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Ministry of Shipping
Ports Wing

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Subject: Draft Port Regulatory Authority Bill, 2011

A draft Port Regulatory Bill, 2011 is hosted at Ministry of Shipping website for seeking comments from all stakeholders. It is requested that all stakeholder may be furnish their comments to this Ministry by 7th April, 2011 through fax(No. 23719456)/email(dspg@nic.in).

(Anurag Sharma)
Under Secretary to the Government of India

Draft Port Regulatory Authority Bill, 2011

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Draft Ports Regulatory Authority Bill, 2011

An Act to provide for the establishment of Regulatory Authorities to regulate rates for the facilities and services provided at the ports and to monitor the performance standards of port facilities and services and for matters connected therewith or incidental thereto.

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

(a) “Appropriate Regulatory Authority” means the Major Ports Regulatory Authority established under Section 4 or the State Ports Regulatory Authority established under Section 6, as the case may be;

(b) “Appropriate Government” means the Central Government in respect of major ports and in any other cases, the State Government having jurisdiction over that port;

(c) “Concession Agreement” means an agreement by which a Private Operator is granted Concession by the concerned Appropriate Government or a Port Authority to provide port facilities and services for a prescribed period;

(d) “major port” means any port which the Central Government may by notification in the Official Gazette declare, or may under any law for the time being in force have declared, to be a major port;

(e) “Private Operator” means any person who provides port facilities and services within a port under a concession granted by the concerned Port Authority with the previous sanction of the Appropriate Government and includes any person authorised under Section 42(3) of the MPT Act, 1963 or Section _____ of the Indian Ports (consolidated) Act or in terms of any other policy guidelines of the Appropriate Government or any other Act;

(f) "Port Authority" means an authority on whom the ownership, the control and management of a port is transferred or vested or licensed for the time being in the form of Board of Trustees constituted under the Major Port Trusts Act, 1963 or a Company constituted under the Companies Act, 1956;

(g) "prescribed" means prescribed by rules or regulations made under this Act;

(h) "rate" includes any toll, due, rent, rate, fee, or charge leviable by a Port Authority or a Private Operator;

(i) "regulations" means regulations made under this Act;

(j) "rules" means rules made by the Appropriate Government under this Act.

CHAPTER-II

CONSTITUTION OF REGULATORY AUTHORITIES

3. Constitution of Major Ports Regulatory Authority

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint there shall be constituted, for the purposes of this Act, an Authority to be called the Major Ports Regulatory Authority.

(2) The Major Ports Regulatory Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property, both moveable and immoveable and to contract and shall by the said name sue and be sued.

(3) The head office of the Major Ports Regulatory Authority shall be at such place as Central Government may, by notification in the Official Gazette, specify.

4. Qualifications for appointment of Chairperson and other Members of the Major Ports Regulatory Authority

(1) The Major Ports Regulatory Authority shall consist of a Chairperson and two whole-time Members, to be appointed by the Central Government.

(2) The Chairperson and Members shall be appointed by the Central Government from amongst the persons of proven ability, integrity and standing having adequate knowledge of and professional experience in the fields of port operations and management, shipping and international trade, finance, transport economics, public administration, maritime law or infrastructure sector regulation.

Provided no two members so appointed shall be from the same area of knowledge mentioned above.

Provided that a person who is, or has been, in the services of Government shall not be appointed as a Chairperson or a Member unless such person has held the post of Secretary to Government of India or equivalent in the Central Government in the case of Chairperson and Additional Secretary or equivalent in the Central Government or Chairperson of a Major Port, in the case of Members.

(3) The Central Government shall, for the purpose of selecting the Chairperson and other members of the Major Ports Regulatory Authority, constitute a search committee consisting of –

(a) Cabinet Secretary

.... Chairperson

- (b) Secretary to Govt. of India, Ministry of Shipping Member
- (c) Secretary to Govt. of India, Department of Economic Affairs.... Member
- (d) Secretary to Govt. of India, Department of Legal Affairs Member
- (e) One expert to be nominated by the Ministry of Shipping Member

(4) The Central Government shall within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or end of tenure of the Chairperson or any Member, make a reference to the Selection Committee for filling up of the vacancy.

(5) The Selection Committee shall finalise the selection of the Chairperson and Members within one month from the date on which reference is made to it.

(6) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(7) Before recommending any person for appointment as a Chairperson or other Member of the Authority the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his function as a Member.

(8) No appointment of the Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee.

5. Constitution of the State Ports Regulatory Authorities

(1) Every Maritime State Government may constitute, by notification, for the purposes of this Act, a Regulatory Authority for the State to be known as the (name of the State) Ports Regulatory Authority.

(2) The State Ports Regulatory Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power

to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the State Ports Regulatory Authority shall be at such place as the State Government may, by notification, specify.

(4) The State Ports Regulatory Authority shall consist of not more than three members, including the Chairperson.

(5) The Chairperson and Members of the State Ports Regulatory Authority shall be appointed by the State Government on the recommendation of a Selection Committee referred to in Section 7.

(6) The Chairman or any other Member of the State Ports Regulatory Authority shall not hold any other office.

(7) The Major Ports Regulatory Authority shall exercise its jurisdiction over the Ports under the control of State Government also, till such time the respective State Government constitutes a separate State Ports Regulatory Authority as per sub-section (1) above.

6. Qualifications of appointment of Chairperson and other Members of State Ports Regulatory Authorities

The Chairperson and the Members of the State Ports Regulatory Authorities shall be persons of proven ability, integrity and standing who have adequate knowledge of and professional experience in the fields of port operations and management, finance, commerce, economics, shipping and international trade, public administration, maritime law or infrastructure regulation.

Provided no two members so appointed shall be from the same area of knowledge mentioned above.

Provided that a person who is, or has been, in the services of any State Government shall not be appointed as a Chairperson or a Member unless such person has held the post of Chief Secretary to any State

Government or equivalent in the case of Chairperson and Principal Secretary of any State Government or equivalent or Chairperson of a Major Port, in the case of Members.

7. Constitution of Selection Committee to select Chairpersons and Members of State Ports Regulatory Authorities

The State Government shall, for the purposes of selecting the Chairpersons and Members of the State Ports Regulatory Authority, constitute a Selection Committee consisting of –

- (a) Chief Secretary of the concerned State ... Chairperson
- (b) Chairperson of the Major Ports Regulatory Authority ... Member
- (c) One expert to be nominated by the State Government ...Member

(2) The State Government shall within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or end of tenure of the Chairperson or any Member, make a reference to the Selection Committee for filling up of the vacancy.

(3) The Selection Committee shall finalise the selection of the Chairperson and Members within one month from the date on which reference is made to it.

(4) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(5) Before recommending any person for appointment as a Chairperson or other Member of the Authority the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his function as a Member.

(6) No appointment of the Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee.

8. Term of office, conditions of service, etc., of Chairperson and other Members of the Major Ports Regulatory Authority and State Ports Regulatory Authorities

(1) Before appointing any person as the Chairperson or a Member, the Appropriate Government shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as Chairperson or such other Member.

(2) The Chairperson and other Members shall hold office for a term of five years from the date on which they enter upon their offices or until they attain the age of sixty-five years, whichever is earlier.

Provided that the Chairperson and other Members shall not be eligible for re-appointment.

Explanation – For the purposes of this Section, appointment of a member as Chairperson shall not be deemed to be re-appointment.

(3) A person in the service of the Central Government, a State Government or an autonomous body, an undertaking, corporation or company owned or controlled by the Central Government or a State Government or from any other non- Government or corporate body shall resign or retire from such service before joining as the Chairperson or other full-time Member, as the case may be.

(4) The salaries and allowances payable to and the other terms and conditions of service of the Chairpersons and the other Members shall be such as may be prescribed by the Appropriate Government.

Provided that after appointment, neither the salary and allowance nor the other terms and conditions of service of the Chairperson or any other Member shall be varied to his disadvantage.

(5) The Chairperson or other Member may resign his office by giving notice thereof in writing to the Appropriate Government and on such resignation being accepted, the Chairperson or such other Member shall be deemed to have vacated his office.

(6) The Chairperson or any other full time Member, upon ceasing to hold office as such, shall

(a) be ineligible for further employment under the Central Government or any State Government or any Port Authority for a period of two years from the date he ceases to hold office; and,

(b). not accept any commercial employment after he ceases to hold such office.

Explanation – For the purpose of this section, “commercial employment” means employment in any capacity under, or agency of a person engaged in trading, commercial, industrial or financial business in the field of Port and Shipping and includes also a whole-time director of a company or partner of a firm or setting up practice either independently or as partner of a firm or as an advisor or a consultant.

9. Removal of Chairperson or any other Member from office

The Appropriate Government may remove from office the Chairperson or any other Member, who –

(a) has been adjudged as insolvent; or

- (b) has been convicted of an offence which in the opinion of the Central Government, involve moral turpitude; or
- (c) has become physically or mentally incapable of acting as a member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

Provided that no Chairperson or other member shall be removed from office under clause (d) or clause (e) unless the Appropriate Government after holding an inquiry by any person appointed or authority constituted for the purpose and in accordance with such procedure as may be prescribed in this behalf, is satisfied that such person ought on such ground or grounds to be removed.

If a casual vacancy occurs in the office of the Chairperson or any Member, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other reasons, such vacancy shall be filled up by the Appropriate Government by making a fresh appointment and the Chairperson or the Member so appointed shall hold office for such term as may be specified.

10. Powers of Chairperson

The Chairperson shall have the power of general superintendence and directions in the conduct of the affairs of the Appropriate Regulatory Authority and shall, in addition to presiding over the meetings of the concerned Appropriate Regulatory Authority, exercise and discharge such other powers

and functions, as may be assigned to him/her by the concerned Appropriate Regulatory Authority.

11. Meetings of the Appropriate Regulatory Authority

(1) The Appropriate Regulatory Authority shall meet at such times and places, and shall observe such procedure in regard to the transaction of business at its meetings as may be specified by regulations.

(2) The Chairperson shall preside at the meeting of the Authority and if for any reason the Chairperson is unable to attend a meeting of the Authority, any other Member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Appropriate Regulatory Authority shall be decided by a majority of votes of members present and voting, and in the event of equality of votes, the Chairperson or the person presiding in the absence of Chairperson, shall have the right to exercise a second or casting vote.

(4) Save as otherwise provided in sub-section(3), every Member shall have one vote.

12. Authentication of all orders and decisions of the Appropriate Regulatory Authority

All orders, directions and decisions of the Appropriate Regulatory Authority shall be authenticated by the signature of the Secretary or any other officer of the Appropriate Regulatory Authority, duly authorised by the Authority in this behalf.

13. Vacancy, etc., not to invalidate proceedings of the Appropriate Regulatory Authority

No act or proceeding of the Appropriate Regulatory Authority shall be invalidated merely by reason of –

- (a) any vacancy in, or any defects in, the constitution of the Appropriate Regulatory Authority; or
- (b) any defect in the appointment of a person acting as a Chairperson or a Member of the Appropriate Regulatory Authority; or
- (c) any irregularity in the procedure of the Appropriate Regulatory Authority not affecting the merits of the case.

14. Officers and employees of the Appropriate Regulatory Authority

(1) The Appropriate Government may appoint a Secretary to discharge his function under this Act.

(2) The Appropriate Regulatory Authority may determine, with the approval of the Appropriate Government, the number and categories of officers and other employees and appoint such officers and employees, as it considers necessary for the efficient discharge of its functions under this Act.

(3) The salary and allowances payable to and the other conditions of service of the officers and other employees of the Appropriate Regulatory Authority appointed under sub-section (2) shall be such as may be specified by regulations.

(4) The Appropriate Regulatory Authority may engage at any time, in accordance with the procedure specified by regulations, any Institutions, Consultants, Advisors, Experts and professionals including legal experts, Chartered Accountants and any other technical and professional persons as it may deem necessary to assist in discharge of its functions under the Act.

CHAPTER-III

POWERS AND FUNCTIONS OF THE AUTHORITIES

15. Functions of the Regulatory Authorities

(1) Subject to the provisions of this Act, the Major Ports Regulatory Authority shall have jurisdiction over all the major ports and a State Port Regulatory Authority shall have jurisdiction over all the ports, other than major ports, located within the concerned State.

(2) The Appropriate Regulatory Authority shall discharge the following functions, namely:

- (a) to formulate and notify tariff guidelines, from time to time, prescribing the methodology, approach and other conditions governing setting of rates for different facilities and services by the Port Authorities and Private Operators functioning therein.
- (b) laying down the performance norms and standards of quality, continuity and reliability of services to be provided by the Port Authorities and Private Operators and monitor actual performance and services provided with a view to secure compliance of the prescribed norms and standards by the Port Authorities and Private Operators.
- (c) to discharge such other functions as may be assigned under this Act.

Provided that the Appropriate Regulatory Authority shall not carry out the functions listed under items (a) and (b) hereinabove in respect of those Port Authorities or Private

Operators having designed cargo handling capacity of less than 5 million tonnes per annum.

(3) The Appropriate Regulatory Authority shall advise the Appropriate Government on all or any of the following matters, namely :-

- (a) Promotion of efficiency and competition in the Port Sector
- (b) Promotion of investment in the Port Sector
- (c) Any other matter referred by the concerned Appropriate Government

(4) (a) The Major Ports Regulatory Authority shall specify the common principles, approach and methodology to be adopted by the State Ports Regulatory Authorities in their tariff guidelines and while prescribing performance standards.

(b) The Major Ports Regulatory Authority shall furnish necessary clarifications on implementation of the tariff guidelines and enforcement of performance standards based on a reference made to it by a State Ports Regulatory Authority.

Tariff Regulations

16. (1) The Major Ports Regulatory Authority and all State Ports Regulatory Authorities shall notify, from time to time, a set of tariff guidelines which are to be applied by the concerned Port Authorities and Private Operators for determining their rates for various services provided by them and / or use of different facilities or properties in their occupation or belonging to them.

(2) The tariff guidelines will contain broad norms for different components of operations and expenditure to be considered in determining rates, methodology to determine rates, periodicity of rates revision, and other conditions governing provision of services and / or use of different facilities or properties of the Port Authorities and Private Operators.

(3) In notifying the tariff guidelines, the Appropriate Regulatory Authority shall be mainly guided by the following, namely :-

- (a) Safeguarding the interest of Port Users and ensuring fair return to Port Authorities and Private Operators;
- (b) Ensuring transparency in the manner in which the Port Authorities and Private Operators fix their rates;
- (c) Commercial principles which will encourage investment, competition, economic use of resources and efficiency in operations;
- (d) Specific policy directions issued by the Appropriate Government; and,
- (e) in the case of State Ports Regulatory Authorities, the common principles and methodologies specified by the Major Ports Regulatory Authority.

17. (1) The Appropriate Regulatory Authority shall, from time to time, issue Regulation for the following services, namely :

- (i) Transshipping of passengers, containers or goods between vessels in the port or port approaches;
- (ii) landing and shipping of passengers, containers or goods from or to such vessels to or from any wharf, quay, jetty, pier, dock, berth, mooring, stage or erection, land or building in the possession or occupation of the Port Authority or Private Operator or at any place within the limits of the port or port approaches;
- (iii) crantage or portorage of containers or goods on any such place;
- (iv) wharfage, storage or demurrage of goods or containers on any such place;

- (v). any other service in respect of vessels, passengers, goods or containers.
- (b) Appropriate Regulatory Authority's Regulation can also cover use of the property belonging to or in the possession or occupation of a Port Authority or Private Operator, or any place within the port limits or port approaches for the purposes specified hereunder :-
- (i) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;
 - (ii) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods or containers;
 - (iii) leasing of land or sheds by owners of containers or goods imported or intended for export or by steamer agents;
 - (iv) any other use of any land, building, works, vessels or appliances belonging to or provided by a Port Authority or Private Operator.

Notwithstanding anything contained above, a Port Authority or Private Operator may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that the common ceiling rates prescribed by the Appropriate Regulatory Authority under sub-section 5(b) above.

(v) Pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels within the port limits;

(vi) Port dues on vessels entering the ports;

18. (1) A Port Authority may frame the Scale of Rates at which and a statement of conditions under which any of the specified services shall be performed by it and / or for use of any property belonging to or in the possession or occupation of it.

(2) The Scale of Rates and statement of conditions so framed by a Port Authority shall comply with the tariff guidelines issued by the Appropriate Regulatory Authority.

(3) No existing rate or conditions shall be altered or no new rate or conditions shall be introduced by a Port Authority until expiry of 30 days of notifying the Port Users about the proposed changes.

Performance Regulation

19. The Appropriate Regulatory Authority shall, from time to time, lay down the performance norms and standards of quality, continuity and reliability of services to be adhered by Port Authorities and Private Operators.

20. The Appropriate Regulatory Authority shall monitor the performance of every Port Authority and Private Operator and for this purpose every Port Authority and Private Operator shall furnish requisite information, as may be prescribed by the Appropriate Regulatory Authority.

21. When the Appropriate Regulatory Authority finds that a Port Authority or Private Operator fails to meet the prescribed norms and standards, it may direct such Port Authority or Private Operator to comply with the norms and

standards within the time-limit to be specified and may also impose a penalty, whether one time or recurring, as may be prescribed by regulations, during the period of default.

22. In the event of the direction issued under Section 21 not being complied within the specified time-limit, the Appropriate Regulatory Authority may recommend to the concerned Port Authority the termination of the Concession Agreement of the concerned Private Operator or may recommend to the Appropriate Government to take suitable action against the Port Authority, as the case may be.

Provided that the Appropriate Regulatory Authority may, for good and valid reasons, extend the time limit specified under Section 21 for compliance and may impose additional penalty during the extended period instead of making the aforesaid recommendations.

23. The Appropriate Regulatory Authority shall afford a reasonable opportunity of hearing to the concerned Port Authority or Private Operator and the port users before imposing any penalty or setting time-limit under Sections 21 and 22 or making final recommendations under Section 22.

24. The Appropriate Regulatory Authority shall atleast once in every year publish, in such form and manner as it considers appropriate, the information relating to performance of all Port Authorities and Private Operators.

25. Powers of the Appropriate Regulatory Authority to call for information, conduct investigations, etc.

(1) Where the Appropriate Regulatory Authority considers it expedient so to do, it may, by order in writing-

(a) call upon any Port Authority or Private Operator at any time to furnish in writing such information or explanation relating to its

affairs as the Appropriate Regulatory Authority may require for discharge of its functions under this Act; or

- (b) authorise any of its officers or employees or appoint one or more persons to make an inquiry in relation to the affairs of a Port Authority or a Private Operator;
- (c) direct any of its officers or employees or such other persons as may be nominated by it to inspect the books of accounts or other documents of any Port Authority or Private Operator.

(2) Where any inquiry in relation to the affairs of a Port Authority or Private Operator has been undertaken under sub-section (1),

- (a) every officer of the Port Authority;
- (b) every director, manager, secretary or other officer of the private operator or;
- (c) every other person or body of persons who has had dealings in the course of business with the Port Authority or Private Operator shall be bound to produce before the Appropriate Regulatory Authority or the persons mentioned at sub-section (1) (b) or (c) making the inquiry, all such books of accounts or other documents in his custody or power relating to, or having a bearing on the subject-matter of such inquiry and also to furnish to the Appropriate Regulatory Authority with any such statement or information relating thereto, as the case may be, required of him, within such time as may be specified.

(3) The Appropriate Regulatory Authority shall have power to verify the data supplied by a Port Authority or Private Operator and appoint any person or persons for the purpose and take such measures as it may consider necessary.

(4) Every Port Authority and Private Operator shall allow inspection of such facilities and documentary records, as may be specified by the Appropriate Regulatory Authority, by any person authorised by the Appropriate Regulatory Authority.

26. Enforcement of orders of the Appropriate Regulatory Authority

For the purposes of enforcement of its orders the Appropriate Regulatory Authority shall have power to call for any information from any person and to issue such directions as it may think fit in order to ensure due compliance of its orders and for effectively discharging its functions under the Act.

27. Overriding Effect

The provisions of this Act in relation to the powers and functions of the Appropriate Regulatory Authority shall have effect notwithstanding anything inconsistent therewith contained in any other enactment.

28. Power to make regulations

(1) The Appropriate Regulatory Authority may, with the previous concurrence of the Appropriate Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for any of the following matters, namely-

- (a) The time and places of meetings of the Regulatory Authority and consultative meetings and the procedure (including quorum necessary for the transaction business) to be followed at such meetings.

- (b) The salaries and allowances payable to and the other conditions of service of officers and other employees of the Regulatory Authority.
- (c) The procedure and other terms and conditions in accordance with which Institutions, Consultants, Advisors, experts and professionals may be engaged under sub-section (4) of Section 14.
- (d) Guidelines relating to fixation of rates and conditionalities.
- (e) Setting of performance norms and standards and monitoring actual performance alongwith the corrective / penal measures to be applied in case of non adherence of such norms and standards.
- (g) Prescribing the necessary formats and instructions for filing performance related information.
- (h) Any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be or may be made by regulations.

(3) Every regulation made by the Major Ports Regulatory Authority under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

(4) Every regulation made by the State Ports Regulatory Authority shall be laid before each House of the concerned State Legislatures where it consists of two Houses or where State Legislature consists of one House, before that House.

CHAPTER-V

POWERS OF THE APPROPRIATE GOVERNMENT

29. Powers of the Appropriate Government to require modifications or cancellation of rates

(1) Whenever the Appropriate Government considers it necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefore, direct the Appropriate Regulatory Authority to cancel any Regulation in force or modify the same, within such period as that Government may specify in the order.

(2) If the Appropriate Regulatory Authority fails or neglects to comply with the direction under sub-section (1) within the specified period, the Appropriate Government may cancel any of Regulation or make such modifications therein as it may think fit.

30. Powers of the Appropriate Government to issue policy directions

(1) The Appropriate Regulatory Authority shall, in the discharge of its functions under this Act be bound by such directions on questions of policy as the Appropriate Regulatory Government may give in writing from time to time.

Provided that the Appropriate Regulatory Authority shall be given opportunity to express its views before any direction is given under this sub-section.

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

(3) No State Government shall issue any policy direction which is in contravention of, or inconsistent with, policy direction issued by the Central Government.

31. Power of Appropriate Government to supersede the Appropriate Regulatory Authority

(1) If the Appropriate Government is of the opinion that the Appropriate Regulatory Authority is unable to perform, or has persistently made default in the performance of, the duties imposed on it by or under this Act or has exceeded or abused its powers, or has willfully or without sufficient cause, failed to comply with any direction issued by the Appropriate Government, the Appropriate Government may, by notification in the Official Gazette, supersede the Appropriate Regulatory Authority for such period as may be specified in the notification.

Provided that, before issuing a notification under this sub-section, the Appropriate Government shall give reasonable opportunity to the Appropriate Regulatory Authority to show cause why it should not be superseded and shall consider the explanation and objections, if any, of the Appropriate Regulatory Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Appropriate Regulatory Authority –

(a) the Chairperson and the Members of the concerned Regulatory Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such Chairperson or Members as the case may be;

- (b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Appropriate Regulatory Authority shall, during the period of supersession, be exercised and performed by such person or persons as the Appropriate Government may direct.
- (3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Appropriate Government may-
- (a) extend the period of supersession for such further period as it may consider necessary; or
 - (b) reconstitute the concerned Regulatory Authority in the manner provided in Section 4 or Section 6, as the case may be.

32. Powers of the Appropriate Government to make rules:

- (1) The Appropriate Government may, by notification, make rules for carrying out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -
- (a) the salary, allowances and other conditions of service of Chairperson and Members of the Appropriate Regulatory Authority;
 - (b) the manner of appointing Inquiry Officer and the procedure to be adopted in removing Chairperson and Members of the Appropriate Regulatory Authority;
 - (c) the form in which the Appropriate Regulatory Authority shall prepare its annual statements of accounts;

- (d) the form in which and time at which the Appropriate Regulatory Authority shall prepare its annual report;
 - (e) any other matter which is required to be, or may be, prescribed.
- (3) Every rule made by the Appropriate Government shall be laid, as soon as may be after it is made, before each House of Parliament or the concerned State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House, as the case may be.

CHAPTER-VI

Port Regulatory Authority Appellate Tribunal

33. Establishment of Appellate Tribunal

(1) The Central Government shall, by notification in the Official Gazette, establish an Appellate Tribunal to be known as Port Regulatory Authority Appellate Tribunal to

- (a) Adjudicate any dispute –
 - (i) Between two or more service providers; or
 - (ii) Between a service provider and a group of consumers;

Provided that the Appellate Tribunal may, if consider appropriate, obtain the opinion of the Authority on any matter relating to such dispute.

Provided further that nothing in this clause shall apply in respect of matters-

- (i) Relating to the complaint of any individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986; or
- (ii) Which are within the purview of the Competition Act, 2002; and

(b) Hear and dispose of appeals against any direction, decision or order of the Authority under this Act.

(2) The Headquarter of the Tribunal shall be at such place as the Central Government may, by notification in the Official Gazette, specify.

34. Application for settlement of disputes and appeals to the Appellate Tribunal –

(1) The Appropriate Government or a local authority or any person may make an application to the Appellate Tribunal for adjudication of any dispute as referred to in clause (a) of section 33.

(2) The Appropriate Government or a local authority or any person aggrieved by any direction, decision or order made by the Authority may prefer an appeal to the Appellate Tribunal.

(3) Every appeal under sub-section (2) shall be preferred within a period of thirty days from the date on which a copy of the direction or order or decision made by the Authority is received by the Appropriate Government or local Authority or the aggrieved person and is shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed;

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause of the not filing it within that period.

(4) On receipt of an application under sub-section (1) or an appeal under sub-section (2), the Appellate Tribunal may, after giving the parties to the dispute or the appeal an opportunity of being heard, pass such order as it thinks fit.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the dispute or the appeal and to the Authority, as the case may be.

(6) The Application made under sub-section (1) of the appeal preferred under sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application or the appeal finally within ninety days from the date of receipt of application or appeal, as the case may be.

Provided that where any such application or appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the application or appeal within that period.

(7) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness, of any dispute made in any application under sub-section (1), or of any 'direction or order or decision of the Authority referred to in the appeal preferred under sub-section (2), on its own motion or otherwise, call for the records relevant to disposing of such application or appeal and make such orders as it thinks fit.

35. Composition of Appellate Tribunal

(1) The Appellate Tribunal shall consist of a Chairperson and not more than two of Appellate Members to be appointed, by notification in the Official Gazette, by the Central Government:

Provided that the Chairperson or a Member holding a post as such in any other Tribunal, established under any law for the time being in force, in addition to his being the Chairperson or a Member of that Tribunal, may be appointed as the Chairperson or a Member as the case maybe, of the Appellate Tribunal under 'Act.

(2) The selection of Chairperson and Members of the Appellate Tribunal shall be made by the Central Government in consultation with the Chief Justice of India or his nominee.

36. Qualifications for appointment of Chairperson – A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he:

(a) In the case of Chairperson, is, or has been, a Judge of the Supreme Court or The Chief Justice of a High Court;

(b) in the case of a Members, has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a total period of not less than two years in the Ministries or Departments dealing with maritime transport or economics or law or a person who is well –versed in the field of maritime transport or economics or law.

37. Term of Office and conditions of service –

(1) The Chairperson and every other Member of the Appellate Tribunal shall hold office as such for term not exceeding five years from the date on which he enters upon his office:

Provided that no Chairperson or other member shall hold office as such after he has attained:

(a) the age of seventy years in case of Chairperson

(b) the age of sixty-five years In the case of any other Member

(2) The salary and allowances payable to and the other terms and conditions of service of the Chairperson and others Members of the appellate Tribunal shall be such as may be prescribed.

(3) If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provision of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

38. Removal and resignation –

(1) The Central Government may remove from office, the Chairperson or any Member of the appellate Tribunal, who –

- a) has been adjudged an insolvent; or
- b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- c) has become physically or mentally incapable of acting as the chairperson or a Member; or
- d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chairperson or a Member; or
- e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section(1), the Chairperson or a Member of the appellate Tribunal shall not be removed from his office on the ground specified in clause (d) or clause (e) of the that sub-section unless the Supreme court on a reference being made to it in this behalf by the Central Government, has, on an enquiry, held by it in accordance with such procedure as it may specify in this behalf, report that the chairperson or a Member ought, on such grounds, to be removed.

(3) The Central Government may suspend from office, the Chairperson or a Member of the appellate Tribunal in respect of who a reference has been made to the Supreme Court under sub-section (2), until the Central Government has passed an order on receipt of the Supreme Court on such reference.

39. Staff of Appellate Tribunal –

(1) The Central Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

(3) The salaries and allowances and other conditions of service of such officers and employees of the Appellate Tribunal shall be such as may be prescribed.

40. Decision to be by majority - If the Chairperson and other Members differ in opinion on any matter, such matter shall be decided accordingly to the opinion of the majority.

41. Members, etc, to be public servants - The Chairperson, Members and other officers and employees of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

41. Civil court not to have jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this act.

42. Procedure and powers of Appellate Tribunal –

(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to be other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, 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) summoning and enforcing the attendance of any person and examining him on oath;
- b) requiring the discovery and production of documents;
- c) receiving evidence on affidavits;
- d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office;
- e) issuing commissions for the examination of witnesses or documents;
- f) reviewing its decisions;
- g) dismissing an application for default or deciding it, ex-parte;
- h) setting aside any order of dismissal of any application for default or any other passed by it, ex parte; and
- i) any other matter which may be prescribed.

(3) Every proceeding before the Appellate Tribunal shall be deemed to be judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal code and the appellate Tribunal shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

44. Appeal to Supreme Court:

- 1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code.

- 2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.
- 3) Every appeal under this section shall be preferred within a period of ninety days from the date of the decision or order appealed against:

Provided that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time

45. Orders passed by Appellate Tribunal to be executable as a decree:

- 1) An order passed by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the appellate Tribunal shall have all the powers of a civil court.
- 2) Notwithstanding anything contained in sub-section (1), the appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

CHAPTER-VII

FINANCE, ACCOUNTS AND AUDIT

46. Grants by Appropriate Government

The Appropriate Government may, after due appropriation made by the Parliament or the State Legislatures, as the case may be in this behalf, make to the Appropriate Regulatory Authority grants of such sums of money as are required to meet its expenses.

47. Accounts and Audit

(1) The Appropriate Regulatory Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Appropriate Government in consultation with the Comptroller and Auditor General of India.

(2) The accounts of the Appropriate Regulatory Authority shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Appropriate Regulatory Authority to the Comptroller and Auditor General of India.

Provided that the decisions of the Appropriate Regulatory Authority taken in exercise of its powers and discharge of its functions under this Act, shall not be subject to audit under this section.

(3) The Comptroller and Auditor General of India and any person appointed by him in connection with the audit of the accounts of the Appropriate Regulatory Authority under the Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor General of India generally has in connection with the audit of the 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 Appropriate Regulatory Authority.

(4) The accounts of the Appropriate Regulatory Authority, 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 Appropriate Government and that Government shall cause the same to be laid, as soon as may be after it is received before each House of Parliament or the House of Legislatures of the State, as the case may be.

48. Annual Report

(1) The Appropriate Regulatory Authority shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Appropriate Government.

(2) A copy of the report received under sub section (1) shall be laid as soon as may be received, before each house of Parliament or the House of Legislatures of the State, as the case may be.

CHAPTER-VIII

OFFENCE AND PENALTIES

49. Offences and Punishment

(1) If a person violates the tariff guidelines or common ceiling rates or contravenes the directions or fails to comply with any order of the Appropriate Regulatory Authority, such person shall be punishable with fine which may extend to one crore rupees and in case of continuing contravention with additional fine which may extend to a lakh rupees for every day during which the contravention continues.

(2) (a) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if

he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

- (b) Notwithstanding anything contained in sub-section (a) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation – For the purpose of this Section –

- (a) “company” means any body corporate and includes a firm or other association of individuals; and

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

- (3) (a) Where an offence under this Act has been committed by any Port Authority, the Head of the Port Authority shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (b) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a Port Authority and it is proved that the offence has been committed with the consent or connivance of, or is attributable to such neglect on the part of, any officer, other than the Head of the Port Authority, such officer shall also be deemed to be guilty of that offence and

shall be liable to be proceeded against and punished accordingly.

50. Cognizance of certain offences

(1) No court shall take cognizance of any offence punishable under this Act save on a complaint made by the Appropriate Regulatory Authority or by any investigating agency so directed by the Appropriate Government.

(2) No court inferior to that of a Chief Metropolitan Magistrate or of a Chief Judicial Magistrate shall try any offence punishable under this Chapter.

(3) Every offence punishable under this Act shall be cognizable.

CHAPTER-IX

MISCELLANEOUS

51. Coordination Forum

(1) The Central Government shall constitute a forum of regulators consisting of the Chairperson of the Major Ports Regulatory Authority and Chairpersons of the State Ports Regulatory Authorities.

(2) The Chairperson of the Major Ports Regulatory Authority shall be the Chairperson of the Forum of regulators referred to in sub-section (1).

(3) The office of the Major Ports Regulatory Authority shall act as the secretariat of the Forum.

(4) The Forum shall meet atleast once in six months to discuss and evolve suitable approaches to framing of Tariff Guidelines and setting Performance Standards and issues arising from implementation of these besides any other

common matter relevant to the efficient discharge of the functions assigned to the Regulatory Authorities under this Act.

52. Publication of orders of the Appropriate Regulatory Authority

Every Order and regulations of the Appropriate Regulatory Authority made in pursuance of this Act shall be published in the official Gazette and a copy thereof shall be kept in the office of the concerned Port Authority and open at all reasonable times to the inspection of any person without payment of fee.

53. Requirements as to publication of notifications, orders, etc., in the Official Gazette

Any requirement in this Act that a notification, order, rule or regulation issued or made by Appropriate Regulatory Authority or Appropriate Government shall be published in the Official Gazette, shall, be construed as a requirement that the notification, order, rule or regulation shall -

- (a) where it is issued or made by the State Ports Regulatory Authority or State Government be published in the Official Gazette of the concerned State and
- (b) where it is issued or made by the Major Ports Regulatory Authority or Central Government be published in the Gazette of India.

54. Chairperson, Members, etc., to be public servants

The Chairperson, Members, Officers and other employees of the Appropriate Regulatory Authority shall be deemed when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the Indian Penal Code.

55. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the Appropriate Government, the Appropriate Regulatory Authority or any officer of the Appropriate Government or any Chairperson, Members, officers or other employee of the Appropriate Regulatory Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

56. Repeal and Saving

(1) With the establishment of the Major Ports Regulatory Authority in terms of Section 4, the Tariff Authority for Major Ports constituted under Chapter V-A of the Major Port Trusts Act, 1963 shall cease to function.

(2) Notwithstanding such cessation,

(a) The Tariff Authority for Major Ports, established under Chapter V-A of the Major Port Trusts Act, 1963, shall be deemed to be the Major Ports Regulatory Authority for the purposes of this Act and the Chairperson, Members, and other officers and employees thereof shall be deemed to have been appointed under this Act and they shall continue to hold office on the terms and conditions which shall not be inferior to the terms and conditions on which they were appointed under the Major Ports Trusts Act, 1963.

(b) All such action taken or orders and notifications issued or regulations framed by the Tariff Authority for Major Ports shall be deemed to have been done or taken or issued under the corresponding provisions of this Act.

(c) All such policy directions issued by the Central Government to the Tariff Authority for Major Ports under Section 111 of the Major Port Trusts Act, 1963 shall be deemed to have been

issued by the Central Government to the Major Ports Regulatory Authority under the corresponding provisions of this Act.

- (d) All assets, liabilities, contracts, agreements, transactions and residual matters pertaining to Tariff Authority for Major Ports shall be transferred to the Major Ports Regulatory Authority and the Major Ports Regulatory Authority will be deemed to be the successor of Tariff Authority for Major Ports for this purpose.
- (e) All litigations in any Court of law initiated by or pending against Tariff Authority for Major Ports shall be pursued by the Major Ports Regulatory Authority as its successor.

57. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

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