

PUBLISHED IN THE GOVT OF INDIA GAZETTE DATED 27-4-89  
MINISTRY OF SURFACE TRANSPORT  
(PORTS WING)

## **NOTIFICATION**

G. S R. 475 (E) — In exercise of the powers conferred by sub-section (i) of section 124, read with sub section (i) of section 132 of the Major Port Trust Act, 1963, (38 of 1963), the Central Government hereby approve the Cochin Port Trust (Distrainment or arrest and sale of Vessels) Regulations, 1988 made by the Board of Trustees of Cochin Port in exercise of powers conferred on them by section 123 of the said Act, and published in the Kerala Gazette dated 31st January, 1989 and 7th February, 1989 and as set out in the Schedule to this notification.

## **COCHIN PORT TRUST SCHEDULE**

No. B2/1633/88/S

### **Notification**

In exercise of the powers conferred by sub-section (f) and (k) of Section 123 of Major Port Trust Act, 1963 (38 of 1963) the Board of Trustees of Cochin Port Trust hereby makes the following regulations, the same having been published for two successive weeks in the Kerala Govt. Gazette dated 12th July 1988 and 26th July 1988 respectively with the approval of the Central Government under Section 124 of the said Act.

1. (i) **Short Title:-** These Regulations may be called "The Cochin Port Trust (Distrainment or Arrest and sale of Vessels) Regulations, 1988."
- (ii) **Commencement:-** They shall come into force on the date of their final publication in the Official Gazette.

## **2. Application:**

These regulations shall apply to all vessels in respect of which any rates or penalties or both are payable under the Major Port Trusts Act, 1963, or under any regulations or orders made thereunder, but shall not apply to vessels belonging to, or in the service of, the Central Government or a State Government or to any vessel of war belonging to any Foreign State.

## **3. Definitions:**

In these regulations, unless the context otherwise requires,

- i) "Act" means the Major Port Trusts Act, 1963 (38 of 1963)
- ii) "Deputy Conservator" means the Officer for the time being in charge of the Marine Department of the Port Trust and includes the Deputies and Assistants to the Deputy Conservator and any other officers acting under the authority of the Deputy Conservator
- iii) "Form" means the form annexed to these regulations;
- iv) "Rates" means the rates or penalties payable under the Act.
- v) Words and expressions used in these regulations but not defined and defined in the Act shall have the meanings respectively assigned to them in the Act.

## **4. Distraint or arrest of vessels :**

- 1) Where any vessel in respect of which rates/penalties have not been paid is lying at the Port, a demand in Form I shall be made by the Deputy Conservator upon the Master of the defaulting vessel requiring the said Master to pay all the rates or penalties within a period of seven days from the date of issue of the said demand.
- 2) The said demand shall accompany the copy of the bills containing the full particulars of rates or penalties which were raised against the owner or agent of the concerned vessel and payment of which still remains due to the Board.
- 3) The said demand shall be served upon the Master and in the event of non-availability of the Master, the affixing of the demand notice on the mast of the vessel shall be deemed as service of the demand upon the master.
- 4) If the master of the defaulting vessel; refuses or neglects to pay the rates/penalties or any part thereof within the time limit specified in the demand made upon the master, the board may proceed to distraint 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.

- 5) In order to distrain or arrest the defaulting vessel, the Deputy Conservator shall issue a warrant of arrest in Form II clearly specifying the amount due and indicating that the distraint or arrest shall continue until the amount so due to the Board together with further accrual of rates or penalties and costs are paid towards full satisfaction of the Board.
- 6) (a) The warrant of arrest shall be served upon the Master of the vessel and a copy thereof shall also be affixed on the mast of the vessel.
- (b) In cases where the Master is not available or avoids service of the warrant, the fixing of the copy of the copy of the warrant on the mast of the vessel shall be deemed as service of the warrant upon the Master.
- 7) If the said rates penalties or cost of the distraint or arrest of the vessel or the keeping of the same are not paid by the owner or master or agent of the vessel towards full satisfaction of the Board within a period of five days next after the distress of arrest has been made, the Board shall cause the vessel or other things so distrained or arrested to be sold.
- 8) In the case of a foreign vessel placed under distraint or arrest by an order, the Embassy of the Flag Country and the Government of India in the Ministry of Surface Transport shall also be informed.

**5. Sale of distrained or arrested vessel:**

- (1) The Deputy Conservator shall have a valuation survey of the vessel carried out by approved Surveyors to ascertain the reserve sale price of the distrained vessel.
- (2) The Deputy Conservator shall obtain the permission of the Director General, Shipping before putting the vessel and the tackle, apparel and furniture belonging thereto, to sale.
- (3) The sale shall be held in accordance with the provisions of the Sale of Goods Act, 1930 and also in terms of the conditions of sale as per Tender Notice.
- (4) Sealed tenders shall be invited from the prospective buyers through press advertisement, as in Form II/4, at least in four leading newspapers, including Hindi and one regional language daily, specifying the last date for the receipt of tenders.
- (5) The prospective buyers shall be permitted to inspect the vessel after the sale notice is published in the Press, during a specified period which shall be fixed by the Deputy Conservator.
- (6) Each tender shall be accompanied by an earnest money deposit, to be paid by bank draft, to be fixed by the Deputy Conservator in each case.
- (7) The tenders received after the due date and time, shall be summarily rejected.

- (8) The sealed tenders shall be opened in the presence of tenderers present on the date and time fixed by the Deputy Conservator for opening the tenders and if any tenderer is not present at the time fixed for opening the tenders, his tender may be rejected without opening, giving the reasons.
- (9) The acceptance of the offer shall be communicated to the successful tenderer.
- (10) The successful tenderer shall pay 25% of the bid amount within five days from the date of acceptance of the tender and the balance amount within 15 days from the date. In addition to the tender value the successful tenderer will also deposit such money/bank guarantee for a value as determined by the Deputy Conservator as security deposit which will be returned within a period of 3 months after successful completion. However, no interest shall be paid by the port on the deposit so made
- (11) In default to payment of 25% of the bid amount within five days from the date of acceptance of the tender, the sale shall, unless otherwise ordered, stand automatically revoked, and the earnest money shall be forfeited, and the vessel shall be resold at the risk of the tenderer whose tender was accepted.
- (12) If the vessel is not removed from the harbour for any reason within 30 days, additional berth hire charges beyond the normal charges, as laid down in the Port's Scale of Rates, shall be levied.
- (13) Under no circumstances, the buyer shall be permitted to dismantle or break the ship inside the harbour or within the port limits, unless or otherwise it is specifically permitted to do so.

#### **6. Liabilities of the buyer of the vessel:**

- (1) On and from the date of acceptance of the tender all rates/penalties and other charges shall be to the buyer's account.
- (2) Upon acceptance of the tender, the buyer shall deposit with the port an amount representing 30 day's port dues, fees and charges as may be estimated by the Deputy Conservator to be payable for such period.
- (3) Customs and Excise duties, Sales Tax, Local Taxes, etc. shall be as applicable on buyer's account and he should remit the amounts on account of such duties and taxes to the concerned authorities and produce the receipts for such payments before the clearance is granted to the vessel by the Port.
- (4) (a) Immediately after the acceptance of the tender the buyer shall make all arrangements for manning and maintenance of the vessel by a certificated master, certificated officers and certificated engineers with an adequate number of crew during the period the vessel is kept inside the harbour.

- (b) In case of failure by the buyer in making necessary arrangements for manning and maintaining the vessel, the Port authorities may hire and employ proper persons for the purpose and all reasonable expenses incurred in this connection shall be recoverable from the buyer.

## FORM NO. I

(See Regulation 4 (1))

To

The Master,  
M V. / S. S.

SUBJECT : m v. Rates / Penalties-Non-payment of rates / penalties-Issue of notice demanding immediate payment.

Sir,

Please refer to my letter cited. You were requested to pay a sum of Rs ..... as on ..... towards the following rates / penalties payable under the provisions of the Major Port Trust Act, 1963/regulations or orders made thereunder due to the Port Trust on or before .....

1 .. 2 .. 3 ..... No steps have so far been taken by you as the Master of the vessel, or by the Agent, to pay dues to the Port as demanded towards aforesaid rate/penalties. As on ..... an amount of Rs ..... is due from the vessel under your command.

2. Notice is hereby given to you for making the above payment within seven days on receipt of this Notice, failing which provisions of section 64 of the Major Port Trust Act 1963 will be invoked to distrain or arrest the vessel and 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.

Yours faithfully,

DEPUTY CONSERVATOR

Copy to:- 1) Owners of m. v. ....

2) Agents of m. v. ....

## FORM NO. II

(See Regulation 4 (5))

To

The Master,

M. V. / S. S.

SUBJECT : SHIPPING- m. v. Rates / penalties- Non-payment of rates penalties- Distrain order- issue off.

Ref: My letter of even number dated.

Sir,

Please refer to my letter cited You were requested pay a sum of Rs ..... as on ..... towards the Rates/penalties due to the ..... Port Trust on or before. No steps have so far been taken by you as master of the vessel or by the agents to pay the dues to the ..... Port Trust as demanded on ..... You are hereby notified that an approximate amount of Rs ..... towards rates/penalties as on ..... is due from the vessel under your command.

In view of the non-payment of the above rates penalties due of the ..... Board I hereby pass orders in exercise of the powers given under the provisions of section 64 of the Major Port Trusts Act, 1963, that the vessel m. v. .... is hereby distrained and will be kept under detention until the amount due to the .....

Board together with such further amount as may accrue for any period during which the vessel is distrained and detained is paid.

Please also note that in case the above said amount and the cost of the distraint is not settled within 5 days from the date of distraint order (i e.) .....  
I shall be constrained to sell the above vessel under the powers vested under section 64 of the said Act and the sale proceeds will be adjusted against the charges due to the Board including the cost of the sale of the vessel.

Yours faithfully,

DEPUTY CONSERVATOR

Copy to:- 1) Owners of m. v. ....

2) Agents of m. v. ....

**FORM III**

(See Regulation 5 (4) )

**ADVERTISEMENT**

In exercise of the powers conferred by section 64 of the Major Port Trusts Act, 1963 ..... Port Trust invites sealed tenders from the intended purchasers for the sale of the vessel m. v. .... on "as is where is" basis.

2. Brief particulars of the vessel are as follows:-

Name of the vessel .....

Year of built .....

G. R. T. ....

N. R. T. ....

Length .....

Breadth .....

Depth .....

Deadweight .....

Classification .....

Engine .....

B. H. P. ....

L. D. T. ....

Year of Built .....

Year .....

3. Offers in double sealed covers are invited before ..... Hrs. on ..... addressed to Deputy Conservator ..... Port Trust alongwith an Earnest Money Deposit of Rs ..... (Rupees ..... ) by Bank Draft payable at ..... in favour of ..... The tender should be submitted superscribing on the envelop **TENDER FOR THE PURCHASE OF M. V. ....**

4. All tenders received after the due date and time will be summarily rejected.



5. The sealed tenders for the purchase of the vessel shall be opened on \_\_\_\_\_ in the presence of Deputy Conservator \_\_\_\_\_ Port Trust in his office. The acceptance of the offer will be communicated to the successful tender.

6. The successful tenderer shall pay 25% of the bid amount within five days from the date of acceptance of the tender and the balance within 15 days from that date. No bank Guarantee will be accepted. In default of payment of 25% of the bid amount within five days from the date of acceptance of the tender, the sale shall unless otherwise ordered, stand automatically revoked and the Earnest Money Deposit of Rs \_\_\_\_\_ forfeited and the ship resold at the risk of cost of the tenderer, whose tender was accepted. Should the balance of sale consideration be not paid within the aforesaid time of 15 days from the acceptance of the tender the sale shall stand automatically revoked and the earnest money of Rs \_\_\_\_\_ be forfeited. The 25% amount already paid shall be retained to meet any shortfall or other expenses arising out of the said resale.

7. Customs Excise and Import Duty, Sales Tax, Local Taxes, etc. as applicable on 'BUYERS ACCOUNT'.

8. The tenders will be opened on \_\_\_\_\_ at \_\_\_\_\_ in the presence of the Deputy Conservator \_\_\_\_\_ Port Trust in his office and the acceptance of any tender will be at the sole discretion of the Deputy Conservator \_\_\_\_\_ Port Trust.

9. The ship should be removed from the \_\_\_\_\_ Port within 30 days from the date of sale. During this time the ship should be kept manned by certificated Master, certificated officers and certificated Engineers plus an adequate number of crew. These arrangements should be made by the Buyer,

10. The Buyer will have to pay all the rate/penalties from the date of sale of the vessel till the date of actual removal of the vessel from the harbour in accordance with the Major Port Trust (Distraint or Arrest and sale of vessels) Regulation, 1988.

11. Under no circumstances, the Buyer will be permitted to dismantle the ship inside harbour or within Port limits, unless or otherwise it is permitted to do so.

12. The ship which is lying at \_\_\_\_\_ may be inspected by prior appointment with the Deputy Conservator, from \_\_\_\_\_ to \_\_\_\_\_

13. The port reserves the right to reject any or all tenders without assigning any reason whatsoever.