

Minutes of the 17th Electronic meeting of National Shipping Board held on 22nd June 2021 at 1600 hrs.

Attendees:

1. Dr. Malini Shankar, Chairperson NSB
2. Dr. Ajay Sahai - FIEO
3. Shri Abdulgani Serang - 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 A. Balasubramanian
11. Capt Piyush Sinha
12. Capt. Sanjay Prashar - IMF.
13. Capt. Sankar Kr. Das, Secretary – NSB
14. Shri Shitesh Ranjan, Asstt. Secretary - NSB

1.0 Granting leave of absence: -

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

- 1) Capt. Sarvpreet Singh, Director Naval Operations, Indian Navy
- 2) Shri Amitabh Kumar, Director General of Shipping
- 3) Shri Vikram Singh, Joint Secretary (Ports), MoPSW
- 4) Shri P. Rajesh, DIG, Coast Guard

The Chairperson welcomed all members to the 17th meeting of NSB.

2.0 Minutes of the 16th meeting held on 12th May 2021 of NSB –

The minutes of the 16th meeting of NSB held on 12th May 2021 has been circulated to all the members and comments of Shri Ishwar Achanta, have been incorporated in the minutes. The Minutes were confirmed.

3.0 Comments on the Indian Ports Bill 2021

The Chairperson stated that the Board is to study the Indian Ports Bill 2021 and submit comments/recommendations to the Ministry. The Bill was discussed section-wise as follows:

Chapter I.1:- The industry has suggested that the Short titles should have grand fathering clause and provide for details in schedules. However the reason for and meaning of the grand fathering clause has not been stated. Code of best Practice for Ports cannot be put in the short titles and commencement and applications; it will be included in the Rules.

Chapter 1.2:- The industry has requested that some definitions like port operations, port works, port assets be deleted and some like Harbour Master, DC, Convention, pilotage, PHO for foreign ships, etc., to be included. Some of the actions in this regard have already been taken. Mr. Ishwar mentioned that a request has been made to include Conventions and that DC and Harbour Master have already been included.

Chapter II:- Maritime State Development Council (MSDC): The industry suggested that marine professionals from port sector/port management/ stakeholders should be nominated in the MSDC. The MSDC is headed by ministers of Ministry of Ports, Shipping and Waterways (MoPSW) and it has among its members all the ministers of the State Government and Secretaries to the Government of India. It does not intend to have anyone from outside as it is a State Development Council.

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Tamil Nadu Chief Minister has taken up this issue with his counterparts of other coastal states.

Chapter IV:- Ports & Ports limit – Suggestion of industry: land side port limits is a civil matter, what is important and key to port operations concerned is SEAWARD port limits

The Board felt that there is no mention of what requires to be included. Mr. Ishwar, while mentioning that the point is well made, pointed out that wreck removal outside ports limits has already been included. Currently, the Act does not speak about outside port limits. Considering that some ports have long navigation channels, some have a short navigation channel or about 5 nautical miles out, this issue needs to be addressed. This matter also has an overlap with operational matters because every port in itself has a lot of fleet of vessels operating for its own business. Therefore, the limits for those operations have to be spelt out.

It was agreed to recommend this point.

Chapter VI:- Adjudication of Disputes – Industry suggestion: There should be an ombudsman process; allowed to take up disposal of current disputes such as that of erstwhile TAMP, concessionaire, etc. Mr. Bala mentioned that the appeals against the orders of the Appellate Tribunal goes to Adjudicatory Authority set up under the Major Port Act and at present this is not accepted by the States. Ombudsman process is very informal and more cumbersome.

Thus this need not be accepted.

Chapter VII:- Port Officials, Their Powers And Functions – Industry's submission: The Act lacks provisions regarding modern port practice/pilotage/ port of refuge, reception, emergency, preparedness. The members felt that it is not possible to capture these provisions in an Act. It is for DG Shipping and other bodies to enact rules. Further, it is not understood as to which port practice provision is lacking.

Pilotage has been included in the M.S. Act itself.

Reception facility is included in a separate chapter - Chapter X and elaborately deals with the reception facilities. M.S. Act deals with the other two i.e. emergency and preparedness.

Shri Shantanu Bhadkamkar-AMTOI stated that 'best practice' cannot be part of an Act because firstly it is abstract & secondly what is considered as best practice particularly in a port sector is that somebody 20 years back became successful, implemented it ten years later & then reached its peak. So we might end up adopting something 10 or 20 years old.

Further, he suggested the formation of a cadre port (like major ports, non-major ports, a big coastline of 7500) on the lines of railways. It was however agreed that as this is not a part/section of this Act this point has to be addressed independently.

Mr. Aditya added that the point regarding best practice is well taken, but it is not appropriate to put it in primary legislation.

Regarding port of refuge, reception, emergency preparedness - as discussed earlier, while some other Act may address these issues, the key issue according to members was how is this going to be linked and ensure enforceability under this Act?

The Chairperson stated that the M.S. Act has provisions regarding emergency preparedness. We have to assure that this provision is adequately reflected in the Ports Act also in order to ensure that ports are made accountable in this regard.

Mr. Abdulgani mentioned that this does relate to seafarers and to waste management and hence suggested that there should be some procedure for imposing levy on ports if welfare of shore-based facilities is not available. However, it is accepted that this cannot be put in the Act but can be part of executive Rules. He further mentioned that it is incumbent on the port to provide welfare facility because it is directly linked with the Maritime Labour Convention (MLC). This is also covered in this Act Chapter XIII section 101- Shore based welfare services for seafarers.

Mr. Ishwar suggested that this can be done under Section 10 - functions of the MSDC regulations, rules, etc. Hence any interested stakeholder can write to the Central Government. to enact rules. There is an enabling portion under Section 10.

Mr. Balasubramanian clarified that rules are intended for a particular Authority, while Acts are not purpose-driven but they are jurisdiction driven.

It was agreed to highlight the need for ensuring that the provisions in the related Acts are adequately reflected in this Act through rules and regulations.

Mr. Ishwar further suggested that Section 101 states that welfare of seafarers may be prescribed by the Central Government. So perhaps, as NSB we could draft that prescription and send to the Central Government requesting them to implement the same.

Mr. Aditya stated that there is a fairly detailed elaboration in Sec.100 regarding emergency preparedness and response plan. Section 108 states that this provision is in addition to and not in derogation of the Major Port Authorities Act, 2021 (1 of 2021), Merchant Shipping Act, 1958 (44 of 1958).

Section 3 – Power to make rules:- The Chairperson mentioned that the enabling provision exists for making Rules.

Mr. Ishwar stated that all the suggestions in this regard have been addressed in one section or the other. If we start making so many rules then IPA rules will be as thick or bulky as the MS Act, 1958 and that defies the purpose of writing a sharp Act. Frankly if compared with the version received last time, there is substantial improvement on all the areas.

Section 34:-Indemnity of Government against any act or default of port official or pilot – the Section states that the Government shall not be responsible for any act or default of any conservator, port officer or Harbour Master of any port. Mr. Bala pointed out that this is basically an escape route for the Government for any fault happening by the Port authorities, whether Major Port or Minor Port. Further Mr. Bala stated that he only disagrees with the context of the Section.

The Chairperson suggested that an alternative is to insert rules under relevant section to ensure that the pilot is well briefed and given specific kind/period/ years of training.

CHAPTER VIII:- Safety And Conservation Of Ports – Section 39 - Offences in connection with safety of vessels:- Industry's suggestion is transfer of schedules.

Mr. Ishwar said that it is not understood what is meant by "schedule". There is nothing called schedule. But this is a comment made about CTI & CTIO and NSB regulations which have been left very vague. It is understood that the State had been fighting for the same because the consent to operate permission is finally given by the Maritime State. It was agreed that it should be left to the State/Centre to create a framework.

CHAPTER IX:- Safety And Security – Industry's suggestion - to move details regarding ISPS to a schedule/Code of best practice enabled by this act –

This entails the framing of a new operating manual or Standard Operating Procedures (SOP).

Mr. Ishwar mentioned that actually for the first time, the ports are agreeing to safety audit in ports. This is the result of the MSC Chitra and AL Khajia accident report which is a very welcoming move.

Mr. Bala further added that not only safety audit, they want specific portions, to be mandatorily published every year which shows excellent transparency.

It was therefore agreed not to recommend any changes.

CHAPTER X:- Prevention, Containment Of Pollution And Response – three tier response required, damage containment exercises –

Section 62: - Definitions – (g) Reception facility definition should be in accordance with IMO consolidated guidance for Port Reception Facility provider and users

The Chairperson desired to know whether the IMO regulation is applicable to all minor ports?

Mr. Aditya mentioned that this is a very important point. They have to distinguish between ports which are catering to towing vessels and ports which are catering to vessels not falling within the ambit of IMO Regulations.

Section 64: - Direction to provide adequate reception facilities – Industry has suggested that it is the responsibility of the State to provide.

The Chairperson stated that this will be covered in the Rules.

Mr. Ishwar stated that this had been discussed earlier during the redrafting of the MS Act - whether a penalty of Rs. 10 lakhs is too high. It was agreed to not suggest any amendments.

CHAPTER XI:- Port Tariff – Is TAMP in or out? TAMP is no longer in existence

Section 71 – Port Tariff – Industry suggestion - ease of doing business clause / display of tariff in public domain / PSC / port website.

Mr. Bala opposed this suggestion as the next section 72 exclusively speaks about Port Transparency. He further stated that the ease of doing business is reflected in the transparent display of port tariff

CHAPTER XIII:- Miscellaneous – Section 98 - Industry's suggestion - Development works.

Mr. Bala mentioned that this point is very valid. However, this need not be inserted in section 98 as it is very general and not binding. It has to be inserted in the relevant sections as submitted/suggested in his paper/comments.

Mr. Ishwar has pointed out that they are speaking about the HNO Act, HNO Fund. He recalls that after the last Board meeting, he had sent a note to the Chairperson which was forwarded to Mr. Bariar with a request to look into those legislations. This needs to be followed up with Mr. Bariar. If the disaster of X-Press Pearl had happened in Indian waters, definitely India would not have enough funds to clean up the Indian shores.

The Chairperson decided that we can take up this issue independently

Mr. Abdulgani Serang – the two things on his list for discussion are:-

- 1) Regarding the Shore based welfare services for seafarers has been covered in Section 101.
- 2) Regarding seafarers' shore leave issue. No reference has been made. This is very important as per the MLC requirement. As of now shore leave is not granted to Pakistanis or Bangladeshis. Those riders and caveats will still stay because of our sensitivity. However shore leave to other foreign seafarers should be allowed and facilitated. Moreover, we can further suggest that Indian seafarers should get leave by default when the vessel touches Indian port.

4.0 Fixing date of the next NSB meeting

The 18th meeting of the National Shipping Board is scheduled on 3rd August 2021 at 1500 hours

As there being no other matter to be discussed, the meeting was closed.

Approved

Dr. Malini Shankar
Chairperson

Place: Mumbai

Date: 22.6.2021