

No. PD-14300/4/2020-PD VII
Government of India
Ministry of Shipping

Transport Bhawan,
1, Parliament Street,
New Delhi-110001
Dated 31st March, 2020

To,

Chairperson & CMD
All Major Ports

Sub.: Guidelines to Major Ports on

- (i) Exemptions/Remission on penalties etc. and
- (ii) Issues relating to Force Majeure

Part A – Exemptions/Remission of Penalties etc.

Ministry of Home Affairs, Government of India had issued order No 40-3/2020-DM-I (A) dated 24.03.2020 to impose lockdown for a period of 21 days to contain COVID-19 pandemic in the country.

2. Further, Ministry of Home Affairs, Government of India had vide its order No 40-3/2020-DM-I (A) dated 25.03.2020 issued an addendum specifically **giving exceptions to the operations of seaports for cargo movement and inter-state movement of goods/cargo for inland and exports** to ensure regular supply of goods in the country. Through the above, the Central Government has made it clear that the smooth functioning of the Ports remain vital for the country as Ports are the main source for import and exports of goods.

3. However, given the nation-wide lockdown, there is an inevitable impact in the form of delays in evacuation of cargo and inability to fulfill obligations by various parties/stakeholders due to the affect on the downstream services.

4. In view of the situation arising because of the lockdown and after considering the representations received from various stakeholders, Major Ports are directed that –

- (i) In the light of the MHA order No. 40-3/2020-DM-I (A) dated 25.03.2020 and by invoking power under Section 53 of Major Port Trust Act 1963; each

Major Port shall ensure that no penalties, demurrage, charges, fee, rentals are levied by the Major ports on any port user (traders, Shipping lines, concessionaires, licensees etc.) for any delay in berthing, loading/unloading operations or evacuation/arrival of cargo caused by the reasons attributable to lockdown measures from 22nd March to 14th April, 2020.

- (ii) Therefore, each Major Port shall exempt or remit demurrage, ground rent over and above the free period, penal anchorage/berth hire charges and any other performance related penalties that may be levied on port related activities including minimum performance guarantee, wherever applicable.

Part B – Issues relating to Force Majeure

5. The Ministry of Finance vide OM No.18/4/2020-PPD dated 19th March, 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.


6. 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 can 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.

7. 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.

8. 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, can be extended by the Ports.
- (ii) For existing and operational PPP projects, 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.

9. The above order issues 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.


(Arvind Chaudhary)
Director

Copy to:

- (i) PS to Hon'ble Minister (IC)
- (ii) PS to Secretary(S)
- (iii) PS to AS(S)
- (iv) PS to JS(P)/JS(S)/JS(SM)/JS(PPP)
- (v) PS to Sr. Advisor(E)
- (vi) All Director/DS in Ministry of Shipping