

The Major Port Trusts Act, 1963

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Act 38 of 1963

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The Major Port Trusts Act, 1963(38 OF 1963)

15.

/716Statement of Objects and Reasons.-At present, there are six major ports in the country, namely, Calcutta, Bombay, Madras, Visakhapatnam, Cochin and Kandla. The first three ports are administered by Port Trusts while the other three are administered direct by the Government of India.2. The Port Trusts at the three major ports of Calcutta, Bombay and Madras are statutory bodies. They consist of a Chairman (and a Deputy Chairman of Calcutta) appointed by the Central Government, elected representatives of commercial, shipping and trade interests, representatives of Central Government Departments concerned with the working of the port, i.e., Customs, Defence and Railways, representatives of the State Government and the local Municipal Corporations or Municipalities concerned and the representatives of labour employed in the port. The Port Trusts administer the ports subject to the control of Central Government in respect of certain specified matters only for example, creation of, and appointment to, certain senior posts, acquisition and sale of immovable property, fixation of rates and charges, floating loans, annual budgets etc.3. The remaining three major ports of Visakhapatnam, Cochin and Kandla are under the immediate charge of a Port Administrative Officer appointed by the Central Government who has been vested with powers similar to those of a Head of a Department. These powers are limited in nature and the Port Administrative Officer has, therefore, to obtain the orders of the Central Government on many matters which would normally be disposed of at local level in the Port Trusts. Commercial and trade interests, especially at Visakhapatnam and Cochin, have also been agitating for some time that they should have a direct voice in the administration of those ports.4. In the circumstances and in view of the fact that statutory Port Trusts have successfully administered the three older ports of Calcutta, Bombay and Madras for many years, it is proposed to constitute Port Trusts at Visakhapatnam,

Cochin and Kandla also. Provision has also been made for the extension of the Act, by notification, to any other port which may be declared as a major port in future. The Bill seeks to give effect to these proposals. Notes on Clauses explain in detail the various provisions of the Bill. Amendment Act 29 of 1974-Statement of Objects and Reasons.-At present the ports of Bombay, Calcutta and Madras are governed by the Bombay Port Trusts Act, 1879, the Calcutta Port Act, 1890 and the Madras Port Trust Act, 1905, respectively. The remaining ports of Visakhapatnam, Paradip, Cochin, Mormugao and Kandla are governed by the Major Port Trusts Act, 1963. The Commission on Major Ports constituted by the Government of India in 1968 to make a comprehensive study of the Major Ports in the country observed that the Acts governing the ports of Bombay, Calcutta and Madras have become out of date and that it is advisable to bring about a measure of uniformity for the governance of all major ports by making the Act of 1963 applicable to the three ports also, Government have accepted this recommendation. It is, therefore, proposed to apply the Major Port Trusts Act, 1963 to the three ports of Bombay, Calcutta and Madras. 2. Opportunity is being availed of to amend some of the provisions of the Major Port Trusts Act, 1963, in the light of the experience gained in the administration of that Act and to give effect to certain recommendations of the Major Ports Commission accepted by Government. 3. The Bill seeks to achieve the above objects. Amendment Act 17 of 1982-Statement of Objects and Reasons.-The Major Port Trusts Act, 1963 provides for the constitution of Port Trusts for major ports in India and for the vesting of the administration, control and management of such ports in such Port Trusts. In the light of the working of the Act, the difficulties felt by the Port Trusts and the present day conditions, it is considered necessary to make certain amendments to the Act. 2. The following are the main amendments proposed in the Bill:-(a) Power is being taken to have more than one Deputy Chairman for a Board. Such a provision is particularly necessary in cases where a major port is formed by combining two or more ports (vide clause 3). (b) Provision is being made for the appointment of a person who is not a Trustee to be a member of a committee of a Board. This is for enabling specialists to be included in such committees (vide clause 5). (c) Section 25 of the Act relating to the powers of the Chairman of a Board to grant leave, to suspend or to remove employees of a Board is being enlarged to cover compulsory retirement of an employee (vide clauses 8 and 10). (d) The rates of charges under section 39 of the Act and the limits of penalties by way of fine under sections 113, 114 and 115 of the Act are being enhanced to make the provisions more deterrent (vide clauses 12, 16, 17 and 18). (e) Sub-section (1) of section 49 of the Act is being amended to enable a Board to lease any land or shed belonging to it or in its possession or occupation at a rate higher than that prescribed under the said sub-section in cases where such lease is by auction or by inviting tenders (vide clause 13). (f) Proviso to section 96(1) of the Act relating to the limits in excess of which any loss cannot be written off by a Board without the approval of the Central Government is being modified to empower the Central Government itself to fix such limits from time to time by order. Amendment Act 12 of 1988-Statement of Objects and Reasons.-Sub-section (2) of section 88 of the Major Port Trusts Act, 1963, inter alia, provides that the 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 be deposited in the State Bank of India or a scheduled bank or banks or invested in public securities or such other securities as the Central Government may approve in this behalf. However, there is no provision in this section whereby the surplus moneys standing at the credit of a Board can be given as loans to the Board of another port. Further, the concept of pooling of resources of all ports for port development is a part of the accepted national policy. In the

Approach Paper to the Seventh Five Year Plan 1985-90; which was approved by the National Development Council and also presented to Parliament, it has been stated that the resources of all ports should be pooled for the development of the port sector. This policy has been reiterated in the Seventh Five Year Plan Document 1985-90. All the ports are not equally placed so far as generation of surplus funds is concerned and some ports are more advantageously placed than the others. It has, therefore, become a matter of necessity that the Central Government, being in charge of all the major ports, should have the authority to pool the resources of all the major ports and deploy surplus funds in the development of ports and deploy surplus funds in the development of ports all over India. In order to give effect to this policy, it is necessary to amend suitably section 88 of the Major Port Trusts Act, 1963 so as to provide that surplus funds standing at the credit of ports can be deployed subject to the general or special directions of the Central Government which may be given for the purpose of maintenance or development of major ports in the country or generally for the development of shipping and navigation. As it was urgently necessary to divert some funds to the Board of a new major port trust, an Ordinance was promulgated by the President on the 28th January, 1988 to amend the Major Port Trusts Act, 1963 and for certain other consequential amendments. The Bill seeks to replace the aforesaid Ordinance. [16th October, 1963] An Act to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith. Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:-

Brought into force on 29.2.1964.

Chapter I

Preliminary

1. Short title, commencement and application .-(1) This Act may be called The Major Port Trusts Act, 1963.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. (3) It applies in the first instance to the major ports of Cochin, Kandla and Visakhapatnam, and the Central Government may, by [notification] in the Official Gazette, apply to the provisions of this Act to such other major port [* * *] [The words " (not being the major port of Bombay, Calcutta or Madras)" omitted by Act 29 of 1974, Section 2 (w.e.f. 1.2.1975).] and with effect from such date, as may be specified in the notification.

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

(a) "appointed day", in relation to a port, means the date on which this Act is made applicable to that port; (aa) ["Authority" means the Tariff Authority for Major Ports constituted under section 47-A;] (b) "Board", in relation to a port, means the Board of Trustees constituted under this Act for that port; (c) "Chairman" means the Chairman of a Board and includes the person appointed to act in his place under section 14; (d) "Collector of Customs" has the same meaning as in the Customs Act, 1962; (e) "Deputy Chairman" means [the Deputy Chairman, or, as the case may be, a Deputy

Chairman of a Board] [Substituted by Act 17 of 1982, Section 2, for " the Deputy Chairman of a Board" (w.e.f. 31.5.1982).] and includes the person appointed to act in his place under section 14;(f)"dock" includes all basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, slipways, gridirons, moorings, transit-sheds, warehouses, tramways, railways and other works and things appertaining to any dock, and also the portion of the sea enclosed or protected by the arms or groynes of a harbour;(g)"foreshore", in relation to a port, means the area between the high-water mark and the low-water mark relating to that port;(h)"goods" includes livestock and every kind of movable property;(i)"high-water mark", in relation to a port, means a line drawn through the highest points reached by ordinary springtides at any season of the year at the port;[Inserted by Act 29 of 1974, Section 3 (w.e.f. 1.2.1975).](ia)["immovable property" includes wharfage-rights and all other rights exercisable on, over, or in respect of any land, wharf, dock or pier;](j)"Indian Ports Act" means the Indian Ports Act, 1908 (15 of 1908);(k)"land" includes the bed of the sea or river below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth;(l)"low-water mark", in relation to a port, means a line drawn through the lowest points reached by ordinary springtides at any season of the year at that port;(m)"major port" has the same meaning as in the Indian Ports Act;(n)"master", in relation to any vessel or any aircraft making use of any port, means any person having for the time being the charge or control of such vessel or such aircraft, as the case may be, except a pilot, harbour master, assistant harbour master, dock master or berthing master of the port;(o)"owner", (i) in relation to goods, includes any consignor, consignee, shipper or agent for the sale, custody, loading or unloading of such goods; and (ii) in relation to any vessel or any aircraft making use of any port, includes any part-owner, charter, consignee or mortgagee in possession thereof;(p)"pier" includes any stage, stairs, landing place, hard, jetty, floating barge [, transhipper] [Inserted by Act 17 of 1982, Section 2 (w.e.f. 31.5.1982).] or pontoon, and any bridges or other works connected therewith.[Explanation.-For the purposes of this clause, "transhipper" means a floating craft or vessel, whether dumb or self-propelled, on which gears are provided for discharging cargo from a barge or wharf and loading it into a ship;] [Inserted by Act 17 of 1982, Section 2 (w.e.f. 31.5.1982).](q)"port" means any major port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act;(r)"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 is in force;(s)"Port Trust security" means debentures, bonds or stocks certificates issued by a Board in respect of any loan contracted by it under the provisions of this Act or issued by any other authority for the payment of which the Board is liable under this Act;(t)"prescribed" means prescribed by rules or regulations made under this Act;(u)"public securities" means-(i)promissory notes, debentures, stocks or other securities of the Central Government or of any State Government:Provided that securities, both the principal whereof and the interest whereon have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause, to be securities of such Government;(ii)debentures or other securities for money issued by or on behalf of any municipal body, Improvement Trust or Port Trust under the authority of any law for the time being in force in India (including the Port Trust securities);(v)"rate" includes any toll, due, rent, rate, fee or charge leviable under this Act;(w)"regulations" means regulations made under this Act;(x)"rules" means rules made by the

Central Government under this Act;(y)"Trustee", in relation to a port, means a member of the Board constituted for the port;(z)["vessel" includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson;] [Substituted by Act 29 of 1974, Section 3, for Clause (z) (w.e.f. 1.2.1975).](za)"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

Board Of Trustees And Committees Thereof

3. Constitution of Board of Trustees .-(1) With effect from such date as may be specified by notification in the Official Gazette, the Central Government shall cause to be constituted in respect of any major port a Board of Trustees to be called the Board of Trustees of that port, which shall consist of the following Trustees, namely:-

(a)a Chairman to be appointed by the Central Government;(b)[one Deputy Chairman or more, as the Central Government may deem fit to appoint;](c)[not more than nineteen persons in the case of each of the ports of Bombay, Calcutta and Madras and not more than seventeen persons in the case of any other port who shall consist of- [Substituted by Act 29 of 1974, Section 4, for Clauses (c) and (d) (w.e.f. 1.2.1975).](i)such number of persons, as the Central Government may, from time to time, by notification in the Official Gazette, specify, to be appointed by that Government from amongst persons who are in its opinion capable of representing any one or more of such of the following interests as may be specified in the notification, namely:- (1)labour employed in the Port;(2)the Mercantile Marine Department;(3)the Customs Department;(4)the Government of the State in which the port is situated;(5)the Defence Services;(6)the Indian Railways; and(7)such other interests as, in the opinion of the Central Government, ought to be represented on the Board:Provided that before appointing any person to represent the labour employed in the port, the Central Government shall obtain the opinion of the trade unions, if any, composed of persons employed in the port and registered under the Trade Unions Act, 1926 (16 of 1926), and that the number of persons so appointed shall not be less than two;(ii)such number of persons, as the Central Government may, from time to time, by notification in the Official Gazette, specify, to be elected by such bodies and representing any one or more of such of the following interests as may be specified in the notification from among themselves, namely:- (1)ship owners;(2)owners of sailing vessels;(3)shippers; and(4)such other interests as, in the opinion of the Central Government, ought to be represented on the Board:Provided that in a case where any such body is an undertaking owned or controlled by the Government, the person to be elected by such body shall be appointed by the Central Government.](2)A Trustee appointed by the Central Government under this Act may be appointed by name or by virtue of office.(3)Every notification issued under [sub-clause (ii) of clause (c) of sub-section (1)] [Substituted by Act 29 of 1974, Section 4, for " Clause (d) of sub-Section (1)" (w.e.f. 1.2.1975).] may also specify the number of Trustees that each of the bodies referred to in that clause may elect.(4)The election of Trustees under [sub-clause (ii) of clause (c) of sub-section (1)]

[Substituted by Act 29 of 1974, Section 4, for " Clause (d) of sub-Section (1)" (w.e.f. 1.2.1975).] shall be held within such period as may, from time to time, be specified by the Central Government.(5)The chief executive authority of every electing body shall communicate forthwith to the Central Government the result of any election held in pursuance of sub-section (4).(6)The names of persons appointed or elected as Trustees shall be notified by the Central Government in the Official Gazette.

4. First Board of Trustees .-(1) Notwithstanding anything contained in section 3, the Central Government may, by notification in the Official Gazette, constitute in respect of any major port the first Board of Trustees thereof consisting of-

(a)a Chairman to be appointed by the Central Government;(b)a Deputy Chairman, if the Central Government deems fit to appoint one; and(c)such number of other Trustees, [not exceeding seventeen], as that Government may deem expedient, to be appointed by that Government from amongst persons who are in its opinion capable of representing,-(i)labour employed in the port;(ii)Government of the State in which the port is situated;(iii)Government departments specified [in sub-clause (i) of clause (c)] [Substituted by Act 29 of 1974, Section 5, for " in sub-clauses (ii), (iii), (v) and (vi) of clause (c)" (w.e.f. 1.2.1975).] of sub-section (1) of section 3; and(iv)such other interests as, in the opinion of the Central Government, ought to be represented on the Board.(2)Subject to the provisions of sub-section (3), the persons appointed as Trustees under sub-section (1) shall hold office during the pleasure of the Central Government.(3)On the constitution of the Board under section 3, the first Board of Trustees shall cease to exist.

5. Board to be body corporate .-Every Board constituted under this Act shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property and may by the name by which it is constituted, sue or be sued.

6. Disqualification for office of Trustee .-A person shall be disqualified for being chosen as a Trustee, if he-

(a)has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or(b)is an undischarged insolvent; or(c)holds any office of profit under the Board:[Provided that this disqualification shall not apply to the Chairman, Deputy Chairman or a Trustee who has been appointed to represent the labour employed in the port or appointed by virtue of office as officer or member of an association formed for the purpose of promoting the interests or welfare of any class of employees of the Board;](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 a 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 any lease, sale, exchange or purchase of immovable property or any agreement for the same, or(v)having a share or interest in any licence by the Board, or right by agreement or otherwise with the Board to the sole or preferential use of any railway siding or any berth for vessels in the docks belonging to the Board, or(vi)having a share or interest in the occasional sale to the Board, to a value not exceeding ten thousand rupees in any one financial year, of any article in which he trades.

7. Term of office of Trustees .-(1) The Chairman and the Deputy Chairman shall hold office during the pleasure of the Central Government.

(2)Subject to the provisions of this Act,-(a)every person elected or appointed by name to be a Trustee shall hold office to which he is elected or so appointed, for a term of two years commencing on the 1st day of April next following his election or appointment, as the case may be:Provided that the term of office of a member elected to represent any body of persons shall come to an end as soon as he ceases to be a member of that body;(b)a person appointed by virtue of an office to be a Trustee shall, until the Central Government by notification in the Official Gazette otherwise directs, continue to be a Trustee so long as he continues to hold that office.

8. Vacation of office of Trustees .-(1) The Central Government shall remove a Trustee if he-

(a)becomes subject to any of the disqualifications mentioned in section 6; or(aa)[has, in the opinion of the Central Government, ceased to represent the interest by virtue of which he was appointed or elected; or](b)refuses to act or becomes incapable of acting; or(c)is, without the permission of the Board previously obtained, absent from six consecutive ordinary meetings of the Board; or(d)is absent from the meetings of the Board for a period exceeding six consecutive months; or(e)acts in contravention of the provisions of section 19.(2)A Trustee may resign his office by giving notice in writing to the Chairman who shall forward the same to the Central Government, and on such resignation being accepted by that Government, he shall be deemed to have vacated his office.

9. Eligibility of Trustee for re-appointment or re-election .-Any person ceasing to be a Trustee shall, unless disqualified under section 6, be eligible for re-appointment or re-election.

10. Filling of vacancies in office of Trustee .-(1) In the case of a vacancy in the office of a Trustee appointed by name or an elective Trustee caused by the expiration of the term of office of such Trustee, the appointment to fill such vacancy shall be made or an election to fill such vacancy shall be completed, as the case may be, within two months immediately preceding the date of expiration of such term.

(2) In the case of a vacancy in the office of a Trustee appointed by the Central Government by virtue of an office, the appointment to fill such vacancy shall be made within one month of the occurrence of such vacancy. (3) In the case of a casual vacancy in the office of a Trustee appointed by name or an elective Trustee caused by the death of such Trustee or by virtue of the provisions of section 8, such vacancy shall be filled within one month of the occurrence thereof by appointment or election, as the case may be, in the manner hereinbefore specified: Provided that the Trustee so appointed or elected shall retain his office so long only as the vacating Trustee shall have retained the same if such vacancy had not occurred: Provided further that no such casual vacancy occurring within three months of the date of expiry of the normal term of office of the vacating Trustee shall be filled up under this sub-section.

11. Saving provision for appointment of Trustee by Central Government after prescribed period .-Nothing in the foregoing provisions shall prevent a person being appointed by the Central Government to fill any vacancy in the office of a Trustee appointed by the Central Government after the expiration of the period specified in section 10, if for any reason it has not been possible for the Central Government to make the appointment within the said period.

12. Power of Central Government to extend time for election or appoint Trustees in default of election .-(1) If the Central Government is satisfied that an electing body has failed to elect a Trustee within the period specified therefor in sub-section (4) of section 3 or section 10 for reasons beyond its control, the Central Government may, by notification in the Official Gazette, direct that the election shall be held on or before such date as may be specified in the notification.

(2) In the event of default being made in electing any Trustee within the period specified therefor under sub-section (4) of section 3 or under section 10, or as the case may be, on or before the date specified in the notification issued under sub-section (1), it shall be lawful for the Central Government to appoint a person by notification in the Official Gazette and the person so appointed shall be deemed to be an elective Trustee.

13. Term of office in case of certain Trustees .-Where a Trustee is appointed under section 11 or under sub-section (2) of section 12 or elected in pursuance of a direction issued under sub-section (1) of section 12, the term of office of such Trustee shall commence on the date on which his appointment or election, as the case may be, is notified in the Official Gazette and shall expire on the date on which his term of office would have expired if his appointment or election had been made within the period specified under

section 10, or, as the case may be, under sub-section (4) of section 3.

14. Absence of Chairman and Deputy Chairman .-If the Chairman or the Deputy Chairman is, by infirmity or otherwise, rendered incapable of carrying out his duties or is absent on leave or otherwise, in circumstances not involving the vacation of his appointment, or is sent on deputation outside India for any of the purposes of this Act, the Central Government may appoint another person to act in his place during his absence:

Provided that the Chairman or the Deputy Chairman, while on deputation outside India, may, if the Central Government by order so directs and subject to such conditions and restrictions as may be specified in that order, exercise such of the powers and perform such of the duties conferred or imposed on the Chairman or the Deputy Chairman, as the case may be, by or under this Act as he may deem necessary, and the Chairman or Deputy Chairman while exercising such powers and performing such duties shall be deemed to be a Trustee notwithstanding anything to the contrary contained in this Act.[14-A. Acting Chairman or Deputy Chairman.-The Central Government may, pending the consideration of the question as to who may be appointed as Chairman or Deputy Chairman of a Board under section 3 or section 4, appoint a person to be the acting Chairman or Deputy Chairman thereof and notify his name in the Official Gazette and the person so appointed shall, until the Central Government by notification in the Official Gazette otherwise directs, be deemed for the purposes of this Act to be the Chairman or Deputy Chairman of such Board appointed under section 3 or section 4, as the case may be.]

15. Conditions of service of Chairman and Deputy Chairman .-The Chairman and the Deputy Chairman shall be paid such salary and be governed by such terms and conditions of service as may, from time to time, be determined by the Central Government.

16. Meetings of Board .-(1) A Board shall meet at such times and places and shall, subject to the provisions of sub-sections (2), (3) and (4), observe such rules of procedure in regard to the transaction of business at its meeting as may be provided by rules made under this Act.

(2)The Chairman or, in his absence, the Deputy Chairman, and in the absence of both, any person chosen by the Trustees present from among themselves, shall preside at meetings of the Board.(3)All questions at a meeting of the Board shall be decided by a majority of the votes of the Trustees present and voting and, in the case of an equality of votes, the person presiding shall have a second or casting vote.(4)No business shall be transacted at any meeting of the Board unless not less than five Trustees are present throughout such meeting.

17. Committees of Board .-(1) A Board may, from time to time, constitute from amongst the Trustees one or more committees, each consisting of such number as the Board may consider necessary, for the purpose of discharging such of its functions as may be delegated to such committee or committees by the Board.

[(1-A) Notwithstanding anything contained in sub-section (1) or any other provision of this Act, the Board may appoint a person who is not a Trustee to be a member of any committee constituted under that sub-section and a person so appointed shall, for the purpose of the discharge of his functions as such member, be deemed to be a Trustee.](2)A committee constituted under this section shall meet at such time and at such places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum) as may be provided by regulations made under this Act.

18. Fees and allowances payable to Trustees .- [(1)] The Trustees shall be paid by the Board such fees and allowances for attending the meetings of the Board or of any of its committees and for attending to any other work of the Board as may be provided by rules made under this Act:

Provided that no fees shall be payable to the Chairman, Deputy Chairman or any other Trustee who is a servant of the Government.(2)[A member of a committee appointed under sub-section (1-A) of section 17 shall be paid the same fees and allowances for attending the meetings of the committee and for attending to any other work of the Board as are payable to a Trustee under sub-section (1):Provided that the Board may, with the prior approval of the Central Government, pay to any such member fees and allowances at a rate higher than that provided in the case of Trustees.] [Section 18 renumbered as sub-Section (1) thereof and sub-Section (2) inserted by Act 17 of 1982, Section 6 (w.e.f. 31.5.1982).]

19. Restriction of power of Trustees to vote in certain cases .-No Trustee shall vote or take part in the discussion of any matter coming up for consideration at a meeting of the Board or any of its committees if the matter is one in which he has any direct or indirect pecuniary interest by himself or his partner, or in which he 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 (16 of 1926), or other than an officer or member of an association formed for the purpose of promoting the interests or welfare of any class of employees of the Board] [Substituted by Act 29 of 1974, Section 8, for " the Indian Trade Union Act, 1926 (16 of 1926)" (w.e.f. 1.2.1975).].

20. Defects in appointments or election not to invalidate acts, etc .-No act or proceeding of a 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 defect in the election or appointment of a person as a member thereof, or(c)any Trustee having acted or taken part in any proceedings in contravention of section 19, or(d)any irregularity in its procedure not affecting merits of the case.

21. Delegation of powers .-A Board may, with the approval of the Central Government, specify-

(a)the powers and duties conferred or imposed upon the Board by or under this Act, which may also be exercised or performed by the Chairman; and(b)the powers and duties conferred or imposed on the Chairman by or under this Act, which may also be exercised or performed by the Deputy Chairman or any officer of the Board and the conditions and restrictions, if any, subject to which such powers and duties may be exercised and performed:-Provided that any powers and duties conferred or imposed upon the Deputy Chairman or any officer of the Board under clause (b) shall be exercised and performed by him subject to the supervision and control of the Chairman.

22. Duties of Chairman and Deputy Chairman .-(1) It shall be the duty of the Chairman and the Deputy Chairman to attend every meeting of the Board unless prevented by sickness or other reasonable cause.

(2)The Chairman shall, as soon as possible, transmit to the Central Government a copy of the minutes of every meeting of the Board and shall furnish to that Government such reports, returns, documents or other information as it may, from time to time, call for.(3)The Chairman shall exercise supervision and control over the acts of all employees of the Board in matters of executive administration and in matters concerning the accounts and records of the Board.

Chapter III

Staff Of The Board

23. Schedule of Board's staff .-A Board shall, from time to time, prepare and sanction a Schedule of the employees of the Board whom it deems necessary and proper to maintain for the purposes of this Act and such Schedule shall indicate therein the designations and grades of employees and the salaries, fees and allowances which are proposed to be paid to them.

[Provided that the previous sanction of the Central Government shall be obtained for the inclusion in the said Schedule of those designations and grades of employees and the salaries, fees and

allowances payable to them which the Central Government may, by order, specify, and where no such order is made, of such posts (including the salaries and allowances attached thereto) which are required to be created by the Central Government, or for the creation of which the previous sanction of the Central Government is required, under this Act.]

24. Power to make appointments .-(1) Subject to the provisions of the Schedule for the time being in force sanctioned by a Board under section 23, the power of appointing any person to any post, whether temporary or permanent, shall-

(a)[in the case of a post-(i)the incumbent of which is to be regarded as the Head of a department; or(ii)to which such incumbent is to be appointed; or](iii)[the maximum of the pay scale of which (exclusive of allowances) exceeds such amount as the Central Government may, by notification in the Official Gazette, fix,] [Substituted by Act 17 of 1982, Section 7, for sub-Clause (iii) (w.e.f. 31.5.1982).][be exercisable by the Central Government after consultation with the Chairman;] [Substituted by Act 29 of 1974, Section 10, for Clause (a) (w.e.f. 1.2.1975).](b)[in the case of any other post, be exercisable by the Chairman or by such authority as may be prescribed by regulations:] [Substituted by Act 29 of 1974, Section 10, for Clauses (b) and (c) (w.e.f. 1.2.1975).]Provided that no person shall be appointed as a pilot at any port, who is not for the time being authorised by the Central Government under the provisions of the Indian Ports Act to pilot vessels [at that or any other port] [[Substituted by Act 17 of 1982, Section 7, for " at that port" (w.e.f.31.5.1982).]].(2)The Central Government may, by order, specify any post the incumbent of which shall, for the purposes of this Act, be regarded as the Head of a department.

25. Power to promote, grant leave, etc., to employees of Board .-(1) Subject to any regulations made under section 28, the power of [* * *] granting extension of service to, granting leave to, suspending, reducing, [compulsorily retiring,] [Inserted by Act 17 of 1982, Section 8 (w.e.f. 31.5.1982).] removing or dismissing or of disposing of any other question relating to the services of, the employees of a Board, including the power of dispensing with the services of any such employee otherwise than by reason of the misconduct of such employee, shall be exercised-

(a)[in the case of an employee holding a post referred to in clause (a) of sub-section (1) of section 24, by the Chairman; [Substituted by Act 29 of 1974, Section 11, for Clauses (a) and (b) (w.e.f. 1.2.1975).](b)in any other case, by the Chairman or by such authority as may be prescribed by regulations:]Provided that no such order, so far as the same involves extension of service, suspension, reduction in rank, [compulsory retirement,] [Inserted by Act 17 of 1982, Section 8 (w.e.f. 31.5.1982).] removal or dismissal of [an employee referred to in clause (a)] [Substituted by Act 29 of 1974, Section 11, for " a Head of a department" (w.e.f. 1.2.1975).], shall have effect until it is approved by the Central Government.(2)Any employee of a Board [* * *] [The words " (not being a Head of a department)" omitted by Act 29 of 1974, Section 11 (w.e.f. 1.2.1975).] aggrieved by an

order involving his reduction in rank, [compulsory retirement,] [Inserted by Act 17 of 1982, Section 8 (w.e.f. 31.5.1982).] removal or dismissal may, within such time and in such manner as may be provided for by regulations, prefer an appeal-(a)[to the Central Government, where such order is passed by the Chairman; [Substituted by Act 29 of 1974, Section 11, for Clauses (a), (b) and (c) (w.e.f. 1.2.1975).](b)to the Chairman, where such order is passed by any such authority as is prescribed by regulations under clause (b) of sub-section (1):]Provided that where the person who passed the order becomes, by virtue of his subsequent appointment as the Chairman, the appellate authority in respect of the appeal against the order, such person shall forward the appeal to [the Central Government] [Substituted by Act 29 of 1974, Section 11, for " the Board" (w.e.f. 1.2.1975).] and [the Central Government] [Substituted by Act 29 of 1974, Section 11, for " the Board" (w.e.f. 1.2.1975).] in relation to that appeal shall be deemed to be the appellate authority for the purposes of this section.

26. Consulting Engineer to Board .-A Board may appoint any person as Consulting Engineer to the Board otherwise than on the basis of payment of a monthly salary, but every such appointment shall be subject to the sanction of the Central Government.

27. [Power to create posts

.-Notwithstanding anything contained in section 23, the power to create any post, whether temporary or permanent, shall,-(a)in the case of a post the holder of which is to be regarded as the Head of a department or in the case of a post the maximum of the pay scale of which (exclusive of allowances)][exceeds such amount as the Central Government may, by notification in the Official Gazette, fix, be exercisable by that Government;] [Substituted by Act 17 of 1982, Section 9, for " exceeds two thousand rupees, be exercisable by the Central Government;" (w.e.f. 31.5.1982).](b)[in the case of a post other than a post referred to in clause (a), the maximum of the pay scale of which exceeds such amount as the Central Government may, from time to time, by order fix in this behalf, or where no such amount has been fixed, is not less than one thousand rupees, be exercisable by the Board with the previous sanction of the Central Government; [Substituted by Act 29 of 1974, Section 12, for Section 27 (w.e.f. 1.2.1975).](c)in the case of any other post, be exercisable by the Chairman.]

28. Power to make regulations .-A Board may make regulations, not inconsistent with this Act, to provide for any one or more of the following matters, namely:-

(a)the appointment, promotion, suspension, [reduction in rank, compulsory retirement,] removal and dismissal of its employees;(b)their leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a provident fund or any other fund for their welfare;(c)the terms and conditions of service of persons who become employees of the Board under clause (f) of sub-section (1) of section 29;(d)the time and manner in which appeals may be preferred under sub-section (2) of section 25 and the procedure for deciding such appeals;(e)any other matter which is incidental to, or necessary for, the purpose of regulating

the appointment and conditions of service of its employees.

Chapter IV

Property And Contract

29. Transfer of assets and liabilities of Central Government, etc., to Board

-(1) As from the appointed day in relation to any port-

(a)all property, assets and funds [and all rights to levy rates] vested in the Central Government or, as the case may be, any other authority for the purposes of the port immediately before such day, 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 Central Government or, as the case may be, the other authority immediately before such day, for or in connection with the purposes of the port, shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Board;(c)all non-recurring expenditure incurred by the Central Government or any State Government for or in connection with the purposes of the port up to such day and declared to be capital expenditure by the Central Government shall be treated as the capital provided by the Central Government or, as the case may be, the State Government to the Board;(d)all rates, fees, rents and other sums of money due to the Central Government or, as the case may be, the other authority in relation to the port 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 Central Government or, as the case may be, the other authority immediately before such day for any matter in relation to the port may be continued by or against the Board;(f)every employee serving under the Central Government or, as the case may be, the other authority immediately before such day solely or mainly for or in connection with the affairs of the port shall become an employee of the Board, shall hold his office or service therein by the same tenure and upon the same terms and conditions of service as he would have held the same if the Board had not been established and shall continue to do so unless and until his employment in the Board is terminated or until his tenure, remuneration or terms and conditions of service are duly altered by the Board:Provided 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 Central Government.(2)Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any employee under this section to the Board shall not entitle such employee to any compensation under that Act or other law, and no such claim shall be entertained by any Court, Tribunal or other authority.(3)[Notwithstanding anything contained in clause (a) of sub-section (1), the right to fix rates vested in the Board shall vest in the Authority as from the date it is constituted under sub-section (1) of section 47-A] [Inserted by Act 15 of 1997, Section 11 (w.r.e.f. 9.1.1997).].

30. Existing rates, etc., to continue until altered by Board

.-As from the appointed day, all rates, fees and other charges in relation to any port, 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 Central Government or, as the case may be, any other authority immediately before such day.

31. Repayment of capital with interest .-A Board shall repay, at such intervals and on such terms and conditions as the Central Government may determine, the amount of capital provided under clause (c) of sub-section (1) of section 29 with interest at such rate as may be fixed by that Government and such repayment of capital or payment of interest shall be deemed to be part of the expenditure of the Board.

32. Procedure when immovable property cannot be acquired by agreement .- [When any immovable property is required for the purposes of the Board], the Central Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894 (1 of 1894), and on payment by the Board of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Board.

33. Contracts by Board .-Subject to the provisions of section 34, a Board shall be competent to enter into and perform any contract necessary for the performance of its functions under this Act.

34. Mode of executing contracts on behalf of Board .-(1) Every contract shall, on behalf of a Board, be made by the Chairman [or by any such officer of the Board not below the rank of the Head of a Department as the Chairman may, by general or special order, authorise in this behalf] and shall be sealed with the common seal of the Board:

Provided that no contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf shall be made unless it has been previously approved by the Board: Provided further that no contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding thirty years, and no other contract whereof the value or amount exceeds such value or amount as the Central Government may from time to time fix in this behalf, shall be made unless it has been previously approved by the Central Government. (2) Subject to the provisions of sub-section (1), the form and manner in which any contract shall be made under this Act shall be such as may be prescribed by regulations made in this behalf. (3) No contract which is not made in accordance with the provisions of this Act and the

regulations made thereunder shall be binding on the Board.

Chapter V

Works And Services To Be Provided At Ports

35. Power of Board to execute works and provide appliances .-(1) A Board may execute such works within or without the limits of the port and provide such appliances as it may deem necessary or expedient.

(2) Such works and appliances may include-(a) wharves, quays, docks, stages, jetties, piers and other works within the port or port approaches or on the foreshore of the port or port approaches, with all such convenient arches, drains, landing places, stairs, fences, roads, railways, bridges, tunnels and approaches and buildings required for the residence of the employees of the Board as the Board may consider necessary; (b) buses, railways, locomotives, 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) moorings and cranes, scales and all other necessary means and appliances for loading and unloading vessels; (d) 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 authorised by this Act, or otherwise for the purposes of this Act; (e) such breakwaters and other works as may be expedient for the protection of the port; (f) dredgers and other machines for cleaning, deepening and improving any portion of the port or port approaches or of the foreshore of the port or port approaches; (g) lighthouses, lightships, beacons, buoys, pilot boats and other appliances necessary for the safe navigation of the port and of the port approaches; (h) vessels, tugs or other boats for use within the limits of the port or beyond those limits, whether in territorial waters or otherwise, for the purpose 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 purpose of landing, shipping or transshipping passengers or goods under section 42; (i) sinking of tube-wells, and equipment, maintenance and use of boats, barges and other appliances for the purpose of the supply of water at the port; (j) engines and other appliances necessary for the extinguishing of fires; (k) [construction of models and plans for carrying out hydraulic studies; (l) dry docks, slipways, boat basins and workshops to carry out repairs or overhauling of vessels, tugs, boats, machinery or other appliances.] [35-A. Power with respect to landing places and bathing ghats.-Without prejudice to the powers exercisable under section 35, the Board of Trustees for the port of Calcutta may, if it considers it necessary so to do for the purposes of this Act, -(i) provide for sufficient number of public landing places from and upon which the public shall be permitted to embark and to land free of charge; (ii) occupy any bathing ghat, or remove any landing place, within the port and thereafter prohibit the public from resorting to or using the same: Provided that the Board shall not exercise any power under this section unless it reserves, sets out, makes and provides for the use of the public, such number of bathing ghats within the port as the Central Government may direct.]

36. Power of Board to undertake certain works .- [(1)] A 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 concerned.

(2)[A 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 granted upon between the Board and the person concerned.] [Section 36 renumbered as sub-Section (1) thereof and sub-Section (2) inserted by Act 29 of 1974, Section 17 (w.e.f. 1.2.1975).]

37. Power of Board to order sea-going vessels to use docks, wharves, etc .-(1) When any dock, berth, wharf, quay, stage, jetty or pier 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 Collector of Customs and by notification published in three consecutive issues of the Official Gazette, declare that such dock, berth, wharf, quay, stage, jetty or pier is ready for receiving, landing and shipping or for landing or for shipping goods or passengers from and upon sea-going vessels.

(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 or pier, to order to come alongside of such dock, berth, wharf, quay, stage, jetty or pier 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 or pier:Provided further that if the Board is not the conservator of the port, the Board shall not itself make the order as aforesaid but shall require the conservator of the port, or other person exercising the rights, powers, and authorities of the conservator of the port, to make such order.

38. If accommodation sufficient, all sea-going vessels compelled to use docks, wharves, etc .-When a sufficient number of docks, berths, wharves, quays, stages, jetties or piers have been provided at any port or port approaches as aforesaid, the Board may, after obtaining the approval of the Collector 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 sea-going vessel within the port or port approaches otherwise than at such docks, berths, wharves, quays, stages, jetties or piers, except with the sanction of the Board and in accordance with such conditions as the Board may specify.

39. 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 appears to him sufficient, by notice in writing, order the master or owner or agent of any sea-going vessel not to bring such vessel alongside of, or to remove such vessel from, any dock, berth, wharf, quay, stage, jetty or pier belonging to or under the control of the Board and, if such notice is not complied with, [the Board may charge, by way of penalty, in respect of such vessel such sum as it thinks fit, not exceeding ten thousand rupees] for each day of twenty-four hours, or portion of such day, during which such vessel remains at such dock, berth, wharf, quay, stage, jetty or pier:

Provided that in the case of 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.

40. Power of Central Government to exempt from obligation to use docks, wharves, etc .-Notwithstanding anything contained in sections 37 and 38, the Central 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 vessels 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 payments to the Board and on such conditions as the Central Government may think fit.

41. Board to declare when vessels other than sea-going vessels compelled to use docks, wharves, etc .-When any dock, berth, wharf, quay, stage, jetty or pier 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 Collector of Customs, by order published in three consecutive issues

of the Official Gazette,-

(i)declare that such dock, berth, wharf, quay, stage, jetty or pier 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 a sea-going vessel, of any class specified in such order, except at such dock, berth, wharf, quay, stage, jetty or pier.(2)As from the date of the publication of the order mentioned in sub-section (1) for the third time, 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 or pier; or(ii)while within such limits, to anchor, fasten or lie within fifty yards 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 expense of the master or owner or agent of the vessel.

42. Performance of services by Board or other person .-(1) A Board shall have power to undertake the following services:-

(a)landing, shipping or transshipping passengers and goods between vessels in the 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 by rail or by other means within the limits of the port or port approaches, subject to such restrictions and conditions as the Central Government may think fit to impose; [*](d)receiving and delivering, transporting, booking and despatching goods originating in the vessels in the port and intended for carriage by the neighbouring railways, or vice versa, as a railway administration under the Indian Railways Act, 1890 (9 of 1890); [[*] [Inserted by Act 29 of 1974, Section 18 (w.e.f. 1.2.1975).](e)[piloting, hauling, mooring, remooring, hooking, or measuring of vessels or any other service in respect of vessels;] [Inserted by Act 29 of 1974, Section 18 (w.e.f. 1.2.1975).][and] [Inserted by Act 22 of 2000, Section 2 (w.e.f. 9.6.2000).](f)developing and providing, subject to the previous approval of the Central Government, infrastructure facilities for ports.(2)A 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.(3)Notwithstanding anything contained in this section, the Board may, with the previous sanction of the Central Government, authorise any person to perform any of the services mentioned in sub-section (1) on such terms and conditions as may be agreed upon.[(3-A) Without prejudice to the provisions of sub-section (3), a Board may, with the previous approval of the Central Government, enter into any agreement or other arrangement (whether by way of partnership, joint venture or in any other manner) with, any body corporate or any other person to perform any of the services and functions assigned to the Board under this Act on such terms and conditions as may be agreed upon.] [Inserted by Act 22 of 2000, Section 2 (w.e.f. 9.6.2000).](4)No person authorised under sub-section (3) shall charge or recover for such service any sum in excess of the amount [specified by the Authority, by notification in the Official Gazette] [Substituted by Act 15 of 1997, Section 12, for " leviable according to the scale framed under Section 48 or Section 49 or Section 50"

(w.r.e.f. 9.1.1997).].(5)Any such person shall, if so required by the owner, perform in respect of goods any of the said 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 (9 of 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.

43. Responsibility of Board for loss, etc., of goods .-(1) Subject to the provisions of this Act, the responsibility of any Board for the loss, destruction or deterioration of goods of which it has taken charge shall,-

(i)in the case of goods received for carriage by railway, be governed by the provisions of the [Indian Railways Act, 1890 (9 of 1890)]; and(ii)in other cases, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 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 42 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)A 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 made in this behalf [from the date of taking charge of such goods by the Board] [Substituted by Act 29 of 1974, Section 19, for " from the date of the receipt given for the goods" (w.e.f. 1.2.1975).] under sub-section (2) of section 42.

44. Accommodation to be provided for customs officers in wharves, etc., appointed under Sea Customs Act .-Where the Collector 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, 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 or 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, the Board shall set apart and maintain such place on or adjoining such dock, wharf, quay, stage, jetty or pier, or in such warehouse or shed or portion thereof, for the use of officers of customs as may be necessary.

45. Dues at customs wharves, etc .-Notwithstanding that any dock, berth, wharf, quay, stage, jetty, pier, warehouse or shed or portion thereof at any port has, under the provisions of section 44, 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.

46. Power to permit erection of private wharves, etc., within a port subject to conditions .-(1) No person shall make, erect or fix within the limits of a port or port approaches any wharf, dock, quay, stage, jetty, pier, erection or mooring [or undertake any reclamation of foreshore within the said limits] [Substituted by Act 29 of 1974, Section 19, for the proviso (w.e.f. 1.2.1975).] 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 wharf, dock, quay, stage, jetty, pier, erection or mooring [or undertakes any reclamation of foreshore] [Inserted by Act 29 of 1974, Section 20 (w.e.f. 1.2.1975).] 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 cause it to be removed at the expense of that person.

47. 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 38 or section 41, the use of any wharf, dock, berth, quay, stage, jetty or pier, 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 wharf, dock, berth, quay, stage, jetty or pier, 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 Central 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 wharf, dock, berth, quay, stage, jetty or pier, 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, that is to say-(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 wharf, dock, berth, quay, stage, jetty or pier provided by the Board;(b)the amount of compensation

shall be calculated with reference to the cost of construction of such wharf, dock, berth, quay, stage, jetty or pier;(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 Central Government shall appoint as arbitrator, a person who is, or has been, or is qualified for appointment as, a Judge of a High Court;(e)the Central 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)at 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 (26 of 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 (5 of 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 V-A] [Inserted by Act 15 of 1997, Section 14 (w.r.e.f. 9.1.1997).] Tariff Authority For Major Ports

47.

-A. Constitution and incorporation of Tariff Authority for Major Ports .-(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint there shall be constituted for the purposes of this Act an Authority to be called the Tariff Authority for Major Ports.(2)The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal and shall by the said name sue and be sued.(3)The head office of the Authority shall be at such place as the Central Government may decide from time to time.(4)The Authority shall consist of the following Members to be appointed by the Central Government, namely:-(a)a Chairperson from amongst persons who is or who has been a Secretary to the Government of India or has held any equivalent post in the Central Government and who has experience in the management and knowledge of the functioning of the ports;(b)a Member from amongst economists having experience of not less than fifteen years in the field of transport or foreign trade;(c)a Member from amongst persons having experience of not less than fifteen years in the field of finance with

special reference to investment or cost analysis in the Government or in any financial institution or industrial or services sector.

47.

-B. Term of office, conditions of service, etc., of Chairperson and other Members .-(1) The Chairperson or a Member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.(2)The salaries and allowances payable to and other conditions of service of the Chairperson and the other Members shall be such as may be prescribed by the Central Government.(3)Notwithstanding anything contained in sub-section (1), the Chairperson or a Member may-(a)relinquish his office by giving in writing to the Central Government a notice of not less than three months; or(b)be removed from his office in accordance with the provisions of section 47-D.(4)If a casual vacancy occurs in the office of the Chairperson or any Member, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled up by the Central Government by making a fresh appointment and the Chairperson or the Member so appointed shall hold office for the remainder of the term of office of the person in whose place he is so appointed.

47.

-C. Disqualification for the office of Chairperson and Member .-A person shall be disqualified for being appointed as a Chairperson or as a Member of the Authority if he is disqualified for being chosen as a Trustee under section 6.

47.

-D. Removal, etc., of Chairperson and Members .-(1) The Central Government shall remove from the Authority the Chairperson or any Member, if he-(a)becomes subject to any disqualification under section 47-C;(b)refuses to act or becomes incapable of acting;(c)in the opinion of the Central Government has so abused his position as to render his continuance in office detrimental to the public interest; or(d)is otherwise unsuitable to continue as the Chairperson or as a Member.(2)The Central Government may suspend the Chairperson or any Member pending an inquiry against him.(3)No order of removal under this section shall be made unless the Chairperson or the Member concerned, as the case may be, has been given an opportunity to submit his explanation to the Central Government and when such order is passed, the seat of the Chairperson or Member removed shall be declared vacant.(4)The Chairperson or a Member who has been removed under this section shall not be eligible for re-appointment as a Chairperson or as a Member or in any other capacity under the Authority.

47.

-E. Meetings .-The Authority shall meet at such times and places, and shall observe such rules of

procedure in regard to the transaction of business at its meetings as may be specified by regulations.

47.

-F. Authentication of all orders and decisions of the Authority .-All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other Member authorised by the Authority in this behalf.

47.

-G. Vacancy, etc., not to invalidate proceedings of the Authority .-No act or proceeding of the Authority shall be invalidated merely by reason of-(a)any vacancy in, or any defect in, the constitution of the Authority; or(b)any defect in the appointment of a person acting as a Chairperson or a Member of the Authority; or(c)any irregularity in the procedure of the Authority not affecting the merits of the case.

47.

-H. Officers and employees of the Authority .-(1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.(2)The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be specified by regulations.

Chapter VI

Imposition And Recovery Of Rates At Ports

48. Scales of rates for services performed by Board or other person .-(1) [The Authority shall from time to time, by notification in the Official Gazette, frame a scale of rates at which, and a statement of conditions under which, any of the services specified hereunder shall be performed by a Board or any other person authorised under section 42 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)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)carnage or portage 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, [* * *] [The words " excepting the services in respect of vessels of which fees are chargeable under the Indian Ports Act" omitted by Act 15 of 1997,

Section 15 (w.r.e.f. 9.1.1997).](2)Different scales and conditions may be framed for different classes of goods and vessels.

49. Scale of rates and statement of conditions for use of property belonging to Board .-(1) [The Authority shall from time to time, by notification in the Official Gazette, also frame 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 any place within the limits of the port or the 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 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;(d)any other use of any land, building, works, vessels or appliances belonging to or provided by the Board.(2)Different scales and conditions may be framed for different classes of goods and vessels.(3)[Notwithstanding anything contained in sub-section (1), the Board may, by auction or by inviting tenders, lease any land or shed belonging to it or in its possession or occupation at a rate higher than that provided under sub-section (1).] [Inserted by Act 17 of 1982, Section 13 (w.e.f. 31.5.1982).][49-A. Fees for pilotage and certain other services.-(1) Within any port, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the Authority may fix.(2)The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).(3)The Central Government may, in special cases, remit the whole or any portion of the fees chargeable under sub-section (1) or sub-section (2).

49.

-B. Fixation of port-dues .-(1) The Authority shall from time to time, by notification in the Official Gazette, fix port-dues on vessels entering the port.(2)An order increasing or altering the fees for pilotage and certain other services or port-dues at every port shall not take effect until the expiration of thirty days from the day on which the order was published in the Official Gazette.]

50. [Consolidated rates for combination of services

.-The Authority may, from time to time, by notification in the Official Gazette, frame a consolidated scale of rates for any combination of service specified in section 48 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 49 or the fees to be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels as specified in section 49-A or the port dues to be fixed on vessels entering the port and for the duration of such

dues as specified in section 49-B]. [50-A. Port-due on vessels in ballast.-A vessel entering any port in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the Authority and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

50.

-B. Port-due on vessels not discharging or taking in cargo .-When a vessel enters a port but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the Authority and not exceeding half the rate with which she would otherwise be chargeable.

50.

-C. Publication of orders of Authority .-Every notification, declaration, order and regulation of the Authority made in pursuance of this Act shall be published in the Official Gazette and a copy thereof shall be kept in the office of the conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee.]

51. Power to levy concessional rates in certain cases .-In framing scales under any of the foregoing provisions of this Chapter, the [Authority] may prescribe 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 (52 of 1962), carried in a vessel from one Indian port to another Indian port:Provided that the [Authority] [Substituted by Act 15 of 1997, Section 19, for " Board" (w.r.e.f. 9.1.1997).] shall not make any discrimination between one Indian Port and another such port in prescribing a lower rate under this section;(b)other goods, in special cases.

52. Prior sanction of Central Government to rates and conditions .-[Omitted by the Port Laws (Amendment) Act, 1997 (15 of 1997), section 20 (w.e.f. 9-1-1997)].

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

54. Power of Central Government, to require modification or cancellation of rates .-(1) Whenever the Central 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 Authority] to cancel any of the scales in force or modify the same, within such period as that Government may specify in the order.

(2)[If the Authority fails or neglects to comply with the direction under sub-section (1)] [Substituted by Act 15 of 1997, Section 21, for certain words (w.r.e.f. 9.1.1997).] within the specified period, the Central 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 Central Government shall consider any objection or suggestion which may be made by [the Authority] [Substituted by Act 15 of 1997, Section 21, for " the Board" (w.r.e.f. 9.1.1997).] 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 Central Government in the Official Gazette and shall thereupon have effect accordingly.

55. Refund of overcharges .-No person shall be entitled to a refund of an overcharge made by a 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 relevant documents:

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

56. Notice of payment of charges short-levied or erroneously refunded .-(1) When any 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 two 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 the 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.

57. Authority not to lease rates without sanction .- [The Authority shall not lease], farm, sell or alienate any power vested in it under this Act of levying rates without the prior sanction of the Central Government.

58. 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 a Board, or to be shipped for export, or to be transhipped, shall be payable before the goods are so removed or shipped or transhipped.

59. Board's lien for rates .-(1) For the amount of all rates [leviable under this Act] in respect of any goods, and for the rent due to the Board for any building, plinths, stacking areas, 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 60, 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] [Substituted by Act 29 of 1974, Section 21, for " under any law for the time being in force" (w.e.f. 1.2.1975)].

60. 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 vessel any goods at any dock, wharf, quay, stage, jetty, berth, mooring or pier belonging to or in the occupation of a 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 the goods until such lien is discharged as hereinafter mentioned; and godown or 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.

61. Sale of goods after two months if rates or rent are not paid or lien for freight is not discharged .-(1) A 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 [the Port Gazette, or where there is no Port Gazette, in the Official Gazette] [Substituted by Act 29 of 1974, Section 22, for " the Official Gazette" (w.e.f. 1.2.1975).] and also in at least one of the principal 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 on the manifest of the goods or in any of the documents which have come into the hands 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 bona fide 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, arms and ammunition and controlled goods may be sold at such time and in such manner as the Central Government may direct.Explanation.-In this section and section 62-(a)"arms and ammunition" have the meanings respectively assigned to them in the Arms Act, 1959;(b)"controlled goods" means goods the price or disposal of which is regulated under any law for the time being in force.

62. 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 [the Port Gazette or where there is no Port Gazette, in the Official Gazette] and also in at least one of the principal 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, private agreement or in any other manner] [

Inserted by Act 29 of 1974, Section 23 (w.e.f. 1.2.1975).]:

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 agents 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 on 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] [Inserted by Act 29 of 1974, Section 23 (w.e.f. 1.2.1975).] after giving notice of the sale in the manner specified in sub-sections (2) and (3) of section 61.(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 and in such manner as, in the opinion of the Board, the urgency of the case requires;(b)arms and ammunition and controlled goods may be sold in accordance with the provisions of sub-section (4) of section 61.(5)The Central 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.

63. Application of sale proceeds .-(1) The proceeds of every sale under section 61 or section 62 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 59 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 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; [Inserted by Act 29 of 1974, Section 24 (w.e.f. 1.2.1975).] (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 the purposes of this Act.] [Substituted by Act 29 of 1974, Section 24, for sub-Section (2) (w.e.f. 1.2.1975).]

64. Recovery of rates and charges by distraint 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 distrain 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 distraint 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 of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest has been so made, the Board may cause the vessel or other thing so distrained 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.

65. [Grant of port-clearance after payment of rates and realisation of damages, etc

.-If a Board gives to the officer of the Central Government whose duty it is to grant the port-clearance to any vessel at the port, a 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 orders 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 vessel; or (ii) that an amount specified therein is due in respect of any damage referred to in section 116 and such amount together with the cost of the proceedings for the recovery thereof before a Magistrate under that section has not been realised, 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 realised.]

Chapter VII

Borrowing Powers Of Board

66. Power to raise loans .-(1) A Board may, with the previous sanction of the Central Government and after due notification in the Official Gazette, raise loans for the purposes of this Act:

Provided that no such notification shall be necessary if a loan is obtained from the Central Government or a State Government. (2) Loans may be raised by a Board in the open market on Port Trust securities issued by it or may be obtained from the Central Government or a State Government. (3) The terms of all loans shall be subject to the approval of the Central Government.

67. Port Trust securities .-(1) The Board may, with the sanction of the Central Government, prescribe the form in which Port Trust securities shall be issued by it and the mode in which, and the conditions subject to which, they may be transferred.

(2)The holder of any Port Trust security in any form may obtain in exchange therefor, upon such terms as the Board may from time to time determine, a Port Trust security in any other form prescribed by regulations.(3)The right to sue in respect of moneys secured by the Port Trust securities shall be exercisable by the holders thereof for the time being without preference in respect of priority of date.

**68. Right of survivors of joint or several payees of securities .-(1)
Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872),-**

(a)when any Port Trust security is payable to two or more persons jointly, and either or any of them dies, the Port Trust 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 representatives of the deceased, or to any of them.(2)This section shall apply whether such death occurred or occurs before or after the appointed day.(3)Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any security to which sub-section (1) applies.(4)For the purposes of this section, a body incorporated or deemed to be incorporated under the Companies Act, 1956 (1 of 1956), or the Co-operative Societies Act, 1912 (2 of 1912), or any other enactment for the time being in force, whether within or without India, shall be deemed to die when it is dissolved.

69. Power of one or two or more joint holders to grant receipts .-Where two or more persons are joint holders of any Port Trust security, any one of those persons may give an effectual receipt for 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.

70. Indorsements to be made on security itself .-Notwithstanding anything in section 15 of the Negotiable Instruments Act, 1881 (26 of 1881), no indorsement of a Port Trust security, which is transferable by indorsement, shall be valid unless made by the signature of the holder inscribed on the back of the security itself.

71. Indorser of security not liable for amount thereof .-Notwithstanding anything in the Negotiable Instruments Act, 1881 (26 of 1881), a person shall not by reason only of his having indorsed any Port Trust security be liable to pay any money due, either as principal or as interest, thereunder.

72. Impression of signature on securities .-(1) The signature of the person authorised to sign Port Trust securities on behalf of the Board may be printed, engraved or lithographed or impressed by such other mechanical process, as the Board may direct, on such securities.

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

73. Issue of duplicate securities .-(1) When any Port Trust security is alleged to have been 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 its satisfaction of the loss, theft or destruction and of the justice of the claim and on payment of such fee, if any, as may be prescribed 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 the 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 prescribed notification of the loss, theft or destruction.(3)A list of the securities in respect of which an order is passed under sub-section (1) shall be published in such manner as the Board may prescribe.(4)If at any time before the Board becomes discharged under the provisions of this Act from 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.

74. Issue of converted, etc., securities .-(1) A Board may, subject to such conditions as it may prescribe, on the application of a person claiming to be entitled to a Port Trust security or securities issued by it, on being satisfied of the justice 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 prescribe, convert, consolidate or sub-divide 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 a security or securities of the same or different classes or of the same or different loans.[74-A. Recognition as holder of Port Trust securities in certain cases.-The person to whom a duplicate security has been issued under section 73 or a new security or securities has or have been issued under section 74 shall be deemed for the purposes of section 74-B to have been recognised by the Board as the holder of the security or securities; and a duplicate security or a new security or securities so issued to any person shall be deemed to constitute a new contract between the Board and such person and all persons deriving title thereafter through him.

74.

-B. Legal effect of recognition by the Board under section 74-A .-No recognition by the Board of a person as the holder of a Port Trust security or securities shall be called in question by any Court so far as such recognition affects the relations of the Board with the person recognised by it as the holder of a Port Trust security or securities or with any person claiming an interest in such security or securities; and any such recognition by the Board of any person shall operate to confer on that person a title to the security or securities subject only to a personal liability to the rightful owner of the security or securities for money had and received on his account.]

75. Discharge in certain cases .-Notwithstanding anything contained in [the Limitation Act, 1963 (36 of 1963)],-

(i)on payment of the amount due on a Port Trust security on or after the date on which payment becomes due, or(ii)when a duplicate security has been issued under section 73, or(iii)when a new security or securities has or have been issued upon conversion, consolidation or sub-division under section 74, 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 73 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 date 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.

76. Power of Board to make regulations .-A Board may, from time to time, make regulations to provide for all or any of the following matters, namely:-

(a)the person, if any, authorised to sign, and the mode of affixing the corporate seal and of attestation of documents relating to Port Trust securities issued or to be issued by the Board;(b)the manner in which payment of interest in respect of such Port Trust securities is to be made, recorded and acknowledged;(c)the circumstances and the manner in which such Port Trust securities may be renewed;(d)the circumstances in which such securities must be renewed before further payment of interest thereon can be claimed;(e)the form in which such securities delivered for renewal, conversion, consolidation or sub-division are to be receipted;(f)the proof which is to be produced by a person applying for duplicate securities;(g)the form and manner of publication of the notification mentioned in sub-section (2) of section 73 and the manner of publication of the list mentioned in sub-section (3) of that section;(h)the nature and amount of indemnity to be given by a person applying for the payment of interest on Port Trust securities alleged to have been wholly or partly lost, stolen or destroyed, or for the issue of duplicate Port Trust securities;(i)the conditions subject to which Port Trust securities may be converted, consolidated or sub-divided;(j)the amounts for which stock certificate may be issued;(k)generally, all matters connected with the grant of duplicate, renewed, converted, consolidated and sub-divided securities;(l)the fees to be paid in respect of the

issue of duplicate securities and of the renewal, conversion, consolidation and sub-division of Port Trust securities;(m)the fees to be levied in respect of the issue of stock certificates.

77. Place and currency of loans raised by Board .-All loans contracted by a Board under this Act shall be raised in India, and in Indian currency, unless the Central Government, by notification in the Official Gazette, otherwise directs.

78. Security for loans taken out by Board .-All loans raised by a Board under this Act shall be a first charge on-

(a)the property vested, or which may hereafter during the currency of the loans become vested, in the Board [other than-(i)any sum set apart by the Board-(1)as the sinking fund for the purpose of paying off any loan; or(2)for the payment of pension to its employees; or(ii)the provident or pension fund established by the Board; and](b)the rates leviable by the Board under this Act.

79. Remedies of Government in respect of loans made to Boards .-The Central Government or a State Government shall have in respect of loans made by it to a Board, or of loans made to any other authority for the repayment of which the Board is legally liable, the same remedies as holders of Port Trust securities issued by the Board; and such Government shall not be deemed to possess any prior or greater rights in respect of such loans than holders of such Port Trust securities:

Provided that where 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.

80. Power of Board to repay loans before due date .-A Board may, with the previous sanction of the Central Government, apply any sums, out of moneys which may come into its hands under the provisions of this Act and which can be so applied without prejudicing the security of the other holders of Port Trust 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.

81. Establishment of sinking fund .-(1) In respect of every loan raised by a Board under this Act, which is not repayable before the expiration of one year from the date of the loan, 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 Central Government has been obtained, exceed thirty years; but the maximum period shall not in any case exceed sixty 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 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.

82. Investment and application of sinking fund .-(1) The sums so set apart by a Board under sub-section (1) of section 81 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 Central Government may approve in this behalf, and shall be held in trust for the purposes of this Act [by the Board].

(2)A 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 moneys 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.

83. 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 Central 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 had investments been regularly made and had the rate of interest as originally estimated been obtained thereon.

(2)A 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 Central Government specifically sanctions a gradual re-adjustment.(3)If the cash and the current

market value of the securities at the credit of a sinking fund are in excess of the amount which should be at its credit, the person appointed under sub-section (1) shall certify the amount of this excess, and the Board may, with the previous sanction of the Central Government, -(a) withdraw the whole or any part of the certified excess in which case the Trustees in whose names the sinking fund is invested under sub-section (1) of section 82, shall forthwith transfer securities of the requisite current market value, or cash and securities of the requisite current market value, to the Board, or (b) reduce or discontinue the half-yearly contributions to the sinking fund required under section 81, or (c) adopt a combination of these measures.

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

85. Power of Board to take temporary loans or overdrafts .-Notwithstanding anything contained in this Act, a Board may borrow moneys by means of temporary overdraft or otherwise by pledging the securities held by the Board in its reserve funds or on the security of the fixed deposits of the Board in its banks:

Provided that such temporary overdrafts 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 Central Government, if at any time in any year the amount of such overdrafts or other loans exceeds [such amount as the Central Government may fix in this behalf and different amounts may be fixed with respect to different Boards]: Provided further that all moneys so borrowed by temporary overdrafts or otherwise shall be expended for the purposes of this Act.

86. Power of Board to borrow money from International Bank for Reconstruction and Development or other foreign institutions .-Notwithstanding anything contained in this Act or any other law for the time being in force, a Board may, with the previous sanction of the Central Government and on such terms and conditions as may be approved by that Government, raise for the purposes of this Act loans in any currency or currencies from the International Bank for Reconstruction and Development or from any other 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 Central Government otherwise provide.

Chapter VIII

Revenue And Expenditure

87. General account of port .-All moneys received by or on behalf of a Board under the provisions of this Act, and all moneys received by it as the Conservator of the port and of the port approaches or as the body appointed under sub-section (1) of section 36 of the Indian Ports Act [* * *] shall be credited to a fund called the general account of the port.

88. Application of moneys in general account .-(1) The moneys credited to the general account under section 87, shall, subject to the provisions of section 89 of this Act and of section 36 of the Indian Ports Act, 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, allowances, pensions, gratuities, compassionate allowances or other moneys due to-(i) the Chairman, Deputy Chairman and other Trustees; (ii) the employees of the Board; and (iii) the surviving relatives, 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 authorised to be made by regulations made under this Act to any such fund as is referred to in clause (d); (f) any charges for which the Board may be liable under section 108 or section 109; (g) [such sums as may, from time to time, be agreed upon by the Board and a State 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 State Government or the Central Government or the 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;] (h) 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; (i) the cost of the execution and provision of any new work or appliance specified in section 35 which the Board may determine to charge to revenue; (j) any expenditure incurred under section 36; (k) any other expenditure which may be incurred by the Board generally for the purposes of this Act; (l) any other charges which may on the application of the Board [or otherwise] [Inserted by Act 29 of 1974, Section 30 (w.e.f. 1.2.1975).] be specially sanctioned by the Central Government or for which the Board may be legally liable. (2) [Subject to such general or special directions as the Central Government may, for the purpose of maintenance or development of major ports in the country or generally for the development of shipping and navigation, give in this behalf, all moneys standing at the credit of the

Board] [Substituted by Act 12 of 1988, Section 2, for " All moneys standing at the credit of the Board" (w.r.e.f. 28.1.1988).] 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 in such [corresponding new bank or banks] [Substituted by Act 12 of 1988, Section 2, for " scheduled bank or banks" (w.r.e.f. 28.1.1988).], and subject to such conditions as may, from time to time, be specified by the Central Government; or(b)be invested in public securities or in such other securities as the Central Government may approve in this behalf; and the said securities shall be held in trust by the Board for the purposes of this Act, [or] [Inserted by Act 12 of 1988, Section 2 (w.r.e.f. 28.1.1988).](c)[be given as a loan to the Board of another port for the development of that port;] [Inserted by Act 12 of 1988, Section 2 (w.r.e.f. 28.1.1988).](d)[be invested, in any manner, in an arrangement referred to in sub-section (3-A) of section 42; [Inserted by Act 22 of 2000, Section 3 (w.e.f. 9.6.2000).](e)be invested, in any manner, in the development or management of any port including a port other than a major port on such terms and conditions as may be approved by the Central Government.][Explanation.-For the purposes of this sub-section, "corresponding new bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).] [Inserted by Act 12 of 1988, Section 2 (w.r.e.f. 28.1.1988).](3)[Every direction issued by the Central Government under sub-section (2) shall be complied with by the Board and shall not be called in question in any Court on any ground.(4)No suit or other legal proceeding shall lie against the Central Government, the Board or any officer or other employee of the Board authorised by it in this behalf for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any direction issued under sub-section (2).] [Substituted by Act 17 of 1982, Section 15, for the proviso (w.e.f. 31.5.1982).]

89. Power to transfer moneys from general account to pilotage account and vice versa .-[Omitted by the Indian Ports (Amendment) Act, 1992 (33 of 1992), section 8 (w.e.f. 12-8-1992).]

90. Establishment of reserve funds .-(1) A 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 expanding existing facilities or creating new facilities at the port or for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement or for meeting expenditure arising from loss or damage from fire, cyclones, shipwreck or other accident or for any other emergency arising in the ordinary conduct of its work 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 amounts as may, from time to time, be fixed in that behalf by the Central Government.(2)Any such reserve fund or funds may be invested in public securities or in such other securities as the Central Government may approve in this behalf.

91. Power to reserve Port Trust securities for Board's own investments .-(1) For the purposes of any investment which a Board is authorised to make by this Act, it shall be lawful for every Board to reserve and set apart any securities to be issued by it on account of any loan to which the consent of the Central 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 any Board of any such securities direct 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 a Board, or the transfer, assignment or indorsement to a Board or to the Trustees of the sinking fund set up by a 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 indorsed to, any other person.

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

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

93. Works requiring sanction of Board or Central Government .-(1) No new work or appliance, the estimated cost of which exceeds such amount as may be fixed by the Central Government in this behalf, shall be commenced or provided by a Board, nor shall any contract be entered into by a Board, in respect of any such new work or appliance until a plan of, and estimate for, such work or appliance has been submitted to, and approved by, the Board; and, in case the estimated cost of any such new work or appliance exceeds such amounts as may, from time to time, be fixed by the Central Government in this behalf, the sanction of the Central 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 Central Government in any case where the actual expenditure incurred does not exceed by more than ten per cent., the estimated cost so sanctioned.

94. Powers of Chairman as to execution of works .-Notwithstanding anything contained in section 93, the Chairman may direct the execution of any work the cost of which does not exceed such maximum limit as may be fixed by the Central Government in this behalf, and may enter into contracts for the execution of such works but in every such case the Chairman shall, as soon as possible, make a report to the Board of any such directions given or contracts entered into by him.

95. Power of Board to compound or compromise claims .-Every 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 Central Government if such settlement involves the payment by the Board of a sum exceeding such amount as may be specified by the Central Government in this behalf.

96. Writing off losses .-(1) Subject to such conditions as may be specified by the Central Government, where a 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, with the previous approval of the Central Government, sanction the writing off finally of the said amount or loss:

[Provided that no such approval of the Central Government shall be necessary where such irrecoverable amount or loss does not exceed, in any individual case and in the aggregate in any year, such amounts as the Central Government may, from time to time, by order, fix and different amounts may be fixed with respect to different Boards.](2) Notwithstanding anything contained in sub-section (1), where the Chairman is of opinion that any amount due to, or any loss, whether of money or of property, incurred by the Board is irrecoverable, the Chairman may sanction the writing off finally of such amount or loss provided that [such amount or loss does not exceed, in any individual case and in the aggregate in any year, such amounts as the Central Government may, from time to time, by order, fix and different amounts may be fixed with respect to different Boards.] [Substituted by Act 17 of 1982, Section 15, for certain words (w.e.f. 31.5.1982).](3) [In every case in which the Chairman sanctions the writing off of any amount or loss under sub-section (2), he shall make a report to the Board giving reasons for such sanction] [Inserted by Act 17 of 1982, Section 15 (w.e.f. 31.5.1982).].

97. Powers, etc., of Board as Conservator or Body appointed under section 36 of Indian Ports Act .-All the powers, authorities and restrictions contained in this Act in respect of the works by this Act authorised, 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, [* * *] and also to the sanction of such works, the estimates therefor, and the expenditure thereunder.

98. Budget estimates .-(1) A Board shall, on or before the thirty-first day of January in each year, hold a special meeting at which the Chairman of the Board shall submit an estimate of the income and expenditure of the Board for the next financial year, in such form as the Central Government may specify.

(2) A copy of such estimate shall be sent by post or otherwise to each Trustee so as to reach him not less than ten clear days prior to the date appointed for the special meeting referred to in sub-section (1). (3) The Board shall consider the estimate at such meeting and may provisionally approve of it with or without modifications. (4) The Board shall, on or before the tenth day of February, cause a copy of such estimate as provisionally approved by it, to be sent to the Central Government. (5) The Central 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 Central Government may call for and shall, if necessary, modify or alter the estimate and resubmit it to the Central Government. (7) The Central Government shall sanction the estimate with or without modifications. (8) Where any such estimate is not sanctioned by the Central Government before the commencement of the financial year to which it relates, the Central Government may authorise the Board to incur such expenditure as may be necessary in the opinion of the Central Government until such time as the approval of the estimate by the Central Government is communicated to the Board.

99. Preparation of supplemental estimate .-A Board may in the course of any year for which an estimate has been sanctioned by the Central Government cause one or more supplemental estimates for the residue of such year to be prepared, and the provisions of section 98 shall, so far as may be, apply to such estimate as if it were an original annual estimate.

100. Re-appropriation of amounts in estimate .-Subject to any directions which the Central Government may give in this behalf, any sum of money or part thereof of which the expenditure has been authorised in an estimate for the time being in force sanctioned by the Central 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 authorised in the said estimate:

Provided that no such re-appropriation shall be made from one major head of expenditure to another such head without the previous sanction of the Central Government.

101. Adherence to estimate except in emergency .-(1) Subject to the provisions of section 100, no sum exceeding such amount as the Central Government may fix in this behalf shall, save in cases of pressing emergency, be expended by, or on behalf of, any Board unless such sum is included in some estimate of the Board at the time in force which has been finally sanctioned by the Central Government.

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

102. Accounts and audit .-(1) A Board shall maintain proper accounts and other relevant records and prepare the annual statement of accounts, including the balance-sheet in such form as may be specified by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) [The accounts of the Board shall be audited-(i) once in every year; and (ii) if so required by the Comptroller and Auditor-General of India, concurrently with the compilation of such accounts, by the Comptroller and Auditor-General of India or such other persons as may be appointed by him in this behalf and any amount payable to him by the Board in respect of such audit shall be debitable to the general account of the Board.] (3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of a Board shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books of accounts, connected vouchers and other documents of the Board.

103. Publication of audit report .-(1) Within fourteen days after the audit and examination of the accounts of a Board have been completed, the Comptroller and Auditor-General of India shall forward copies of the audit report to the Central Government and to the Board.

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

104. Board to remedy defects and irregularities pointed out in audit report .-Every Board shall forthwith take into consideration any defects or irregularities that may be pointed out by the Comptroller and Auditor-General of India 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 Central Government.

105. Central Government to decide difference between Board and auditors .-If there is a difference of opinion between any Board and the Comptroller and Auditor-General of India 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 Central Government which shall pass final orders thereon and the Board shall be bound to give effect to such orders.

Chapter IX

Supervision And Control Of Central Government

106. Administration report .-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 Central Government every Board shall submit to the Central Government a detailed report of the administration of the port during the preceding year ending on the thirty-first day of March, in such form as the Central Government may direct.

107. Submission of statements of income and expenditure to Central Government .-(1) Every Board shall annually, or oftener if directed by the Central Government so to do, submit statements of its income and expenditure in such form and at such time as that Government may direct.

(2)A copy of all such statements shall be open to the 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 fixed by the Board.

108. Power of Central Government to order survey or examination of works of Board .-The Central Government may, at any time, order a local survey or examination of any works of a Board, or the intended site thereof and the cost of such survey and examination shall be borne and paid by the Board from and out of the moneys credited to the general account of the port.

109. Power of Central Government to restore or complete works at the cost of Board .-If, at any time, any Board-

(a)allows any work or appliance constructed or provided by, or vested in, the Board to fall into disrepair; or(b)does not, within a reasonable time, complete any work commenced by the Board or included in any estimate sanctioned by the Central Government; or(c)does not, after due notice in writing, proceed to carry out effectually any work or repair or to provide any appliance which is necessary in the opinion of the Central Government for the purposes of this Act, the Central Government may cause such work to be restored or completed or carried out, or such repairs to be carried out or such appliance to be provided and the cost of any such restoration, completion, construction, repair or provision shall be paid by the Board from and out of the moneys credited to the general account of the port.

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

(a)that on account of a grave emergency, any 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)that 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 Board or the administration of the port has greatly deteriorated, the Central 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 Central Government shall give a reasonable time of not less than three months 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 a notification under sub-section (1) superseding the Board,-(a)all the Trustees shall, as from the date of supersession, vacate their offices as such Trustees;(b)all the 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 Central 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 Central Government.(3)On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central 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 fresh election, and in such case,

any persons who vacated their offices under clause (a) of sub-section (2) shall not be deemed disqualified for appointment or election, as the case may be, 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 Trustees when the Board was superseded: Provided that the Central 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 Central 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 each House of Parliament at the earliest possible opportunity.

[110-A. Power of Central Government to supersede the Authority.]-(1) If the Central Government is of the opinion that the Authority is unable to perform, or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully or without sufficient cause, failed to comply with any direction issued by the Central Government under section 111, the Central Government may, by notification in the Official Gazette, supersede the Authority for such period as may be specified in the notification: Provided that, before issuing a notification under this sub-section, the Central Government shall give reasonable opportunity to the Authority to show cause why it should not be superseded and shall consider the explanation and objections, if any, of the Authority. (2) Upon the publication of a notification under sub-section (1) superseding the Authority, -(a) the Chairperson and the Members of the Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such Chairperson or Members as the case may be; (b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Authority shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct. (3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may -(a) extend the period of supersession for such further period as it may consider necessary; or (b) reconstitute the Authority in the manner provided in section 47-A].

111. Power of Central Government to issue directions to Board .- [(1) Without prejudice to the foregoing provisions of this Chapter, the Authority and every Board shall, in the discharge of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing from time to time:

Provided that the Authority or the Board as the case may be, shall be given opportunity to express its views before any direction is given under this sub-section.](2) The decision of the Central Government whether a question is one of policy or not shall be final.

Chapter X

Penalties

112. [Every person employed by the authority of this Act to be a public servant

.-Every person employed by the Authority or by a Board under this Act shall, for the purposes of sections 166 to 171 (both inclusive), 184, 185 and 409 of the Indian Penal Code (45 of 1860) and for the purposes of the Prevention of Corruption Act, 1988 (49 of 1988) be deemed to be a public servant within the meaning of section 21 of the said Code.]

113. Penalty for contravention of sections 37, 38, 40 and 41.-Whoever contravenes the provisions of any order issued under section 37 or section 38 or section 41 or fails to comply with any condition imposed under section 40 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 [one thousand rupees] [Substituted by Act 17 of 1982, Section 16, for " one thousand rupees" and " one hundred rupees" , respectively (w.e.f. 31.5.1982).] for every day after the first during which such contravention or failure continues.

114. Penalty for setting up wharves, quays, etc., without permission .-Any person who contravenes the provisions of section 46 shall be punishable with fine which may extend to [ten thousand rupees] for the first contravention and with a further fine which may extend to [one thousand rupees] [Substituted by Act 17 of 1982, Section 17, for " one thousand rupees" and " one hundred rupees" , respectively (w.e.f. 31.5.1982).] for every day after the first during which the contravention continues.

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

(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 [ten times] the amount of rates so due subject to a minimum of [five hundred rupees] [Substituted by Act 17 of 1982, Section 18, for " fifty rupees" .].

116. Recovery of value of damage to property of Board .-If, through the negligence of any person having the guidance or command of any vessel, or of any of the 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 any Board, [or any movable property belonging to any Board], the amount of such damage shall, on the application of the Board be recoverable, together with the cost of [such recovery in accordance with the provisions of Part X-A of the Merchant Shipping Act, 1958 (44 of 1958)] [Substituted by Act 63 of 2002, Section 28, for certain words (w.r.e.f. 1.2.2003)].

117. 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 [two thousand rupees].

[117-A. 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 Trustee 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, any Board, shall be deemed to have committed an offence under section 168 of the Indian Penal Code (45 of 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 6.]

118. 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.

119. Offences by companies .-(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished 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 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

120. Limitation of proceedings in respect of things done under the Act .-No suit or other proceeding shall be commenced against a Board or any member 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 after the accrual of the cause of action.

121. Protection of acts done in good faith .-No suit or other legal proceeding shall lie [against the Authority a 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 moorings, hawsers or other things belonging to or under the control of the Board.

122. Power of Central Government to make rules .-(1) The Central Government may, by notification in the Official Gazette, make rules for all or any of the following purposes, namely:-

(a) the times and places of the meetings of a Board and the procedure to be followed for the transaction of business at such meetings; (b) the fees and allowances payable to the members of a Board or of its committees; (ba) [the salaries, allowances payable to and the other terms and conditions of the chairperson and members of the Authority;] (c) any other matter in respect of which rules may be made by the Central Government. (2) The power to make rules under this section is subject to the condition of the rules being made after previous publication. (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session [immediately following the session] [Substituted by Act 29 of 1974, Section 35, for " in which it is so laid" (w.e.f. 1.2.1975).] 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.

123. General power of Board to make regulations .-Without prejudice to any power to make regulations contained elsewhere in this Act, a Board may make regulations consistent with this Act for all or any of the following purposes, namely:-

(a)for the times and places of the meetings of its committees and for the procedure to be followed for the transaction of business at such meetings;(b)for the form and manner in which contracts shall be made by the Board;(c)for the form of receipt to be given under sub-section (2) of section 42;(d)for the period within which notice may be given under sub-section (2) of section 43;(e)for the guidance of persons employed by the Board under this Act;(f)[for the safe, efficient and convenient use, management and control of the docks, wharves, quays, jetties, railways, tramways, 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;](g)for 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;(h)for 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;(i)for the mode of payment of rates leviable by the Board under this Act;(j)for 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;(k)for 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;(l)for regulating the lighthouse of cargo between ships or between ships and shore or between shore and ships;(m)for the exclusion from the premises of the Board of disorderly or other undesirable persons and of trespassers;(n)for ensuring the safety of the port;(o)generally, for the efficient and proper administration of the port.[123-A. Power of Authority to make regulations.-The Authority may make regulations consistent with this Act for all or any of the following purposes, namely:-(a)the times and places of meetings of the Authority and the procedure to be followed at such meetings under section 47-E;(b)the salaries and allowances payable to and the other conditions of service of officers and other employees of the Authority under sub-section (2) of section 47-H.]

124. Provisions with respect to regulations .-(1) No regulation made by the Board under this Act [other than a regulation made under sub-section (2) of section 17,] shall have effect until it has been approved by the Central Government and until such approval has been published in the Official Gazette.

(2) No such regulation [other than a regulation made under section 28,] [Inserted by Act 17 of 1982, Section 20 (w.e.f. 31.5.1982).] shall be approved by the Central Government until the same has been published by the Board for two weeks successively in the Official Gazette and until fourteen days have expired from the date on which the same had been first published in that Gazette. (3) Any regulation made under this Act other than a regulation made under section 28, may provide that a breach thereof shall be punishable with fine which may extend to [two thousand rupees] [Substituted by Act 17 of 1982, Section 20, for " two hundred rupees" (w.e.f. 31.5.1982).], and where the breach is a continuing one, with further fine which may extend to [five hundred rupees] [Substituted by Act 17 of 1982, Section 20, for " fifty rupees" (w.e.f. 31.5.1982).] for every day after the first during which such breach continues. (4) [Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.] [Inserted by Act 17 of 1982, Section 20 (w.e.f. 31.5.1982).]

125. Power of Central Government to direct regulations to be made or to make regulations .-(1) Whenever the Central Government considers necessary in the public interest so to do, it may, by order in writing together with a statement of reasons therefor, direct any Board to make any regulations for all or any of the matters specified in section 28 or section 76 or section 123 or to amend any regulations, within such period as the Central Government may specify in this behalf:

Provided that the Central Government may extend the period specified by it by such period or periods as it may consider necessary. (2) If any Board, against whom a direction is issued by the Central Government under sub-section (1), fails or neglects to comply with such direction within the period allowed under sub-section (1), that 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 modifications thereof as the Central Government may think fit: Provided that, before so making or amending the regulations, the Central 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 Central Government in the Official Gazette and shall thereupon have effect accordingly.

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

127. Posting of certain regulations, etc .-The text of the regulations made under clauses (e) to (n) of section 123 and the scale of rates together with a statement of conditions framed by any Board under Chapter VI shall be prominently posted by the Board in English, in Hindi and in the regional language on special Boards to be maintained for the purpose at the wharves, docks, piers and other convenient places on the premises of the Board.

128. Saving of right of Central Government and municipalities to use wharves, etc., for collecting duties and of power of Customs Officers .-Nothing in this Act shall affect-

(1)the right of the Central Government to collect customs duties or of any municipality to collect town duties at any dock, berth, wharf, quay, stage, jetty or pier in the possession of a Board, or(2)any power or authority vested in the customs authorities under any law for the time being in force.

129. Application of certain provisions of the Act to aircraft .-The provisions of sections 35, 37, 38, 39, 40, 41, 42, 48, 49, 50, 64, 65, 115, 121, 123 and 124 shall apply in relation to all aircraft making use of any port while on water as they apply in relation to vessels.

130. Power to evict certain persons from the premises of Board .-(1) Notwithstanding anything contained in any other law for the time being in force, if a Board in exercise of the powers conferred on it by regulations made under this Act cancel the allotment of any premises made to any employee of the Board, the Board may, by notice in writing, order such allottee or any other person who may be in occupation of the whole or any part of the premises to surrender or deliver possession thereof to the Board or a person appointed by the Board in that behalf within such period as may be specified in the notice.

Explanation.-For the purposes of this section, "premises" means any building or part of a building and includes-(i)the gardens, grounds and out-houses, if any, appertaining to such building or part of a building;(ii)any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof; and(iii)any furniture, books or other things belonging to the Board and found in such building or part of a building.(2)If any allottee or other person refuses or fails to comply with an order made under sub-section (1), any magistrate of the first class may, on application made by or on behalf of the Board, order any police officer, with proper assistance, to enter into the premises and evict any person from, and take possession of, the premises and to deliver the same to the Board or a person appointed by the Board in that behalf and the police officer may, for the purpose, use

such force as may be necessary.(3)Any such notice as is referred to in sub-section (1) may be served-(a)by delivering or tendering it to the allottee or any other person who may be in occupation of the whole or any part of the premises; or(b)if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises, or(c)by registered post.

131. Alternative remedy by suit .-Without prejudice to any other action that may be taken under this Act, a Board may recover by suit any rates, damages, expenses, costs, or in the case of sale the balance thereof, when the proceeds of sale are insufficient, or any penalties payable to, or recoverable by, the Board under this Act or under any regulations made in pursuance thereof.

132. Requirements as to publication of notifications, orders, etc., in the Official Gazette .-(1) Any requirement in this Act that a notification, order, rule or regulation issued or [made by a Board or the Authority or the Central Government] shall be published in the Official Gazette, shall, unless otherwise expressly provided in this Act, be construed as a requirement that the notification, order, rule or regulation shall-

(a)where it is issued or made by the Board be published in the Official Gazette of the State in which the port is situated, and(b)where it is issued or [made by the Authority or the Central Government] [Substituted by Act 15 of 1997, Section 30, for " made by the Central Government" (w.r.e.f. 9.1.1997).], be published in the Gazette of India.(2)Any notification, order, rule or regulation issued or [made by the Authority or the Central Government] [Substituted by Act 15 of 1997, Section 30, for " made by the Central Government" (w.r.e.f. 9.1.1997).] shall, for general information, be also republished in the Official Gazette of the State in which the port is situated.

133. Repeal .-(1) On the application of this Act to the port of Kandla, the Bombay Landing and Wharfage Fees Act, 1882 (Bombay Act 7 of 1882), shall cease to have force in relation to that port.

(2)On the application of this Act to the ports of Cochin and Visakhapatnam, the Madras Outports Landing and Shipping Fees Act, 1885 (Madras Act 3 of 1885) shall cease to have force in relation to those ports.[(2-A) On the application of this Act to the port of Bombay, the Bombay Port Trust Act, 1879 (Bombay Act 6 of 1879), except the provisions thereof relating to municipal assessment of the properties of the port of Bombay and matters connected therewith, shall cease to have force in relation to that port.(2-B) On the application of this Act to the port of Calcutta, the Calcutta Port Act, 1890 (Bengal Act 3 of 1890), except the provisions thereof relating to municipal assessment of the properties of the port of Calcutta and matters connected therewith, shall cease to have force in relation to that port.(2-C) On the application of this Act to the port of Madras, the Madras Port Trust Act, 1905 (Madras Act 2 of 1905), shall cease to have force in relation to that port.(2-D)

Notwithstanding anything contained in sub-sections (2-A), (2-B) and (2-C),-(a)every Trustee of the Board of Trustees of the port of Bombay or Madras holding office as such immediately before the application of this Act to the port of Bombay or Madras, as the case may be, shall be deemed to have been appointed or elected as such under this Act and shall continue to hold such office after such application until a Board of Trustees in respect of that port is constituted under the provisions of this Act;(b)every Commissioner of the port of Calcutta holding office as such immediately before the application of this Act to that port shall be deemed to have been appointed or elected as a Trustee under the provisions of this Act and shall continue to hold such office after such application until a Board of Trustees in respect of that port is constituted under the provisions of this Act;(c)anything done or any action taken or purported to have been done or taken (including any rule, regulation, bye-law, notification, order or notice made or issued or any resolution passed or any appointment or declaration made or any licence, permission or exemption granted or any rates, charges or duties levied or any penalty or fine imposed) under the Acts referred to in sub-sections (2-A), (2-B) and (2-C) 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.(2-E) Upon the cesser of operation of the provisions of the Acts referred to in sub-sections (2-A), (2-B) and (2-C) the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply as if the provisions first-mentioned were provisions contained in a Central Act and such cesser of operation were a repeal; and the mention of particular matters in sub-section (2-D) shall not be held to prejudice or affect the general application of the said section 6 with regard to the effect of repeals.](3)If immediately before the application of this Act to any other port, there is in force in that port any law which corresponds to this Act or to any provision thereof, that corresponding law shall, on such application, cease to have force in relation to that port [and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply as if such corresponding law were a Central Act and such cesser of operation were a repeal.] [Inserted by Act 17 of 1978, Section 3 (w.e.f. 4.5.1978).]

134. Power to remove difficulties .-If any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactments repealed by this Act to the provisions of this Act, the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears to it 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.]