

Transport Bhawan,
1, Parliament Street,
New Delhi-110001
Dated 21st April, 2020

To

Chairperson & CMD
All Major Ports

Sub: Issues at Major Ports relating to;

- 1) Exemptions/Remission of charges
- 2) Force Majeure

Due to COVID19 pandemic and lockdown measures in several countries, the logistic chain has been severely disrupted and associated production & consumption centres have been affected. The logistic chains are going through an unusual and massive shock from the disruptions on supply side as well as the demand side. The logistic chain related businesses including traders, importers, exporters, port operators, shipping lines, transporters are facing huge challenge in maintaining their businesses due to lower trade volume as well as cash flow issues. Therefore, it is required that some relief measures are taken to support and rebuild the logistic chain.

2. Ministry of Home Affairs, Government of India had issued order No 40-3/2020-DM-I (A) dated 24.03.2020 and subsequent order dated 15/4/2020 along with its amendments to impose lockdown from 22nd March to 3rd May, 2020 (hereafter "Lockdown Period") to contain COVID-19 pandemic in the country. The lock-down measures and associated disruptions in logistic chains have impacted the Indian ports and port users. There is an impact in the form of drop in imports & exports volumes, delays in evacuation of cargo, cash flow issues etc. resulting in inability of port users, concessionaires and other stakeholders to fulfil their obligations to port authorities and banks/lenders. In view of this extraordinary situation and after considering the representations received from various stakeholders, all Major Ports are directed that:-



3. **Remission of charges to Port Users**

- (i) *Storage Charges:* Ports shall allow free storage time to all port users for the Lock-down Period.
- (ii) *Lease rentals, licence fees related charges:* Ports shall allow deferment of April, May and June months, annual lease rentals/licence fees on pro-rata basis, without any interest, if requested by lessee/licensee. This shall be applicable only for the annual lease rentals/licence fee to be received by port for year 2020.
- (iii) *Other Charges, penalties etc.:* Ports shall ensure that no penal charges, demurrages, detention charges, dwell time charges, anchorage charges, penal berth hire charges, performance related penalties etc. are levied on any port user (traders, importer, exporters, shipping lines, concessionaires, licensees, CFS, etc.) for any delay in berthing, loading/unloading operations or evacuation/arrival of cargo during the Lock-down Period plus 30 days recovery period.
- (iv) *Additional land for storage:* If requisite additional land is available within port area, the port shall make all efforts to provide the additional storage land to port users, on temporary basis, without any charges, rentals, fee etc upto 30th June 2020 on 'as is where is' basis.

4. **Remission of charges to PPP concessionaire**

Due to the impact of COVID and lockdown measures, there is drop in cargo volume at several Public Private Partnership (PPP) berths/terminals in Major-Ports. Therefore, ports shall extend the following to such PPP concessionaires;

- (i) *Revenue share, royalty and equipment hire related charges:* Ports shall allow deferment of April, May and June months' revenue, royalty and equipment hire charges without any interest, if requested by concessionaire. The said deferred amount shall be paid by concessionaire after interest free period of three months(reckoned month to month i.e. the charges due in April 2020 shall be paid in month of August 2020) Or alternatively, through six monthly equated instalments at interest rate equal to RBI's 91-days Treasury Bill

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(Primary) yield rate (as on the due date of initially deferred amount) after expiry of interest free period.

- (ii) *Lease rentals, licence fees related charges:* Ports shall allow waiver of lease rentals, licence fees and similar charges for three months (April, May and June'2020) to the extent the volume of cargo dropped compared to monthly average cargo volume of last calendar year i.e. 1st Jan 2019 to 31st Dec 2019. For example, the 'average monthly volume' is 10,000 TEUs based on the cargo handled by concessionaire from 1st Jan 2019 to 31st Dec 2019. If the cargo volume for the month of April'20 is 6000 TEUs (*i.e. drop of 40% by volume compared to last year's average monthly volume*), the ports shall waive off 40% of lease rentals, licence fees and similar charges for the month of April 2020. If such waived amount has already been received by port, adjustment of the same shall be provided in the forthcoming from concessionaire.
- (iii) *Minimum Guaranteed Throughput (MGT) obligations:* The MGT obligations (wherever existent in concessionaire agreements) shall be computed, for the respective year, without considering the Lockdown Period and cargo volume handled during said period.
- (iv) *Performance standard related obligations:* Ports shall not levy any penalty or charges for any shortfall in any performance standards such as gross berth output, transit storage dwell time, turnaround time for delivery store receipt operations, non-transshipment requirements etc. for the Lockdown Period plus 30 days recovery period.
- (v) *Additional Land for storage:* If requisite additional area is available within port, the port shall provide additional storage area to PPP concessionaires, on temporary basis, without any charges, rentals, fee etc for upto 30th June 2020 on 'as is where is' basis.

5. **Vessel related charges from Shipping Lines:**

Marine Due/Vessel related charges: Ports shall allow interest free 60 days deferment of marine dues/ vessel related charges to Indian coastal vessels, if requested by vessel operators. Ports shall obtain requisite Bank Guarantee, as security, from coastal vessel operators for the same. Only deferment requests received by 30th May 2020 shall be considered.

(Signature)

6. **Force Majeure:**

The Ministry of Finance vide OM No.18/4/2020-PPD dated 19th February, 2020 *inter alia* citing "A Force majeure (FM) means extraordinary events or circumstances beyond human control such as an event described as an Act of God (like natural calamity)" has clarified that spread of corona virus should be considered as a case of natural calamity and Force Majeure may be invoked.

The Ministry of Shipping, Government of India through Order No PD-13/33/2020-PPP/e-339106 dated 20.03.2020 and letter dated 24th March, 2020 has already intimated the Major Ports that the COVID-19 pandemic shall be considered as a 'natural calamity' that would entitle invocation of 'force majeure' provisions inasmuch as obligations under various contracts (involving the Major Ports) are concerned.

The aforesaid orders do not impact or dilute the fact that each Major Port needs to remain operational during the COVID-19 pandemic and continue cargo operations in all respects.

In view of the situation arising because of the COVID-19 pandemic and after considering the representations received from various stakeholders, Major Ports are directed that –

- (i) The period for completion of any Project under implementation in PPP mode or otherwise, shall be extended by the Ports.
- (ii) For PPP projects under implementation, the Major Ports can permit waiver of all penal consequences on a case-to-case basis along with deferment of performance obligations as per relevant provisions of Concession Agreement.
- (iii) The period of Force Majeure starts from the date of order of Ministry of Finance referred above and will end when the competent authority so orders.

7. The aforementioned point 3(i) and (ii) shall not be applicable to Mumbai Port Trust and Mormugao Port Trust

8. All Major Port Trusts shall issue relevant applicable orders for both remission and Force Majeure in their respective ports and forward the copy of port's order to the Ministry of Shipping within 7 working days from the date of issue of this order.




9. The remissions/waivers/deferments stipulated in this order shall be extended to only port related activities, industries and commercial establishments. This order shall not be applicable on any captive user, Central or State govt entities, local bodies, PSUs, CPSEs.

10. Port shall ensure strict implementation of this order by port users including PPP concessioners, CFS, ICD, Shipping lines etc. If required, ports shall invoke relevant provisions of agreements and take appropriate action.

11. This order supersedes the Order No. PD-14300/4/2020-PD VII dated 31st March 2020.

12. This order is issued under Section 111 of Major Port Trusts Act, 1963 with the approval of Hon'ble Minister of State for Shipping (IC) and to be implemented with immediate effect. This order shall also be followed by Kamarajar Port Limited.

Yours faithfully,


(Arvind Chaudhary)
Director

Copy to,

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| (i) Secretary, Revenue | } | With a request to issue appropriate direction to CFS and ICDs. |
| (ii) Secretary, Ministry of Commerce | | |
| (iii) Chairman, CBIC | | |

Copy also to:

- (i) PS to Hon'ble Minister (IC)
- (ii) PS to Secretary(S)
- (iii) PS to Chairman, IWAI
- (iv) PS to AS(S)
- (v) PS to Sr. Advisor(E)
- (vi) PS to DG(S)
- (vii) PS to JS(P)/JS(S)/JS(SM)/JS(PPP)/JS(A)
- (viii) MD, IPA
- (ix) All Director/DS in Ministry of Shipping