definition of “Rules” and “Deputy Chairperson” should be incorporated in the MPA Bill, 2016.**

**25. Another stakeholder in their representation to the Committee has suggested that in Clause 2(ZC), in the list of vessels, “Dredgers” may be added as dredgers are not coming under the category of the vessels which are made for conveyance by water of human beings or of goods and a caisson.**

**26. The Committee recommends that Ministry of Shipping may include the dredgers also in the list of vessels as suggested in the previous paragraph.**

**27. Clause 3**

**3. (1) The Central Government shall, within a period of ninety days from the date of commencement of this Act, by notification, in respect of each Major Port, constitute a**

Board called the Board of Major Port Authority for that Port which shall consist of the following Members, namely:—

- (a) a Chairperson;
- (b) a Deputy Chairperson;
- (c) one Member each from the—
  - (i) Concerned State Government in which the Major Port is situated;
  - (ii) Ministry of Railways;
  - (iii) Ministry of Defence; and
  - (iv) Customs, Department of Revenue;
- (d) not less than three and not exceeding four Independent Members;
- (e) one Member not below the rank of Director nominated by the Central Government, *ex officio*; and
- (f) one Member representing the interest of the employees of the Major Port Authority:

Provided that until the constitution of the Board of Major Port Authority, the Board of Trustees constituted under section 3 of the Major Port Trust Act, 1963 shall continue to function and shall cease to exist immediately after the constitution of the Board under this Act.

(2) The Board of each Major Port Authority constituted under this Act shall be a permanent body having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

28. Clause 3 of the Bill lays down the provisions for the constitution and composition of the Board of Major Port Authority. The Board shall consist of a Chairperson, a Deputy Chairperson, one Member each from the (a) concerned State Government in which the Major Port is situated; (b) Ministry of Railways; (c) Ministry of Defence; and (d) Customs, Department of Revenue, minimum three and not exceeding four Independent Members, one Member representing the interest of the employees and one Member nominated by the Central Government.

29. The Ministry of Shipping informed the Committee that the Board of Trustees under the present Major Port Trusts Act, 1963 is very large and comprises of representatives of disparate interests including port users, labour, trade, trade associations which make decision making cumbersome, and, at times decisions are taken which are not fully based on commercial and economic interest. The Ministry has further stated that the size of the proposed Board has been reduced from the present 17-19 members to 11-12 members to have a compact and professional Board for better governance of the Port.

30. The Committee received large number of representations suggesting amendments to this Clause. The labour unions of the Major Ports claimed that the ports are labour oriented organizations and the production and productivity of ports lies only on management of labour. One of the representatives pointed out that the Major Ports have progressed to the present level with the cooperation of its employees and workers. In the initial stages the investment from the Central Government was very

minimum and the operation system was obsolete because of absence of mechanical system and modernization there. The obsolete system is still going on in some ports. In spite of huge reduction in manpower the production has gone up considerably. 53 per cent of the cargo is handled by the Major Ports. After paying the income tax, other sales taxes, operational expenses and salaries etc, at present the total income of Major Ports are about Rs.12000 crores. Apart from this, the Government is getting about Rs.50,000 crores of customs duty. They claimed that the growth of Major Ports has occurred due to the dedication and hard work of the port employees and that for the last 36 years not a single day was lost in the Major Ports due to any strike and it shows dedication and concern of the employees about the ports. They further stated that their representation has been reduced in the proposed Bill as they say things openly in the Board meetings.

31. Another representative submitted before the Committee that Government is ignoring whatever consensus that was reached after a prolonged discussion with federations on this Bill and that gross injustice is done by reducing the labour representatives from two to one. As regards posting of independent Members, the representative pointed out that independent Members should be persons who know the ports and who have a vision.

32. The Ministry of Shipping responded to these demands in a negative way stating that the MPA Bill aims to have a compact and professional Board of Major Port Authorities for quick and efficient decision making, one nominee member representing the employees appears sufficient to represent the interest of the employees.

33. In a written memorandum, the Committee was informed that qualifications and experience has been prescribed in the case of members appointed under clause 3(1)(c) of the Bill though they are Government officials, who are competent in their respective fields. Whereas for members appointed under clause 3(1)(d), no qualification or experience have been prescribed and it is left for the discretion of the Board even though under clause 4(3) of the draft Bill published in 2005, qualification and experience of not less than 10 years were insisted. They have suggested that instead of Independent Members, Functional Heads need to be appointed in the Authority Boards from among those who are having adequate Port experience and professional expertise in the Port sector.

34. The Ministry of Shipping replied that, originally the proposal was to have three "Functional Heads". However, after deliberations, this provision has been modified by retaining representatives from State Government, Railways, Defence and Customs. As regards, the independent members the Bill contemplates that they should have adequate knowledge and professional experience of not less than 15 years in Shipping, Marine, Management or Administration, the details of which shall be prescribed in the rules to be framed under the Act.

35. The stakeholders have also shown the apprehension that the majority of the powers have been now shifted to the Government nominees which will lead to misuse of powers and positions. Therefore, the labours should be represented suitably. The trade unions have also suggested that while appointing the Labour nominee, representing the labour employed in the port, the Central Government shall obtain the opinion of the trade unions, if any, composed of persons employed in the port and registered under the Trade Union Act, 1926.

36. One of the stakeholders claimed that there should be representation from the Mercantile Marine Department also in the new Board. The representative from the

Private Ports and Terminals Association also pointed out that being an important constituent member, they should be given representation in the Board.

37. Representatives from the Chambers of Commerce has deposed before the Committee that in the Major Port Trusts Act, 1963, they have four representatives in the 'other' or 'elected' category, which comprises Chambers of Commerce and trade bodies. However, in the proposed Bill, the opportunity is completely denied and the door is closed for the representation of the Chambers of Commerce. The exporters and importers are the members of the chamber of commerce and they are the actual port users. They pay customs duty and port handling charges which is the major revenue for the port trust. They also earn foreign exchange by exporting goods and services and importing other raw materials or industries. However, their representation is not taken into account by the Ministry of Shipping, which is injustice to the trade and industry. They demanded that there should be regional local representation in the decision making Board of any Major Port all over the country.

38. The Ministry has informed that the manner of appointment can be considered while framing the Rules.

**39. The Committee notes that production and productivity of Ports lies on the proper management of labour. Efficiency of any Port is measured particularly considering the labour productivity. After considering all the aspects of the various representations received and the oral evidence recorded before the Committee, the Committee suggests the following modifications in the Clause 3 of Bill related to Constitution of the Board:**

- (i) The employees and labour involved in the Port activities are one of its major stakeholder and they need a better representation in the Board. The Committee therefore recommends that minimum 2 labour representatives should be appointed in the Port Authority Board from among the serving employees of the Port. Here the Committee would reiterate that the Labour Nominee should be a serving employee of the Port.**
- (ii) Provided further that before appointing any person to represent the labour employed in the port, the Central Government shall obtain the opinion of the serving employees of the Major Ports and the selection procedure of the labour representative should be same as the existing one. In fact the Ministry of Shipping assured the Committee that the selection of the Labour nominee should be same as that of the existing one and the procedure will be prescribed in the Rules.**

40. The Committee also notes that in the mode of appointment of Board of Directors in the existing Major Port Trusts, the qualification and experience in the port operations are mostly ignored and favoritism and other vested interests play a major role. The Committee notes that the Independent Members are not so important and many a times they are representatives of vested interests nominated to the Boards to perpetuate the business interests of some people. The Committee recommends that the Independent Members should be persons having expertise in port activities. And while prescribing the Rules, the qualifications and the criteria of expertise should be specifically mentioned. The Committee also notes that in a Board consisting of eleven members there is no point in having four Independent Members. The Committee therefore, recommends that there should be a maximum of two members in the category of Independent Members in the Board.

#### 41. Clause 4

4. (1) The Chairperson and Deputy Chairperson of the Board shall be appointed by the Central Government on the recommendation of a Select Committee consisting of such persons and in such manner, as may be prescribed.

(2) The Members of the Board as mentioned in clause (c) of sub-section (3) of section 3 shall be appointed by the Board in such manner as may be prescribed from amongst persons having adequate knowledge and professional experience of not less than fifteen years in shipping, marine, management or administration.

(3) The qualifications, experience and manner of appointment of Independent Members

shall be such as may be prescribed.

(4) The appointment of the Member referred to in clause (f) of sub-section (3) of section 3 shall be made by the Central Government, by notification, from amongst the persons who in the opinion of the Central Government are capable of representing the interest of the employees in the Major Port Authority.

(5) Every person nominated or appointed to the office of the Chairperson or the Member of the Board, shall, within thirty days of his nomination or appointment, furnish to the said Board his consent and a declaration that he is not disqualified or ineligible to hold such office.

42. Clause 4 of the Bill lays down the provisions relating to the qualification, experience and the manner of appointment of the Chairperson, Deputy Chairperson and Members of the Board.

43. The representatives of the trade unions demanded that appointment of labour nominee should be done after taking the opinion of Trade Unions. They also suggested that the Members of the Board should have adequate knowledge and professional experience of not less than fifteen years in Shipping, mercantile Marine Department, Management of Port Administration, etc.

44. The Ministry of Shipping replied that as regards, qualification and the manner of appointment of the Chairperson, Deputy Chairperson are concerned, the same will be formulated in the Rules to be framed under Act. However, a small correction of the typographical error in clause 4 (2) is required, by which in the first line “(c)” shall be substituted by “(d)” and (3) shall be substituted by (1) in the new bill would and this correction meet the suggestion.

**45. The Committee observes that the ports being the country’s major trade centre, apart from cargo handling, Major Ports have to undertake several ancillary functions like dredging, maintenance of navigational channel, pilotage, berthing, buoying, bunkering, dry docking etc. The Committee therefore recommends that the Members of the Board should have several years of knowledge and professional experience in Shipping, Mercantile Marine Department, and Management of Port Administration. The Committee also recommends that the necessary corrections to Clause 4 as identified by the Ministry of Shipping may be carried out.**

**46. The Committee observes that cross reference given in Clause 4 (2) and 4 (4) does not correlate to sub-clause (3) of clause (3), where sub-clause (3) does not exist. It should be mentioned as clause (c) of Sub-clause (1) of Clause 3 and clause (f) of Sub-clause (1) of Clause 3 respectively.**

**47. Clause 5**

5. (1) A person shall not be eligible for appointment or to continue as a Member of the Board, if —

(a) he has been adjudged as an insolvent; or

(b) he has become physically or mentally incapable of acting as a Member; or

(c) he has been convicted of an offence, involving moral turpitude; or

(d) he holds an office of profit or the office of the Functional Head in the Major Port Authority or the Board of that Authority; or

(e) he has made a false declaration under sub-section (5) of section 4; or

(f) he has been removed or dismissed from the service of a Major Port Authority, Government or a body corporate owned or controlled by the Central Government or the State Government; or

(g) an order disqualifying him for appointment as a Member has been passed by a court or tribunal and such order is in force.

(2) The Chairperson or Deputy Chairperson or any other Member shall not be removed from his office except by an order of the Central Government on the ground of his proved misbehaviour or incapacity or in contravention of the provisions of section 7 after the Central Government, has, on an inquiry, held in accordance with the procedure prescribed in this behalf by the Central Government, come to the conclusion that the Member ought on any such ground to be removed.

(3) The Central Government may suspend the Chairperson or Deputy Chairperson or any other Member in respect of whom an inquiry under sub-section (2) is being initiated or pending till the Central Government has passed an order on receipt of the report of the inquiry.

48. The clause 5 of the Bill lays down the circumstances in which the Chairperson, Deputy Chairperson and other Members of the Board shall be ineligible for appointment.

49. The employee unions represented that the proviso existing in the MPT Act, 1963 under Section 6(c) has to be maintained in the case of labour representatives under Clause 5(1)(d) of the Bill. However, the Ministry of Shipping replied that the present structure of Board of Trustees under the MPT Act allows varied interested parties to have representation on the Board. Whereas, the MPA Bill aims to have a professional Board without any Member having vested interest in port operations or activities. Accordingly, it has been proposed to apply the disqualification on account of 'office of profit' on all Members of the Board without providing any exception in respect of any particular Member as it is otherwise given in section 6(c) of the MPT Act.

**50. The Committee notes that Clause 9 also deals with removal of Chairperson by the Central Government under certain circumstances. The Committee recommends that sections given under Clause 9 in the Bill may be merged with Clause 5 in order to avoid duplication. The Committee also recommends that the word 'Deputy Chairperson' may be included in Clause 5(1)(d).**

**51. Clause 6**

6. (1) The Chairperson and the Deputy Chairperson shall hold office for a term not exceeding five years from the date on which they enter upon their office or until they attain the age of superannuation, whichever is earlier.

(2) Subject to the provisions of this Act, a person appointed as a Member of the Board by virtue of an office under clause (c) of sub-section (3) of section 3 shall continue to be a Member of the Board so long as he continues to hold that office.

(3) An Independent Member shall hold office for a term of three years from the date of his appointment or up to the age of seventy years, whichever is earlier and shall be eligible for re-appointment:

Provided that no Independent Member shall hold office for more than two consecutive terms:

Provided further that an Independent Member shall not, during the said period of three years, be appointed to or be associated with any Major Port Authority in any other capacity, either directly or indirectly.

(4) The Member appointed under clause (f) of sub-section (3) of section 3 shall hold office for a term of three years.

52. Clause 6 of the Bill lays down the term of office of the Chairperson, Deputy Chairperson and Members.

53. Some of the Major Ports have suggested that the period of appointment of members to the Board has different term of office depends on their mode of selection which may be uniform as provided in the MPT Act, 1963.

54. The Ministry of Shipping replied that since the Members of the Board represent different backgrounds and the MPA Bill aims to have a professional Board, it is not desirable to have uniform term of appointment for all Members. It is essential that the Members appointed on the Board should complete their fixed term and make way for the new talent and other professional / eligible candidates to be appointed on the Board.

55. The stakeholders suggested that the Clause 6(4) instead of mentioning as Clause (f) of sub-section (3) it should be mentioned as 'Labour Nominee'. To this suggestion, the Ministry of Shipping responded that the suggestion is not required in view of provision under Clause (f) of sub section (3) of Section 3.

**56. The Committee notes the reply given by the Ministry of Shipping to the suggestions proposed by the stakeholders. The Committee recommends that the labour nominee member appointed representing the interest of the employees shall hold office for a term of 3 years and shall not hold office for more than two consecutive terms. Provided the labour nominee should be a serving employee and his Board Membership will be co-terminus with his retirement. The Committee also recommends that the tenure of an independent Member should be 3 years, however, the independent Member should have 15 years of experience of Port and port related activities.**

**57. Clause 7**

7. Before appointing any person as a Chairperson or Deputy Chairperson or Member, the Central Government shall satisfy itself that the person does not have any such

financial or other interest as is likely to affect prejudicially his functions as such Chairperson, Deputy Chairperson or Member:

Provided that where any Member who is not so concerned or interested at the time of occupying such office, he shall, if he becomes concerned or interested afterwards, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested and resign forthwith.

58. Clause 7 of the Bill provides that the Members of the Board shall disclose their interests which are likely to affect their official functions within the Board.

59. IPPTA suggested that this clause may be amended as when the members have any such financial or other interest as is likely to affect prejudicially his functions as a Member, such Members shall not participate when such related matters are taken up for discussion at the meeting. This is a normal professional practice followed where the concerned interested party steps out of the meeting. Other stakeholders also pointed out that person appointed as Chairperson or Deputy Chairperson or Member should not have any financial or other interest in functioning of ports.

60. The Ministry of Shipping informed the Committee that this point may be considered while drafting Rules on Board Meetings.

**61. The Committee recommends that person appointed as Chairperson or Deputy Chairperson or Member should not have any financial or other interest in functioning of ports and Members shall not participate when such related matters are taken up for discussion at the meeting. The Committee also recommends that prescribed format for declaration of interests and assets may be given in the rules.**

**62. Clause 10**

**10.** The Members appointed under clauses (c), (d) and (f) of sub-section (3) of section 3, shall be paid such honorarium as may be prescribed.

63. Clause 10 of the Bill relates to fees and honorarium payable to Members appointed from amongst the Members referred to in clauses (c), (d) and (f) of sub-section (1) of section 3.

64. The stakeholders suggested retaining Clause 18 of the MPT Act 1963 in this place.

65. The Ministry of Shipping replied that the provisions relating to fee and honorarium payable to Members would be formulated in the Rules.

**66. The Committee recommends that the Members appointed shall be paid honorarium as per government rules. The Committee also suggests that the Clause 10 may be read as ‘The Members appointed under clauses (c), (d) and (f) of sub-section (1) of Section 3, shall be paid such honorarium as may be prescribed’.**

**67. Clause 11**

**11.** The Chairperson and in his absence, the Deputy Chairperson shall have powers of general superintendence and directions in the conduct of affairs of the Major Port Authority and he shall, in addition to presiding over the meetings of the Board, exercise supervision and control over the acts of all employees of the Major Port Authority in matters of executive administration and in matters concerning the accounts and records of such Board.

68. Clause 8 of the Bill provides that the Chairperson and in his absence, the Deputy Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Major Port Authority and he shall, in addition to presiding over the meetings of the Board, exercise supervision and control over the acts of all the employees of the Major Port Authority, in matters of executive administration and in matters concerning the accounts and records of such Board.

69. The Ministry of Shipping responded to a suggestion on prescribing the duties of Members and Chairperson that can be inserted in this clause that the Clause 11 of the MPA Bill defines the powers and duties of both the Chairperson and the Deputy Chairperson. Clause 11 stipulates that the Chairperson and in his absence, the Deputy Chairperson will have the power of general superintendence and directions in the conduct of affairs of the Major Port Authority. By virtue of the above power, the Chairperson / Deputy Chairperson can assign different duties and functions to the Members of the Board.

**70. The Committee recommends that the powers and duties of Members may also be included in this Clause to remove any ambiguity in the matter.**

**71. Clause 12**

12. (1) The Board shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings), as may be specified by the regulations.

(2) If the Chairperson for any reason, is unable to attend a meeting of the Board, the Deputy Chairperson and in the absence of such Deputy Chairperson, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be—

(a) decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote;

(b) dealt with as expeditiously as possible and the Board shall dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the Board shall record its reasons in writing for not disposing of the application within that period.

72. Clause of the Bill lays down the procedure and manner in which the meetings of the Board shall be conducted.

73. The Major Ports suggested that new provision to dispose application within sixty days can be modified to 120 days and for non disposal within the said period the reasons should be recorded in writing. They pointed out that in this regard, there is no mention about further disposal of the application, which can be included in this section.

74. In response, the Ministry of Shipping has replied that the suggested timeline of 120 days appears to be too large and would delay decision making by the Board. The time period of 60 days is specified to enable efficient and quick disposal of questions / issues which come before the Board for consideration. If the Board is unable to dispose of any issue within the specified time period, then the Board would record the reasons in writing for such non-disposal.

75. As regards the future disposal of the undecided issue within a specific timeline, it is incumbent upon the Board to formulate the future course to decide the said issue; which would also be recorded by the Board in writing while recording the reasons for non-disposal. This requirement forms part of the inherent powers of the Board in day-to-day operations of the major port and need not be specifically mentioned in clause 12 of the MPA Bill.

**76. The Committee notes the reply given by the Ministry of Shipping. The Committee recommends that the provisions given under 12(3)(a) may be deleted as it impacts the functional and strategic independence of the Board.**

**77. The Committee observes that the Clause 12(3)(b) needs more clarity. The Committee therefore, suggests that the above clause may read as “.....the Board shall dispose of any application addressed to it within a period of 60 days from the date of receipt of the application”. As regards the suggestion given by the Major Ports, the Committee recommends that the future course of action on such non-disposed receipts may be uniform in all the Port Authorities.**

**78. The Committee also recommends that the manner to conduct Board meetings should be separately defined in the Rules including that of conduct of Board meetings through video conferencing and audio visual means.**

**79. Clause 13**

13. (1) A Board may, from time to time, from amongst its Members and any other person, constitute committees for the purpose of discharging such of its functions as may be delegated to such committee or committees by the Board.

(2) The committee or committees constituted under this section shall meet at such time and at such places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum) as may be provided by regulations made under this Act.

80. Clause 13 of the Bill lays down the power of the Board to appoint Committees and delegation of powers to such Committees.

81. The Major Ports pointed out that the Board can constitute committees/sub-committees from amongst its Members or by any other person. Any committee or sub-committee to be constituted by Board under sub-clause (1) shall only from amongst its members and the term “any other person” may be defined for the purpose of sub-clause(1).

82. The Ministry of Shipping responded to this point that the Clause 13 of the MPA Bill aims to empower the Board to appoint committees consisting of Members of the Board and any other person to discharge the functions delegated by the Board to such committees. The words ‘any other person’ are included in clause 13 with a view to empower the Board to appoint an ‘expert’ on the subject, issue which may be delegated to the Committee.

**83. The Committee notes the reply given by the Ministry of Shipping and agreed to it.**

**84. Clause 17**

17. The Board shall after every five years prepare and submit to the Central Government a list of the employees of the Board of Major Port Authority indicating

therein the designations and grades of employees and the salaries, fees and allowances which are proposed to be paid to them.

85. The clause 17 of the Bill provides that the Board shall prepare and submit to the Central Government, after every five years, a list of the employees of the Board of the Major Port Authority indicating therein the designations and grades of employees and the salaries, fees and allowances which are proposed to be paid to them.

86. The employees unions have suggested that the time line of five years should be replaced as three years because it is at par with the term of independent Members as Trustees. They have also demanded that the Clause 23 "Schedule of Board's Staff" of the MPT Act, 1963 should be included in the Major Port Authorities Bill, 2016.

87. The Ministry of Shipping responded that the five years period is reasonable and appears fine with all major ports. They have further stated that as the MPA Bill, 2016 aims to provide administrative autonomy to the Board of Major Port Authorities with minimum interference from the Central Government, the provisions of section 23 of the MPT Act are not desired to be incorporated in clause 17 of the MPA Bill.

**88. Taking note of the reply furnished by the Ministry of Shipping, the Committee feels that the period of five years is sufficient and there is no need to change the period.**

**89. The Committee observes that Section 25 of MPT Act, 1963 has provision for "power to promote, grant leave, etc to employees of Board" which has been removed in the MPA Bill, 2016. The Committee recommends that the equivalent provision or adoption of rules may be included in the Bill.**

**90. Clause 18**

**18.** On and from the date of constitution of the Board—

(a) the Board of the Major Port Authority shall be the successor of the Board of Trustees constituted under the Major Port Trusts Act, 1963;

(b) all the assets and liabilities of the Board of Trustees shall stand transferred to, and vested in, the Board.

*Explanation.*—The assets of the Board of Trustees shall be deemed to include all rights and powers, all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of the Board of Trustees and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(c) without prejudice to the provisions of clause (a), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Board of Trustees immediately before that date, for or in connection with the purpose of the said Board of Trustees, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Board;

(d) all sums of money due to the Board of Trustees immediately before that date shall be deemed to be due to the Board;

(e) all suits and other legal proceedings instituted or which could have been instituted by or against the Board of Trustees immediately before that date may be continued or may be instituted by or against the Board;

(f) every employee serving under the Board of Trustees of the Major Port immediately before such date shall become an employee of the Board, shall hold his office or service therein by the same tenure and upon the same terms and conditions of service as he would 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:

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 Central Government.

91. Clause 18 of the Bill provides that the Board of the Port Authority shall be deemed to be the successor of the Board of Trustees of Major Port and all assets, contracts, obligations, liabilities and employees serving under the Board of Trustees under the Major Port Trusts Act, 1963 shall transferred to the Board of the Port Authority constituted under the proposed legislation.

92. The employee unions in their written memoranda demanded that Pensioners/Family Pensioners of the Major Ports should be added in the liability of the Board and the Clause 18(f) need to be amended suitably. The Committee sought comments from the Ministry of Shipping in this matter.

93. The Ministry replied that the term 'pensioners' cannot be included since the Bill aims to regulate the service conditions of the 'serving employees' and not 'retired employees'. Further, the MPT Act also does not stipulate any provision in relation to the pensioners/retired employees. The Ministry further stated that the subject matter relating to pensioners will be considered while framing Regulations.

94. The Ministry of Shipping also submitted that for protection of interests of all employees and personnel presently serving under the Board of trustees of the Major Port will, immediately from the date of constitution of the Board of Major Port Authority under the MPA Bill become employees of the new Board and will hold his office for the same tenure and upon the same terms and conditions of his current employment with the Board of trustees. Moreover, the tenure, remuneration and other terms and conditions of service of the employees will not be altered to their disadvantage without the previous approval of the Central Government.

**95. The Committee considered the above matter and recommends that there shall be safeguards to the existing benefits including the pensionery benefits. Necessary clause in this regard should be inserted while finalizing the Bill.**

**96. In clause 18 (c) the Committee notes that even when an obligation was entered into by port (say 5 years back) and is still to be fulfilled, it has to be taken care by the new Board. Therefore, the word "immediately" may be removed.**

**97. Clause 19**

19. (1) The Board of each Major Port shall be entitled to use its property, assets and funds in such manner and for such purposes as it may deem fit for the benefit of that Major Port.

(2) All Port assets under the ownership of the Board or vested with the Board through the Central Government shall be used and developed as per the regulations made by the Board in that behalf and to the exclusion of any municipal, local or Government regulation:

Provided that any contract or arrangement by the Board for sale of land or immovable property or for lease of land or immovable property for port related use for a term exceeding forty years and for any purpose other than the purposes specified in section 22 for a term exceeding twenty years shall be subject to the prior approval of the Central Government:

Provided further that the tenure for lease of land or immovable property for Public Private Partnership projects by the Board shall be subject to the policy notified by the Central Government in respect of such Public Private Partnership projects.

(3) The Board of each Major Port may erect, construct or build such civil structures within the port limits for port development or improving commerce and trade in national interest for which no regulatory license or approval from the State authorities shall be required, unless so mandated by the Central Government.

98. Clause 19 of the Bill lays down the provisions relating to usage of property, assets, etc, by the Board. This clause further lays down that any contract or arrangement to be entered by the Board for sale of land or immovable property or for lease of land or immovable property for port related use for a term exceeding forty years and for any purpose other than the purposes specified in clause 22 for a term exceeding twenty years shall be subject to the prior approval of the Central Government. This clause also provides that the tenure for lease of land or immovable property by the Board for Public Private Partnership projects shall be subject to the policy notified by the Central Government in respect of such Public Private Partnership projects.

99. The employees union made apprehensions about this Clause as the existing MPT Act, 1968 does not permit any port to sell the land, rather it could give land on a long term lease. They further stated that the proviso to Clause 19 lays down that any contract or arrangement to be entered by the Board for sale of land or immovable property or for lease of land or immovable property for port related use for a term exceeding forty years and for any purpose other than the purposes specified in section 22 for a term exceeding twenty years shall be subject to the prior approval of the Central Government. The unions shown their apprehension that the above proviso will definitely would enable the ports to sell their land after enactment of this Bill.

100. However, the Ministry of Shipping while replying to this point, stated that Clause 19(2) and Clause 48 of the proposed Bill takes care of this issue. In another reply they stated that there are no provisions in the MPA Bill which entitles Major Ports to directly sell the port land to any third party. The Ministry has further stated that as per first 'proviso' to clause 19(2) and clause 48 of the MPA Bill, approval of the Central Government is mandatory for sale of port property and hence, apprehension shown is unfounded.

101. The Ministry of Shipping replied to a questionnaire on the nature of ownership of the land belong to the port that in both existing Act as well as in the new Bill, ownership of land rests with Government only and it is vested in Major Port Authorities only for administration and management. However, in a reply to another questionnaire, the Ministry of Shipping submitted that ports can give lease of land for port related use for upto 40 years and for non-port use for upto 20 years without Government approval under this clause.

**102. Taking into consideration of the points raised by the stakeholders and the reply furnished by the Ministry of Shipping, the Committee recommends that necessary modifications may be made to this clause to have clear ownership terms**

**on the properties of the Ports. The Committee suggests that alternatively, Section 34(1) of MPT Act, 1963 may be retained in this place.**

**103. The Committee observes that in clause 19(3) for port development, sometimes assets are to be developed by port outside port limits- for example storage areas, railheads etc. Similarly, there is no reason to restrict any activities within port limits. The Committee, therefore, recommends that the word “Port Limit” may be deleted from this sub-clause.**

**104. The Committee also recommends that the provision regarding sale of port assets may have a condition of utilizing unused or wastelands, keeping aside the useful lands with it, in this clause.**

**105. Clause 21**

**21. (1)** The Board of each Major Port shall be competent to enter into and perform any contract necessary for the performance of its functions under this Act.

(2) Every contract shall, on behalf of the Board of each Major Port, be made by the Chairperson or by any such officer of the Board as the Chairperson may by general or special order, authorise in this behalf and shall be sealed with the common seal of the Board.

(3) The form and manner in which any contract shall be made under this Act shall be such as may be prescribed.

106. Clause 21 of the Bill empowers the Board to enter into contracts for performance of its functions under the proposed legislation. This clause further provides that the contracts shall be entered into by the Chairperson or any authorised officer on behalf of the Board.

107. The stakeholders suggested that contracts shall be made by any such officer of the Port Authority as the Chairman may by general or special order authorized in this behalf. The Ministry of Shipping has agreed to this suggestion and stated that this suggestion may be considered while framing Regulations.

**108. The Committee recommends that necessary action may be taken while framing Regulations regarding contracts sealed on behalf of the Board under this Clause.**

**109. Clause 22**

**22.** For the purposes of planning and development of the Major Port, the Board in relation to that Major Port shall have the power to make regulations, not inconsistent with the Customs Act, 1962 or any rules made there under, to—

(a) undertake, execute and perform such works and provide such services at or within the port limits and Major Port approaches on such terms and conditions as it may deem necessary or expedient;

(b) declare availability of the port assets at the Major Port or Major Port approaches for port related activities and services subject to such limits, conditions and restrictions as it may deem necessary or expedient;

(c) develop and provide infrastructure facilities including setting up new ports, jetties, navigational channels, dry ports and such other infrastructure in furtherance of the interest of the Major Port;

(d) take charge of the goods from the concerned owner for the purpose of performing any port related services;

(e) order, in cases of emergency or for any other reason, the master or owner or agent of any sea-going vessel, not to bring any vessel alongside of, or to remove such vessel from, any dock, berth, wharf, quay, stage, jetty or pier belonging to or under the control of the Board;

(f) permit construction and development by itself or through any person, to make, erect, fix or remove within the port limits or Major Port approaches any wharf, dock, quay, stage, jetty, pier, building or structure, erection or mooring or undertake any reclamation of foreshore within the said limits and buildings and amenities required for the residence and welfare of the employees of the Board, subject to such limits, conditions and restrictions as it may deem necessary or expedient;

(g) provide exemption or remission from payment of any rate or charge leviable on any goods or vessels or class of goods or vessels under this Act;

(h) provide any other services or amenities in respect of vessels, passengers, goods or employees;

(i) undertake, execute and perform such works, activities and studies to promote maritime education, training skill development of coastal communities, seafarers welfare and Major Port related development; and

(j) make or construct or erect within the port limits such structures, buildings, drains, roads, fences, tube-wells, in-take wells, storage facilities, warehouses, pipelines, telephone lines, communication towers, electricity supply or transmission equipment, and such other works and conveniences as the Board of each Major Port thinks proper.

110. Clause 22 of the Bill empowers the Board to make different regulations for the planning and development of the Major Port and such regulations shall not be inconsistent with the Customs Act, 1962 and the rules made there under.

111. Some of the stakeholders pointed out that powers need to be given within and or without the limits of the Ports as many of the Port properties and assets are situated outside the port or beyond the port limits. In addition, the following suggestions were also received from the stakeholders:

- (i) The Port Authority of each Major Port shall be entitled to create specific Master Plan in respect of any development or infrastructure established or proposed to be established within the Port Limits. The Master Plan for development of the Port Limits would be independent of any local or State government regulations of any authority whatsoever but will be subject to rules and guidelines prescribed by the Central Government in that regard.
- (ii) The Major Ports shall have the power to make their own regulations without any interference of any authority.
- (iii) It is necessary to notify Mumbai Port Trust as Planning Authority to enable the Mumbai port Trust to develop the area according its needs and plan.

112. The Ministry of Shipping replied that the suggested amendments in clause 22 are not required as the provision relating to master plan is separately covered in clause 27 of the MPA Bill, 2016.

**113. The Committee observes that Major Ports shall have the power to make their own regulations without any interference of any authority. The port limits would be independent of any local or State Government regulations of any authority. The Committee recommends that the Ministry of Shipping should incorporate necessary amendments accordingly.**

**114. Clause 23**

**23.** (1) The Board of each Major Port Authority or the committee or committees appointed in this behalf by the Board in accordance with section 13, may,—

(a) frame scale of rates at which, and a statement of conditions under which any services shall be performed or made available;

(b) frame scale of rates at which, and a statement of conditions under which, the access to and usage of the port assets may be allowed by the Board;

(c) frame consolidated scale of rates for any combination of services specified in clause (a) or for any combination of such service or services with any user or permission to use or access to any port assets as specified in clause (b);

(d) pass an order for refund of any amount overcharged by the Board in relation to the services provided to any person;

(e) pass an order for recovery of any rate or charge which is short-levied or erroneously refunded by the Board to any person under this Act;

(f) frame different scales, fees, rates and conditions for different classes of goods and vessels under this section:

Provided that the fixation and implementation of such scales, fees, rates and conditions shall—

(a) not be with retrospective effect;

(b) not be applicable for Public Private Partnership projects already awarded by the Board or the Central Government;

(c) not be in derogation with the rules made by or the directives of the Central Government in this behalf;

(d) not be inconsistent with the provisions of the Competition Act, 2002; and

(e) not be inconsistent with the provisions of any other law for the time being in force:

Provided further that in case of such Public Private Partnership projects, the Board may fix the reference tariff for purposes of bidding only and the concessionaire appointed under any such Public Private Partnership projects shall be free to fix the tariff based on market conditions and such other conditions as may be notified:

Provided also that the revenue share and other conditions would be as per the provisions of the specific concession agreement between the Board and the Public Private Partnership concessionaire appointed under the Public Private Partnership project.

(2) Notwithstanding anything contained in clause (b) of sub-section (1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to or in its possession or occupation at a rate higher than that provided under clause (b) of sub-section (1).

115. Clause 23 of the Bill empowers the Board to frame and fix the scale of rates for assets and services available at Major Ports. This clause further provides that the fixation and implementation of such rates, etc. shall not be (a) with retrospective effect; (b) applicable for Public Private Partnership projects already awarded by the Board or the Central Government; (c) in derogation of the rules made by or directives of the Central Government in this behalf; (d) inconsistent with the provisions of the Competition Act, 2002; and (e) inconsistent with the provisions of any other law for the time being in force.

116. Ministry of Shipping while replying to a questionnaire stated that abolition of TAMP under this clause will enable the Port Authorities to have greater autonomy to fix tariff for ports' own terminals and services.

117. Some of the stakeholders pointed out that in view of the competition exists in the sector, all operators should be allowed to change to a market determined tariff. Partnership in PPP projects should be applicable to market linked tariff. The Ministry clarified in reply to a question that the exemption has been provided specifically for PPP projects already awarded to avoid the possibility of violating the contractual obligations contained in the existing concession agreement. However, the Port authority has been given powers to fix tariff which will act as a reference tariff for purposes of bidding for prospective PPP projects. PPP operators will be free to fix based on market condition with the coming into force of the new Bill.

118. The representatives of the Private Ports and Terminals Association pointed out that as on date four different guidelines are being operated of 2005,2008,2013 and 2015. As per the Clause 23, those who come after the promulgation of the Bill have the freedom to set tariffs, i.e, Port-trust operated terminals have the freedom of setting tariffs, but those who have come before and invested into this country since 1997 till today do not have the freedom to set their own tariffs. They will have to go to adjudicatory board. He pointed out that every provisions of this clause 23 are creating an uneven level playing field and they are not allowing the private terminals to compete.

119. He further stated that the TAMP has now been made applicable to those who have already operating in the ports but those come after the date of the new Act, TAMP has been done away with. They further stated that there exists sufficient competition in this sector and this has been acknowledged by the Government when they issued the tariff guidelines of 2013 and 2015 and therefore all operators should be allowed to change to a market determined tariff.

120. Ministry of Shipping has replied to these issues and stated that the power given to the Board of Major Port Authorities to fix tariff is intended for future prospective projects which will be awarded to private concessionaires after the commencement of the MPA Bill. There is no intention to disturb the existing contractual arrangements which are entered into between the Board of Trustees and PPP concessionaires under the MPT Act. As regards the fixation of reference tariff for bidding in PPP projects, and the provisions for revenue sharing, the same will be determined by the respective Major Port Authorities at the time of finalizing the bidding documents for PPP projects, on case to case basis.

121. The Major Ports submitted that provisions regarding meetings and notification for fixing scale of rates/rate revision may be prescribed in the MPA Bill, 2016 as given in the Section 48 of the MPT Act, 1963 under TAMP.

122. The Ministry of Shipping replied that the power given to the Board to fix scale of rates inherently includes the power to revise and notify the scale of rates. Further, in this regard, the Board is entitled to make regulations for fixation, revision, meeting and notification of scale of rates. The general power of the Board to make regulations is given in clause 61(2)(g).

**123. The Committee notes the various arguments given by various stakeholders about clause 23. The Committee recommends the following in this regard:**

**124. With reference to proviso (a) to Clause 23 (1) (f), the ports may be given flexibility to implement the revised rates with retrospective effect in the following circumstances:**

- (i) **Rectification of clerical, typographical and arithmetical mistakes observed in the revised rates:**
- (ii) **Annual escalation is due from 1<sup>st</sup> April of every year, based on the WPI variation during the preceding calendar year.**
- (iii) **The Board/competent authority may approve a tariff cycle for revision say 2 years or 3 years and the revision will be due from the next tariff cycle, which will be a specific date, i.e., 1<sup>st</sup> April or 1<sup>st</sup> January.**
- (iv) **Exemption may be given for implementation of rates with retrospective effect in case of Court direction/orders**

**125. With reference to proviso (b) to Clause 23 (1) (f), the existing BOT operators are liable to pay to the Ports, the charges for the services provided to them and lease rent for the land allotted to them, as per the scale of rates, fixed in accordance with Clause 23 (1) (f), subject to the provisions in the License Agreement. Hence, it may be considered to include “ in so far as the services provided by the BOT operators under PPP projects are concerned”.**

**126. Regarding 23 (2), in view of public- private-partnerships, there should be an occasion to lease any asset and need not be limited to land/sheds. Therefore, “Lease any land....” May be amended to read as ‘Leasing of any asset including...’**

**127. Clause 25**

**25. (1)** If the master or owner of any vessel or his agent, at or before the time of landing from such vessel or any goods at any port asset belonging to or in the occupation of the Board of the Major Port, gives to such Board a notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the ship owner, 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 and godown or 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 without regard to such lien, provided that the Board shall have used reasonable care in respect to the authenticity of such document.

128. Clause 25 of the Bill relates to ship-owner's lien for freight and other charges and provides that if the master or owner of any vessel or his agent, at or before the time of landing from such vessel or any goods at any port asset belonging to or in occupation of the Board, gives to such Board a notice in writing that such goods are to remain subject to a lien for 28 freight or other charges payable to the ship owner, to an amount to be mentioned in such notice, such goods shall continue to be liable to such lien to such amount.

129. The Committee was informed by the stakeholders from the ship operating sector that although shipowners have a lien and right to seek from the Board to sell these goods which are under custody, these rights are easily circumvented by ports/terminals by not allowing to discharge the cargo at the Port area. This is observed frequently in bulk cargoes; however, containers are also affected. This is burdensome and affects the business practices to ensure facilitation of trade.

130. The Ministry of Shipping replied that provision contained in clause 25 of the Bill of the point is identical to what is provided in section 60 of the MPT Act, the two new clauses seeks to propose that inspite of the lien marked on the goods, the Board should allow the vessel to discharge the goods and retain the same in its custody even in such cases when the goods are moved to CFS or ICD at the instance of major ports or customs, as the case may be.

**131. The Committee, therefore, recommends that the following sections may be inserted under this clause stating (1) ‘the Board shall allow the vessel to discharge the goods and shall retain the goods in the custody of the Board for purpose of this section, for all such vessel(s) that are allowed to berth at such port and have received or allowed such berth from such port’. (2) “If any cargo which is required to be moved at the instance of Major Port or as per any Custom requirements to Container Freight Station or Inland Container Depot from the major port, the rights of the Board under this section and section 24 will subsist as if the goods are in custody of the Board.”**

**132. Clause 26**

**26. (1)** The Board may, after expiry of such time and in such manner as stipulated in section 48 of the Customs Act, 1962, sell any goods that have passed or placed into the custody of the Board upon landing thereof—

(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 ship-owner 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 charge has made to the Board an application for such sale; or

(d) if such goods are not removed by the owner or the person entitled thereto from the premises of the Board.

(2) The procedure for sale of goods under sub-section (1) and the proceeds of any such sale shall be applied in the manner as provided in section 150 of the Customs Act, 1962.

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

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

133. Clause 26 of the Bill lays down the circumstances under which the Board may sell the goods that have been passed or placed into its custody upon landing at the Major Port and also empowers the Board to apply the sale proceeds of such goods in the manner stipulated under section 150 of the Customs Act, 1962.

134. During the deliberation of the Committee one of the stakeholders suggested that the sale of goods under this Clause should be in a manner stated in section 48 of the Customs Act, 1962 thereby clearly incorporating the principles of Customs Act into this proposed Bill. It was also pointed out that the Container Freight Stations is an off-dock facility located near the servicing ports which helps in decongesting the port by shifting cargo and Customs related activities outside the port area. Therefore, it is pertinent that for easy movement of traffic and to ensure protection of rights of the ports, Container Freight Stations and Shipowners, the rights given under section 26 in the proposed Bill should apply to cargoes in Container Freight Stations. However, this may be restricted to scenarios to where cargo is moved to Container Freight Stations for Direct Port Delivery Customers or moved at the instance of Port.

135. Another stakeholder has submitted that clause 26 (3) may be renumbered as clause 26 (4) and a new sub clause may be added as Clause 26(3) as , “The right to sell shall also vest with any concessionaire appointed by the board with whom a concession contract under a Private Public Partnership project for operating any berth or terminal within port limits has been executed by the said board”.

136. The Ministry of Shipping replied that Clause 26 stipulates the power of the Board to sell goods that have passed or placed into the custody of the Board. However, such right may be granted by the Board to the private concessionaire subject to the terms and conditions as may be mutually settled in a particular concession contract.

**137. The Committee notes that there should be provisions in the Bill to decongest the cargo accumulations in the ports so that the unclaimed cargo can be easily disposed/auctioned. The Committee therefore recommends that a new suitable sub-clause may be added to this Clause for addressing the above issue.**

**138. The Committee also recommends that for easy movement of traffic and to ensure protection of rights of the ports, Container Freight Stations and Shipowners, the rights under Clause 26 in the proposed bill should also be applicable to cargoes in Container Freight Stations.**

**139. The Committee also notes that the port has got powers to sell any goods after expiry of such time and manner as stipulated in the Section 48 of Customs Act, 1962 and applied in manner as provided in section 150 of the Customs Act, 1962. The Committee recommends that any amendment to the Act regarding sale process shall be applicable to the new Act and same may be included in this Clause.**

**140. Clause 28**

**28.** (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 distrain or arrest such vessel and the 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 of the keeping of the same, remains unpaid for the space of fifteen 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 costs of sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

141. Clause 28 of the Bill relates to recovery of rates and charges by distraint of vessel and empowers the Board to detain or arrest any vessel in respect of which the rates or penalties are not paid as per the provisions of the proposed legislation.

142. IPPTA submitted that the recovery of rates or penalties clause may also vest with the concessionaire and the clauses may be amended

143. The Ministry of Shipping replied that the purpose of MPA Bill is to vest regulatory and management power with the Major Ports for port operations. However, the rights of the private concessionaire to recover rates and charges may be specified by the Board in a particular concession contract with such concessionaire.

**144. The Committee recommends that the interests of the concessionaire may also be protected and suitable amendments may be carried out in the above clause.**

**Clause 29**

**145.** Any person aggrieved by any action of the Board while exercising its powers under sections 19 to 28 (except section 25), may approach the Adjudicatory Board constituted under section 51 by filing an application before it in such form, manner and on payment of such fee, as may be prescribed.

Clause 29 of the Bill provides that any person aggrieved by the action or decision of the Board under clauses 19 to 28 (except clause 25) of the Act to file an application against such action or decision before the Adjudicatory Board.

146. The Major Ports suggested that the period of disposal of application received by Adjudicatory Board for adjudicating disputes may be included.

**147. The Committee recommends that relevant timeline for disposal of application would be formulated in the Rules.**

**148. Clause 30**

**30.** (1) The Board may for the purposes of its capital expenditure and working capital requirements raise loans in any currency or currencies from any—

(a) scheduled bank or financial institution located within India; or

(b) financial institution in any country outside India in compliance with the laws for the time being in force:

Provided that no loan or loans exceeding a sum equivalent to fifty per cent of the capital reserves of the Board shall be raised by the Board without the previous sanction of the Central Government.

(2) The loans may be raised by the Board in open market within India and in any country outside India on port securities including but not limited to debentures, bonds and stock certificates issued by the Board or may be obtained from the Central Government or a State Government:

Provided that no loan shall be raised from and no securities shall be issued to any person resident outside India without complying with the Foreign Exchange Management Act, 1999, the circulars and guidelines issued by the Reserve Bank of India, the Foreign Direct Investment Policy issued by the Central Government and any other law for the time being in force.

(3) The holder of any port security in any form may obtain in exchange thereof, upon such terms as the Board may from time to time determine, a port security in such form as may be specified by the regulations made by the Board.

(4) The right to sue in respect of moneys secured by port securities shall be exercisable by the holders thereof subject to the provisions of the Limitation Act, 1963.

(5) Nothing contained in this Act shall be deemed to affect the power of the Boards of Major Port Authorities to raise loans under the Local Authorities Loans Act, 1914.

(6) Notwithstanding anything contained in this Act, the Board may borrow moneys by means of temporary overdraft or otherwise by pledging the securities held by the Board in its reserve funds or on the security of the fixed deposits of the Board in its banks:

Provided that such temporary overdrafts or other loans shall not be taken, without previous sanction of the Central Government, if at any time in any year the amount of such overdrafts or other loans exceeds a sum equivalent to fifty per cent. of the capital reserves of the Board:

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

149. Clause 30 of the Bill empowers the Board to raise loans and issue port securities for capital expenditure and working capital requirements of the Port Authority from any Scheduled Bank or financial institution located in India or from any financial institutions in any country outside India without prior approval of the Central Government up to fifty-one per cent. of the capital reserves of the Board.

150. Stakeholders suggested that the Board may raise loans for the purpose of its capital expenditure and working capital requirement with the previous sanction of the Central Government from any Nationalized Bank instead of any Scheduled Bank.

151. The Ministry of Shipping was asked to furnish their comments on this clause and they replied that the proposed changes cannot be accepted as it seems to curtail the right of the major ports to raise/generate funds from international market. The Ministry further stated that the Bill already put a restriction on major ports to take prior approval of the Central Government if the amount of the loan proposed to be raised

exceeds 50% of the capital reserve of the such major port. The Ministry also stated that Clause 30 of the bill empowers the Board to raise loans from both (a) scheduled Bank or Financial Institutions located within India or (b) Financial Institutions in any country outside India. This right to raise loan from domestic and foreign institutions without Central Government approval is limited to the amount of loan raised upto 50% of its capital reserves, reason being that, the Major ports have dollar denominated income. The above provision would enable the Port Authorities to access long term low cost funding (3-5%) as against high-cost rupee loans at interest rates of 8-12% from the domestic market.

152. Further, as per the proviso to clause 30(2) of the bill the provision to raise loan from and issuance of security to any person resident outside India is subject to the compliance of provisions of FEMA, RBI and FDI policy issued by the Government. Hence, the concerns raised are already addressed in clause 30 of the MPA Bill and there is no further requirement to make modifications as suggested.

153. The Ministry of Shipping further clarified that no Central Government approval is required by the Board to raise loans upto 50% of its capital reserves and the Board is free to determine the terms and conditions of the said loan.

**154. The Committee notes the apprehensions shown by various stakeholders especially the employee unions of ports that the provisions given in clause 30 to empower the port authorities to raise loans from open market and also foreign financial institutions may finally lead to take over the control of the port management by foreign entities or private parties. The loans from the foreign financial institutions should not be a backdoor opening for such institutions to gain administrative and managerial control of the Ports. The Committee therefore, cautions the Government that this clause may be thoroughly scrutinized again and any loopholes in it may be rectified so that the management and administrative control of the port authority may remain with the Government at any circumstances.**

**155. The Committee recommends that a new para should be added in this clause 30 (1) as “Board may without the approval of the RBI, Central Government and due notification in official gazette, raise no loans for the purpose of the Act. Provided that no such notification shall be necessary if a loan is obtained from State Government or Central Government”.**

#### **156. Clause 39**

**39.** All moneys received by or on behalf of the Board under the provisions of this Act shall be credited to such general account or accounts of the Board which the Board may from time to time generally open with the scheduled banks as per the guidelines of the Ministry of Finance, Government of India.

157. Clause 39 of the Bill provides that all moneys received by the Board shall be credited to the general accounts of the Board which it may open with the Scheduled Banks as per the guidelines of the Ministry of Finance, Government of India.

158. During deliberations, the stakeholders have pointed out that the Clause 39 will enable the Port Authority Board to open account in the scheduled banks, which are foreign based private banks also. If the surplus funds of the ports are deposited in such banks, there is no guarantee that Indian money will be spent inside India only for development works. They suggested that all money received by the board shall be credited to the account of board opened in a nationalized bank. Therefore, they

suggested to retain the Section 88(2) of the MPT, Act, 1963 that the money credited to the general account may be deposited only in "Nationalised Banks"

159. The Ministry of Shipping replied that as the MPA Bill, 2016 aims to give financial autonomy to Major Ports, the suggested amendments do not seem necessary. They have also stated that the scheduled banks include nationalized banks as well and they are defined and regulated by the Reserve Bank of India. They also stated that this will help the ports to get better interest rates. Further, Section 40 of the MPA Bill clearly specifies the purposes and the manner in which the moneys received by the Major Ports and credited to the general account can be applied.

**160. The Committee recommends that this clause may be modified as “Ports shall have power to invest in any Nationalised Banks within India” and can borrow from any “scheduled Banks and financial institutions”.**

**161. Clause 40**

**40.** (1) The moneys credited to the general account or accounts under section 39, shall be applied by the Board in payment of the following charges, namely:-

(a) the salaries, fees, allowances, pensions, gratuities, compassionate allowances or other moneys due to—

(i) the Members of the Board except Members appointed under clauses (d), (e) and (f) of sub-section (3) of section 3;

(ii) the employees of the Board; and

(iii) the surviving relatives, if any, of such employees;

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

(c) the maintenance, development, security and protection of the Board and the docks, warehouses and other properties of the Board;

(d) 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;

(e) the costs, expenses, sums, payments and contributions to be made or incurred by the Board for the purposes provided under section 23; and

(f) any other charge or expenditure for which the Board may be legally liable.

(2) All moneys standing to the credit of the Board which cannot immediately be applied in the manner or for the purposes specified in sub-section (1) may be used for such lawful purposes as the Board may from time to time decide.

(3) Notwithstanding anything contained in section 38 and sub-sections (1) and (2), moneys received by or on behalf of the Board from non-port related use except those falling under section 59 shall be credited to a designated account and shall be applied by the Board for capital investment or for such purposes as may be prescribed.

162. Clause 40 of the Bill lays down the purposes for which the Board shall apply the moneys credited into the general accounts of the Board. This clause further provides that the provision includes payment of salaries, fees, allowances, pension, etc., of the Members and employees of the Board, cost and expenses incurred by the Board in the conduct and administration of any provident or welfare fund established by the Board,

maintenance, development, security and protection of the Board, docks, warehouses and other properties of the Board, and the like.

163. The employee unions insisted that the provisions contained under section 88 of the existing MPT Act 1963 may be retained in place of section 40 of the proposed Bill which is more specific.

164. The Ministry of Shipping replied that Clause 40 of the MPA Bill largely incorporates identical provisions given in section 88 of the MPT Act.

**165. The Committee heard the views of the employees unions and the Ministry of Shipping regarding the implications of this Clause. The Committee recommends that provision contained under section 88 of the existing MPT Act, 1963 may be retained in place of this Clause.**

**166. Clause 41**

41. (1) The Board shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheet in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India or such other person as may be appointed by him in this behalf and any amount payable to him by the Board in respect of such audit shall be debitable to the general account of the Board.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Board under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Authority.

(4) The accounts of the Board, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Board and the Central Government shall cause the same to be laid, as soon as may be after it is received, before each House of Parliament.

167. Clause 41 of the Bill relates to the accounts and audit of the Board and requires the Board to prepare a budget and an annual statement of its accounts. This clause further provides that the accounts of the Board shall be audited by the office of the Comptroller and Auditor-General of India and the audited report as certified by the Comptroller and Auditor-General shall be forwarded to the Central Government for presentation before both the Houses of Parliament.

168. The employee unions have given the following suggestion in this clause:

(i) The Board of each Port Authority shall appoint an internal auditor, who shall either be a chartered accountant or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the Major Port.

(ii) The internal auditor may or may not be an employee of the Port Authority;

(iii) The term "chartered accountant" shall mean a chartered accountant whether engaged in practice or not.

169. The Ministry of Shipping has replied that this provision may be considered while formulating the Rules.

**170. The Committee recommends that the suggestions as given by the employees unions may be considered while formulating the Rules under the Clause 41.**

**171. Clause 50**

**50.** (1) Without prejudice to the foregoing provisions of this Chapter, the Board shall in discharge of its functions under this Act, be bound by such directions on question of policy as the Central Government may give in writing from time to time:

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 Central Government on whether a question is one of policy or not shall be final and binding on the Board.

172. Clause 50 of the Bill states that the Board shall in discharge of its functions under the Act, be bound by the directions on questions of policy as the Central Government may give in writing from time to time. This clause further states that the Board shall be given an opportunity to express its views before any direction is given by the Central Government; but the decision of the Central Government on whether a question is one of policy or not shall be final and binding on the Board.

173. The stakeholders pointed out that this provision is a repetition of the Section 111 of the existing MPT Act, 1963. They deposed before the Committee that since the Port Trust Board is converted as Port Authority with Director Board of the Authorities as envisaged in the new Act, the power of the Central Government to issue directions to the Directors of the Board may finally lead to converting the Port Authorities into companies through executive order of the Central Government.

174. They have explained their experience on a previous occasion that using the power enabled by the Section 111 of the existing Major Port Trusts Act, 1963 the Ministry of Shipping issued an order on 21<sup>st</sup> April, 2016 to three Major Ports viz. JNPT, Chennai Port and Cochin Port to issue no objection certificate to Dubai Port World for making it a single holding company named Hindustan Ports Private Limited. This direction was issued without obtaining the views of the Board of Trustees of the above three Ports. This decision of the Government has caused irreparable loss and damages to the Cochin Port. Citing this example, the employees union representatives have shown the apprehension that retaining the Section 111 of the MPT Act, 1963 in the new Bill may be intentional to use it at the appropriate time by the Government and may endanger the very interest of the Major Ports, particularly when the ongoing policy of privatization is aggressively taking forward by the Central Government.

175. Indian Private Ports and Terminals Association (IPPTA) suggested the following amendments as matters related to Section 50 (1) would have major impact on the functioning of the concessionaire and it is only fair that the concessionaire under PPP contract with the Port Authority be given the opportunity to express the views.

176. The Ministry of Shipping replied that the suggested amendment is not desirable as clause 50(1) of the MPA Bill is similar to section 111 of the MPT Act which stipulates the power of Central Government to give directions to the Board and not to any private concessionaire appointed under a PPP project.

**177. The Committee notes the points raised by the stakeholders and the reply given by the Ministry. The Committee is also agreeable to the apprehension of the employee unions that retaining the Section 111 of the MPT Act, 1963 in the new Bill may be intentional to use it at the appropriate time by the Government and may endanger the very interest of the Major Ports, particularly when the ongoing policy of privatization is aggressively pursued by the Central Government. The power given to Central Government under the Clause 50 to issue directions to the Directors of the Board may lead to converting the Port Authorities into companies through executive order of the Central Government. The Committee recommends that the Government should not misuse the provision given under this Clause for any such activities as pointed out by the stakeholders.**

**178. Clause 51**

**51. (1)** The Central Government may, by notification, constitute an Adjudicatory Board for adjudicating disputes relating to Major Ports and such Board shall consist of a Presiding Officer and such other members not exceeding two, as may be appointed by the Central Government.

(2) The head office of the Adjudicatory Board shall be in Mumbai:

Provided that the Adjudicatory Board may hold its sittings at such other places as the Presiding Officer may decide from time to time having taken into consideration the convenience to decide the disputes referred to it.

(3) The Adjudicatory Board referred to in sub-section (1) shall perform the following functions, namely:—

(a) the functions envisaged to be carried out by the erstwhile Tariff Authority for Major Ports arising from the Tariff Guidelines of 2005, 2008 and 2013 and tariffs orders issued by the said Authority;

(b) to receive and adjudicate reference on any dispute or differences or claims related to rights and obligations of Major Ports and Public Private Partnership concessionaires or captive users for dedicated berth within the framework of their concession agreements and to pass orders after considering and hearing all the parties involved in the dispute:

Provided that any party not agreeable with order of the Adjudicatory Board may resort to arbitration as provided under the provisions of their respective concession agreements;

(c) to appraise, review the stressed Public Private Partnership projects as referred by the Central Government or the Board of the Major Ports and to suggest measures to revive such projects; and

(d) to look into the complaints received from port users against the services and terms of service rendered by the Major Ports or the private operators operating in the Major Ports and to pass necessary orders after hearing the parties concerned:

Provided that any party not satisfied with the order of the Adjudicatory Board shall be free to resort to arbitration or any other available legal remedy.

(4) A person shall not be qualified for appointment as the Presiding Officer of the Adjudicatory Board unless he is, or has been, or is qualified to be, a judge of a High Court.

(5) The Presiding Officer and members of the Adjudicatory Board shall be appointed by the Central Government on the recommendation of a Select Committee consisting of such persons and in such manner as may be prescribed.

(6) The Presiding Officer and members of the Adjudicatory Board shall hold office for a term not exceeding five years from the date on which they enter upon their office or until they attain the age of seventy years, whichever is earlier.

(7) A person shall not be qualified for appointment as a member of the Adjudicatory Board unless he is an expert in the field of finance, commerce, marine, shipping and port related matters, etc., having worked in the respective field for not less than twenty years.

(8) The salaries and allowances payable to and other terms and conditions of service of the Presiding Officer and members of the Adjudicatory Board shall be such as may be prescribed:

Provided that neither the salary and allowance nor other terms and conditions of service of the Presiding Officer or members of the Adjudicatory Board shall be varied to their disadvantage after their appointment.

(9) The procedure to be adopted by the Adjudicatory Board, while discharging its functions referred to in sub-section (1) shall be such as may be prescribed.

(10) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Adjudicatory Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

(a) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Adjudicatory Board;

(b) summoning and enforcing the attendance of persons and examining them on oath;

(c) issuing commissions for the examination of witnesses or documents; and

(d) any other matter which may be prescribed.

(11) Any proceeding before the Adjudicatory Board shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code and the Adjudicatory Board shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(12) Subject to the provisions of this Act, every order made by the Adjudicatory Board under this Act shall be final and shall not be called in question in any suit, application, execution or other proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or intended to be taken in pursuance of any power conferred by or under this Act.

179. Clause 51 of the Bill provides for the constitution of the Adjudicatory Board for hearing the application against any person aggrieved by any action of the Board while exercising its powers under sections 19 to 28 (except section 25).

180. IPPTA submitted that they strongly oppose the continuation of tariff regulation and fixation by the Adjudicatory Board. This provision just results in shifting the tariff fixation responsibility to the same authority under a new name. This provision

is self defeating. Continuance of the function of tariff fixation by the Adjudicatory Board are also , to Concessionaires in major Ports, discriminatory given that state ports which handle nearly 50% of the country's EXIM trade have the freedom of market determined tariff. They have further submitted that the provisions of this Section appear not only to empower the Adjudicatory Board to perform the existing functions of TAMP but in fact enlarges the scope to include, for example, adjudication on disputes or differences concerning agreements.

181. The Ministry of Shipping has replied to their above apprehension and suggestion which stated that the apprehensions expressed in relation to clause 51(3)(a) are unfounded. The functions to be carried out by the Adjudicatory Board under clause 51(3)(a) are limited to the tariff fixed under the Tariff Guidelines of 2005, 2008 and 2013 in relation to the works and contracts executed / awarded prior to the commencement of the MPA Bill. As per clause 23 of the MPA Bill, the power to fix tariff is given to the Board of Port Authority and it is also clarified in the first proviso to clause 23 that the fixation and implementation of scale of rates by the Board will not have retrospective effect. Accordingly, there is no power given to the Adjudicatory Board to fix tariff for any prospective projects. Instead, the said power vests with the Board of the Major Port Authority under clause 23 of the MPA Bill.

182. As regards 51(3) (b) provides the Adjudicatory Board with judicial powers to decide disputes between the Major Ports and PPP concessionaires, the Ministry of Shipping stated that Clause 51(3)(b) does not mandate any PPP concessionaire to refer disputes to the Adjudicatory Board. Instead, it provides an option to PPP concessionaires to refer disputes arising out of Concession contracts to Adjudicatory Board. Further, it is only when the dispute is referred to the Adjudicatory Board, the Board will adjudicate upon such dispute and pass order after hearing all concerned parties. There is also a proviso in clause 51(3)(b) which clarifies the position that any party not agreeable with the order of Adjudicatory Board may resort to arbitration under the provisions of their respective concession agreements.

183. The stakeholder further suggested that in clause 51 (5) clarity needs to be provided regarding the nature of the proposed "Select Committee", and also the parameters and process by which recommendations will be provided by the Select Committee. Clarity also needs to be provided as to the manner in which the rules and regulations for the recommendations will be "prescribed". The provision is vague and ambiguous. The term "as may be prescribed" also occurs in Section 51 (8), (9), & (10).

184. The Ministry of Shipping replied that the criteria for selection of 'Select Committee', the process for recommendation of Members and other matters pertaining to the Adjudicatory Board (as referred in clause 51(8), (9) & (10)) will be defined in the Rules.

185. The stakeholder demanded a clarification regarding as to which Act the Sections 193 & 228 were mentioned in the provision refers to the sections mentioned Clause 51 (11). The Ministry of Shipping clarified that the reference of Section 193 and 228 pertains to the Indian Penal Code.

186. The stakeholder further pointed out that the provisions giving under clause 51 (12) is very draconian in the sense that it takes away the right of the concessionaire to approach the courts to seek relief . This clause must be deleted.

187. The Ministry of Shipping give the following explanation to this point: The reference of dispute to the Adjudicatory Board under clause 51 is optional and not

mandatory. It is only when the concerned party refers the dispute to the Adjudicatory Board, the order passed by the Adjudicatory Board would be final and binding on disputing parties. However, this is subject to the other provisions of the MPA Act (*as mentioned in the beginning of clause 51(12)*).

188. Therefore, if the contract between the major port and the private concessionaire provides for resolution of dispute through arbitration and any party voluntarily decides to first refer the dispute to Adjudicatory Board without initiating arbitration, the order passed by the Adjudicatory Board on such dispute would not be binding and the aggrieved party not satisfied with such order can resort to arbitration under the terms of the concession contract. [proviso to clause 51(3)(b) & (c)]

189. However, if there is no arbitration mechanism agreed in the concession contract and if any party voluntarily refers the dispute in relation to such contract before the Adjudicatory Board without initiating any other contractual remedy, the order passed by the Adjudicatory Board in such matter would then be final and binding on the disputed parties. This is so because the Adjudicatory Board has been accorded a 'statutory status' of civil court and the proceedings before the Adjudicatory Board would be deemed as judicial proceedings.

**190. The Committee notes the reply given by the Ministry of Shipping over various points raised by the stakeholders. The Committee notes that under 51(3)(b), the Adjudicatory Board is given judicial powers to handle disputes. However, the composition of this authority does not seem to be composition of a judicial authority. The Committee recommends that under 51(4), the Chairman of the Adjudicatory Board may be equal to the status of a High Court Judge in order to avoid any ambiguity on the matter.**

**191. The Committee recommends that the ambiguity in clause 51(11) may be clarified in the final Bill.**

**192. In 51(d) the words "free to resort to arbitration" may be deleted since it is contradictory to 51 (12).**

**193. The Committee recommends that provisions for transfer of existing disputes against Major Ports to Adjudicatory Body for disposal may be included in this clause.**

**194. The Committee also recommends that the domain of the Adjudicatory Board on deciding disputes arising from existing contracts would be defined in the Rules.**

**195. Clause 55**

**55.** No suit or other legal proceeding 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 there-under, or for any deficiency of service or any consequential losses on account of deficiency in services.

Clause 55 of the Bill relates to protection of acts done in good faith and states that no suit or other legal proceeding 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 the Act or any rule or regulation made there-under, or for any deficiency of service or any consequential losses on account of deficiency in services.

196. The Committee was informed by a stakeholder that in cases of any losses and damages to vessel and cargo due to wilful negligence, default or gross negligence of the employees or Stevedores, the employees or Stevedores are absolved of any liability in view of the old section 121 which is mirrored in new bill vide Clause 55 “Protection of acts done in good faith”. They have suggested that any act due to negligence, default or gross negligence the employees or Stevedores are held responsible and liable. This is necessary to bring accountability and due diligence thereby furthering Rationalisation and Transparency in the business conducted by Government bodies.

**197. The Committee recommends that the above issue may be considered while framing the Rules. The Committee also recommends that Section 120 of the MPT Act, 1963 may be incorporated under this clause.**

**198. Clause 56**

**56.** Every person employed by the Board under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

199. The clause 56 of the Bill stipulates that every person employed by the Board under the Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

200. Major Ports pointed out that the staff of the Board has been mentioned as “deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code”, which was earlier under Penalties chapter of MPT Act, 1963. The definitions of public servant may be inserted in the Bill and the applicable rules of public servants.

**201. The Committee recommends that the definitions of the public servant and the applicable rules may be inserted in the Bill.**

**202. Clause 57**

**57. (1)** Notwithstanding anything contained in any other law for the time being in force, the Board in exercise of the powers conferred on it by regulations made under this Act or by invoking the contractual remedies available to the Board may cancel the allotment of any premises made to any employee of the Board or any other person or evict an employee of the Board or any person in occupation of any port asset or premises or area in the port limits, by notice in writing, addressed to such allottee or employee or other person who may be in occupation or possession thereof in violation of the regulations specified or formulated by the Board:

Provided that such notice shall indicate the reasons for cancellation of allotment or eviction or removal along with the period within which the removal or eviction is sought and recovery of the sums of dues in arrears and also for the extended unauthorised use of such premises.

(2) If any allottee or employee or other person is aggrieved by the order made under sub-section (1), then the said allottee or employee or other person may appeal against the order with the compensation officer so appointed by the Board within thirty days from the receipt of the order under sub-section (1).

(3) If any allottee or employee or other person refuses or fails to comply with an order made under sub-section (1), then any Magistrate of the First Class may, on application made by or on behalf of the Board, order any police officer, with proper

assistance, to enter into the premises and evict any person from, and take possession of, the premises and to deliver the same to the Board or a person appointed by the Board in that behalf and the police officer may, for the purpose, use such force as may be necessary.

(4) Any such notice as is referred to in sub-section (1) may be served—

(a) by delivering or tendering it to the allottee or employee or any other person who may be in occupation or possession of the whole or any part of the premises; or

(b) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises; or

(c) by registered post; or

(d) by publishing in the local newspaper having circulation in the area.

*Explanation.*—For the purposes of this section, the expression “premises” means any land, building or part of a building which is part of port assets and includes—

(i) areas such as canteens, gardens, grounds and out-houses, if any, appertaining to such building or part of a building;

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof; and

(iii) any furniture, books or other things belonging to the Board and found in such building or part of a building.

203. Clause 57 of the Bill relates to power of the Board to evict certain persons from premises of the Board and stipulates that the Board in exercise of the powers conferred on it by regulations made under the Act or by invoking the contractual remedies available to the Board may cancel the allotment of any premises made to any employee of the Board or any other person or evict an employee of the Board or any person in occupation of any port asset or premises or area in the port limits, by notice in writing, addressed to such allottee or employee or other person who may be in occupation or possession thereof in violation of the regulations specified or formulated by the Board.

204. The Committee received large number of representations on this Clause from the present occupants of the port land. The Committee also heard one of the representationist in this Clause. He while deposing before the Committee stated that the Clause 57 has completely ignored the Constitutional provisions as this will allow the Board to evict a person from the properties belong to the Board without hearing the law of natural justice after issuing a notice for the eviction. They also pointed out that the evicting body is not having the powers of a civil court. They requested that in such cases, the affected persons must be given an opportunity to make representation and to explain the allegations made against him/them and the authority conducting the proceedings must not be biased and should act in good faith.

205. The representations received by the Committee in this regard further stated that the eviction authority should act fairly, reasonably and in a just manner in accordance with the principles of natural justice particularly when the result of the exercise of the power is likely to affect any person or visit him with civil consequences.

206. The port land occupants have also pointed out some of the drawbacks in the above clause as it is not giving any provision for hearing of the affected party and no provision for statutory appeal before any court or even a persona designate who act as a

Judge or Court. They have claimed that the provisions of clause 57 therefore (as they are currently drafted) are clearly vitiated in law because:

- a. There is no provision for hearing of the affected party.
- b. No provision for the affected person to represent his case: pursuant to the Notice viz. there is no provision for "Show Cause" against the Notice.
- c. No trial (no recording of evidence) by the parties.
- d. No burden of proof required from the Port Authority.
- e. No opportunity for the affected person to discharge the burden cast upon him by the allegations and no opportunity of proving his case in answer to the allegations.
- f. The issuance of Notice under clause 57(1) presupposes that the allegations of the Port Authority are true.
- g. No judicial determination by a court, or a judge vested with judicial powers or even limited powers under the code of Civil Procedure, 1908.
- h. The "Compensation Officer" is not defined. His qualifications, power, scope, role, functions, and duties are also not defined.
- i. There is no provision for statutory Appeal before any court or even a *persona designata* who acts as a Judge or Court.
- j. The predecessor Major Port Trust Act, 1953 does not contain any such provision.
- k. The position today is that Ports already covered under the definition -under section 2(e)(2)(v) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971: may initiate proceedings under the said Act. Even under this Act, there is a provision (a safeguard) or issuance of Show Cause Notice, proper opportunity to hear the affected party to show cause, a proper trial (opportunity for both sides to lead evidence), and a judicial determination. There is also a statutory right of Appeal under section 9 of the Public Premises (Eviction Unauthorised Occupants) Act, 1971 before an Appellate officer, who shall be the district judge of the district in which the public premises are situated or such other judicial officer in that district of not less than 10 years; standing as the district judge may designate in this behalf.
- l. Neither the "Statement of Objects and Reasons" nor the "Notes on Clauses" in the proposed bill afford any justification for drafting such a draconian provision.
- m. As such the current provision (clause 57) contains no procedural judicial and/or constitutional safeguards. The provision as it stands today does not pass the basic requirement viz. natural justice and hence fails the test of the rule of law as enshrined in the Constitution of India. It seeks (without hearing or trial)- to condemn, evict and recover sums of money.

207. The Ministry of Shipping gave the following reply to their grievances:

With a view to deal with the unauthorized occupants in the ports land and reclaim the port properties for its development, the provision to empower Board to evict illegal occupants has been incorporated in clause 57 of the MPA Bill. This provision is similar to section 130 of the MPT Act which stipulates the power of the Board of Trustees to evict certain persons from the premises of the

Board. Even the procedure for eviction given in section 57 of the MPA Bill has been broadly adopted/ retained from section 130 of the MPT Act.

The provision of appeal before the compensation officer [ under clause 57(2)] is a new provision which would enable the aggrieved parties to challenge the notice / order for eviction before the compensation officer appointed by the Board. This is in addition to other legal remedies available to aggrieved parties under common civil laws.

The role / functions of the compensation officer (including other modalities viz., the need for issuing show-cause notice, personal hearing, etc. would be defined by Major Ports in the regulations to be made under the MPA Bill.

**208. The Committee notes the grievances of certain individuals on the Clause 57 and the reply furnished by the Ministry of Shipping on the matter. The Committee also notes the reply given by the Ministry that section 130 of the Major Port Trusts Act, 1963 have similar provision for eviction of the un-authorized occupants of the Port land though many people are continuing there since generations. The Committee has the opinion that the ports have every right to protect the land under their jurisdiction. There is no right for the unauthorized occupants to claim a stake in the Port land. The Committee therefore recommends that the ports may evict encroachers and unauthorized occupants from the port land at the earliest.**

**209. Clause 58**

**58.** Without prejudice to any other action that may be taken under this Act, the Board may recover by suit any rates, damages, expenses, costs, or in case of sale the balance thereof, when the proceeds of sale are insufficient, or any penalties payable to, or recoverable by, the Board under this Act or under any regulations made in pursuance thereof.

210. Clause 58 of the Bill entitles the Board with an alternate remedy to recover by suit any rates, damages, expenses, costs, or in case of sale the balance thereof, when the proceeds of the sale are insufficient, or any penalties payable to, or recoverable by, the Board under the Act or under any regulations made in pursuance thereof.

211. IPPTA submitted that this clause may be amended to, "Without prejudice to any other action that may be taken under this Act, the Board or any concessionaire may recover by suit any rates, damages, expenses, costs, or in case of sale the balance thereof, when the proceeds of sale are insufficient, or any penalties payable to, or recoverable by, the Board under this Act or under any regulations made in pursuance thereof."

212. The Ministry of Shipping replied to this suggestion that the Clause 58 of the MPA Bill stipulates the power of the Board to have alternate remedy by suit for recovery of any unpaid rates, damages, expenses, costs, penalties, etc. payable to the Board. This power is identical to the power given to the present Board of Trustee under section 131 of the MPT Act.

213. The stakeholder also suggested that the Draft Bill may incorporate provisions with regard to the following:

    Navigational Safety - Following a major accident (MSC Chitra and Al Khaleej collision in Mumbai Port) the Government constituted a Committee headed by Chairman, NCB. The Committee recommended that all major ports navigation

safety systems and procedures be audited by National Port Safety Committee. Accordingly, the Major Port Authorities Bill may introduce a clause to make Navigation Safety Audits mandatory as two yearly intervals.

214. The Ministry of Shipping stated that the Board of Major Ports Authority shall have powers to make Regulations and this suggestion may be considered while framing Regulations.

**215. The Committee notes that navigational safety is a cause of concern especially the Indian coasts witnessed similar incidents of vessels collisions and abandoning the vessels in a dangerous manner as pointed out by the stakeholders. The Committee, therefore, recommends that specific clauses may be added to the Bill empowering the Port Boards to make provisions for making Navigational Safety Audits mandatory.**

**216. Clause 59**

**59. (1)** Subject to the provisions of the Companies Act, 2013, the Board may use its funds for providing social benefits including development of infrastructure in areas of education, health, housing, accommodation, skill development, training and recreational activities within the port limits for its own employees, customers, business partners, Government and Non-Government Organisation, local communities, environment and society at large.

(2) The manner of utilisation of funds for the Corporate Social Responsibility shall be such, as may be prescribed.

217. Clause 59 of the Bill relates to Corporate Social Responsibility of the Major Ports and requires the Board of Port Authorities to utilise funds for providing social benefits including development of infrastructure in areas of education, environment, health, housing, skill development, training, etc., within the port limits for its employees, customers, business partners, Non-Government Organisations and society at large.

218. The stakeholders have pointed out that since the Port Authority is not coming under the purview of Companies Act how the provision of Companies Act can be entertained for the purpose. The Ministry of Shipping while furnishing the reply to this point clarified that the reference of Companies Act is inadvertently mentioned in clause 59 and the Ministry is proposing to rectify the error.

**219. The Committee notes the reply given by the Ministry. The Committee recommends that appropriate corrections may be carried out to rectify the error in Clause 59.**

**220. The Committee also notes that Port limits as defined in Clause 2 (w) is a restricted area and notified by the Central Government. Therefore, the provision of social benefits cannot be restricted to port limits alone. The Committee therefore recommends that in Clause 59 (1) the word “port limits” may be replaced with the word “within or outside port limits”.**

**221. Clause 61**

**61. (1)** The Board may, with the previous approval of the Central Government and after previous publication, by notification, shall make regulations consistent with this Act and the rules made there-under to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) rules of procedure for transaction of business under sub-section (1) of section 12;

(b) rules of procedure for transaction of business under sub-section (2) of section 13;

(c) the appointment of employees under clause (b) of sub-section (1) of section 16;

(d) the use and development of the port assets under sub-section (2) of section 19;

(e) the purposes of planning and development of Major Port under section 22;

(f) the form of port security under sub-section (3) of section 30; and

(g) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

222. Clause 61 of the Bill provides that the Board may, with the prior approval of the Central Government, by notification, make regulations consistent with the provisions of the Act and the rules made there under.

223. The employee unions suggested the following amendments in this clause:

(i) The Board may make regulation for the appointment of any person and the terms and conditions for such appointment.

(ii) The procedure for filing an appeal in respect of matters of eviction of persons from the premises of the Board as set forth u/s 63.

(iii) Section 28, Power to make regulation and Section 122, Power of Central Government to make rules to be included as it is in the Major Port Authority bill 2016.

224. The Ministry of Shipping replied that relevant provisions with regards to the Power of Central Government to make rules and the Power of the Board to make regulations are stipulated in clause 60 and 61 of the MPA Bill, respectively.

**225. The Committee recommends that the following provisions may also be inserted under Clause 61 (g) as under:**

**(a) the appointment, promotion, suspension, reduction in rank, compulsory retirement, removal and dismissal of its employees;**

**(b) their leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a Provident Fund or any other fund for their welfare;**

**(c) the terms and conditions of service of persons who become employees of the Board under.**

**(d) the time and manner in which appeals may be preferred and the procedure for deciding such appeals.**

**226. Clause 63**

**63.** (1) The Major Port Trusts Act, 1963 is here by repealed.

(2) Notwithstanding the repeal of the Major Port Trusts Act, 1963 under sub-section (1),—

(a) anything done primarily by the Board of Trustees under the Major Port Trusts Act, 1963 in respect of any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the Major Port Trusts Act, 1963, shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, trust, special purpose vehicle, joint venture, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of the repealed Major Port Trusts Act, 1963 shall, if in force at the commencement of this Act and not inconsistent with the provisions of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

(c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed Major Port Trusts Act, 1963;

(d) any person appointed to any office under or by virtue of the repealed Major Port Trusts Act, 1963 shall be deemed to have been appointed to that office under or by virtue of this Act;

(e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;

(f) any documents and any funds constituted and established under the repealed enactments shall be deemed to be documents and funds constituted or established under the corresponding provisions of this Act;

(g) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court; and

(h) any inspection, investigation or inquiry ordered to be done under the repealed Major Port Trusts Act, 1963 shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal of the Major Port Trusts Act, 1963.

227. Clause 63 of the Bill relates to repeal of the Major Port Trusts Act, 1963 and saving of certain actions taken under the said Act.

228. Representatives of the Major Ports have suggested that the retired employees and the pension payment under the earlier MPT Act, 1963 may be saved by including “retired employees and payment of pension” in the Bill.

229. The Ministry of Shipping replied that Clause 18 (a) and (c) of the MPA Bill stipulates that upon the constitution of the Board of Major Port Authority, the Board of Major Port Authority would be the successor of the Board of Trustees under the MPT Act and all obligations of the Board of Trustees will be deemed to be the obligations of the Board of Major Port Authority. Accordingly, the obligation of the Board of Trustees to pay pension to the retired employees under the MPT Act will become the obligation of the Board of Major Port Authority once the MPA Bill is notified by the Central Government and the new Board of Major Port Authority is constituted under the MPA Bill and hence required no change.

**230. The Committee is not satisfied with the reply of the Ministry of Shipping. The Committee recommends that the retired employees and the pension payment under the earlier MPT Act, 1963 may be retained by including the words “retired employees and payment of pension” in the Bill under this clause.**

**231. The Committee also recommends that Section 133 (2A), 2(B), and 2(C) of the MPT Act may be retained which enables the municipal assessment of properties of Mumbai, Calcutta and Chennai ports.**

**232. The Committee approved other Clauses of the Major Port Authorities Bill, 2016 without any modifications.**

#### **General Observations and recommendations**

233. The Committee was informed by the employee unions that there is a ban on recruitment in Major Ports. At one time the Ports have about three lakh employees at one stage and it has come down to 38,000 now and many Major Ports are facing shortage of manpower.

**234. The Committee recommends that government may make a study of the requirement of staff at each port and as per study report necessary actions may be taken to recruit the staff in the major ports.**

**235. The Committee notes that the Government intends to attract investors in the ports. However, the ports like Cochin, Visakhapatnam, Mumbai and Goa are handling defence cargo. If the private operators are given authority to handle such confidential cargo, there may be chances of leakage of the details to anti national elements. The Committee recommends that while handing over the port related activities to private operators, there should not be any compromise on the national security and safety aspects.**

**236. The Committee recommends that necessary provisions may be incorporated for CSR Audit by Practicing Company Secretaries in order to scrutinize the expenditure of CSR Fund and transparency, accuracy and authenticity of the expenditure. CSR Audit by the Company Secretary in practice is, therefore, an independent and objective assurance intended to add value and give necessary comfort to the Port Authority.**

**237. The Committee notes that new ports are coming up in the vicinity of major ports affecting the business and profitability of the major ports. The Committee therefore recommends that no new ports should be established in the 100 km vicinity of the existing major ports without the permission of the Board of the existing major ports.**

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## RECOMMENDATIONS/OBSERVATION/CONCLUSIONS-AT A GLANCE

The Committee has gone through the concern and apprehension of the various stakeholders regarding corporatization/privatization of the ports. But, there are some clauses which give impression that the proposed Bill provides the Government more teeth to allow private players in the port sector which may, in future take full control over the port activities.

(Para:14)

The Committee recommends that the Ministry in the first instance, should remove the fears of the stakeholders on the issue of 'privatization of ports' and ensure that the administrative, managerial and financial control of the Port will remain with the Port managements.

(Para:15)

### Clause 2

In view of the above, the Committee suggests that the following definitions may be added under this Clause:

- (x) "Central Government" means the Government of India represented by the Ministry of Shipping;
- (xi) "Deputy Chairman" means the Deputy Chairman of the Board appointed;
- (xii) "Government Nominee Member" means the Government Nominee Member appointed on the Board;
- (xiii) "Labour Nominee Member" means the labour nominee member appointed on the Board under;
- (xiv) "Major Port Trusts Act, 1963" means the erstwhile Major Port Trusts Act, 1963 (38 of 1963);
- (xv) "Non-Port Related use" means any activity for purposes other than the Port activity;
- (xvi) "Port Related use" means any activity for the purposes Port and its use;
- (xvii) "Rules" means rules made under or pursuant to this Act by the Central Government for the purposes of this Act;
- (xviii) Definitions for the terms 'Public Servant, Eviction and Staff' may be included. In sub-clause (d), 'Chairperson' may be modified as "Chairperson and Deputy Chairperson"

(Para:20)

The Committee recommends that under Clause 2(v) in the definition of Port assets may be modified suitably to include any asset within the port limits including within or outside Port limits.

(Para:22)

The Committee notes that Major Ports are owning vast land property. Therefore, port assets should include all its assets such as land even outside the Port limits. The Committee recommends that under Clause 2(v), "Port assets means any asset within the port limits including" may be replaced with the words "Port asset means any asset within or outside Port limits including".

(Para:23)

**The Committee also recommends that definition of “Rules” and “Deputy Chairperson” should be incorporated in the MPA Bill, 2016.**

(Para:24)

**The Committee recommends that Ministry of Shipping may include the dredgers also in the list of vessels as suggested in the previous paragraph.**

(Para:26)

### **Clause 3**

**The Committee notes that production and productivity of Ports lies on the proper management of labour. Efficiency of any Port is measured particularly considering the labour productivity. After considering all the aspects of the various representations received and the oral evidence recorded before the Committee, the Committee suggests the following modifications in the Clause 3 of Bill related to Constitution of the Board:**

- (iii) The employees and labour involved in the Port activities are one of its major stakeholder and they need a better representation in the Board. The Committee therefore recommends that minimum 2 labour representatives should be appointed in the Port Authority Board from among the serving employees of the Port. Here the Committee would reiterate that the Labour Nominee should be a serving employee of the Port.**
- (iv) Provided further that before appointing any person to represent the labour employed in the port, the Central Government shall obtain the opinion of the serving employees of the Major Ports and the selection procedure of the labour representative should be same as the existing one. In fact the Ministry of Shipping assured the Committee that the selection of the Labour nominee should be same as that of the existing one and the procedure will be prescribed in the Rules.**

(Para:39)

**The Committee also notes that in the mode of appointment of Board of Directors in the existing Major Port Trusts, the qualification and experience in the port operations are mostly ignored and favoritism and other vested interests play a major role. The Committee notes that the Independent Members are not so important and many a times they are representatives of vested interests nominated to the Boards to perpetuate the business interests of some people. The Committee recommends that the Independent Members should be persons having expertise in port activities. And while prescribing the Rules, the qualifications and the criteria of expertise should be specifically mentioned. The Committee also notes that in a Board consisting of eleven members there is no point in having four Independent Members. The Committee therefore, recommends that there should be a maximum of two members in the category of Independent Members in the Board.**

(Para:40)

### **Clause 4**

**The Committee observes that the ports being the country’s major trade centre, apart from cargo handling, Major Ports have to undertake several ancillary functions like dredging, maintenance of navigational channel, pilotage, berthing, buoying, bunkering, dry docking etc. The Committee therefore recommends that the Members of the Board should have several years of knowledge and professional experience in Shipping, Mercantile Marine**

**Department, and Management of Port Administration. The Committee also recommends that the necessary corrections to Clause 4 as identified by the Ministry of Shipping may be carried out.**

(Para:45)

**The Committee observes that cross reference given in Clause 4 (2) and 4 (4) does not correlate to sub-clause (3) of clause (3), where sub-clause (3) does not exist. It should be mentioned as clause (c) of Sub-clause (1) of Clause 3 and clause (f) of Sub-clause (1) of Clause 3 respectively.**

(Para:46)

#### **Clause 5**

**The Committee notes that Clause 9 also deals with removal of Chairperson by the Central Government under certain circumstances. The Committee recommends that sections given under Clause 9 in the Bill may be merged with Clause 5 in order to avoid duplication. The Committee also recommends that the word ‘Deputy Chairperson’ may be included in Clause 5(1)(d).**

(Para:50)

#### **Clause 6**

**The Committee notes the reply given by the Ministry of Shipping to the suggestions proposed by the stakeholders. The Committee recommends that the labour nominee member appointed representing the interest of the employees shall hold office for a term of 3 years and shall not hold office for more than two consecutive terms. Provided the labour nominee should be a serving employee and his Board Membership will be co-terminous with his retirement. The Committee also recommends that the tenure of an independent Member should be 3 years, however, the independent Member should have 15 years of experience of Port and port related activities.**

(Para:56)

#### **Clause 7**

**The Committee recommends that person appointed as Chairperson or Deputy Chairperson or Member should not have any financial or other interest in functioning of ports and Members shall not participate when such related matters are taken up for discussion at the meeting. The Committee also recommends that prescribed format for declaration of interests and assets may be given in the rules.**

(Para:61)

#### **Clause 10**

**The Committee recommends that the Members appointed shall be paid honorarium as per government rules. The Committee also suggests that the Clause 10 may be read as ‘The Members appointed under clauses (c), (d) and (f) of sub-section (1) of Section 3, shall be paid such honorarium as may be prescribed’.**

(Para:66)

#### **Clause 11**

**The Committee recommends that the powers and duties of Members may also be included in this Clause to remove any ambiguity in the matter.**

(Para:70)

#### **Clause 12**

**The Committee notes the reply given by the Ministry of Shipping. The Committee recommends that the provisions given under 12(3)(a) may be deleted as it impacts the functional and strategic independence of the Board.**

(Para:76)

The Committee observes that the Clause 12(3)(b) needs more clarity. The Committee therefore, suggests that the above clause may read as “.....the Board shall dispose of any application addressed to it within a period of 60 days from the date of receipt of the application”. As regards the suggestion given by the Major Ports, the Committee recommends that the future course of action on such non-disposed receipts may be uniform in all the Port Authorities.

(Para:77)

The Committee also recommends that the manner to conduct Board meetings should be separately defined in the Rules including that of conduct of Board meetings through video conferencing and audio visual means.

(Para:78)

#### **Clause 13**

The Committee notes the reply given by the Ministry of Shipping and agreed to it.

(Para:83)

#### **Clause 17**

Taking note of the reply furnished by the Ministry of Shipping, the Committee feels that the period of five years is sufficient and there is no need to change the period.

(Para:88)

The Committee observes that Section 25 of MPT Act, 1963 has provision for “power to promote, grant leave, etc to employees of Board” which has been removed in the MPA Bill, 2016. The Committee recommends that the equivalent provision or adoption of rules may be included in the Bill.

(Para:89)

#### **Clause 18**

The Committee considered the above matter and recommends that there shall be safeguards to the existing benefits including the pensionary benefits. Necessary clause in this regard should be inserted while finalizing the Bill.

(Para:95)

In clause 18 (c) the Committee notes that even when an obligation was entered into by port (say 5 years back) and is still to be fulfilled, it has to be taken care by the new Board. Therefore, the word “immediately” may be removed.

(Para:96)

#### **Clause 19**

Taking into consideration of the points raised by the stakeholders and the reply furnished by the Ministry of Shipping, the Committee recommends that necessary modifications may be made to this clause to have clear ownership terms on the properties of the Ports. The Committee suggests that alternatively, Section 34(1) of MPT Act, 1963 may be retained in this place.

(Para:102)

The Committee observes that in clause 19(3) for port development, sometimes assets are to be developed by port outside port limits- for example storage areas, railheads etc. Similarly, there is no reason to restrict any activities within port limits. The Committee, therefore, recommends that the word “Port Limit” may be deleted from this sub-clause.

(Para:103)

**The Committee also recommends that the provision regarding sale of port assets may have a condition of utilizing unused or wastelands, keeping aside the useful lands with it, in this clause.**

(Para:104)

#### **Clause 21**

**The Committee recommends that necessary action may be taken while framing Regulations regarding contracts sealed on behalf of the Board under this Clause.**

(Para:108)

#### **Clause 22**

**The Committee observes that Major Ports shall have the power to make their own regulations without any interference of any authority. The port limits would be independent of any local or State Government regulations of any authority. The Committee recommends that the Ministry of Shipping should incorporate necessary amendments accordingly.**

(Para:113)

#### **Clause 23**

**The Committee notes the various arguments given by various stakeholders about clause 23. The Committee recommends the following in this regard:**

(Para:123)

**With reference to proviso (a) to Clause 23 (1) (f), the ports may be given flexibility to implement the revised rates with retrospective effect in the following circumstances:**

- (v) Rectification of clerical, typographical and arithmetical mistakes observed in the revised rates:**
- (vi) Annual escalation is due from 1<sup>st</sup> April of every year, based on the WPI variation during the preceding calendar year.**
- (vii) The Board/competent authority may approve a tariff cycle for revision say 2 years or 3 years and the revision will be due from the next tariff cycle, which will be a specific date, i.e., 1<sup>st</sup> April or 1<sup>st</sup> January.**
- (viii) Exemption may be given for implementation of rates with retrospective effect in case of Court direction/orders**

(Para:124)

**With reference to proviso (b) to Clause 23 (1) (f), the existing BOT operators are liable to pay to the Ports, the charges for the services provided to them and lease rent for the land allotted to them, as per the scale of rates, fixed in accordance with Clause 23 (1) (f), subject to the provisions in the License Agreement. Hence, it may be considered to include “ in so far as the services provided by the BOT operators under PPP projects are concerned”.**

(Para:125)

**Regarding 23 (2), in view of public- private-partnerships, there should be an occasion to lease any asset and need not be limited to land/sheds. Therefore, “Lease any land....” May be amended to read as ‘Leasing of any asset including...’**

(Para:126)

#### **Clause 25**

**The Committee, therefore, recommends that the following sections may be inserted under this clause stating (1) ‘the Board shall allow the vessel to discharge**

the goods and shall retain the goods in the custody of the Board for purpose of this section, for all such vessel(s) that are allowed to berth at such port and have received or allowed such berth from such port”. (2) “If any cargo which is required to be moved at the instance of Major Port or as per any Custom requirements to Container Freight Station or Inland Container Depot from the major port, the rights of the Board under this section and section 24 will subsist as if the goods are in custody of the Board.”

(Para:131)

#### **Clause 26**

The Committee notes that there should be provisions in the Bill to decongest the cargo accumulations in the ports so that the unclaimed cargo can be easily disposed/auctioned. The Committee therefore recommends that a new suitable sub-clause may be added to this Clause for addressing the above issue.

(Para:137)

The Committee also recommends that for easy movement of traffic and to ensure protection of rights of the ports, Container Freight Stations and Shipowners, the rights under Clause 26 in the proposed bill should also be applicable to cargoes in Container Freight Stations.

(Para:138)

The Committee also notes that the port has got powers to sell any goods after expiry of such time and manner as stipulated in the Section 48 of Customs Act, 1962 and applied in manner as provided in section 150 of the Customs Act, 1962. The Committee recommends that any amendment to the Act regarding sale process shall be applicable to the new Act and same may be included in this Clause.

(Para:139)

#### **Clause 28**

The Committee recommends that the interests of the concessionaire may also be protected and suitable amendments may be carried out in the above clause.

(Para:144)

#### **Clause 29**

The Committee recommends that relevant timeline for disposal of application would be formulated in the Rules.

(Para:147)

#### **Clause 30**

The Committee notes the apprehensions shown by various stakeholders especially the employee unions of ports that the provisions given in clause 30 to empower the port authorities to raise loans from open market and also foreign financial institutions may finally lead to take over the control of the port management by foreign entities or private parties. The loans from the foreign financial institutions should not be a backdoor opening for such institutions to gain administrative and managerial control of the Ports. The Committee therefore, cautions the Government that this clause may be thoroughly scrutinized again and any loopholes in it may be rectified so that the management and administrative control of the port authority may remain with the Government at any circumstances.

(Para:154)

The Committee recommends that a new para should be added in this clause 30 (1) as “Board may without the approval of the RBI, Central Government and due notification in official gazette, raise no loans for the purpose of the Act.

**Provided that no such notification shall be necessary if a loan is obtained from State Government or Central Government”.**

(Para:155)

**Clause 39**

**The Committee recommends that this clause may be modified as “Ports shall have power to invest in any Nationalised Banks within India” and can borrow from any “scheduled Banks and financial institutions”.**

(Para:160)

**Clause 40**

**The Committee heard the views of the employees unions and the Ministry of Shipping regarding the implications of this Clause. The Committee recommends that provision contained under section 88 of the existing MPT Act, 1963 may be retained in place of this Clause.**

(Para:165)

**Clause 41**

**The Committee recommends that the suggestions as given by the employees unions may be considered while formulating the Rules under the Clause 41.**

(Para:170)

**Clause 50**

**The Committee notes the points raised by the stakeholders and the reply given by the Ministry. The Committee is also agreeable to the apprehension of the employee unions that retaining the Section 111 of the MPT Act, 1963 in the new Bill may be intentional to use it at the appropriate time by the Government and may endanger the very interest of the Major Ports, particularly when the ongoing policy of privatization is aggressively pursued by the Central Government. The power given to Central Government under the Clause 50 to issue directions to the Directors of the Board may lead to converting the Port Authorities into companies through executive order of the Central Government. The Committee recommends that the Government should not misuse the provision given under this Clause for any such activities as pointed out by the stakeholders.**

(Para:177)

**Clause 51**

**The Committee notes the reply given by the Ministry of Shipping over various points raised by the stakeholders. The Committee notes that under 51(3)(b), the Adjudicatory Board is given judicial powers to handle disputes. However, the composition of this authority does not seem to be composition of a judicial authority. The Committee recommends that under 51(4), the Chairman of the Adjudicatory Board may be equal to the status of a High Court Judge in order to avoid any ambiguity on the matter.**

(Para:190)

**The Committee recommends that the ambiguity in clause 51(11) may be clarified in the final Bill.**

(Para:191)

**In 51(d) the words “free to resort to arbitration” may be deleted since it is contradictory to 51 (12).**

(Para:192)

**The Committee recommends that provisions for transfer of existing disputes against Major Ports to Adjudicatory Body for disposal may be included in this clause.**

(Para:193)

**The Committee also recommends that the domain of the Adjudicatory Board on deciding disputes arising from existing contracts would be defined in the Rules.**

(Para:194)

#### **Clause 55**

**The Committee recommends that the above issue may be considered while framing the Rules. The Committee also recommends that Section 120 of the MPT Act, 1963 may be incorporated under this clause.**

(Para:197)

#### **Clause 56**

**The Committee recommends that the definitions of the public servant and the applicable rules may be inserted in the Bill.**

(Para:201)

#### **Clause 57**

**The Committee notes the grievances of certain individuals on the Clause 57 and the reply furnished by the Ministry of Shipping on the matter. The Committee also notes the reply given by the Ministry that section 130 of the Major Port Trusts Act, 1963 have similar provision for eviction of the un-authorized occupants of the Port land though many people are continuing there since generations. The Committee has the opinion that the ports have every right to protect the land under their jurisdiction. There is no right for the unauthorized occupants to claim a stake in the Port land. The Committee therefore recommends that the ports may evict encroachers and unauthorized occupants from the port land at the earliest.**

(Para:208)

#### **Clause 58**

**The Committee notes that navigational safety is a cause of concern especially the Indian coasts witnessed similar incidents of vessels collisions and abandoning the vessels in a dangerous manner as pointed out by the stakeholders. The Committee, therefore, recommends that specific clauses may be added to the Bill empowering the Port Boards to make provisions for making Navigational Safety Audits mandatory.**

(Para:215)

#### **Clause 59**

**The Committee notes the reply given by the Ministry. The Committee recommends that appropriate corrections may be carried out to rectify the error in Clause 59.**

(Para:219)

**The Committee also notes that Port limits as defined in Clause 2 (w) is a restricted area and notified by the Central Government. Therefore, the provision of social benefits cannot be restricted to port limits alone. The Committee therefore recommends that in Clause 59 (1) the word “port limits” may be replaced with the word “within or outside port limits”.**

(Para:220)

## **Clause 61**

**The Committee recommends that the following provisions may also be inserted under Clause 61 (g) as under:**

- (a) the appointment, promotion, suspension, reduction in rank, compulsory retirement, removal and dismissal of its employees;**
- (b) their leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a Provident Fund or any other fund for their welfare;**
- (c) the terms and conditions of service of persons who become employees of the Board under.**
- (d) the time and manner in which appeals may be preferred and the procedure for deciding such appeals.**

**(Para:225)**

## **Clause 63**

**The Committee is not satisfied with the reply of the Ministry of Shipping. The Committee recommends that the retired employees and the pension payment under the earlier MPT Act, 1963 may be retained by including the words “retired employees and payment of pension” in the Bill under this clause.**

**(Para:230)**

**The Committee also recommends that Section 133 (2A), 2(B), and 2(C) of the MPT Act may be retained which enables the municipal assessment of properties of Mumbai, Calcutta and Chennai ports.**

**(Para:231)**

**The Committee approved other Clauses of the Major Port Authorities Bill, 2016 without any modifications.**

**(Para:232)**

## **General Observations and recommendations**

**The Committee recommends that government may make a study of the requirement of staff at each port and as per study report necessary actions may be taken to recruit the staff in the major ports.**

**(Para:234)**

**The Committee notes that the Government intends to attract investors in the ports. However, the ports like Cochin, Visakhapatnam, Mumbai and Goa are handling defence cargo. If the private operators are given authority to handle such confidential cargo, there may be chances of leakage of the details to anti national elements. The Committee recommends that while handing over the port related activities to private operators, there should not be any compromise on the national security and safety aspects.**

**(Para:235)**

**The Committee recommends that necessary provisions may be incorporated for CSR Audit by Practicing Company Secretaries in order to scrutinize the expenditure of CSR Fund and transparency, accuracy and authenticity of the expenditure. CSR Audit by the Company Secretary in practice is, therefore, an independent and objective assurance intended to add value and give necessary comfort to the Port Authority.**

**(Para:236)**

**The Committee notes that new ports are coming up in the vicinity of major ports affecting the business and profitability of the major ports. The Committee**

**therefore recommends that no new ports should be established in the 100 km vicinity of the existing major ports without the permission of the Board of the existing major ports.**

(Para:237)

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