

Minutes of the 18th Electronic meeting of National Shipping Board held on 3rd August 2021 at 1500 hrs.

Attendees:

1. Dr Malini Shankar, Chairperson
2. Dr. Ajay Sahai, FIEO
3. Shri AbdulganiSerang, NUSI
4. Shri Amar Singh Thakur, MUI
5. Shri Anil Devli, INSA
6. Shri Rahul Modi, CCTA
7. Shri Shantanu Bhadkamkar, AMTOI
8. Shri Ishwar Achanta
9. Shri Aditya Suklikar, ICCSA
10. Shri P. Rajesh, DIG, Indian Coast Guard
11. Capt. Piyush Sinha
12. Capt. Sarvpreet Singh, Director Naval Operations, Indian Navy
13. Capt. Sankar Kr. Das, Secretary – NSB
14. Shri Shitesh Ranjan, Asstt. Secretary - NSB

1.1 Granting leave of absence:

The following did not attend the meeting and were granted leave of absence.

- i) Shri K S Bariar, Addl. Director General of Shipping.
- ii) Shri Vikram Singh, Joint Secretary (Ports), MoPSW.
- iii) Shri A. Balasubramanian
- iv) Capt. Sanjay Prashar.

On the onset the Chairperson welcomed all the members to the 18th meeting of NSB. The Chairperson thereafter instructed to continue with the listed Agenda.

2.0 Following agenda points were discussed at the meeting: -

Sr.No.	Agenda item	Suggested by
1.	Confirmation of the Minutes of the 17 th NSB meeting	Chairperson
2.	Increasing Indian Tonnage	Note received from AMICIE - Capt R Venkat, B.Sc.,M.L., FICS., M.CIArb
3.	Proposed Changes In Model Concession Agreement	Shri Ishwar Achanta
4.	Themes/Topics for Research in Maritime	Chairperson

2.1 Confirmation of the Minutes of the 17th NSB meeting held on 22nd June 2021

The Minutes of the 17th NSB meeting was circulated to all members. With the concurrence of members, the Chairperson-NSB, confirmed the Minutes of the 17th meeting of the NSB.

2.2 Increasing Indian Tonnage - discussion on Note received from AMICIE - The note received from Capt R. Venkat was read out by Capt. S.K. Das, which emphasized the need to protect and promote Indian flag shipping, essentially for national cargo security and related socio-commercial reasons of

continuous employment generation and forex gains. It identifies the taxes for import export and the taxes on the income of the seafarers as major cause of the disadvantage for the Indian flagged or owned ship. Further it also brings out that Tonnage Tax (instead of Income Tax) granted last decade hasn't been an enabler in promoting tonnage growth. In light of these, Capt. R Venkat, has put forth the idea of declaring the vessel as SEZ.

Dr. Ajay Sahai agreed on the need to promote Indian shipping but observed that the SEZ may not be a viable way forward as the Direct tax concession no longer exists for SEZ. Direct tax concession for SEZ ended in 2020. Secondly, the World Trade Organisation (WTO) ruled against India in a dispute filed by the USA regarding certain export subsidies that were being provided by India, which includes SEZ Scheme. Presently, the Govt. is thinking ways to remodel the SEZ. However, the Government will not grant any further concessions for SEZ.

He added, that in his view, by giving ships, an Infrastructure status, the problem of long term lending will be solved and also concession in income tax under sec. 80(i) may continue to flow. As an organization FIEO has taken up this matter with Ministry of Commerce and Ministry of Port, Shipping & Waterways, and NITI Ayog to create an ecosystem so that large shipping lines of global repute in India could invest in Indian flag. He expressed concern that about 65 billion dollars which is remitted every year as transport service charges could be saved for the country. It was summed up that SEZ would not be appropriate way to obtain the goal but the infrastructure status coupled with tax concessions could possibly serve the purpose.

The Chair thanked and appreciated the pointed observations made by Dr. Ajay Sahai, and also took up another aspect "The GIFT (Gujarat Infrastructure &Financial Technology) City" on similar lines for discussion. GIFT city has established a maritime cluster and the idea is that the GIFT city would be like an overseas territory of India. The maritime cluster will be developed as a dedicated ecosystem comprising of ports, shipping, logistics services providers, and pertinent government regulators. The GIFT City also intends to house an Arbitration Centre-Alternate Dispute Resolution (ADR) Centre, focused on maritime, shipping. It is also thought about setting up a second registry and options are being looked into the GIFT City being the prospect. It was queried whether it will help to increase the Indian tonnage if a second registry is recommended in GIFT City.

Dr. Ajay Sahai commented that GIFT City may have been given similar stature as to the SEZ. However, it seems to be good idea if the service component is being looked into. All the tax concession will automatically follow if the ships which are to be registered in GIFT City.

Further the Chair mentioned that as NSB, if the idea of second registry in GIFT City is recommended then it should be done with proper substantiation or justification. Therefore, the legal aspects and the intricacies involved in it are to be studied or looked into. Mr. Balasubramanian was asked to study and advise over this aspect.

Mr. Devli apprised that the issue of opening a second registry is being discussed in D.G Shipping for more than a decade. It was further stated that as long as the operating costs of a shipping company in India are high due to high taxes payable in India than overseas and the foreign shipping companies

would not prefer to flag their ships in India. He further added that "*importing of a shipping service is cheaper than providing a service locally*". As long as this continues nobody will flag in India. Secondly, linkage to access of cargo to flag was advocated. Success of FDI policy in other sectors was given as example where service providers cannot access the Indian market without being invested in India.

Indian shipping can be made competitive by ensuring that foreign shipping companies and Indian companies pay the same taxes either by imposing a similar cost burden to the foreign ships or relaxing the tax burden of Indian ships in order to bring them to the equal footing of the foreign ships.

It was also brought out that lately, the Government of India (GoI) has announced that if a ship is repaired at a foreign port, then the ship-owner has to pay 5% GST in India on the reverse charge basis. By doing this, the GoI is not encouraging the ship-owners to flag in India. The Chairperson was of the opinion that this is probably done with the intention to encourage the vessel/ship to be repaired in India. Mr. Devli responded that out of 129 offshore vessels in India 128 got repaired in India, out of 143 tugs 119 tugs got repaired in India and all the dredges (100%) got repaired in India. But vessels that have more than 10,000 DWT don't have services facility available in India. The Government expects that foreign companies should repair their vessels in India. INSA fully supports the growth of ship repair in India. However, this would be possible only if Indian shipping is made competitive and if access to cargo is related to ownership as done in any other business.

Mr. Devli further stated that 100% FDI is welcomed but nobody desires to do business in India. In Universities and Insurance sector, there is a restriction to FDI. However, in the year 1991 Govt. permitted 100% FDI in both Ports and Shipping, despite this no foreign investor wanted to establish their business in India. This has nothing to do with the change of rules. In 1991, only one tanker vessel (owned by American Eagle), 7000DWT, single skin came to India. This happened as single skin vessels/ships were then banned throughout the world. Hence simply allowing 100% FDI without enabling environment is not enough. Thus, Mr. Devli stressed that policy measures need to consider the means of making Indian shipping COMPETITIVE.

The Chair enquired as to what exactly it entail/require to make Indian shipping competitive and added that Dr. Sahai's recommendation to make shipping an industry is well explained and understood.

Mr. Devli briefed that Dr. C. Rangarajan, Governor of RBI, in his report has laid down seven parameters that is required for granting infrastructure status to an industry/sector. INSA had prepared a detailed paper by engaging TERI and another economist and provided the information regarding compliance to the seven parameters. However, the proposal to declare shipping as infrastructure industry was refused by the Department of Economic Affairs (DEA). Thereafter, 3 years back, the Ministry of Shipping had applied for declaring inland waterways and shipping under infrastructure status. The DEA examined the whole issue in line with the seven parameters laid down by Dr. Rangarajan Committee and declared that shipping is not infrastructure but a "business". Therefore, shipping is unable to access infrastructure funds. Furthermore, IMO has set a target of at least 40% de-carbonization by 2023 decarbonization as compared to 2018 and 50% by 2030. To meet this date, new engines and other assets, are to be bought for decarbonization. Now the predicament is how the funds are going to be made available for these

huge expenses. Hence, one way of enabling this in India is by instituting a dedicated Maritime Development Fund.

Further following issues have been identified for detailed analysis:

- 1) Manning – Indian ship-owners are paying competitive wages to seafarers which are definitely higher by 2% than the other flags. Recently, a tug operating within harbour met with an accident. Instead of directing the tugs (operating within harbour) to have minimum safe manning according to coastal requirements, all the tugs were directed to increase their manning. This will definitely increase the cost of the ship-owners by 3-4 lakhs. So our manning scales are to be brought in par with international levels by following white list MOU flag plan.
- 2) IGST on ships – Mr. Devli informed of the disparity in taxation between Indian flag vessel (imported into India) entering Indian waters for the first time being liable to pay 5% IGST of the value of the vessel compared to a foreign flag vessel entering India for the first time not required to pay such tax.
- 3) When an Indian Company transports EXIM or domestic containers from Port A to Port B, they are required to pay GST on movement. But if the same movement is done by a foreign flag vessel whether it is a mainline or feeder operator they are not charged GST. Hence dues to onerous taxes, the business is carried out by the foreign Company and not Indian Company.
- 4) When an Indian Company is operating on the coast and buys fuel or spares in one state and the principal office of the company is in a different state, no CENVAT is available on GST paid on fuel and spares in the other State. He further recalled that a delegation was led by the now NSB-Chairperson Dr. Malini Shankar former DG Shipping to meet Shri Hasmukh Adhia, former Finance Secretary, and had extensive deliberations on the GST issues. However, since those days nothing has changed. Those are problems on indirect taxes.
- 5) Now on direct tax issues - if an Indian Company operates a vessel on the Indian coast and foreigner operates a vessel on the Indian coast, and both employ Indian seafarers on board the vessel, the rules do not require that the Indians on the foreign flag ship have to pay tax on wages, while those on Indian ships have to pay tax! This disparity in treatment to tax by the Government is not understood.
- 6) Cost of funds – for a mid-sized Indian company, in rupees terms the cost of funds is close to 12 to 14%. In dollar level it would be around 4 to 5%. But in Norway or Oslo or China leasing companies the borrowing cost is not more than 1.50% in dollar terms.
- 7) The other related issue is that of the tenor of the loans. While the average life of a vessel is 25 years, and Indian companies buy secondhand vessels, the Indian ship-owner is lent funds for 6 years whereas his foreign competitor gets funding for 12 yrs. Therefore, simply put, if the same money is paid by the Indian over 6 years instead of 12 years then the daily cash flow requirement of an Indian company doubles which makes the Indian ship-owner less competitive.

The Chair mentioned that perhaps this is the reason Capt. R. Venkat had this idea & suggested SEZ as most of these things are covered in SEZ ambit. Mr. Devli had a differing view. He stated that an SEZ is no attraction to foreigners since if they continue to be invested outside India they do not face any Indian tax. Therefore, by investing inside an SEZ if they do not face any tax issues, they are not better off. If

that be the case, all existing Indian ship-owners will move out of the non-SEZ territory and migrate into the SEZ. The Chairperson was of the view that even if the Indian Ship-owners leave & migrate in SEZ there may perhaps be other Indian entrepreneurs who would be interested to invest or set up shop in SEZ. Mr. Devli further added that foreign investment in Indian ships will come to India only if the Govt. declares that access to cargo is connected to flagging. *He suggested that the Govt. may specify that any contract for coast al shipping of more than six months, should require flagging in India.* This will greatly increase flagging in India. This, accompanied by significant improvements in ease of doing business, will attract investment and support the “Make in India” and “Atmanirbhar Bharat” initiatives.

The Chair enquired as to the reason for hesitation on the part of the Government in getting these things done. Mr. Devli mentioned that in his understanding, since the Govt. works in silos, one has to keep on discussing the issue and raising attention from time to time with different persons. Only, this makes things move. For the past 3 to 4 years there is an appreciation from Government about the importance of an Indian flag. Recently the Government has approved the subsidy scheme to Indian shipping companies. Further, the Govt. is looking forward to setting up a Maritime Development Fund and the IFSC has set up a Committee for this purpose. Also, various other entities are working together to help the shipping industry. He expressed hope that in the coming ten years and with the support of FIEO, a container shipping line of repute will be created in India.

The Chairperson pointed out that some of the shipping companies did not perform well and became insolvent. This led to creation of a slightly negative view by Insurance companies as well as those in the Government of India.

Mr. Ishwar shared his astringent experience about buying vessels and unable to make payments like loan amount, interests, etc. He added that there are plenty of Indian companies who are daily evaluating the prospects of buying ships, even second hand ships if the uptick is right.

Ways to promote foreigners invest in Indian flag – Mr. Ishwar mentioned that some time ago there was a *move to reserve 50% PSUs and other Government agencies for Indian vessels.* The immediate response was it would increase freight rates. Hence Mr. Ishwar & Mr. Devli had prepared a detailed document, giving reasons for non-increase of global freight rates and that this would spur foreign ship-owners to come and register in India. This paper was submitted to the then JS (Shipping) Mr. Satinder Pal Singh. Further, he mentioned that Section 14 & 15 of the M.S. rules actually plays a key role in adopting the BBDC ROUTE for acquisition. He stated that the Indian ship-owners are very much against the BBDC Route. They rather have ships on bare boat with minimum 3 years before they are allowed to convert. There is also a demand for dual flag. *If the administration can readily accept dual flag then that also will help foreigners to come and establish Indian Companies.* All of these issues must be revisited. Also, the report then sent to Shri Satinder Singh will be sent by Mr. Ishwar to Chairperson for her perusal and directives. A copy of the said paper heading POLICY FOR PROMOTION OF INDIAN SHIPPING INDUSTRY is part of these minutes.

The Chair stated that it was interesting to know that there are enough Indians who are interested in buying ships just like the time when Mr. Mallya went into aircraft operations. She said that lately Mr.

Rakesh Jhunjhunwala says he will start Akash Air. Such things are not heard of in the shipping industry. Airlines are as complicated as shipping. Aviation industry, film industry seems to attract a lot of people but not shipping. This is perhaps because shipping works behind the curtains and not even seen as an option.

Mr. Ishwar further stated that Delta Cement have their own cement carrier. They are looking at buying three more ships. There are a lot of cement majors-RAMCO Cements, coal companies in India. They all want to buy their own carriers to transfer their own cargoes. This is an ongoing exercise.

On the question of whether aircrafts are bought outright or leased, Mr. Ishwar said that now-a-days, aircrafts are not purchased but only leased. However, in shipping bareboat charter is permitted and can be adopted for participating in international trade. However, such bareboat vessels cannot be on par with owned tonnage since there is a possibility of people entering into a BBCD for a short period and then disappear. This fear or concern is real and needs to be addressed.

Mr. Devli explained that aircraft too can be bought. However, in India for the aircraft business there is absolute cabotage which is absent in shipping. The government does not provide any access to market to non-Indian players. For example, if you want to move a passenger from Mumbai to Bangalore then only an Indian company can do it. A foreign company cannot. Hence access to market is for Indian companies. In the same context, it is the position that if you flag in India, only then will one have access to cargo.

Mr. Devli further explained that in the aviation sector there is no need of buying aircraft outright. By and large, designs for all aircraft are standard. Hence the resaleability of an aircraft is far more than shipping. Companies place a bulk order with the aircraft manufacturer by paying 6/7% of money upfront. They then contact a finance company and do a sale and lease back transaction. The finance company gives upfront about 25% of the value of the aircraft which is used as working capital. If the aircraft owning company defaults, due to unforeseen circumstances, then the leasing company immediately takes charge of the aircraft and delivers it to another owner. These aircrafts are thus used. Further older aircrafts are either cannibalized or sold for spare parts.

It is hope that the IFSC which has formed a committee for ship leasing would create a similar environment. However, in shipping one cannot expect to buy 15 Supramax of the same design. That is the reason why business men find it easier to get into aircraft business. In shipping, have to follow L1, if foreigner has given a rate, then that rate is to be matched. So the inaccuracy (??) makes it completely unattractive for anybody to get into shipping.

Mr. Abdulgani said that the views of NUSI on the manning scales did not match that of Mr. Devli and stated that this issue will be taken up for discussion some other time. He appreciated Mr. Devli-INSI, & Mr. Suklikar-ICCSA, for eloquently projecting the cause of the Indian ship-owners.

Regarding Indian Controlled Tonnage (ICT), Mr. Abdulgani agreed that every industry other than shipping has to have an Indian setup to operate in India. The reason why Denmark (DIS), Germany (GIS), Norway (NIS) has second register is to come out of the strict regimes of the original flag. The second

registry gives their ship-owners concession in many ways, Indian shipping needs to grow, hence second registry in India should be looked into. However, the second registry should employ only Indian seafarers. He added that NUSI is in possession of one legal opinion which was obtained by INSA, and NUSI is using it for the past 20 years, which probably could be used for SEZ purpose. DG Shipping is maritime administration, therefore has limitation in proposing but as NSB a strong recommendation on Mr. Devli's suggestion to improve the competitive ability of Indian ships must be made.

Shri Shantanu Bhadkamkar said that Indian container shipping movement has become minuscule and that trade in India is facing shortage of containers. Hence imports and exports are suffering. Also, there are some Indians who have set up companies abroad and have bought containers there. They operate between places other than India. Container owning and ship owning are linked with each other and hence he suggested that this issue may be viewed in holistic manner. The Chair brought to his notice that this issue was discussed in the earlier meeting. She further mentioned that Shri Rahul Modi made a statement that some initiatives are being taken and manufacture of containers is going to start around Bhavnagar.

After a long discussion on tonnage, the Chair suggested that as the NSB members feel, a strong detailed recommendation is to be made with adequate substantiation, if possible with appropriate statistics. The last recommendation made by NSB was ten years back. Last year, NSB had made a budget for consultancy and haven't used it. So, if agreed by all an external professional consultant may be engaged to make a recommendation about the state of Indian shipping industry in an integrated manner. All the members unanimously agreed to the suggestion made by the Chairperson.

The Chair affirmed that the response given by Dr. Sahai is very effective. Since we have not been successful in our representation to the WTO, the Govt. is unlikely to increase any concession or even maintain the present concessions for the SEZ. Hence, we can commission our report and ask them to look into all the given options.

Furthermore, the Chair requested Mr. Sahai and Mr. Devli for assistance in commissioning the report. Mr. Devli agreed to do the same with the help of Mr. Ishwar and other members.

Mr. Rajesh of Coast Guard advised that the industry needs to justify to the government about the need to give relaxation on taxes and conversion of tonnage taxes system as done in open registry system. Hence, the Government procedures to be followed i.e. the justification has to be submitted on a financial tabulated sheet, in a simple form, detailing and justifying the potential benefits that will be gained, how the new form of taxation will benefit the industry or increase the overall finances or employment or any other benefits. This is how concessions are obtained from the Government

The Chair appreciated Mr. Rajesh's views and stated this has been attempted a couple of times before. Everything had been tabulated point by point on the issues that were required to be looked into. In her opinion, for the last twenty years the strength of Indian shipping strength has reduced. Shipping has remained in the background most of the time whereas airlines are in the foreground. If seen from the Finance Ministry's or the government's point of view several reports, recommendations have been

submitted, but the same have not fructified. In many sectors such as tolls on road, certain inflated projections were made and realization was very low. This is damaging since officers within the government become very skeptical about the projections. However, these things can be tried again but not as a simple recommendation from the NSB. This has to go in a formal report form; this report will need to be sent to 2 or 3 ministries, not just shipping. What is needed is a cogent and coherent argument about the likely benefit of a shipping industry and the need for a national fleet.

Mr. Ishwar pointed out that last year Indian Oil Corporation, Gol paid 3400 crores to the foreign ship-owners to carry their cargo. This is the strongest justification and it is time to write a very strong paper on this subject to the Ministry. Mr. Devli further added that the notes sent to Ministry for the past seven years showing all justifications will be forwarded to Mr. Rajesh for his reference.

Capt. Sarpreet Singh representative from Indian Navy brought to the notice of the members that in December-2020 NSCS (National Security Council Secretariat) completed a study on the perspective of security of trade and most of the issues were pertaining to the shipping ministry. One of the recommendations of that study was the absolute need to increase the share of Indian flag vessels to a sizeable number and these vessels will be made to the Indian Navy in times of need, specifically to carry critical cargo. This recommendation has been forwarded to all the ministries including Shipping Ministry. He said that though the entire report is a classified document, the broad recommendation could be shared with the person writing the integrated report.

The Chair said that the inputs from the said report will be considered while drafting the integrated report.

2.3 Proposed Changes In Model Concession Agreement (MCA) submission by Mr. Ishwar Achanta

The Chair stated that Mr. Ishwar has a few points to make on the MCA which he has discussed with Mr. Bala.

Mr. Ishwar behind bringing up this issue mentioned that many newspapers are reporting that government is on the verge of changing the MCA in the favour of public-private-partnership (PPP) operators, which is a matter of concern. Hence, the NSB should ensure that the original terms & conditions of the tenders under which these concessions were granted are not arbitrarily changed.

The Chair affirmed that a series of meetings have taken place over several weeks and Mr. Balasubramanian played a key role in those meetings. He submitted all possible inputs and was in agreement with the evolved MCA. Based on the inputs received the MCA has undergone several modifications. She attended these meetings as invitee but is not entirely certain whether the all the changes are in favour of the Concessionaire. She added that if he has any reservations, the same could be mailed directly to the IPA, on his personal capacity.

The Chair stated that NSB should not be a reactive force. Therefore, it is not necessary for NSB to respond to all and sundry that appears in newspapers. Moreover, NSB is an Advisory body of the highest order where futuristic things should be looked into. Therefore, she recommended that we

should not react on the MCA at this time. If at all NSB had to make submissions, the same should have gone in the beginning itself. It is the duty of the Government to consider both sides as well as public opinion in newspapers.

The Chair remarked that many of the members may not be aware of the reservations in respect of the changes proposed to the MCA and Mr. Ishwar could brief the NSB members about the same.

Mr. Ishwar apprised that after the first privatisation happened in 1999, the Chennai Container Terminal then run by the port was handed over to the Ennore port. There was no tender nothing registered just kaccha agreement was signed between the two bodies. Subsequently, the government came out with a document called MCA. This document captures the duties and responsibilities of both the parties which was originally one-sided document, heavily in favour of the government. There have been some changes thereafter but unfortunately many of the PPP projects which came up after the Chennai terminal ran into issues on 3 or 4 legitimate points. They were envisaged as 30 years projects, but it is difficult to predict what happens in thirty years window. There is no between or midway reset clause. Also there is nothing in the agreement that allows both parties to reset, amend, modify or have any new kind of Minimum Guarantee Tonnage (MGT) clauses, revenue share clauses and so on and so forth. Initially there was revenue shared as royalty. The PPP operator paid per ton or per container royalty to the government and that was it. Subsequently, TAMP authority said the royalty model does not work. The revenue has to be shared where the highest revenue share offered would be the winner of the bid. So TAMP then made a ruling that this revenue share amount is not a pass through amount. It can't be written down as an expense on books and then pay the money to the government. The Ministry had taken a view that there were too many PPP projects which were in distress or which were on the verge of shutting down or which were not performing. So, the ministry set up a Committee to review the MCA. According to the industry there are four issues that deserve attention:

First- A PPP operator bids a specific cargo project takes a calculated risk, studies everything, and bids 30% revenue share. The original tender had not envisaged them to handle other cargoes that are being handled in the common berths of these ports. This PPP operator now wants to handle multiple cargoes that are being handled in other berths. But there should be separate tender for it like done in Kamarajar (Ennore) Port. There was a tender put out for two million tonnes multi cargo terminal which is won by Chettinad now Jindal. That was a very specific tender which listed out 6 or 8 commodities which the concessionaire would be able to handle. So the industry knew that these are the commodities that will easily go or are willing to operate from these terminals. But this is not the case where a PPP bids for iron ore or coal and then want to also handle the other six commodities at that terminal. The PPP operators today particularly ICRA/ISCA are trying to get the new MCA to state that there should be no restriction on the type of cargo to be handled irrespective of the fact that a particular PPP project has been bided out for a particular cargo. The industry has objected to these changes.

Second - PPP players are also requesting for a No MGT (minimum guarantee tonnage) clause. To date there is no tender where the sovereign has stood guarantee for business. The PPP in advance knew the risk involved, studied the analysis, did the financial calculations 45% revenue share for 10 million tonnes of cargo, now cannot say that the 10 million tonnes of cargo can't be given but can give only 2 million

tonnes of cargo. The sovereign cannot lose money nor can the PPP concessionaire be given an easy route out. So the industry is suggesting that there should be a MGT clause but if there is a change in law or there is a change in input substitution then the mid-way reset clause can be discussed mutually and adjustment made, but there still has to be MGT. If there is no MGT the concessionaire has no incentive or no responsibility to perform his contract.

Third - there should be no restrictions in the concessionaire agreement. The industry wants the Government to favour the concessionaire, which is unfair to the government.

Fourth is Right of First Refusal (ROFR) – In Ennore Port, an iron ore terminal SIOT was lying idle for ten years because the Supreme Court ordered a ban on iron ore. Subsequently the government agreed to convert the iron ore export to coal import terminal. Despite the fact that 400 crores have been spent by the company the Ministry demanded and insisted that there should be price discovery when this conversion is being made. The industry suggests that there should be a price discovery with a provision that the existing concessionaire should be in a position (not gone defunct) and should be given the ROFR to match that priced discovery. Whereas what is being demanded is that the concessionaire should simply be given the ROFR, if he says no then only the Govt. should go and tender out, which is not acceptable. Mr. Bala agrees that the Competition Commission MRTP statute must be addressed by deciding on ROFR and this has been specifically mentioned by him in the meetings that he attended.

The last one is - EFTA wants a clause inserted in the new MCA which says that there should be remedies for unforeseen circumstances. Unforeseen circumstance is a vague or indistinct phrase and cannot be placed in a sovereign contract as can be misused by private enterprises. Technically COVID-19 is unforeseen circumstances, or a policy shift is unforeseen circumstance. Each of these contracts says that unless there is a material adverse effect or a condition precedent , none of these can be taken as circumstances in which the tender can be changed. These are the five key points that has been articulated by Mr. Bala in the meetings.

The Chair commented that the briefing given on the MCA and the need for the changes as well as the points on which there are some reservations from the part of Mr. Ishwar is very concise. The government is consulting experts and stakeholders and modifying the MCA accordingly.

She further clarified that the first point regarding allowing other cargo also had been brought up specifically because of change in business. In business something changes drastically due to change in local or national or international law. At such times the business should not go defunct since that is not good for either party. This was the background against which this issue was discussed.

Mr. Ishwar further briefed that Vizag port has directed that berths 6 & 7 to be handed over to PPP operators because there is a lot of cargo. There is about 4 million tonnes in each berth that is being handled by existing stevedores. Now, if one PPP operator wants to take over the cargo in exchange then it would have a serious and detrimental impact on the lives of 50,000 stevedores of our country. These stevedores right to livelihood will be lost if the PPP operator takes cargo by exchange. Article 21 of the Constitution guarantees a right to livelihood. The Chair said that if this is from the point of stevedores then it has to be represented separately to the government.

Mr. Ishwar said that it is not about the stevedores alone, it is the principle behind it. The operator is unable to find the cargo originally permitted in the PPP and now is adopting other means to cannibalise cargoes. This is why the stevedores are lamenting and want the government to consider this.

The Chair assured that a recommendation on MCA can be sent to the Government provided all the members have understood the issues and are assenting to sending this recommendation. Mr. Ishwar agreed to share the note on MCA (Annexure-1) which has been sent to the MPV-2030 Group on behalf of the NSB along with the comments (Annexure-2) & copy of the MCA (Annexure-3). He said that he will flag the issues where it was his view that the agreement should be changed (Annexure-4). The Chairperson directed that these notes be circulated and comments sought by a fixed date after which the NSB could send in their observations.

Mr. Bhadkamkar suggested elaborating the supporting provisions or logic like 'Right to Livelihood' and its applicability as this will be useful for justifying equivalent cases. The Chair agreed with Mr. Bhadkamkar. She further added that concept of livelihood keeps changing due to advancement in technology. Some professions will disappear but new will take its place. As mentioned by Mr. Bhadkamkar & Mr. Rajesh, the facts and figures have to be given regarding how many stevedores will lose their jobs, and suggest solutions.

Mr. Ishwar pointed out that Article 21 of our Constitution guarantees 'Right to Livelihood', as decreed by Hon. Justice D.A. Desai in his judgment in Board of Trustees of the "Port of Bombay v. Dilipkumar Raghavendranath Nandkarni" where he has articulated and explained what is under Article 21 of the Constitution which he will share by email to all and by 12th August everyone should respond. The Chair responded by saying that we are now enlightened by some of these aspects which are not in our domain.

2.4 Themes/Topics for Research in Maritime: submission by Chairperson

The Chair mentioned that the Maritime Vision 2030 document talks about formation of maritime clusters, collaborations and giving specific emphasis to research projects. The kind of research needs to be undertaken. The research that industry would like to see, could be anything from technical to managerial, to policy and how would it make a difference to the sector and the country.

Mr. Devli said that INSA looked into this subject and INSA's research and technical Committee suggested the following points which are open for discussion.

- (i) There have been a lot of technological advances in shipping itself, but our educational curriculum has not kept track with the technological changes. Hence, our educational curriculum, the methodologies that we adopt for the purposes of training our teachers, students as well as our trainers are not at par with the global standards. All of this requires some amount of change and the systems are to be updated. Hence there is a need for research in the specified curriculum in education and training.

- (ii) Seafarers should be shore ready. Research needs to be carried out into the means and methods of starting a seafarer's career in such a way as to provide assured means of achievement of his/her life by providing equal opportunities to seafarers similar to those provided to non-seafarers in the shore environment. The seafarers should be shore ready and are able to get on the same footing like any other business qualification.
- (iii) Anti-collision and anti-grounding - Traditionally what was being done by carpenters, etc. has now progressed into science and art. Shipbuilding is a science and it is also an art. Yet we have collisions, accidents, etc. Of late, in the container industry, lots of collapses are happening. Hence there is a need to study the root causes of such accidents like collisions, vessels running aground, etc. which will take into account the early warning systems as well as current anti-collisions systems and their effectiveness. Having dedicated sailing corridors for ships like for aircrafts could be looked at and possible traffic separation schemes. The idea is to look at these kinds of traffic separation schemes and do some research so that accidents on the coast and in deep sea routes are avoided.
- (iv) Automatic systems for ship loading/mooring and Dynamic Positioning (DP) systems - For several years we have this mooring of ships and access but the technology that we are still using is electromagnetic or vacuumed systems. It should be looked into as to what can be done to improve ship mooring coupled with the DP.
- (v) Safe access on ship - The way the pilot boards the gangway by climbing a ladder off the side of the vessel is very scary. It is scary walking up that gangway because the whole thing is shaking. So we need to take a look at this and do it better. Further, safe access to ships is not just for lay man/person but even for pilots, and others.
- (vi) Ship board data - The DGS has a lot of information i.e. about the whereabouts of the vessel, the cargo she is carrying, how they are carrying it, how much of it is full, how much is empty, what is their graph but based on this available data nothing is being done that will assist us in being a better maritime nation. Harvesting of this data is not being done. Hence, IMU will be appropriate to research into this and regular quarterly reports can be generated for the benefit of the coast guard, Indian navy, soil management systems, NIOS and various other entities that can benefit out of harvesting of this data.
- (vii) Distribution of lower zero carbon fuel - IMO has set up these Goals for 2030, and 2050. In this regard the ship-owners are not aware what lead will be taken or whether this kind of fuels are created. However, it is understood that there are entrepreneurs in India who are working on zero carbon fuels and we need to do something about this. This is one more area that needs to be looked into.
- (viii) Another important point is too much of legislation. Indian ship-owners feel that the access is more on compliance. Hence, another area is to try and see if maritime administration can become more effective rather than compliance oriented so that our administration is also more relaxed and comfortable at work and supervision.

The Chair thanked Mr. Devli for the very pointed and well thought out inputs.

Mr. Abdulgani pointed out that research is required on the mental health & well-being of Indian seafarers. The details that exist were primarily done by some Scandinavian research or some other city. But details on Indian seafarers, their style of working, living and their issues of mental health and well-being is not available. Another issue is the need for raising awareness - the seafarers should be made aware about the zero carbon emission and anything that IMO announces.

Mr. Ishwar said that he had sent a note to the Chair on the four topics that was raised more than a year ago. The topics are given below

- 1) Salvage of derelicts
- 2) Abandoned ships - How to deal with vessels under arrest due to abandonment by seafarers on engine failure
- 3) Stateless ships - How to deal with stateless ships as there is no policy on this.
- 4) HNS Convention

The Chair agreed with all the members' perception that syllabus / curriculum revision is taken as a routine exercise. Revisions must be seen in context of what has happened in the last five years and in technological advancements from year to year and how do we see it progressing in the next three to five years and accordingly changes can be suggested to the curriculum. She shared information that microcredit system is being introduced in the Maritime University.

On Mental Health of Seafarers - The Chair informed Mr. Abdulgani that the proposal on this issue has been submitted to the Ministry and Ministry is likely to fund the study on Mental Health of Seafarers. If Ministry does not support, then NUSI or MUI will be requested to support this study. Some study like ship data getting captured does not require funding. It just requires guiding and access to data whereas some other like automatic system for ships may require funding or strong support which will help the researchers to progress.

Mr. Shitesh Ranjan informed that, maritime course curriculum is being looked into, DGS is already working on the dual-degree program and Capt. S. K. Das is heading that committee. It is expected that the result will come out soon with the intention that the seafarers will get a job in the adjacent industry as well.

3.0 Fixing date of the next meeting:

The 19th meeting of the Board of NSB will be held on 14th September 2021 at 1500 hours.

As there being no other matter to be discussed, the meeting concluded with a vote of thanks to the Chair.

Approved

Dr. Malini Shankar
Chairperson

Place: Mumbai

Date: