

Minutes of the 9th Electronic meeting of National Shipping Board held on 13th August, 2020 at 1500 hrs.

Attendees:

Dr. Malini Shankar, Chairperson NSB

Shri Pradeep Chhabra, MoS

Shri P. Rajesh, DIG, Coast Guard

Shri Abdulgani Serang-NUSI

Shri Amar Singh Thakur-MUI

Shri Anil Devli- INSA

Shri Aditya Suklikar- ICCSA

Shri Rahul Modi- CCTA

Shri Shantanu Bhadkamkar-AMTOI

Capt Piyush Sinha

Shri A. Balasubramanian

Shri Ishwar Achanta

Capt Sanjay Prashar, IMF

Capt. Sankar Kr. Das

Shri Kshetra Nath Milli

1.0 Granting leave of absence: -

Leave of absence was granted to, Shri Amitabh Kumar, Director General of Shipping, Shri Satinder Pal Singh, JS Shipping, Shri Ajay Sahai, FIEO, Capt. Sarvpreet, Indian Navy.

The Chairperson welcomed all members to the 9th meeting of NSB and requested Capt. Das to take up the agenda.

2.0 Minutes of the 8th meeting held on 7th July 2020 of NSB -

The minutes of the 8th meeting held on 7th July 2020 was circulated to the members. Since there was no comment, the Minutes of meeting was approved.

3.0 Review of Indian Port Act

3.1 Shri Balasubramanian briefed the Board on the review of the Indian Port Act and the comments made by him were as follows :-

No	Sec	Subject	Comment	Suggested Change
1	3	Conservator plays a major role in the scheme of Indian Ports Act in general and in particular in Chapter VI Sec 22 to 33 dealing with VI Port Officials, Their Powers and Functions	The definition of the term Conservator is missing	Amend Sec 3
2	10(2)	Powers regarding complaints and resolution of disputes by the Authority	10 (2) 9b)- Authority role overlaps with Adjudicatory Board (though it says Authority will deal with areas outside jurisdiction of Adjudicatory Board) And this position appears to be overreach of the Authority especially and is inconsistent with the status assigned to Adjudicatory Board under Sec 11 (9) and 11 (10)	To clarify the intention
3	10(2)	Powers regarding complaints and resolution	These issues are outside the jurisdiction of the Authority and are	May be amended to consult with and involve formally Competition

		<p>of disputes by the Authority</p> <p>10 (2) (c) any complaint or reference made by the Central Government or State Maritime Board, concerning alleged anti-competitive practices or abuse of a dominant position at Scheduled Ports;</p>	<p>strictly matters of adjudication by the Competition Commission of India constituted under Competition Law.</p>	<p>Commission of India for proper adjudication</p>
4	10(2)	<p>Powers regarding complaints and resolution of disputes by the Authority</p> <p>10 (2) (d) any complaint or reference made by the Central Government or State Government or State Maritime Board in relation to Port charges levied by Scheduled Ports, and whether those tariffs amount to or evidence</p>	<p>These issues are outside the jurisdiction of the Authority and are strictly matters of adjudication by the Competition Commission of India constituted under Competition Law.</p>	<p>May be amended to consult with and involve formally Competition Commission of India for proper adjudication</p>

		an anti-competitive practice or an abuse of a dominant position.		
5	10 (2)	10 (2) (e) any complaint or reference made by the Central Government or State Government or State Maritime Board, with respect to a merger between:- (I) a shipping line and a terminal operator; (ii) a Port services provider with another Port services provider; or (iii) a terminal operator with another terminal operator in the same Port or in a nearby Port, being anti-competitive, or an abuse of a dominant position at Scheduled Ports and to make an order thereon prior to or upon merger;	These issues are outside the jurisdiction of the Authority and are strictly matters of adjudication by the Competition Commission of India constituted under Competition Law.	May be amended to consult with and involve formally Competition Commission of India for proper adjudication
6	10	Sec 10- Powers regarding	These are not adequate to perform	Sec 10 may be amended accordingly.

		<p>complaints and resolution of disputes by the Authority.</p> <p>the designated functions of the authority. These may be strengthened by inserting similar provisions from Sec 11 (8) which empowers the Adjudicatory Board as under:</p> <p>Sec 11 (8)</p> <p>Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1) and (4), 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:—</p> <p>(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;</p> <p>(b) summoning and enforcing the attendance of persons and</p>	
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			examining them on oath; (c) issuing commissions for the examination of witnesses or documents; and (d) any other matter which may be Prescribed	
7	11	Constitution of Adjudicatory Board and its functions 11 (6) In discharge of its functions, the Authority shall be guided by the National Port Policy and the National Port Plan and by such directions as may be issued by the Central Government.	Inadvertent use of the word Authority	the term Authority shall be replaced by the Adjudicatory Board
8	13	Establishment of Appellate Tribunal 13 ((8) The Appellate Tribunal shall consist of a Chairperson and not more than two Members to be appointed, by Notification, by the Central Government. 13 (9) The	1. Tribunal by its nature cannot have non judicial members as its work entails adjudication as the final arbiter of justice subject to Supreme Court review. The country faced judicial challenge in Competition	1. Needs a review since this is in conflict with established legal precedents. 2. It needs amendment to provide for clear selection criteria on the lines of Adjudicatory Board membership Or by amending as follows: The qualifications, term, allowances and salaries of the

		<p>selection of Chairperson and Members of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India.</p>	<p>Appellate Tribunal in 2009. It was decided to have judicial members in place. In fact, Competition law was held in abeyance for a few years till 1 this issue was resolved</p> <p>2. The criteria for selection of the Tribunal are missing.</p>	<p>Tribunal shall be Prescribed by the Central Government after due consultation with the Chief Justice of India.</p> <p>Or</p> <p>On the lines similar to the provisions for selecting the members of the Authority under Sec 8 (3) of the Act amend the Act as follows:</p> <p>Sec 8 ((3) reads as under:</p> <p>The Central Government shall appoint the Chairperson and other members of the Authority from amongst persons of eminence, having adequate knowledge, or experience in, or shown capacity in, dealing with, matters relating to Ports, management, finance, economics, Port policy, law, administration and operation of Ports.</p> <p>(4) The Central Government shall, for the purposes of selecting the Chairperson and</p>
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				other members of the Authority, constitute a Selection Committee
9	59	<p>Chapter XI- Port-Dues, Fees and Other Charges</p> <p>59. Power to Remit or exempt. - The State Government may, in special cases, remit or exempt the whole or any portion of the Port charges.</p>	<p>Non major Ports or Scheduled Ports are in Concurrent List of the Constitution. In certain special cases the state government may want to regulate port dues, fees and other charges.</p> <p>Power to regulate is different from the power to remit or exempt.</p>	The Act may be amended accordingly.

3.2 Shri Ishwar Achanta put forward the following comments :-

No	Sec	Concerned Section	Desired Change	Justification for Change
1	2	<p>Saving.- Nothing in this Act shall-</p> <ol style="list-style-type: none"> 1. deprive any person of any right of property or other private right, except as hereinafter expressly provided. 2. affect any law or rule relating to the customs or any order or direction lawfully made or given 	<p>Saving.- Nothing in this Act shall-</p> <ol style="list-style-type: none"> 1. deprive any person of any right of property or other private right, except as hereinafter expressly provided. 2. affect any law or rule relating to the customs or any order or direction lawfully made or given 	To clarify if "customs" means "customs of the Port/country" or "CBIC Customs"

		the customs or any order or direction lawfully made or given pursuant thereto.	pursuant thereto.	
2	3 (10)	"Convention" means any International Convention or Treaty or Agreement in relation to maritime matters and their Protocols to which India is a party and as are made applicable by the Central Government;	(10) "Convention" means any International Convention or Treaty or Agreement in relation to maritime matters and their Protocols to which India is a party and as are made applicable and/or adopted, from time to time, by the Central Government;	Added for clarity that all Conventions that are amended and approved/ratified by India, from time to time
3	3 (18)	"Master", when used in relation to any Vessel or any aircraft making use of any Port, means, subject to the provisions of any other enactment for the time being in force, any person (except a Pilot, harbour-master, assistant harbour Master, Dock Master or berthing Master	"Master" when used in relation to any Vessel making use of any Port, means a sea captain who is a licensed mariner, in ultimate command of the vessel and "Captain" when used in relation to any aircraft /sea plane, making use of the Port, means the senior pilot who is in ultimate command of the crew and passengers of the aircraft/sea plane, means, subject to	Simplification of definition of Master, as an aircraft commander is never referred to as "Master, clarification of meaning of "Captain" with reference to aircraft. Removal of needless reference to other uses of "Master " as a prefix or suffix. Use of sea plane found in Section 78

		of the Port) having for the time being the charge or control of the Vessel [or the aircraft, as the case may be];	the provisions of any other enactment for the time being in force, any person having for the time being the charge or control of the Vessel [or the aircraft, as the case may be];	
4	3 (24)	“Owner”----(ii) (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;	<p>“Owner” in relation to an aircraft means an owner as described in Section 30(2) of The Aircraft Rules,1937.</p> <p>“Owner in relation to a vessel means the person to whom the vessel or a share in the vessel belongs and as may be deemed appropriate for the context would include the Ship Operator/Disponent Owner, Charterer (including Bareboat), Manager or to any person or company a vessel has been sublet to.</p> <p>For this purpose, the terms “Bareboat Charterer”, “Manager” and “a Ship Operator/Disponent Owner” shall mean the following:</p> <p>A Bareboat</p>	<p>In line with the recommendation made by the NSB for the MS Bill 2016</p> <p>Made reference to the Aircraft Rules 1937.</p>

		<p>Charterer means the hirer of a ship for an agreed period during which the transfer of the ship is not just possession but also management, from the owner to the charterer. During the charter period, the charterer has total control over how the vessel is managed, manned and operated and where it will be deployed.</p> <p>Ship Manager is a person or a legal entity, managing ship's business and/or maintenance and/or manning who directs or controls the operations of a ship, providing professional management and care-taking, with extensive power in operating and managing the vessel.</p> <p>A Ship Operator/Disponent Owner is a person or a legal entity who charters in tonnage from the beneficial owner and whose</p>	
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			responsibilities include but are not limited to managing vessel performance, bunkers quality and quantity pricing and ship routing.	
5	3 (49)	“Ton” means a Ton as determined or determinable by the rules made under section 74 of the Merchant Shipping Act 1958 (44 of 1958), for regulating the measurement of the gross tonnage of ships;	“Ton” refers to Gross tonnage which means the measure of the overall size of a ship determined in accordance with the provisions of the IMO’s International Convention on tonnage measurement, 1969	Section 74 of MS Act 1958 has been removed in the MS Bill 2016 and its provisions scattered all across the MS Bill, better to define what GT means OR make reference to Section 275 of MS Bill , which is not currently desirable. Solution is to refer to the IMO Convention
6	6 (1) (ii) (iii) (iv) & (v)	Commencement of Operations by Scheduled Ports:		Needs a review since this is in conflict with the CTE / CTO provisions of Maritime States
7	9 (i) (c)	Functions of the Authority (1) The functions of the Authority shall be to:- (c) register Scheduled Ports and renew, withdraw, suspend or		Unclear if this provision is to register existing Non Major Ports and if so, no procedure is laid down for this.

		cancel such registrations;		
8	9 (c) iv	Pass an Order, grouping any number of Ports in the State not being Major Ports to be regarded as constituting a single Port for the purposes as may be provided in the Order;	Pass an Order, grouping any number of Ports in the State whether Major or Non Major to be regarded as constituting a single Port for the purposes as may be provided in the Order;	In keeping with the concept of Grid of Ports as being brought out in the MPV 2030 Eg. Pondicherry Old Port, Cuddalore, Tiruchopuram, can be grouped with Chennai/KPL Ports
9	10 2 (f)		any complaint or reference made by any Port User in relation to Port charges levied by Scheduled Ports, and whether those tariffs amount to or evidence an anti-trade practice or an abuse of a dominant position.	NEW CLAUSE to offer protection to a Port User to ensure no monopolies are created. Current relief is through MRTP Commission / Competition Commission and is time consuming.
10	25 (3)	The conservator may cause removal of wreck, or Obstruction within the Port Limits, including dismantling of the wreck if required, either on his own, or through any external agency.	The conservator may cause removal of wreck, or Obstruction within the Port Limits, including dismantling of the wreck if required, either on his own, or through any external agency, in accordance with the Wreck removal	India does not have a comprehensive legal instrument in its national law addressing wrecks. It is recommended that concurrent with the enactment of this Bill, DGS writes the Rules for Wreck removal

			guidelines adopted by the Director General of Shipping or as modified, from time to time.	referring to Article 9 of the Wreck Removal Convention (WRC) and in conjunction with Article 7 of the Turkish Ports Act.
11	27 (3)		The conservator may cause removal of wreck, or Obstruction Outside the Port Limits, including dismantling of the wreck if required, either on his own, or through any external agency, in accordance with the Wreck removal guidelines adopted by the Director General of Shipping or as modified, from time to time.	NEW CLAUSE similar to 25 (3)
12	28 (1)	Fouling of moorings.- (1) If any Vessel hooks or gets foul of any of the buoys or moorings laid down by or by the authority of the Government in any such Port, the Master of such Vessel shall not, nor shall any other person,	Fouling of moorings.- (1) If any Vessel hooks or gets foul of any of the buoys or moorings laid down by or by the authority of the Government in any such Port, the Master of such Vessel shall not, nor shall any other person, except in case of emergency, lift the buoys or	It is unusual for the Master to directly pay for such damage and it is usual for the ship's PNI Club to provide cover for the ship when it strikes a fixed object such as a quay dock or a buoy/mooring.

		<p>except in case of emergency, lift the buoys or moorings for the purpose of unhooking or getting clear from the same without the assistance of the conservator; and the conservator, immediately on receiving notice of such accident, shall assist and superintend the clearing of such Vessel; and the Master of such Vessel shall, upon demand, pay such reasonable expenses as may be incurred in clearing the same and for repairing the damages or for the replacement, if required.</p>	<p>moorings for the purpose of unhooking or getting clear from the same without the assistance of the conservator; and the conservator, immediately on receiving notice of such accident, shall assist and superintend the clearing of such Vessel; and the Master/Owner of such Vessel, through their PNI Club, shall, upon demand, pay such reasonable expenses as may be incurred in clearing the same and for repairing the damages or for the replacement, if required.</p>	
13	28 (2)	<p>Any Master or other person offending against the provisions of this section shall, for every such offence, be punishable as</p>	DELETE	<p>PNI will post cover and ship can sail. This is sufficient for the Port</p>

		provided in the Table.		
14	29 (3)	Notwithstanding anything contained in the forgoing subsections, if the conservator is of the opinion that any Vessel which is wrecked, stranded or sunk in any Port is required to be immediately raised, removed or destroyed for the purpose of uninterrupted navigation in such Port, he may, without giving any notice under sub-section (1), cause the Vessel to be raised, removed or dismantled.	Notwithstanding anything contained in the forgoing subsections, if the conservator is of the opinion that any Vessel which is wrecked, stranded, abandoned, stateless or sunk in any Port is required to be immediately raised, removed or destroyed for the purpose of uninterrupted navigation in such Port, he may, without giving any notice under sub-section (1), cause the Vessel to be raised, removed or dismantled.	To cover abandoned and stateless vessels covered by UNCLOS but not in any of our Acts or Rules
15	70	Foreign deserters.—Any Magistrate, upon an application being made to him by the Consul of any foreign Power to which section 238 of the Merchant	DELETE IN ITS ENTIRETY	1. Citing the UK's Merchant Shipping Act 1894 and its sections and provisions is irrelevant and archaic. The use of the word "slave" is offensive and abolished in

		<p>Shipping Act, 1894 (57 & 58 Vict., c. 60) has, by an Order in Council or order, been, or shall hereafter be, declared to be applicable, or by the representative of such Consul, and upon complaint on oath of the desertion of any seaman, not being a slave, from any Vessel of such Foreign Power, may, until a revocation of such order in Council or order has been publicly notified, issue his warrant for the apprehension of any such deserter, and, upon due proof of the desertion, may order him to be conveyed on board the Vessel to which he belongs or, at the instance of the Consul, to be detained in custody until the Vessel is</p>	<p>India per the Criminal Law Amendment Act 2013.</p> <p>2. Why the “deserter” needs to be dealt with The Indian Ports Act is unclear, the genesis of this needs to be understood, the scope of which is beyond this review.</p> <p>3. Deserters from foreign ships at Indian Ports (they can jump ship when at the roads or coasting) is dealt with in Section 211 of The MS Act, 1958 (or Section 107 of the MS Bill 2016) and hence there is no need for such a provision on the Ports Act.</p>
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		<p>ready to sail, or, if the Vessel has sailed, for a reasonable time not exceeding one month:</p> <p>Provided that a deposit be first made of such sum as the Magistrate deems necessary for the subsistence of the deserter during the detention and that the detention of the deserter shall not be continued beyond twelve weeks.</p>		
16	81	<p>Shore leave for seafarers.-Every Port shall facilitate the issue of shore leave for seafarers of Vessels calling at the Port.</p>	<p>Shore leave for seafarers. -Every Port shall facilitate the issue of shore leave for seafarers of Vessels calling at the Port in accordance with the Immigration Rules issued by the Ministry of Home Affairs from time to time.</p>	<p>Currently there is a conflict between this Section and the procedures followed by the Port Immigration Department.</p>
17	86	<p>Offences how triable, and penalties how recovered.-Any offence under this Act punishable with imprisonment</p>	<p>Offences how triable, and penalties how recovered.-Any offence under this Act, except as provided in Section 15, punishable</p>	<p>Section 15 prohibits a Civil Court from having Jurisdiction</p>

		<p>shall be triable by a Magistrate, having jurisdiction, and any Magistrate may, by warrant under his hand, cause the amount of any fine imposed upon the Owner or Master of any Vessel, for any offence committed on board of the Vessel or in the management thereof or otherwise in relation thereto, whereof the Owner or Master is convicted, to be levied by distress and sale of the Vessel, and the tackle apparel and furniture thereof, or so much thereof as is necessary.</p>	<p>with imprisonment shall be triable by a Magistrate, having jurisdiction, and any Magistrate may, by warrant under his hand, cause the amount of any fine imposed upon the Owner or Master of any Vessel, for any offence committed on board of the Vessel or in the management thereof or otherwise in relation thereto, whereof the Owner or Master is convicted, to be levied by distress and sale of the Vessel, and the tackle apparel and furniture thereof, or so much thereof as is necessary.</p>	
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3.3 The Chair brought to the attention of the members that along with Capt. Jayakumar, she had reviewed the Indian Ports Act and had submitted suggestions to the Ministry in 2018. The Chair requested Capt. Das to try and locate the document and circulate the same to the members so that efforts are not duplicated.

3.4 Shri Abdulgani Serang requested the Chair to clarify the mandate of the NSB on the Indian Port Act. The Chair clarified that the base document was Indian Ports Act Bill 2020 and NSB members were part of the group of stakeholders whose comments were being sought by the Ministry of Shipping. The members of NSB are not expected to be experts on Ports however there were members like Shri Ishwar Achanta who had the experience and worked with Ports for many years. Since shipping was not completely different from Ports and considering the number of years of experience the members of NSB would have had in dealing with the Ports, they would be aware of the problems being faced at Ports. It was required of the members of the NSB to highlight those points in the Bill which were missed out. Shri Anil Devli too had a similar doubt and thanked Shri Abdul Gani for raising this question and also thanked the Chair for clarifying.

3.5 The Chair also advised the Board that the committee had already sent recommendations on the MS Act with respect to issues affecting shipping such as reception facility at ports, waste management, recreation facility for seafarers etc. She suggested that such issues must also be mirrored in the Ports Bill. She requested the committee should look into all such recommendations and suggested that the same should be included in the Ports Bill as well. She highlighted that in the current Ports Act, with regards to shipping there was nothing with respect to enforcement and hence there was no accountability on Ports.

3.6 Shri Abdulgani Serang brought to the notice of the Chair that he had not received the Indian Ports Bill 2020 since the document was only shared on WhatsApp. He requested that the Indian Ports Bill be circulated on mail. He also suggested that as discussed earlier, all important correspondence be sent on mail instead of WhatsApp. The Chair requested Capt. Das to circulate the Indian Ports Bill 2020 to all members via email and also ensure all future correspondence to members be sent by email.

3.7 Shri Ishwar Achanta highlighted that with respect to the provisions in respect of Port Reception facility, as currently mentioned in the Indian Ports Bill 2020, Chapter10 section 56 mentions what facilities should Ports provide. However, there was no penalty clause on failure to provide. The Chair mentioned that in such a situation where the penalty was not mentioned, the case is referred to the adjudicator who is left to decide what should be the penalty depending on local conditions. Port Reception facility is an international requirement and small ports need reception facility which is appropriate to its size. She said that the Act should mention about the reception facility and in case of contravention a penalty would be levied. The rules could further clarify what facilities should be available and the penalty that would be applicable in case the facility is not provided.

3.8 On point no. 17 of the comments of Shri Ishwar Achanta, the Chair clarified that jurisdiction referred to were the Criminal Court. Shri Balasubramanian added that there was a need to improve the drafting of clause 86.

3.9 With respect to point no. 15 section 70, Shri Balasubramanian said that it possibly looked like there was some copy paste error in this section and needed some more of research.

3.10 The Chair appreciated comprehensive work carried out by Shri Balasubramanian and Shri Ishwar Achanta by going through the Bill in detail and bringing out the points that were put forth at the meeting.

3.11 The Chair suggested considering the following in the Indian Port Bill 2020

- NSB recommendation could include Pilot training in the Rules.
- The committee should look at the provision for Oil Spill with respect to responsibility, accountability, supply chain, equipment etc.

- c. The Major and Minor ports cannot have the same standards however a minimum standard should be available. A SOP could be made under a certain Rule.
- d. To cover Disaster Management
- e. Collectively to also look at areas that will not be represented by any other forum such as water pollution prevention.

3.12 Shri P. Rajesh, DIG, Coast Guard brought to the attention of the Board that on the earlier occasions when the M S Bill was being discussed, he was unable to join in for the meeting due to some technical reason. He had therefore sent his suggestion for consideration of the Board. The Chair requested Capt. Das to pass on the comments to the committee reviewing the MS Act.

3.13 The Chair requested Shri Balasubramanian to convene a meeting of the committee and invite the Coast Guard as well to review the points submitted by them and finalise the additional recommendations to the MS Act.

3.14 The Chair requested that the same committee which reviewed the recommendations to MS Act, should include additional members such as Shri Abdulgani Serang and hold committee meetings to review the comments of the members and finalize a report with recommendations to the Indian Ports Bill within the next two weeks.

3.15 The Chair suggested that after the committee had reviewed the additional comments on MS Act and Indian Ports Bill, the finalized comments should be sent to Capt. Das for circulation to the Board.

3.16 The Chair also brought to the attention of the members that whenever there are documents to be sent to the members, the same should be sent to

Capt. Das who would take care of the distribution to the Board which will help in easy retrieval as well.

4.0 Emerging issues of cyber security in ships and ports with the growing dependence on internet and digitization -The Chair said that these issues are important and wanted to know if any member would be willing to look into this. If none of the members was able to take this up, an agency would need to be engaged for this purpose. She requested the members to give this a thought and revert with their suggestions.

5.0 Fixing date of the next meeting:

The chairperson suggested that the 10th meeting of the Board of NSB will be held on Tuesday, the 1st September 2020 at 1500 hrs to review the additional recommendations of the committee on MS Act and recommendations on Indian Ports Bill.

There being no other matter to be discussed, likewise the meeting was ended.

Approved

Dr. Malini Shankar

Chairperson

Place: Mumbai

Date: 17/08/2020