

THE KARNATAKA MARITIME BOARD ACT, 2015

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STATEMENT OF OBJECTS AND REASONS

ACT 41 OF 2017.- Karnataka has a coast line of about 300 kms, which is dotted with 10 non-major ports, besides the major port at New Mangalore. These non-major ports, which include Karwar, Malpe harbour, Tadri, Old Mangalore, etc., are currently managed by the Public Works Department through the Director of Ports and Inland Water Transport. The revenue receipts from these ports are credited into the Consolidated Fund of the State, while the development and maintenance expenditure are met out of the budgetary grants. In the circumstances, there is no relationship between the receipts and expenditure of the Ports & IWT sector. Further, the Directorate of Ports & IWT is not able to raise finance from the market directly for undertaking development activities.

Some of the major maritime States, notably Gujarat, Maharashtra and Tamil Nadu, have already set up Maritime Boards and have seen tremendous growth in development of the infrastructure for ports and allied activities. Keeping such experience in view, the Maritime States Development Council has been advising all the maritime States to constitute Maritime Boards.

Karnataka also has several inland waterways on both, west flowing as well as east flowing rivers, that offer the potential for development of an environment friendly mode transportation of goods and passengers, particularly for several interior locations. The Maritime Board would be in a position to develop and maintain the inland waterways too. Further, the Board would be in an advantageous position to prepare and implement schemes for coastal protection, which has become an important issue for the growth and development of the coastal regions of the State.

Ministry of Home Affairs, Government of India vide letter No.F.No:17/08/2012/JudI&PP, dated:09.12.2014 has suggested to the State Government to withdraw the early bill and to send modified version of the Bill to the Government of India, after it is passed by the State Legislature.

As suggested by Government of India, Ministry of Home Affairs, all the amendments are incorporated in modified "Karnataka Maritime Board Bill, 2015".

The Bill among other things provides for, -

- (i) constitution and functioning of the Maritime Board for Karnataka. The Board shall be in a position to find ways and means to undertake various developmental projects and maintenance activities in relation to ports, harbours, inland waterways and coastal protection and thus help in the growth and development of the coastal region and its hinterland.
- (ii) Developing all Karnataka ports on public private partnership Basis.
- (iii) development and maintenance of fishing harbours by the Board with suitable budgetary grants and subventions from the Government. However, the

operations and management of the fishing harbours shall continue to be done by the Fisheries Department and not by the Maritime Board.

Hence, the Bill.

[L.A. Bill No.41 of 2015, File No. Samvyashae 54 Shasana 2015]

[entry 31 of List III of the Seventh Schedule to the Constitution of India.]

[Item (i) of sub-clause (3) of clause 36 was repugnant to the provisions of the Arbitration and Conciliation Act, 1996 and clause 56 was repugnant to section 45 of the Indian contract Act 1872 and clause 62 was repugnant to the provisions of the Indian Limitation Act, 1963. Therefore the Hon'ble Governor reserved the said Bill for the consideration of His Excellency, the President of India under Article 200 of the constitution of India as required by clause (2) of Article 254]

KARNATAKA ACT 41 OF 2017

(First published in the Karnataka Gazette Extraordinary on the Twenty third day of August, 2017)

THE KARNATAKA MARITIME BOARD ACT, 2015

(Received the assent of the President on the Eleventh day of August, 2017)

An Act to provide for the development and Management of Ports Inland Water Ways and the Coastal region in the State of Karnataka by establishing the Karnataka Maritime Board and to provide for matters connected therewith and incidental thereto;

Whereas, it is expedient to provide for rapid development and management of Ports and Inland Water Ways and Coastal region in the State of Karnataka by establishing the Karnataka Maritime Board and to provide for matters connected therewith and incidental thereto;

Be it enacted by the Karnataka State Legislature in the sixty-sixth year of the Republic of India as follows:-

CHAPTER – I**PRELIMINARY**

1. Short title, commencement and application.- (1) This Act may be called the Karnataka Maritime Board Act, 2015.

(2) It shall come into force on such date, as the State Government may, by notification, appoint.

(3) It applies to all the non-major ports in the State of Karnataka to which the Indian Ports Act, 1908 applies.

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

- (a) "appointed day" in relation to any non-major port means the day on which this Act is made applicable to that port;
- (b) "Board" means the Karnataka Maritime Board constituted under section 3;
- (c) "Board Security" means debentures, bonds or dock certificates issued by the Board in respect of any loan contracted by it under the provisions of this Act;
- (d) "Chairman" means the Chairman of the Board appointed under section-3 and includes the person appointed to act in his place under section 9;
- (e) "dock" includes all basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipways, gridirons, moorings, transit sheds, warehouses, godowns, open plots and other works and things pertaining to any dock and also the portion of the sea enclosed or protected by the arms of groynes of a harbour;
- (f) "foreshore" in relation to a port means the area between the high water mark and the low water mark relating to that port;
- (g) "goods" includes live stock and every kind of movable property;
- (h) "Government" means the State Government;
- (i) "high water mark" in relation to a port means a line drawn through the highest points reached by ordinary spring tides at any season of the year at that port;
- (j) "immovable property" includes wharfage rights and all other rights exercisable on, over, or in respect of, any land, wharf, dock or pier;
- (k) "Indian Ports Act" means the Indian Ports Act, 1908 (Central Act 15 of 1908);

- (l) "Inland Water Transport (IWT)" means Inland Water Transport system including ferry services in the State;
- (m) "land" includes the bed of sea or river below high water mark and also things attached to the earth or permanently fastened to anything attached to the earth;
- (n) "low water mark" in relation to a port means a line drawn through the lowest points reached by ordinary spring tides at any season of the year at that port;
- (o) "Major Ports" shall have a same meaning assigned to it in the Indian Ports Act 1908 (Central Act 15 of 1908);
- (p) "master" shall have the same meaning as assigned to in the Indian Ports Act 1908 (Central Act 15 of 1908);
- (q) "member" means a member of the Board or its Committee, as the case may be;
- (r) "Non-major port" means port other than a major port;
- (s) "owner",-
- (i) in relation to goods includes any consignor, consignee, shipper's agent for the sale, custody, loading or unloading of such goods; and
 - (ii) in relation to any vessel or craft making use of any port, includes any part owner, charterer, consignee or mortgagee in possession thereof;
- (t) "pier" includes any stage, stairs, landing place, hard jetty, floating barge, **transhipper** or pontoon and any bridges or other works connected therewith;
- Explanation.- For the purpose of this clause, "transhipper" means a floating craft for vessel whether dump or self propertied, on which and provided for discharging cargo from a barge or wharf and loading it into a ship.***
- (u) "port" means any non-major port to which this Act applies within such limits as may from time to time be defined by the Government under the Indian Ports Act;
- (v) "port approaches" in relation to a port means those parts of the navigable rivers and channels leading to the port in which the Indian Ports Act 1908 (Central Act 15 of 1908) is in force;
- (w) "prescribed" means, - prescribed by rules and regulations made under this act;
- (x) "public securities" means,-
- (i) promissory notes, debentures, stock or other securities of the State Government:
Provided that securities both the principal whereof and the interest whereof have been fully and unconditionally guaranteed by any state Government shall be deemed for the purposes of this clause, to be securities of state Government;
 - (ii) debentures or other securities (including the Board Securities) for money issued by or on behalf of any local authority, Improvement Board or Port Trust under the authority or any law for the time being in force in the State.
- (y) "rate" includes any toll, due, rent, fee or charge leviable under this Act;
- (z) "regulations" means regulations made by the Board under this Act.
- (z-a) "State" means the State of Karnataka".
- (z-b) "vessel" includes anything made for the conveyance, mainly by water, of human being or of goods;
- (z-c) "wharf " includes any wall or stage and any part of the land or foreshore that may be used for loading or unloading goods or for the embarkation or disembarkation of passengers and any wall enclosing or adjoining the same.

CHAPTER - II
ESTABLISHMENT OF KARNATAKA MARITIME BOARD

3. Establishment of Karnataka Maritime Board.- (1) As soon as may be after the commencement of this Act, the Government may, by notification, in the official Gazette, establish a Board to be called the Karnataka Maritime Board.

(2) The Board shall consist of following members, namely:-

(1)	The Additional Chief Secretary to Government or Additional Chief Secretary and Development Commissioner nominated by the Government.	Chairman
(2)	The Principal Secretary to Government, Public Works, Ports and Inland Water Transport Department.	Ex-officio Member
(3)	The Principal Secretary to Government, Finance Department.	Ex-officio Member
(4)	The Principal Secretary to Government, Home Department.	Ex-officio Member
(5)	The Principal Secretary / Secretary to Government of any Department as deemed fit by Government.	Ex-officio Member.
(6)	The Joint Secretary, Government of India, Ministry of Shipping.	Ex-officio Member.
(7)	The Inspector General of Police, Internal Security Wing, incharge of costal security	Ex-officio Member
(8)	The Director of Ports and Inland Water Trnsport Department.	Ex-officio Member
(9)	The Director of Fisheries, Karnataka.	Ex-Officio Member.
(10)	The Naval Officer in charge, INS Kadamba Karwar Uttara Kannada District.	Ex-officio Member
(11)	<i>The Commander, Coast Guard District, Head Quarters, No.3, New Mangalore</i>	<i>Ex-officio Member</i>
(12)	<i>Commissioner of Customs, Karnataka</i>	<i>Ex-officio Member</i>
(13)	Four persons having expertise in the development of ports nominated by the Government as shown below:- (i) One member who has qualification of Master Mariner (FG) who has experience and expertise in matters relating to ports, shipping, maritime affairs or in the administration or management of such matters. (ii) One member who has experience, expertise and academic qualification of a Degree in the subject of Harbour Engineering or Civil Engineering and has wide experience relating to Harbour Works. (iii) One member representing the Chambers of Commerce and Industry in the coastal districts.	Member Member Member

	(iv) One member who has expertise in financial management	Member
(14)	One member who has experience, expertise in coastal engineering, marine engineering Hydrographic Survey or Prevention of sea erosion / coastal protection nominated by the Government.	Member
(15)	The Member (Technical) of the Board	Ex-officio Member
(16)	The Chief Executive Officer of the Board	Ex-officio Member-Secretary

(3) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act to acquire, hold and dispose of property, both movable and immovable and to contract, and may by the said name sue and be sued.

(4) The State Government shall appoint one of the members mentioned in serial No. (2) to (5) of sub-section (2) as the Vice Chairman of the Board.

(5) The head office of the Board shall be at such place as the Government may, by notification, direct.

4. Disqualifications of members.- A person shall be disqualified for being appointed, or for continuing as a member of the Board, if he,-

(a) has been removed or dismissed from the service of Central or any State Government or of a local authority or of a corporation owned or controlled by the State or Central Government; or

(b) has been convicted and sentenced to imprisonment for an offence amounting to moral turpitude; or

(c) is an undischarged insolvent; or

(d) has directly or indirectly any share or interest in any work done by order of the Board or in any contract or employment with, by, or on behalf of the Board:

Provided that no person shall be deemed to have any share or interest in such work contract or employment by reason only of his, -

(i) having a share in any company or firm which may contract with or be employed by or on behalf of the Board; or

(ii) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Board may be inserted; or

(iii) being interested in any loan of money to the Board; or

(iv) having a share or interest in the sale of any article to the Board of a value not exceeding rupees 10,000/- in any one financial year, in which he trades

5. Term of Office of Members.- Subject to the provisions of this Act, the non official member of the Board, shall hold office during the pleasure of the Government and in any case for a period not exceeding two years.

6. Vacation of office of the Board's members.- (1) The Government shall remove a member of the Board if he,-

(a) becomes subject to any disqualification specified in section 4; or

(b) refuses to act or becomes incapable of acting; or

(c) has, in the opinion of the Government become incapable of representing the interests by virtue of which he was appointed; or

(d) is without the permission of the Board previously obtained, absents himself from three consecutive meetings of the Board; or

(e) is acts in contravention of the provisions of section 13.

(2) A member of the Board other than the ex-officio member may resign from his office by tendering his resignation in writing to the chairman who shall forward the same to the Government for acceptance. The resignation shall not take effect until it is accepted by the Government.

7. Eligibility of re-appointment.- Any person ceasing to be a member shall, unless disqualified under section 4, be eligible for reappointment.

8. Filling of vacancies.- (1) Any vacancy in the office of a member of the Board other than that of the ex-officio member shall be filled as early as possible after the occurrence of such vacancy by appointment of another member:

Provided that where any vacancy occurs in the office of any such member within three months preceding the date on which the term of the office of such member expires under section 5, it shall not be filled.

(2) A member appointed under sub-section (1) shall hold office for the remainder period only as the member in whose place he has been appointed would have held office if the vacancy had not occurred.

9. Absence of Chairman.- If the Chairman is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise the office of the chairman is vacant, the Vice-chairman and in the absence of both Chairman as well as the Vice-Chairman, such person, as the Government may appoint, shall act as the Chairman.

10. Meetings of Board.- (1) The Board shall hold meetings at such time and places, and shall subject to the provisions of sub-sections (2), (3), (4) and [5] follow such procedure with regard to the transaction of business at its meetings as may be provided in the regulations.

(2) The Board shall meet at least once in three months.

(3) The Chairman and in his absence the Vice-Chairman, and in the absence of both the Chairman and Vice-Chairman, any person chosen by the members present from amongst themselves, shall preside at meetings of the Board.

(4) All questions at a meeting of the Board shall be decided by a majority of the votes of the members present and voting and in the case of any equality of votes, the person presiding shall have a second or casting vote.

(5) The quorum for the meeting shall be not less than fifty percent of the total strength of the Board members and no business shall be transacted at any meeting unless the members constituting the quorum are present throughout such meeting.

(6) Proceedings of the meeting shall be forwarded to the Government.

11. Committee of the Board.- (1) The Board may from time to time constitute such committee or committees consisting of one or more of the Members of the Board and such other members as it may deem necessary from time to time for providing advice to the Board in carrying out its function under the Act on such terms and conditions as may be prescribed.

(2) In addition to the committees under sub section (1), the Board may from time to time constitute from amongst its members one or more committees consisting of such number as the Board may consider necessary for the purpose of discharging such of its duties and functions as may be delegated to such committee or committees.

(3) A committee constituted under sub-sections (1) and (2) shall meet at such time and place and shall follow such procedure in regard to the Transaction of Business at its meetings (including the quorum) as may be provided by regulations.

12. Fees and allowances payable to members.- The members shall be paid by the Board such fees and allowances for attending meetings of the Board or of any of its committees and for attending any work of the Board, as may be prescribed:

Provided that, no fee shall be payable to the Chairman, Deputy-Chairman or any other trustee who is a Government servant.

13. Members of Board or Committee not to vote in certain cases.- A member of the Board or of a Committee thereof, who,-

(i) has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board or a Committee thereof; or

(ii) is interested professionally on behalf of a client or as agent for any person other than the Government or an undertaking owned or controlled by the Government or a local authority or a trade union registered under the Trade Unions Act, 1926 or member of an association formed for the purpose of promoting the interest or welfare of any class of employees of the Board shall; as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the minutes of the Board or the committee, and the member shall not take part in any deliberation or decision of the Board or the committee with respect to that matter.

14. Defects in appointment not to invalidate acts, etc.- No act or proceeding of the Board or of any of its committees shall be invalid merely by reason of,-

- (a) any vacancy therein or any defect in the constitution thereof; or
- (b) any disqualification of or any defect in the appointment of, a person acting as a member thereof; or
- (c) any member having acted or taken part in any proceedings in contravention of section 13; or
- (d) any defects or irregularity in its procedure not affecting merits of the case.

15. Delegation of powers.- The Board, may, with the approval of the Government, direct that such of the powers and duties conferred or imposed upon it or under this Act as may be specified in such direction may also be exercised or performed by the Chief executive Officer subject to such restrictions and conditions as may be specified in such direction:

Provided that the Chief Executive Officer shall exercise the powers and perform such of the duties specified in the direction subject to the supervision and control of the Board.

16. Functions of the Board.- (1) It shall be the obligatory function and duty of the Board,-

- (a) to initiate and develop plans and frame guide lines for the port sector in the state;
- (b) to promote the use, development, and improvement of ports in the state;
- (c) to provide, maintain and operate ports in the state;
- (d) to provide and maintain adequate and efficient lighthouses beacons and other lights buoys and other navigational aids and services at such places as the board may deem appropriate;
- (e) to regulate and control navigation within the limits of the port and the approaches to the ports in the state;
- (f) to exercise licensing and regulatory functions in respect of port infrastructure and services;
- (g) to exercise supervision and control over all port works in the state including those works entrusted on contract to third parties;
- (h) to frame or make modifications and approve as required to the scale of rates for services provided by the board;
- (i) to plan or provide or secure the provision of a safe economical and efficient sea transport system for movement of goods and persons in the state;
- (j) to furnish to the Government all information in respect to its property and activities in such manner and at such times as the Government may require;
- (k) to develop new non-major Ports in the State as per Indian Ports Act, 1908 with the approval of the Government **subject to obtaining security clearance for new projects from Ministry of Home Affairs, Government of India;**

Provided that, the Board shall ensure that all security clearance pertaining to projects/developments/operation of minor/private ports be processed in consultation with concerned central security agencies and in accordance with the standard operating procedures recommended by the Task Force on national

committee on strengthening maritime and coastal security (NCSMCS) against threats from the sea.

- (l) to provide facilities and create Infrastructure for Ship building, Ship breaking and related activities;
- (m) to maintain and regulate ferry services and Inland Water Transport System in Karnataka State;
- (n) without prejudice the above to provide or ensure the providing of such other services and other facilities as are in the opinion of the Board necessary for the efficient operation of ports systems in the state.

(2) In addition to the obligatory functions mentioned in sub section (1) of this section, the Board shall be entitled to perform the following functions subject to availability of funds by way of grants or subventions from the Government or any local authority etc:

- (a) to carry out flood relief works for natural calamity works in Karnataka coast
- (b) to undertake tourism development works in and the around the Karnataka coast.
- (c) To carryout coastal protection works and to prevent sea erosion in Karnataka coast.
- (d) To construct and maintain fisheries harbours and create infrastructure required for promoting fishing activities in the state.
- (e) To carry out beach nourishments in Karnataka coast and
- (f) To manage and execute all types works as its relates to the Karnataka coast;

(3) The Government shall make suitable budgetary provisions as grants for subventions in aid of the revenues of the Board for carrying out the activities specified in sub section (2) and any other service oriented works in the State including establishment charges therefore.

CHAPTER - III

Staff of the Board

17. Appointment of Chief Executive Officer and other officers.- (1) The Government shall appoint such person as in its opinion has the qualification, experience of and capabilities for development, operation, management and administration of ports and Inland Water ways specified in the regulation to be the Chief Executive Officer of the Board.

(2) The Board may create such posts and appoint such other officers and servants, as it considers necessary in accordance with the regulations made in this behalf for the efficient performance of its functions.

(3) Notwithstanding any thing contained in sub-section (2), the Board may sanction the creation of or appoint any person to any post in accordance with the schedule of the employees of the board prepared in terms of section 18 (2) with the previous approval of the Government.

Provided that no person shall be appointed as a Pilot at any Port who is not for the time being authorized by the Board under the Indian Ports Act to Pilot vessels at that Port.

18. Terms and conditions of the employees of the Board.- (1) The Board may from time to time prepare and notify, with prior approvals of the

Government a schedule of the employees of the Board i.e. considered necessary, adequate and proper to maintain for the purposes of this Act and such schedule shall indicate therein the designations and grades of employees.

(2) The qualification, remuneration, terms and conditions of service and the method of recruitment of the employees of the board shall be such as may be specified by the regulations.

19. Absorption of employees in to the Board service.- (1) Every employee serving under the Government immediately before such day on which this Act comes into operation solely or

mainly for or in connection with the affairs of non-major Ports, Inland Water Transport and Coastal Protection shall become employees of the Board on absorption and shall hold his office therein by the same tenure subject to such terms as the Government may approve and unless he exercises an option for non absorption in to the Board service upon the same terms and conditions of service as he would have held had the board not been established and shall continue to do so until his retirement either on superannuation, medical invalidation, dismissal, removal or voluntary retirement:

Provided that the employees who do not offer for absorption in the Board service shall be deemed to serve in the Board on deputation:

Provided further that the tenure, remuneration and terms and conditions of service of any such employee shall not be altered to his disadvantage without the previous sanction of the Government.

(2) All existing service rules applicable to employees serving under the Government shall continue to be applicable to the employees of the Government absorbed in the Board.

(3) The Board shall have the power of granting leave to the employees of the Board. The Board shall also have the power to suspend, remove dismiss or dispose of any other question relating to the services of the employees of the Board in accordance with the regulations.

(4) Any officer or Employee of the Board, aggrieved by an order involving his reduction in rank, removal or dismissal done by the Board in accordance with the Karnataka Civil Service rules, other rules governing conditions of service including the disciplinary and conduct rules which are amended from time to time may with in such time and in such manner as may be provided for by regulations, prefer an appeal to the Government and the decision of the Government shall be final.

CHAPTER - IV

Property and contracts

20. Transfer of assets and liabilities of Government to Board.- As from the appointed day, in relation to any port, Inland Water Ways / Ferry Service and Coastal Protection Works,-

(a) all properties, assets and funds and all rights to levy rates vested in the Government for the purposes of the port Inland Water Ways / Ferry Service and Coastal Protection Works immediately before such day, shall be valued by an independent valuer approved by the Government and appoint such valuation, shall vest in the Board;

(b) all debts, obligations and liabilities incurred, all contracts entered into, and all matters and things engaged to be done by, with or for the Government immediately before such day, for or in connection with the purposes of the non-major port, Inland Water Ways / Ferry Service and Coastal Protection Works shall be deemed to have been incurred, entered into and engaged to be done by, with, or for the Board;

(c) all non-recurring expenditures incurred by the Government for or in connection with purposes of the non-major ports, Inland Water Ways/ Ferry Service and Coastal Protection Works up to such day and declared to be capital expenditure by the State Government shall be treated as the capital provided by the Government to the Board;

(d) all rates, fees, rents and other sums of money due to the Government in relation to the non-major port, Inland Water Ways / Ferry Service and Coastal Protection Works immediately before such day, shall be deemed to be due to the Board;

(e) all suits and other legal proceedings instituted by or against the Government immediately before such day for any matter in relation to non-major port, Inland Water Ways / Ferry Service and Coastal Protection Works, may be continued by or against the Board.

21. Existing rates, etc., to be continued until altered by the Board.- As from the appointed day, all rates, fees and other charges in relation to any non-major ports, Inland Water service and Ferry services, shall unless and until they are varied by the competent authority in

accordance with the provisions of this Act, continue to be levied and collected, at the same rate at which they were being levied and collected by the Government before such day.

22. Repayment of Capital with interest.- The Board shall repay at such intervals and on such terms and conditions as the Government may determine the amount which is treated under clause (c) of sub-section (1) of section 20 as capital provided by the Government and with interest at such rate as may be fixed by the Government and such repayment of capital or payment of interest shall be deemed to be a part of the expenditure of the Board.

23. Procedure when immovable property cannot be acquired by agreement.- Where any immovable property is required for the purposes of the Board, the Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Right to Fair Compensation and Transparency in Land Acquisitions, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) or any other applicable laws.

24. Contracts by Board.- In respect of the contracts by the Board for the purposes of this Act, the following provisions shall have effect, namely:-

(a) Every contract shall be made on behalf of the Board by the Chief Executive Officer or an officer authorized by the Board. No contract in respect of leasing of water front, jetty, waterway and corresponding infrastructure facilities thereof for a term exceeding five years shall be made unless it is previously approved by the Government on such terms and conditions as it may deem fit;

(b) No contract for acquisition or sale of immovable property or for the lease of any such property for a term exceeding five years shall be made unless it is previously approved by the Government

(c) The form and manner of executing contracts on behalf of the Board shall be such as may be prescribed by rules;

CHAPTER - V

WORKS AND SERVICES TO BE PROVIDED AT PORTS BY THE BOARD

25. Powers of the Board to execute works and provide appliances.- (1) The Board may, subject to any other law for the time being in force, execute such works within or outside the limits of ports and provide such appliances as it may deem necessary or expedient.

(2) Such works and appliances may include,-

(a) for wharves, quays, docks, stages, jetties, piers, place of anchorage and other works within the port or port approaches or on the foreshore of the port or port approaches in the State, with all such convenient arches, trams, landing places, stairs, fences, roads, bridges, tunnels and approaches, and buildings required for the residence of the employees of the Board as the Board may consider necessary;

(b) to buses, locomotives, **railways**, rolling stock, sheds, hotels, warehouses and other accommodation for passengers and goods and other appliances for carrying passengers and for conveying, receiving and storing goods landed or to be shipped or otherwise;

(c) to moorings and cranes, scales and all other necessary means and appliances for loading and unloading of vessels;

(d) to dredging, reclaiming, excavating, enclosing and raising any part of the foreshore of the port or port approaches which may be necessary for the execution of the works authorized by this Act or otherwise for the purposes of this Act;

(e) to such **break** water and other works as may be expedient for the protection of the port;

(f) to dredgers and other machines for cleaning, widening, deepening and improving any portion of the port or port approaches or of the foreshore of the port or port approaches;

(g) to light-houses, light-ships, beacons, buoys, pilot boats and other appliances necessary for the safe navigation of the port and the port approaches in so far as it relates to State functions;

(h) to vessels, tugs, boats, barges and launches and lighters for the use within the limits of the port or beyond those limits, whether in territorial waters or otherwise, for the purposes of towing or rendering assistance to any vessel whether entering or leaving the port or bound elsewhere and for the purpose of saving or protecting life or property and for the purposes of landing, shipping or transshipping passengers or goods under section 32;

(i) to sinking of tube well and equipment, maintenance and use of boats, barges and other appliances for the purpose of the supply of water at the port;

(j) to engines and other appliances necessary for the extinguishing of fires;

(k) to lands abutting the sea coast including creeks;

(l) to ferry boats and other works and equipment appertaining to the running of ferry service in the State of Karnataka;

(m) to construction of models and plans for carrying out hydraulic studies;

(n) to dry docks, slipways, boat basins and workshops to carryout repairs or overhauling of vessels, tugs, boats, machinery or other appliances;

(o) to initiate and develop plans and frame guide lines for the port sector in the state;

(p) to promote the use, development, and improvement of ports in the state;

(q) to provide maintain and operate ports in the state;

(r) to provide and maintain adequate and efficient lighthouses beacons and other lights buoys and other navigational aids and services at such places as the board may deem appropriate;

(s) to regulate and control navigation within the limits of the port and the approaches to the ports in the state;

(t) to exercise licensing and regulatory functions in respect of port infrastructure and services;

(u) to exercise supervision and control over all port works in the state including those works contracted out to third parties;

(v) to make modifications and approve as required to the scale of rates for services provided by the board;

(w) to plan or provide or secure the provision of a safe economical and efficient sea transport system for movement of goods and passengers.

Provided that, the Board shall ensure that security at port confirms the norms required under international ships and ports security (ISPS) code and also the compliance of security guidelines/instructions issued by Ministry of Home Affairs and Ministry of Shipping, from time to time.

(x) to furnish to the Government all information in respect to its property and activities in such manner and at such times as the Government may require;

(y) to develop new minor ports in the State as per Indian Ports Act, 1908 with the approval of the Government;

(z) to provide facilities and create Infrastructure for Ship Building, Ship Breaking activities;

(za) tourism development works in the Karnataka coast;

(zb) to maintain and regulate ferry services and Inland Water Transport System in Karnataka State;

(zc) to carry out coastal protection works in Karnataka State;

(zd) for construction and maintenance of fisheries harbours and create Infrastructure required for fishing activities in the State;

(ze) to carryout beach nourishment in Karnataka coast;

(zf) without prejudice to the above, to provide or ensure providing of such other services and other facilities as are in the opinion of the Board necessary for the operation of ports in the state.

(3) The Government shall make separate budgetary provision for carrying out ferry services, coastal protection, fishing harbour and any other service oriented works in the State including establishment charges.

26. Power of the Board in undertaking certain works.- (1) The Board may undertake to carry out on behalf of any person any works or services or any class of works or services, on such terms and conditions as may be agreed upon between the Board and the person/ authority concerned.

(2) The Board may, if it considers it necessary or expedient in the public interest so to do, lend any of its vessels or appliances or the services of any of its employees to any person for such period not exceeding three months and on such terms and conditions as may be agreed upon between the Board and the person concerned.

27. Power of Board to order sea going vessel to use dock, wharves etc.- (1) When any dock, berth, wharf, quay, stage, jetty or pier or place of anchorage erected at any port or port approaches under the provisions of this Act has been completed with sufficient warehouses, sheds and appliances for receiving, landing or shipping goods or passengers from and upon sea going vessels, the Board may, after obtaining the approval of the Commissioner of Customs and by notification published in three consecutive issues, of the official Gazette, declare that such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage is ready for receiving landing and shipping or for landing or for shipping goods or passengers from and upon sea going vessels.

Provided that, the Board shall ensure that prior to such notifications the provisions of the section 29 and 33 of the Customs Act, 1962 shall be complied and no imported goods shall be unloaded and no export goods shall be loaded at any place other than a place approved under clause (a) of section 8 of the Customs Act, 1962 for the unloading or loading of such goods, except with the permission of the proper officer.

(2) As from the date of the publication of such notification for the third time, it shall be lawful for the Board from time to time, when there is room at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage to order to come alongside of such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage for the purpose of landing and shipping goods or passengers or for landing or for shipping the same, any sea-going vessel within the port or port approaches which has not commenced to discharge goods or passengers or which being about to take in goods or passengers, has not commenced to do so:

Provided that before making such order, the Board shall have regard as far as possible to the convenience of such vessel and of the shippers, in respect of the use of any particular dock, berth, wharf, quay, stage, jetty, pier or place of anchorage.

28. Accommodation for sea going vessels to use docks, wharves, etc.,- When a sufficient number of docks, berths wharves, quays, stages, jetty, pier or place of anchorage have been provided at any port or port approaches as aforesaid, the Board may, after obtaining the approval of the Commissioner of Customs and by notification published in three consecutive issues of the official Gazette, direct that no goods or passengers shall be landed or shipped from or upon any seagoing vessel within the port or port approaches otherwise than at such docks, berths, wharves, quays, stages, jetties, piers, or place of anchorage except with the sanction of the Board and in accordance with such conditions as the Board may specify.

Provided that, the Board shall ensure that prior to such notifications the provisions of the section 29 and 33 of the Customs Act, 1962 shall be complied and no imported goods shall be unloaded and no export goods shall be loaded at any place other than a place approved under clause (a) of section 8 of the Customs Act, 1962 for the unloading or loading of such goods, except with the permission of the proper officer.

29. Power to order vessels not to come alongside of, or to be removed from docks, wharves etc.- Any officer appointed by the Board in this behalf, may, in cases of emergency or for any reason which appear to him sufficient, by notice in writing, order the master or owner or agent or any seagoing vessels not to bring such vessel alongside of, or to remove such vessel from, any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage belonging to or under the control of

the Board and if, such notice is not complied with, the Board may charge in respect of such vessel such sums as it thinks fit, not exceeding ten thousand rupees for each day of twenty four hours or portion of such day, during which such vessels remains at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage:

Provided that in case a vessel ordered to be removed such charge shall not commence to be made till after the expiry of twelve hours from the service of such notice as aforesaid on the master or owner or agent of the vessel.

30. Power of Government to exempt vessels from obligation to use wharves etc.,- Notwithstanding anything contained in section 27 or 28, the Government may, if in its opinion, it is necessary in the public interest so to do, by general or special order from time to time permit certain specified vessel or classes of vessels to discharge or ship goods or certain specified goods or classes of goods at such place in a port or within the port approaches, in such manner, during such period and subject to such payment to the Board and on such conditions as the Government may think fit.

Provided that any notification regarding loading or unloading of export/imported goods in certain specific vessels/class of vessels shall be done in accordance with the provisions the Customs Act, 1962.

31. Board to declare when vessels other than sea going vessels compelled to use dock, wharves, etc.,- (1) When any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage for receiving, landing or shipment of goods or passengers from or upon vessels, not being sea-going vessels has been made and completed with all proper appliances in that behalf, the Board may, after obtaining the approval of the Commissioner of Customs, by order published in the official Gazette,-

(i) declare that such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage is ready for receiving, landing or shipment of goods or passengers from or on vessels not being sea-going vessels; and

(ii) direct that within certain limits to be specified therein it shall not be lawful without the express sanction of the Board, to land or ship any goods or passengers, out of, or into, any vessel not being, sea going vessels of any class, specified in such order, except at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage.

(2) As from the date of the publication of the order mentioned in sub-section (1), it shall not be lawful without the consent of the Board, for any vessel of such class,-

(i) to land or ship any goods or passengers at any place within the limits so specified except at such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage; and

(ii) while within such limits to anchor, fasten or lie within fifty meters of the ordinary low-water mark.

(3) If after the publication of such order, any such vessel shall, while within the limits so specified, so anchor, fasten or lie, it shall be lawful for the Board to cause the same to be removed out of the said limits at the expenses of the master or owner or agent of the vessel.

32. Performance of services by Board or other person.- (1) The Board shall have power to undertake the following services, namely:-

(a) stevedoring, landing, shipping or trans shipping passengers and goods between vessels in port and the wharves, piers, quays or docks belonging to or in the possession of the Board;

(b) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises;

(c) carrying passengers within the limits of the port or port approaches, by such means and subject to such restrictions and conditions as the Board may think fit to impose; and

(d) piloting, hauling, mooring, rumouring, hooking or measuring of vessels or any other service in respect of vessels.

(2) The Board may, if so requested by the owner, take charge of the goods for the purpose of performing the service or services and shall give a receipt in such form as the Board may specify by the regulations.

(3) Notwithstanding anything contained in this section, the Board may authorize any person to perform any of the services mentioned in sub-section (1) on such terms and conditions as may be agreed upon.

(4) No person authorized under sub-section (3) shall charge or recover for such service any sum in excess of the amount leviable according to the scale framed under sections 37, 38 or 40.

(5) Any such person shall, if so required by the owner perform in respect of the goods any of the services and for that purpose take charge of the goods and give a receipt in such form as the Board may specify.

(6) The responsibility of any such person for the loss, destruction or deterioration of goods of which he has taken charge shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872.

(7) After any goods have been taken charge of and a receipt given for them under this section, no liability for any loss or damage which may occur to them shall attach to any person to whom a receipt has been given or to the master or owner of the vessel from which the goods have been landed or transhipped.

33. Responsibility of Board for loss, etc., of goods.- (1) *The responsibility of the Board for the loss, destruction or deterioration of good of which it has taken charge shall, subject to provisions of the section 45 of the Customs Act, 1962,-*

(i) in the case of goods received for carriage by railway, be governed by the provisions of the Indian Railways Act, 1890; and

(ii) in other cases, be that of a bailor under sections 151, 152 and 161 of the Indian Contract Act, 1872 omitting the words " in the absence of any special contract" in section 152 of that Act:

Provided that no responsibility under this section shall attach to the Board, -

(a) until a receipt mentioned in sub-section (2) of section 32 is given by the Board; and

(b) after the expiry of such period as may be prescribed by regulations from the date of taking charge of such goods by the Board.

(2) The Board shall not be in any way responsible for the loss destruction or deterioration of, or damage to goods of which it has taken charge unless notice of such loss or damage has been given within such period as may be prescribed by regulations, from the date of taking charge of such goods by the Board under sub-section (2) of section 32.

34. Accommodation to be provided for customs officers in wharves, etc., appointed under Customs Act, 1962.- (1) Where the *Commissioner of Customs* has, under the provisions of any Act for the levy of duties of customs appointed any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage warehouse or shed or a portion of any warehouse or shed provided at any port under the provisions of this Act for the use of sea going vessels to be an approved place for the landing or shipping of goods of a warehouse for the storing of dutiable goods on the first importation thereof without payment of duty, within the meaning of the first-mentioned Act of the Board shall set apart and maintain such place on or adjoining such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage or in such warehouse or shed or portion thereof, for the use of officers of customs as may be necessary.

(2) Notwithstanding that any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, warehouse or shed or portion thereof at any port has, under the provisions of sub-section(1), been set apart for the use of the officers of customs at the port, all rates and other charges, payable under this Act in respect thereof, or for the storage of goods therein shall be payable to the Board, or to such person or persons as may be appointed by the Board to receive the same.

(3) *The customs cargo service provider for custody of imported goods or export goods and for handling of such goods in custom area shall full fill the conditions stipulated in regulation 5 of the Handling of Cargo Customs Areas Regulations, 2009.*

(4) The customs cargo service provider shall provide free of cost or rent free, fully furnished office accommodation for customs. Customs Electronic Data Interchange (ED) Service Centre with required amenities and facilities and residential accommodation and transportation facilities for customs staff is to be provided subject to the satisfaction of the Commissioner of Customs. As per the regulation 5 (b) Handling Cargo in Customs Area Regulation, 2009.

35. Power to permit erection of private wharves, etc., within the limits of port subject to conditions.- (1) No person shall make, erect or fix within the limits of a port or port approaches any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, erection or mooring or undertake any reclamation of foreshore within the said limits except with the previous permission in writing of the Board and subject to such conditions, if any, as the Board may specify.

(2) If any person makes, erects or fixes any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, erection or mooring or undertakes reclamation of foreshore in contravention of sub-section (1), the Board may, by notice require such person to remove it within such time as may be specified in the notice and if the person fails so to remove it, the Board may, by notice require such person to remove it within such time as may be specified in the notice and if the person fails so to remove it, the Board may cause it to be removed at the expenses of that person.

36. Compensation payable in certain cases where use of any private wharf, etc., rendered unlawful.- (1) Where, as a result of an order published under section 28 or section 31, the use of any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, made fixed or erected by any person is rendered unlawful, the Board may, after hearing the person concerned, by order, close, remove, fill up or destroy such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, or permit the use thereof to such person on payment of such rates and charges as the Board may, with the previous sanction of the Government determine.

(2) Save as otherwise provided under sub-section (3), no person shall be entitled to claim compensation for any injury, damage or loss caused or alleged to have been caused by an order made under sub-section (1).

(3) If it is proved to the satisfaction of the Board that any such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, was made, fixed or erected by any person with the previous permission of the authority competent to grant such permission, he shall be paid by the Board compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, namely:-

(a) in computing the compensation, there shall not be taken into account any rates or other charges, which such person shall be liable to pay for using any dock, berth, wharf, quay, stage, jetty, pier or place of anchorage, provided by the Board;

(b) the amount of compensation shall be calculated with reference to the cost of construction of such dock, berth, wharf, quay, stage, jetty, pier or place of anchorage;

(c) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;

(d) where no such agreement can be reached, the Government shall appoint an arbitrator, a person who is or has been, or is qualified for appointment as a Judge of the High Court;

(e) the Government may, in any particular case,; nominate a person possessing special knowledge of any matter relating to any case under inquiry to assist the arbitrator in determining any question which has to be decided by him under this section, and where such nomination is made the person to be compensated may also nominate an assessor for the same purpose;

(f) after the commencement of the proceeding before the arbitrator, the Board and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;

(g) the arbitrator shall after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specify the person or persons to whom such compensation shall be paid;

(h) where there is a dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof among such persons;

(i) nothing in the Arbitration and Conciliation Act, 1996 shall apply to arbitrations under this section;

(j) the arbitrator appointed under this section, while holding arbitration proceedings under this Act, shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of documents;

(iii) receiving evidence on affidavits;

(iv) issuing commissions for examination of witnesses or documents;

(k) every award shall also state the amount of costs incurred in the arbitration proceedings under this section and by what persons and in what proportions they are to be paid;

(l) any person aggrieved by an award of the arbitrator made under this section may, within thirty days from the date of the award, prefer an appeal to the High Court within whose jurisdiction the port is situated:

Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

CHAPTER - VI

IMPOSITION AND RECOVERY OF RATES AT PORTS

37. Scales of rates for services performed by board or other person.- (1) The Board shall from time to time frame by regulation a scale of rates at which and a statement of the conditions under which any of the services specified hereunder shall be performed by itself or any person authorized under section 32 at or in relation to the port or port approaches,-

(a) transhipping of passengers or goods between vessels in the port or port approaches;

(b) stevedoring, landing and shipping of passengers 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 Board or at any place within the limits of the port or port approaches;

(c) cranaage or portorage of goods on any such place;

(d) wharfage, storage or demurrage of goods on any such place;

(e) any other service in respect of vessels, passengers or goods excepting the services in respect of vessels for which fees are chargeable under the Indian Ports Act, 1908.

(2) Different scales of rates and conditions may be framed for different classes of goods and vessels and for different ports.

38. Scale of rates and statement of conditions for use of property belonging to Board.-

(1) The Board shall, from time to time also frame by regulations a scale of rates on payment of which and a statement of conditions under which any property belonging to, or in the possession or occupation of, the Board or in any place within the limits of the port or port approaches may be used for the purposes specified hereunder:-

(a) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels;

(b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge, approach or place as aforesaid by animals or vehicles carrying passengers or goods;

(c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents and stevedores;

(d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.

(2) Different scales of rates and conditions may be framed by regulation for different classes of goods and vessels and for different ports.

39. Consolidated rates of combination of services.-The Board may, from time to time, frame by regulation a consolidated scale of rates for any combination of the services specified in section 37 or for any combination of such service or services with any user or permission to use any property belonging to or in the possession or occupation of the Board, as specified in section 38.

40. Power to levy concessional rates in certain cases.- In framing scales of rates under any of the foregoing provisions of this chapter, the Board may specify a lower rate in respect of,-

(a) coastal goods, that is to say, goods other than imported goods as defined in the Customs Act, 1962 carried in a vessel from one Indian Port to another Indian Port:

Provided that the Board shall not make any discrimination between one Indian port and another such port in specifying a lower rate under this section;

(b) other goods in special cases.

41. Scale of rates and conditions.- Every scale of rates and every statement of conditions framed by the Board under the foregoing provisions of this Chapter, shall be submitted to the Government for sanction and shall have effect when so sanctioned and published by the Board in the official Gazette.

42. Power of Government to require modification or cancellation of rates.- (1) Whenever the Government considers it necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct the Board to cancel any of the scales in force or modify the same within such period as the Government may specify in the order.

(2) If the Board fails or neglects to comply with such direction within the specified period, the Government may cancel any of such scales or make such modifications therein as it may think fit:

Provided that before so cancelling or modifying any scale, the Government shall consider any objection or suggestion which may be made by the Board during the specified period.

(3) When in pursuance of this section any of the scales has been cancelled or modified, such cancellation or modification shall be published by the Government in the official Gazette and shall thereupon have effect accordingly.

43. Remission of rates or charges.- The Board may, in special cases, and for reasons to be recorded in writing, exempt either wholly or partially any goods, vehicles, or vessels or class of goods, vehicles or vessels from the payment of any rate or of any charge leviable in respect thereof according to any scale of rates in force under this Act or remit the whole or any portion of such rate or charge so levied.

44. Refund of overcharges.- No person shall be entitled to a refund of an overcharge made by the Board unless his claim to the refund has been preferred in writing by him or on his behalf to the Board within six months from the date of payment duly supported by all original relevant documents:

Provided that the Board may, of its own motion remit overcharges made in its bills at any time.

45. Notice of payment of charges short levied or erroneously refunded.- (1) When the Board is satisfied that any charge leviable under this Chapter has been short levied or erroneously refunded, it may issue a notice to the person who is liable to pay such charge or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that no such notice shall be issued after the expiry of three years,-

- (a) when the charge is short levied, from the date of the payment of the charge;
- (b) where a charge has been erroneously refunded, from the date of refund;

(2) The Board may after considering the representation if any made by the person to whom notice is issued under sub-section (1), determine the amount due from such person and thereupon such person shall pay the amount so determined.

46. Time for payment of rates on goods.- Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of the Board or to be shipped for export or to be transhipped shall be payable before the goods are removed, shipped or transhipped.

47. Boards lien for rates.- (1) For the amount of all rates leviable by the Board under this Act in respect of any goods and for the rent due to the Board for any building, plinths, stacking area or other premises on or in which any goods may have been placed, the Board shall have a lien on such goods; and may seize and detain the same until such rates and rents are fully paid.

(2) Such lien shall have priority over all other liens and claims, except for general average and for the ship owner's lien upon the said goods for freight and other charges where such lien exists and has been preserved in the manner provided in sub-section (1) of section 48 and for money payable to the Central Government under any law for the time being in force, relating to customs other than by way of penalty or fine and to the Government under any law for the time being in force.

48. Ship owner's lien for freight and other charges.- (1) If the master or owner of any vessel or his agent at or before the time of landing from such vessels and goods at any dock, wharf, quay, stage, jetty, berth, mooring or pier belonging to or in occupation of the Board, gives to the Board a notice in writing that such goods are to remain subject to a lien for freight or other charges payable to the ship owner, to an amount to be mentioned in such notice, such goods shall continue to be liable to such lien to such amount.

(2) The goods shall be retained in the custody of the Board at the risk and expense of the owners of goods until such lien is discharged as hereinafter mentioned and godown and storage rent shall be payable by the party entitled to such goods for the time during which they may be so retained.

(3) Upon the production before any officer appointed by the Board in that behalf of a document purporting to be a receipt for, or release from the amount of such lien, executed by the person by whom or on whose behalf such notice has been given, the Board may permit such goods to be removed without regard to such lien:

Provided that the Board shall have used reasonable care in respect to the authenticity of such document.

49. Sale of goods after two months if rates or rent are not paid or lien for freight is not discharged.- (1) The Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty four hours after the landing of the animals or goods as the Board, may think fit, sell by public auction or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by tender, private agreement or in any other manner such goods or so much thereof as in the opinion of the Board may be necessary, -

- (a) if any rates payable to the Board in respect of such goods have not been paid; or
- (b) if any rent payable to the Board in respect of any place on or in which such goods have been stored has not been paid; or
- (c) if any lien of any ship-owner for freight or other charges of which notice has been given has not been discharged and if the person claiming such lien for freight or other charges has made to the Board an application for such sale.

(2) Before making such sale, the Board shall give ten days notice of the same by publication thereof in the official Gazette and also in at least one of the widely circulated local daily newspapers:

Provided that in the case of animals and perishable or hazardous goods, the Board may give such shorter notice and in such manner as, in the opinion of the Board, the urgency of the case admits of.

(3) If the address of the owner of the goods has been stated in the manifest of the goods or in any of the documents which have come into the possession of the Board or is otherwise known, notice shall also be given to him by letter delivered at such address or sent by post, but the title of a bonafide purchaser of such goods shall not be invalidated by reason of the omission to send such notice, nor shall any such purchaser be bound to inquire whether such notice has been sent.

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

Explanation.- In this section and section 50 " controlled goods " means goods the price or disposal of which is regulated under any law for the time being in force.

50. Disposal of goods not removed from premises of Board within time limit.- (1) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods, were placed in their custody, the Board may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be so served upon him or his address is not known cause a notice to be published in the official Gazette, and also in at least one of the widely circulated local daily newspapers requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction or by tender, or agreement or in any manner:

Provided that where all the rates and charges payable under this Act in respect of any such goods have been paid, no notice of removal shall be so served or published under this sub-section unless two months have expired from the date on which the goods were placed in the custody of the Board.

(2) The notice referred to in sub-section (1) may also be served on the agent of the vessel by which such goods were landed.

(3) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section(1), the Board may at any time after the expiration of two months from the date of which such goods were placed in its custody, sell the goods by public auction or, in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing sell by tender, private agreement or in any other manner such goods or so much thereof as in the opinion of the Board may be necessary, after giving notice of the sale in the manner specified in sub-sections (2) and (3) of section 49.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (3),-

(a) the Board may in the case of animals and perishable or hazardous goods give notice of removal of such goods although the period of one month or as the case may be, of two months specified in sub-section(1) has not expired or give such shorter notice of sale in such manner as in the opinion of the Board the urgency of the case requires;

(b) controlled goods may be sold in accordance with the provisions of sub-section (4) of section 49.

(5) The Government may, if it deems necessary so to do in the public interest, by notification in the official Gazette, exempt any goods or classes of goods from the operation of this section:

Provided that, in custom area the Board shall ensure that the manner of disposal of unclaimed / uncleared cargo is in accordance with the provisions of section 48 of the Customs Act, 1962 read with Handling of Cargo in Customs Areas Regulations, 2009.

51. Application of sale proceeds.- (1) The proceeds of every sale under section 49 or section 50 shall be applied in the following order:-

(a) in payment of the expenses of the sale;

(b) in payment, according to their respective priorities, of the liens and claims excepted in sub-section(2) of section 47 from the priority of the lien of the Board;

(c) in payment of the rates and expenses of landing, removing, storing or warehousing the same, and of all other charges due to the Board in respect thereof including demurrage (other than the penal demurrage) payable in respect of such goods for a period of four months from the date of landing;

(d) in payment of any penalty or fine due to the Central Government under any law for the time being in force relating to customs;

(e) in payment of any other sum due to the Board.

(2) The surplus, if any shall be paid to the importer, owner or consignee of the goods or to his agent, on an application made by him in this behalf within six months from the date of the sale of the goods.

(3) Where no application has been made under sub-section (2), the surplus shall be applied by the Board for purposes of this Act:

Provided that, in custom area proceeds of every sale under section 49 and 50 shall be applied subject to the Order specified in section 150 of the Customs Act, 1962.

52. Recovery of rates and charges by detainment of vessel.- (1) If the master of any vessel in respect of which any rates or penalties are payable under this Act, or under any regulations or orders made in pursuance thereof, refuses, or neglects to pay the same or any part thereof on demand, the Board may detain or arrest such vessel and the tackle, apparel and furniture belonging thereto or any part thereof and detain the same until the amount so due to the Board, together with such further amount as may accrue for any period during which the vessel is under detain or arrest is paid.

(2) In case any part of the said rates or penalties or of the cost of the distress or arrest or the keeping of the same, remain unpaid beyond five days next after any such distress or arrest has been so made, the Board may cause the vessel or other thing so detained or arrested to be sold and with the proceeds of such sale, shall satisfy such rates or penalties and costs, including the cost of sale remaining unpaid, rendering the surplus (if any), to the master of such vessel on demand.

53. Grant of port clearance after payment of rates, realization of damages, etc.- If the Board gives to the officer of the Central Government whose duty is to grant the port clearance to any vessel at the port, notice stating,-

(i) that an amount specified therein is due in respect of rates, fines, penalties or expenses chargeable under this Act or under any regulations or order made in pursuance thereof, against such vessel, or by the owner or master of such vessel in respect thereof, or against or in respect of any goods on board such vessels; or

(ii) that an amount specified therein is due in respect of any damage referred to in section 100 and such amount together with the cost of the proceedings for the recovery thereof before a Magistrate under that section has not been realized, such officer shall not grant such port clearance until the amount so chargeable or due has been paid or, as the case may be, the damage and cost have been realized.

CHAPTER - VII

BORROWING POWERS OF BOARD

54. Powers to raise loans.- (1) The Board may with the previous sanction of the Government borrow loan on such terms and conditions as may be prescribed for the purposes of this Act.

(2) Loans may be raised by the Board in the open market on Board securities issued by it or may be obtained from the Government or a Bank approved by the Government.

55. Board Securities.- (1) The Board may with the previous sanction of the Government specify the form in which the Board securities shall be issued by the Board and the mode in which, and the conditions subject to which, they may be transferred.

(2) The holder of any board security in any form may obtain in exchange therefore, upon such terms as the Board may from time to time determine. A Board security shall be in such form as may be prescribed.

(3) The right to sue in respect of money secured by the Board securities shall be exercisable by the holders thereof for the time being without preference in respect of priority of date.

56. Right of joint or several payees of securities.- Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872,-

(a) when any Board's security is payable to two or more persons jointly and either or any of them dies, the Board's security shall be payable to the survivor or survivors of those persons; and

(b) when any such security is payable to two or more persons severally and either or any of them dies, the security shall be payable to the survivor or survivors of those persons or to the legal representative of the deceased or to any of them.

57. Powers of one or two or more joint holders to grant receipt.- Where two or more persons are joint holders of any Board security, any one of those persons may give an effectual receipt of any interest payable in respect of such security unless notice to the contrary has been given to the Board by any other of the holders.

58. Endorsement to be made on security itself.- Endorsement of a Board Security which is transferable by endorsement shall be valid when it is made under the Signature of the holder inscriber or marker in accordance with the Negotiable Instrument Act, 1881 (Central Act 26 of 1881)

59. Endorsement of security and liable for amount thereof.- (1) A person shall by reason of his having endorsed any board security, be liable to pay any money due either as principal or as interest there under.

(2) The signature of the person authorized to sign the Board Securities on behalf of the Board may be printed engraved or lithographed or impressed by such mechanical process as the Board may direct.

(3) A signature so printed engraved or lithographed impressed or otherwise shall be valid as if it had been inscribed in the proper handwriting of the person so authorized.

60. Issue of duplicate security.- (1) When any Board security is lost, stolen or destroyed either wholly or in part and a person claims to be the person to whom but for the loss, theft or destruction it would be payable, he may, on application to the Board and on producing proof to the satisfaction of the Board, loss, theft or destruction and of the genuineness of the claim and on payment of such fee, if any, as may be provided by regulations, obtain from the Board an order for,-

(a) the payment of interest in respect of the security said to be lost, stolen, or destroyed, pending issue of a duplicate security; and

(b) the issue of a duplicate security payable to the applicant.

(2) An order shall not be passed under sub-section (1), until after the issue by the Board of the notification of the loss, theft or destruction in the manner specified by regulations.

(3) A list of securities in respect of which an order is passed under sub section (1), shall be published in such manner as the Board may specify by regulations.

(4) If at any time before the Board becomes discharged under the provisions of this Act from the liability in respect of any security the whole of which is alleged to have been lost, stolen or destroyed such security is found, any order passed in respect thereof under this section shall be cancelled.

61. Issue of converted, etc., securities.- (1) The Board may, subject to such conditions as it may specify by regulations, on the application of a person claiming to be entitled to a Board security or securities issued by it, on being satisfied of the genuineness of the claim and on delivery of the security or securities receipted in such manner and on payment of such fee, if any, as it may specify

by regulation, convert, consolidate or subdivide the security or securities, and issue to the applicant a new security or securities accordingly.

(2) The conversion, consolidation or sub-division referred to in sub-section (1) may be into security or securities of the same or different classes or of the same or different loans.

62. Discharge in certain cases.- Notwithstanding anything contained in the Indian Limitation Act, 1963,-

- (i) on payment of the amount due on a security on or after the date on which payment become due; or
- (ii) when a duplicate security has been issued under section 60; or
- (iii) when a new security or securities has or have been issued upon conversion, consolidation or sub-division under section 61;

the Board shall be discharged from all liability in respect of the security or securities so paid or in place of which a duplicate or new security or securities has or have been issued,-

(a) in the case of payment, after the lapse of six years from the date on which payment was due;

(b) in the case of a duplicate security, after the lapse of six years from the date of the publication under sub-section (3) of section 60 of the list in which the security is first mentioned or from the date of the last payment of interest on the original security, whichever is later;

(c) in the case of a new security issued upon conversion, consolidation or sub-division, after the lapse of six years from the date of the issue thereof.

63. Security for loans taken by the Board.- All loans raised by the Board under this Act shall be a first charge on,-

(1) the property vested or which may hereinafter during the currency of the loans become vested in the Board other than,-

- (i) any sum set apart by the Board,-
 - (a) as the sinking fund for the purpose of paying off any loan; or
 - (b) for the payment of pension to its employees; or
- (ii) the provident or pension fund established by the Board;

(2) the rates leviable by the Board under this Act.

64. Remedies of Government in respect of loans made to Board.- The Government shall have in respect of loans raised by it to the Board the same remedies as holders of Board securities issued by the Board; and the Government shall not be deemed to possess any prior or greater rights in respect of such loans than holders of such Board securities:

Provided that when the terms of any such loan made before the appointed day expressly provide that the loan shall have priority over all other loans in the matter of repayment by the Board, such loan shall have priority.

65. Power of Board to repay loans before due date.- The Board may, with the previous sanction of the Government, apply any sums which may come into its hands under the provisions of the Act and which can be so applied without prejudicing the security of the other holders of the Board securities, in repaying to the Government any sum which may remain due to it in respect of the principal of any loan although the time fixed for the repayment of the same may not have arrived:

Provided that no such repayment shall be made of any sum less than ten thousand rupees; and that if such repayment is made, the amount of interest in each succeeding instalment shall be so adjusted as to represent exactly the interest due on the outstanding principal.

66. Establishment of sinking fund.- (1) If in respect of a loan raised by the Board under this Act which is not repayable before the expiration of one year from the date of the loan, the Government by an order in writing so directs the Board shall set apart half yearly out of its income,

as a sinking fund, a sum sufficient to liquidate the loan within a period which shall not in any case unless the previous consent of the Government has been obtained exceed twenty five years; but the maximum period shall not in any case exceed forty years:

Provided that a sinking fund need not in the absence of any stipulation to that effect be established in the case of loans taken by the Board from the Central Government or any other State Government.

(2) Where any sinking fund has, before the appointed day, been established by any authority in respect of a loan raised by it, for which loan, the Board is liable under this Act, the sinking fund so established by that authority shall be deemed to have been established by the Board under this section.

67. Investment and application of sinking fund.- (1) The sums so set apart by the Board under sub-section (1) of section 66 and the sums forming part of any sinking fund referred to in sub-section (2) of that section shall be invested in public securities or in such other securities as the Government may approve in this behalf and shall be held by the Board in trust for the purposes of this Act.

(2) The Board may apply the whole or any part of the sums accumulated in any sinking fund in or towards the discharge of the moneys for the repayment of which the fund has been established:

Provided that it pays into the fund in each year and accumulates until the whole of the money borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied.

68. Examination of sinking fund.- (1) A sinking fund established for the liquidation of any loan shall be subject to annual examination by such person as may be appointed by the Government in this behalf and the person so appointed shall ascertain whether the cash and the current market value of the securities at the credit of the fund are actually equal to the amount which would have been accumulated if, investment had been regularly made and the rate of interest as originally estimated had been obtained thereon.

(2) The Board shall pay forthwith into the sinking fund any amount which the person appointed under sub-section (1) to conduct the annual examination of the fund may certify to be deficient unless the Government specifically sanctions a gradual readjustment.

(3) If the cash and current market value of the securities at the credit of sinking fund are in excess of the amount which should be at its credits, the person appointed under sub-section(1) shall certify the amount of the excess and the Board may, with the previous sanction of the Government reduce or discontinue the half yearly contributions to the sinking fund required under section 66.

69. Power of Board to raise loans on short Term Bills.- Nothing contained in this Act shall be deemed to affect power of the Board to raise Loans under the Local Authorities Loans Act, 1914.(Central Act 9 of 1914)

70. Power of Board to take Temporary Loans or Over Drafts.- Notwithstanding anything contained in this Act, the Board may,-

- (i) borrow money by means of temporary over draft or otherwise by placing the securities held by the Board in its Reserve Funds or on security of the Fixed Deposits of the Board in its Banks;
- (ii) obtain advances from such banks on pledge or hypothecation of its current assets without the previous sanction of the Government:

Provided that such temporary over drafts or other loans,-

- (a) shall not at any time have a longer currency than six months; and
- (b) shall not be taken without the previous sanction of the Government, if at any time in any year the amount of such over drafts, or other loans exceeds such amount not exceeding fifty lakhs of rupees as the Government may fix in this behalf;

Provided further that all moneys so borrowed by over drafts or otherwise shall be expended for the purpose of this Act.

71. Power of Board to borrow money from International Bank for Reconstruction and Development or other Foreign Institutions.- Notwithstanding anything contained in this Act, but subject to any other law for the time being in force, the Board may with the previous sanction of the Government and on such terms and conditions as may be approved by the Government, raise, for the purpose of this Act, loans in any currency or currencies from the International Bank for Reconstruction and Development or from any Bank or Institution in any country outside India, and no other provision of this Chapter shall apply to or in relation to any such loan unless the terms and conditions of the loan or the approval thereof by the Government otherwise provide.

CHAPTER - VIII

Revenue and Expenditure

72. General Fund of the Board.- The Board shall have and maintain its own fund called the General Fund of the Board to which shall be credited all moneys received by it including grants by the Government subventions, loans and advances, and as the Conservator of the Ports and of their approaches or as the body appointed under section 36 of the Indian Ports Act, 1908.

73. Application of moneys in general accounts.- (1) The moneys credited to the general account under section 72 shall be applied by the Board in payment of the following charges, namely:-

(a) the interest and instalments of principal due in respect of any loan that may have been raised or obtained by the Board or for the repayment of which the Board may be liable and payments to the sinking fund established for such loan;

(b) the salaries, fees, remuneration, allowances, pensions, gratuities compassionate allowances or other money due to,-

(i) the Chairman, and other members of the Board;

(ii) the employees of the Board; and

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

(c) the contributions, if any, payable to the Central Government or any State Government on account of the pension and leave allowance of any officer lent to the Board by such Government;

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

(e) the contributions, if any, duly authorized to be made by regulations made under this Act to any such fund as is referred to in clause (d);

(f) such sums as may, from time to time, be agreed upon by the Board and the Government or the Central Government or any other authority as a reasonable contribution payable by the Board towards the expenses in connection with the watch and ward functions of the Police force or the Central Industrial Security Force or any other force which the Government or the Central Government or any other authority, as the case may be, may establish and maintain for the protection of the port and the docks, warehouses and other property of the Board;

(g) the cost of repairs and maintenance of the property belonging to or vested in the Board and all charges upon the same and all working expenses;

(h) the cost of the execution and provision of any a new work or appliance specified in section 25 which the Board may determine to charge to revenue;

(i) any expenditure incurred under section 26;

(j) any other expenditure which may be incurred by the Board generally for the purpose of this Act;

(k) any other charge which may on the application of the Board or otherwise be specially sanctioned by the Government or for which the Board may be legally liable.

(2) All moneys standing at the credit of the Board which cannot immediately be applied in the manner or for the purposes specified in sub section (1) shall,-

(a) be deposited in the State Bank of India or any Nationalized Banks as defined in clause(d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or any corporation or financial institution controlled or managed by the Government as the Board may decide; or

(b) be invested in such public securities as may be determined by the Board and the said securities shall be held in trust by the Board for the purposes of this Act.

74. Power to transfer moneys from general account to specified particular account and vice-versa.- The Board may, with the previous sanction of the Government, apply any sum out of the moneys credited to the general account of the port towards meeting deficits, if any, in the particular or specified account such as pilotage account, if so maintained or transfer the whole or part of any surplus funds in such particular account to the general account of the port.

75. Establishment of Reserve Funds.- The Board may from time to time set apart such sums out of its surplus income as it thinks fit as a reserve fund or funds for the purpose of expending existing facilities or creating new facilities at the ports or for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purpose of replacement or for meeting expenditure arising from loss or damage from fire, cyclones, shipwrecks or other accident or for any other emergency arising in the ordinary conduct of its works under this Act:

Provided that the sums set apart annually in respect of, and the aggregate at any time of, any such reserve fund or funds shall not exceed such amount as may, from time to time be fixed in that behalf by the Government.

76. Power to reserve Board's securities on Board's own investments.- (1) For the purposes of any investment which the Board is authorized to make under this Act, it shall be lawful for the Board to reserve and set apart any securities to be issued by it on account of any loan to which the consent of the Government has been given,

provided that the intention to so reserve and set apart such securities has been notified as a condition to the issue of the loan.

(2) The issue by the Board of such securities directly to and in the name of the board shall not operate to extinguish or cancel such securities, but every security so issued shall be valid in all respects as if issued to and in the name of any other person.

(3) The purchase by the Board or the transfer, assignment or endorsement to the Board of any security issued by the Board, shall not operate to extinguish or cancel any such security but the same shall be valid and negotiable in the same manner and to the same extent as if held by or transferred or assigned or endorsed to any other person.

77. Prior sanction of the Government to charge expenditure to capital.- (1) No expenditure shall be charged by the Board to capital without the previous sanction of the Government:

Provided that the Board may without such sanction charge to capital expenditure not exceeding such limit as may be specified and subject to such conditions as may be imposed by the Government.

(2) Nothing in sub-section (1) shall be deemed to require the further sanction of the Government in any case where the actual expenditure incurred as a charge to capital exceeds the expenditure sanctioned in this behalf by the Government unless the excess is more than ten percent of the expenditure so sanctioned.

78. Works requiring sanction of Board or Government.- (1) No new work or appliance the estimated cost of which exceeds such amount as may be fixed by the Government in this behalf, shall be commenced or provided by the Board, nor shall any contract be entered into by the Board in respect of any such new work or appliance until a plan of an estimate for such work or appliance has been submitted to, and approved by the Board; and in case the estimated cost of any new work or appliance exceeds such amount, as may from time to time, be fixed by the Government in this

behalf, sanction of the Government to the plan and estimate shall be obtained before such work is commenced or appliance provided.

(2) Nothing in sub-section (1) shall be deemed to require the further sanction of the Government in any case where the actual expenditure incurred does not exceed by more than ten per cent of the estimated cost so sanctioned.

79. Power of Chief Executive Officer as to execution of works.- Notwithstanding anything contained in section 82, the Chief Executive Officer may direct the execution of any work the cost of which does not exceed such maximum limit as may be fixed by the Government in that behalf and may enter into contracts for the execution of such work, but in every such case the Chief Executive Officer shall, as soon as possible, make a report to the Board of any such direction given or contracts entered into by him.

80. The Power of Board to compound or compromise claims.- The Board may compound or compromise any claim or demand or any action or suit instituted by or against it for such sum of money or other compensation as it deems sufficient.

Provided that no settlement shall be made under this section without the previous sanction of the Government if such settlement involves payment to the Board of a sum exceeding such amount as may be specified by the Government in this behalf.

81. Writing off losses.- (1) Subject to such conditions as may be specified by the Government, where the board is of opinion that any amount due to or any loss, whether of money or of property incurred by the Board is irrecoverable., the Board may sanction the writing off the said amount or loss:

(2) Notwithstanding anything contained in sub-section(1), where the Chief Executive Officer is of opinion that any amount due to, or any loss, whether of money or of property, incurred by, the Board is irrecoverable, the Chief Executive Officer may sanction the writing off finally of such amount or loss:

Provided that such amount or loss, does not exceed, in any individual case, ten thousand rupees or in the aggregate in any one year, one lakh rupees in every such case, the Chief Executive Officer shall make a report to the Board giving reasons for such sanction.

82. Powers etc., of Board as Conservator.- All the powers, authorities and restrictions contained in this Act in respect of the work by this Act authorized, shall apply to the works which may be executed by the Board as the Conservator of the port or as the body appointed under sub-section (1) of section 36 of the Indian Ports Act, 1908 and also to the sanction of such works, the estimate therefore and the expenditure thereunder.

83. Budget estimates.- (1) The Board shall on or before the thirty first day of January in each year, hold a special meeting at which the Chief Executive Officer of the Board shall cause to be submitted an estimate of the income and expenditure of the Board for the next financial year, in such form as the Government may prescribe.

(2) A copy of such estimate shall be sent by post or otherwise to each member of the Board so as to reach him not less than ten clear days prior to the date appointed for the special meeting referred to in subsection(1).

(3) The Board shall consider the estimate at such meeting and may provisionally approve of it with or without modification.

(4) The Board shall, on or before the tenth day of February, cause a copy of such estimates as provisionally approved by it, to be sent to the Government.

(5) The Government may sanction the estimate or may return it with remarks and may call for such additional information, as it may deem necessary.

(6) When an estimate is returned under sub-section(5), the Board shall proceed to reconsider the estimate with reference to such remarks and shall furnish such additional information as the Government may call for and shall, if necessary, modify or alter the estimate and resubmit it to the Government.

(7) The Government shall sanction the estimate with or without modification.

(8) Where any such estimate is not sanctioned by the Government before the commencement of the financial year to which it relates, the Government may authorize the Board to incur such expenditure as may be necessary in the opinion of the Government until such time as the approval of the estimate by the Government is communicated to the Board.

84. Preparation of supplemental estimates.- The Board may in the course of any year for which an estimate has been sanctioned by the Government cause one or more supplemental estimates for the residue of such year to be prepared and the provisions of section 83 shall, so far as may be apply to such estimate as if it were an original annual estimate.

85. Re-appropriation of amounts in estimates.- Subject to any directions which the Government may give in this behalf, any sum of money or part thereof of which the expenditure has been authorized in an estimate for the time being in force sanctioned by the Government and which has not been so spent, may at any time be re-appropriated by the Board to meet any excess in any other expenditure authorized in the said estimate.

86. Adherence to estimate except in emergency.- (1) Subject to the provisions of section 85 no sum exceeding such amount as the Government may fix in this behalf shall, save in cases of emergency, be expended by, or on behalf of, the Board unless such sum is included in some estimate of the Board at the time in force which has been finally sanctioned by the Government.

(2) If any sum exceeding such limit as may have been fixed in this behalf under sub-section (1) is so expended by the Board on a pressing emergency, the circumstances shall be forthwith reported by the Chief Executive Officer to the Government, together with an explanation of the way in which it is proposed by the Board to cover such extra expenditure.

87. Duty of board to meet liability towards salaries, allowances, pensions etc.,- It shall be the duty of the board to meet its liability towards the following during preparation of annual budget estimates and incurring expenditures for the year,-

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

- (i) the Chairman and other members of the board;
- (ii) the employees of the board; and
- (iii) the surviving relatives if any, of such employees;

(b) the contributions, if any, payable to the Central or State Government on account of pension and leave allowance of any officer lent to the board by such Government;

(c) the cost and expenses if any incurred by the board in the conduct and administration of any provident fund, welfare fund, loan or special fund established by the board.

88. Accounts and audit.- (1) The Board shall maintain proper accounts and other relevant records and prepare the annual statement of account including the balance sheet in such form as may be prescribed by the Government.

(2) The Accounts of the Board shall be audited once in every year and if so required by the Government concurrently with the compilation of such accounts by an auditor appointed by the Government in consultation with the Comptroller and Auditor General of India (hereinafter referred to as the Auditor) and any amount payable to such auditor by the Board in respect of such audit shall be debitable to the general account of the Board.

(3) The Auditor shall have the same rights, privileges and authority in connection with the audit of the accounts of the Board as the Comptroller and Auditor General of India has in connection with the audit of the Government accounts and in particular, shall have the right to demand production of books of accounts, connected vouchers and other documents of the Board.

89. Publication of audit report.- (1) Within fourteen days after the audit and examination of the accounts of the Board have been completed, the auditor shall forward copies of the audit report to the Government and to the Board.

(2) The Government shall cause every audit report to be laid for not less than thirty days before the State Legislature as soon as may be after such report is received by the Government.

90. Board to remedy defects and irregularities pointed out in audit report.- The Board shall forthwith take into consideration any defects of irregularities that may be pointed out by the auditor, in the audit report on the income and expenditure of the Board and shall take such action thereon as the Board may think fit and shall also send a report of the action so taken to the Government.

91. Government to decide difference between Board and auditors.- If there is a difference of opinion between the Board and the auditor on any point included in the audit report, and the Board is unable to accept and implement the recommendations, if any, made by him on such point, the matter shall forthwith be referred to the Government which shall pass final orders thereon and the Board shall be bound to give effect to such orders.

CHAPTER - IX

SUPERVISIONS AND CONTROL OF GOVERNMENT

92. Administration report.- (1) As soon as may be after the first day of April in every year and not later than such date as may be fixed in this behalf by the Government, the Board shall submit to the Government a detailed report of the administration of the ports during the preceding year ending on the thirty-first day of March in such form as the Government may be prescribed.

(2) The Government shall cause such report to be laid for not less than thirty days before the State Legislature as soon as may be after such report is received by the Government.

93. Submission of Statements of income and expenditure to Government.- (1) The Board shall annually or often or if directed by the Government so to do, submit statements of its income and expenditure in such form and at such time as the Government may be prescribed.

(2) A copy of all such statements shall be open to inspection of the public at the office of the Board during office hours on payment of such fee for each inspection as may from time to time be specified by the Board.

94. Power of Government to supersede Board.- (1) If, at any time, the Government is of the opinion that,-

(a) on account of a grave emergency, the board is unable to perform the duties imposed on it by or under the provisions of this Act or of any other law; or

(b) the Board has persistently made default in the performance of the duties imposed upon it by or under the provisions of this Act or of any other law and as a result of such default, the financial position of the Board or the administration of the ports has greatly deteriorated;

(c) the Government may, by notification, in the official Gazette, supersede the Board for such period, not exceeding six months at a time, as may be specified in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (b), the Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of notification under sub-section(1) superseding the Board,-

(a) all the members of the Board shall, as from the date of supersession, vacate their offices as members of the Board;

(b) all powers and duties which may, by or under the provisions of this Act or of any other law, be exercised or performed by or on behalf of the Board, shall until the Board is reconstituted under clause(b) or clause(c) of sub-section(3) be exercised and performed by such person or persons as the Government may direct;

(c) all property vested in the Board shall, until the Board is reconstituted under clause(b) or clause(c) of sub-section(3), vest in the Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Government may,-

(a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or

(b) reconstitute the Board by fresh appointment and in such case, any person who vacated their offices under clause(a) of sub-section (2) shall not be deemed disqualified for appointment; or

(c) reconstitute the Board by appointment only for such period as it may consider necessary and in such a case the persons who vacated their offices under clause(a) of sub-section(2) shall not be deemed disqualified for such appointment merely because they were members of the Board when the Board was superseded:

Provided that the Government may, at any time before the expiration of the period of supersession, whether as originally specified under sub-section (1) or as extended under this sub-section, take action under clause (b) or clause (c) of this sub-section.

(4) The Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before the State Legislature at the earliest possible opportunity.

95. Power of Government to give directions to Board.- (1) Government may give direction to the Board in writing to it from time to time:

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

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

CHAPTER - X

PENALTIES ETC

96. Persons employed under this Act to be public servants for certain purposes.- Every person employed by the Board under this Act shall, for the purposes of sections 166 to 171 (both inclusive), 184, 185 and 409 of the Indian Penal Code, 1860, and for the purposes of the Prevention of Corruption Act, 1988 be deemed to be a public servant within the meaning of section 21 of the said Code.

97. Penalty for contravention of sections 27, 28, 29 and 31.- Whoever contravenes the provisions of any order issued under section 27 or section 28 or section 29 or fails to comply with any conditions imposed under section 31 shall be punishable with fine which may extend to ten thousand rupees and where the contravention or failure is a continuing one with further fine which may extend to Five hundred rupees for every day after the first during which such contravention or failure continues.

98. Penalty for setting up wharves, quays, etc., without permission.- Any person who contravenes the provisions of section 35 shall be punishable with fine which may extend to Five thousand rupees for the first contravention, and with a further fine which may extend to Five hundred rupees for every day after the first during which the contravention continues.

99. Penalty for evading rates etc..- Any person who with the intention of evading payment to the Board of the rates lawfully due in respect of any goods or vessels carrying any goods,-

(a) understates or incorrectly gives the weight, quantity, value or description of such goods, or the tonnage of such vessel in any document presented to any employee of the Board for the purpose of enabling him to determine such rates; or

(b) removes or attempts to remove or abets the removal of such goods or such vessel;

shall be punishable with fine which may extend to twice the amount of rates so due subject to a minimum of five hundred rupees.

100. Recovery of value or damage to property of Board.- If, through the negligence of any person having the guidance or command of any vessel, or of any of mariners or persons employed on such vessel, any damage is caused to any dock, wharf, quay, mooring, stage, jetty, pier or other work in the possession of the Board or any movable property belonging to the Board the amount of such

damage shall, on the application of the Board be recoverable together with the cost of such recovery, by distress and sale under a Magistrate's warrant, of a sufficient portion of the boats, masts, spares, ropes, cables, anchors or stores belonging to such vessel:

Provided that no Magistrate shall issue such a warrant until the master of the vessel has been duly summoned to appear before him and, if he appears, until he has been heard; and provided also that no such warrant shall be issued if the vessel was at the time under the orders of a duly authorized employees of the Board and the damage caused was attributable to the order, act or improper omission of such employee.

101. Person interested in contracts, etc., with the Board to be deemed to have committed an offence under section 168 of the Indian Penal Code.- Any person who, being a member or an employee of the Board, acquires, directly or indirectly, any share or interest in any contract or employment with, by or on behalf of the Board, shall be deemed to have committed an offence under section 168 of the Indian Penal Code, 1860:

Provided that nothing in this section shall apply to a person who is deemed not to have a share or interest in any contract or employment under the proviso to clause (d) of section 4.

102. Other offences.- Any person who contravenes any of the provisions of this Act or of any rule, regulation or order made thereunder for the contravention of which no penalty is expressly provided thereunder, shall be punishable with fine which may extend to one thousand rupees.

103. Cognizance of offences.- No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence punishable under this Act or any rule or regulation made thereunder.

104. Offence by companies.- (1) If the person committing an offence under this Act is a company, every person who, at the time of the offence was committed was in charge of, and was responsible to the company for the conduct of business of 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 accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), 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 that the commission of the offence is attributable to any negligence on the part of any director, manager, Secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section,-

(a) "Company" means a 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.

CHAPTER - XI MISCELLANEOUS

105. Constitution of State Ports Consultative Committee.- (1) The Government may, by notification, in the official Gazette, constitute a State Ports Consultative Committee consisting of members of the Board and such other persons, being not less than ten and not more than twenty as the Government may appoint from amongst persons who are, in the opinion of the Government, capable of representing the interest of the Chamber of Commerce, Shipping, Sailing, Vessels, Customs, Railways, Road Transport, Labour, Communications Fisheries and Industries, expertise in Harbour Engineering, Hydrographic Survey, Maritime Research Organizations, Model Studies, Port Users Association however that, there shall be at least one member from each of the aforesaid interests.

(2) The Chairman of the Board shall also be the Chairman of the Committee.

(3) The Chief Executive Officer of the Board as the Government may appoint in this behalf shall act as Secretary to the Committee.

(4) The functions of the Committee as so constituted shall be as under:-

(a) to advise the Board on all general questions pertaining to the ports; Inland Water Transport and Ferries and **Coastal protection**;

(b) to advise the Board in respect of any scheme pertaining to development of any port; Inland Water Transport and Ferries and **Coastal protection**;

(c) to review the administration of ports Inland Water Transport and Ferries and Coastal protection. and to suggest ways and means of improving their work;

(d) to suggest ways and means to remove any difficulty experienced by the Board in its administration of ports; Inland Water Transport and Ferries and **Coastal protection**;

(e) to make suo-moto recommendation to the Board in regard to any matter relating to administration of the ports; Inland Water Transport and Ferries and **Coastal protection**

(f) to report to the Government or as the case may be, the Board on such matters as may be referred to it either by the Government or the Board for its opinion.

(5) The Government may by general or special order provide for,-

(a) the calling of the meetings of the Committee and procedure of meetings;

(b) duties of the Secretary of the Committee;

(c) the term of the office of persons appointed to be the members of the Committee to represent any of the aforesaid interests, travelling allowance and daily allowance to the members of the Committee and rate thereof.

(6) Any person appointed to the Committee to represent any of the aforesaid interests may resign from the membership by tendering his resignation in writing to the Chairman and the resignation shall take effect from the date on which it is received by the Chairman who shall give intimation of the vacancy to the Government.

106. Local Advisory Committee.- (1) The Government may from time to time constitute for such ports as it may determine Local Advisory Committees, consisting of such number of persons as it may think fit in each case and on such terms and conditions as may be prescribed.

(2) The Board may, if it thinks fit, consult the Local Advisory Committee concerned on any business coming before it, and shall do so in respect of such business as the Government may, by general or special order in this behalf, specify or when required by the regulations so to do.

(3) The concerned Port Officer shall be the ex-officio Chairman of a Local Advisory Committee.

(4) Local Advisory Committees shall meet at such intervals as may be prescribed, and for the transaction of urgent business on such other occasions as the Chairperson of the Board may require.

(5) The number of members necessary to constitute a quorum at a meeting of a Local Advisory Committee shall as the Government when constituting the committee may specify.

107. Limitation of proceedings in respect of things done under this Act.- No suit or other proceedings shall be commenced against the Board or any member officer or employee thereof for anything done, or purporting to have been done in pursuance of this Act, until the expiration of one month after notice in writing has been given to the Board or him stating the cause of action, or after six months from accrual of the cause of action.

108. Protection of action done in good faith.- No suit or other legal proceeding shall lie against the Board or any member or employee thereof in respect of anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder, or for any damage sustained by any vessel in consequence of any defect in any of the mooring, hawsers or other things belonging to or under the control of the Board.

109. Power of the Government to make rules.- (1) The Government may, by notification, in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may be made, for all or any of the following matters, namely:-

(a) fees and allowances payable to the members of the Board or any of its committees for attending meetings of the Board or its committee or for attending any work of the Board, under section 12;

(b) the terms and conditions of service of Chief Executive Officer

(c) the authority competent to appoint other members of the staff of the Board;

(d) the recruitment, remuneration and allowance and other conditions of service including disciplinary matter of other members of the staff of the Board;

(e) the mode of executing contracts under section 24;

(f) factors to be taken into consideration for determining fair and reasonable compensation under sub-section (3) of section 36;

(g) the terms and conditions of appointment of persons as member of a Local Advisory Committee under sub-section(1) of section 106; and

(h) the terms and conditions on which the Board with the previous sanction of the Government, may raise loans under sub- section (1) of section 54;

(i) any other matter which is to be or may be prescribed by rules.

(3) all rules made under this Act shall be subject to the condition of previous publication:

Provided that if the Government is satisfied that circumstances exist which render it necessary to make immediate action ,it may dispense with previous publication of any rule to be made under this section;

(4) Every rule made by the Government under this Act shall be laid as soon as may be after it is made, before each House of the State Legislature, 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 immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule 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 rule.

110. General power to make regulation.- The Board may make regulations with previous approval of the Government, not inconsistent with this Act and the rules with respect to all, or any of the following matters, namely:-

(1) the time and places of the meetings of the Board or its committees, the procedure to be followed for the transaction of business at such meetings and the number of members necessary to constitute a quorum at such meetings;

(2) the form of receipt to be given under sub-section (2) of section 32;

(3) the period within which notice may be given under sub-section (2) of section 33;

(4) the guidance of persons employed by the Board under this Act;

(5) the safe efficient and convenient use, management and control of the docks, wharves, quays, jetties, buildings and other works constructed or acquired by, or vested in, the Board, or of any land or foreshore acquired by or vested in the Board under this Act;

(6) the reception, portorage, storage and removal of goods brought within the premises of the Board for the exclusive conduct of these operations by the Board or persons employed by the Board, and for declaring the procedure to be followed for taking charge of goods which may have been damaged before landing, or may be alleged to have been so damaged;

(7) keeping clean the port, river or basins or the bank of the river and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon;

(8) the mode of payment of rates leviable by the Board under this Act;

(9) regulating, declaring and defining the docks, wharves, quays, jetties, stages and piers vested in the Board on which goods shall be landed from vessels and shipped on board vessels;

(10) regulating the manner in which and the conditions under which, the loading and unloading of all vessels within the port or port approaches shall be carried out;

(11) regulating the lighter age of cargo between ships or between ships and shore or between shore and ships;

(12) the exclusion from the premises of the Board of disorderly or other undesirable persons and of trespassers;

(13) ensuring the safety of the port;

(14) generally for the efficient and proper administration of the ports;

(15) the person, if any authorized to sign and the model of affixing the corporate seal and of attestation of documents relating to Board securities issued or to be issued by the Board;

(16) the manner in which payment of interest in respect of such Board securities is to be made, recorded and acknowledged;

(17) the circumstances and the manner in which Board securities may be renewed;

(18) the circumstances in which such securities must be renewed before further payment of interest thereon can be claimed;

(19) the form in which such securities delivered for renewal, conversion, consolidation or sub-division are to be receipted;

(20) the proof which is to be produced by a person applying for duplicate securities;

(21) the nature and amount of indemnity to be given by a person applying for the payment of interest in the Board securities alleged to have been wholly or partly lost, stolen or destroyed or for the issue of duplicate Board securities;

(22) the conditions subject to which Board securities may be converted consolidated or sub-divided;

(23) the amounts for which stock certificate may be issued;

(24) generally all matters connected with a grant of duplicate, renewed, converted, consolidated and sub-divided board securities;

(25) the fees to be paid in respect of the issue of duplicate securities and of the renewal, conversion, consolidation and sub-division of Board securities;

(26) the fees to be levied in respect of the issue of stock certificate;

(27) the terms and conditions of service of persons who become employees of the Board under section 18 and 19;

(28) any other which is incidental to or necessary for the purpose of regulating the appointment and conditions of service of its employees;

(29) any other matter which is to be, or may be specified by regulations.

111. Provisions with respect to regulations.- (1) No regulation made by the Board under this Act shall have effect until the same has been published by the Board in the official Gazette.

(2) Any regulation made under this Act may provide that a breach thereof shall be punishable with fine which may extend to Five hundred rupees and where the breach is a continuing one, with further fine which may extend to one hundred rupees for every day after the first during which such breach continues.

112. Power of Government to direct regulations to be made or to make regulations.- (1) Whenever the Government considers necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefore, direct the Board to make any regulations for all or any of the matters specified in section 110 or to amend any regulations, within such period as the Government may specify in this behalf:

Provided that the Government may extend the period specified by it by such period or periods as it may consider necessary.

(2) If the Board, to whom a direction is issued by the Government under sub-section(1), fails or neglects to comply with such directions within the period allowed under sub-section(1), the Government may make the regulations or amend the regulations, as the case may be, either in the form specified in the direction or with such modification thereof as the Government may think fit:

Provided that before so making or amending the regulations the Government shall consider any objection or suggestion made by the Board within the said period.

(3) Where in pursuance of sub-section (2) any regulations have been made or amended, the regulations so made or amended shall be published by the Government in the official Gazette and shall thereupon have effect accordingly.

113. Power of Government to make first regulations.- Notwithstanding anything contained in this Act, the first regulations under this Act shall be made by the Government and shall have effect on being published in the official Gazette.

114. Power of the Government to limit regulatory functions of the Board.- Notwithstanding anything contained in this Act, the regulatory functions and powers of the board may be curtailed or ceded to a regulatory authority through an amendment to this act and or through an enactment of law.

115. Posting of certain regulations, etc.- The text of the regulations made under clauses (4) to (13) of section 110 and the scale of rates together with a statement of conditions framed by the Board under Chapter VI shall be prominently posted by the Board in English and in Kannada on special boards to be maintained for the purposes at the wharves, docks, piers and other convenient places on the premises of the Board.

116. Saving of right of Government and municipal Council to use wharves, etc., for collection of duties and power of Customs officer.- Nothing in this Act shall affect, the right of the Central Government to collect customs, duties or of any municipal Council to collect any tax or duties at any dock, berth, wharf, quay, stage, jetty or pier in the possession of the Board or any power of authority vested in the customs authorities under any law for the time being in force.

117. Application of provisions of Act to aircraft.- The provisions of this Act shall also apply to all air crafts making use of any port while on water in the same manner as they apply in relation to vessels.

118. Power to remove difficulties.- (1) If any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactment repealed by this Act to the provisions of this Act the Government may, by general or special order, do anything not

inconsistent with such provisions which appears to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made in respect of a port after the expiry of a period of two years from the appointed day.

(2) Every order made under sub-section (1) shall as soon as may be after it is made, be laid before the State Legislature.

119. Repeal and savings.- On the application of this Act to any port, the Karnataka Ports (Landing and Shipping Fees) Act, 1961(Karnataka Act 20 of 1961) and the Karnataka Harbour Craft Rules, 1963 shall stand repealed in relation to that port:

Provided that such repeal shall not affect,-

(a) the previous operation of the Act so repealed, or anything duly done or suffered thereunder;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act, so repealed;

(c) any penalty, forfeiture, or punishment incurred in respect of any offence committed under the Act so repealed; or

(d) any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture and punishment may be imposed, as if this Act had not been passed:

Provided further that, subject to the preceding proviso, anything done or any action taken under the repealed Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.

By Order and in the name of the Governor of Karnataka

K. DWARAKNATH BABU
Secretary to Government,
Department of Parliamentary Affairs