

DISTRAINT OR ARREST AND SALE OF VESSELS

1. **Short Title and Commencement :**

These regulations may be called the " Mumbai Port Trust (Distraint or Arrest and Sale of Vessels) Regulations, 1988".

They have come into force from 9th March 1989 after their publication of the approval of the Central Government 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 Trust Act, 1963 or under any regulations or orders made by thereunder, but shall not apply to vessels belonging to or 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 Trust Act, 1963 (38 of 1963);
- (ii) "Deputy Conservator" means an Officer for the time being in charge of the Marine Department, Mumbai 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; and
- (v) Words and expressions used in these regulations but not defined and defined in the Act shall have the meaning 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 the period of seven days from the date of issue of the said demand.

2. The said demand shall accompany a copy/ copies of the bills containing the full particulars of rates of penalties which were raised against the owner/ master 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 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.
 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 at cost 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 case where the master is not available or avoids service of the warrant, the fixing 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 the master or agent of the vessel towards full satisfaction of the Board within the period of five days next after the distraint or 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 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 reserved sale price of the distrained vessel.

2. The Deputy Conservator shall obtain the permission of the Director General of 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 provision 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 III, at least in four leading newspapers, including Hindi and one regional language daily specifying the last date of 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 the tenderers present on the date and the 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 reason.
9. The acceptance of the offer shall be communicated to the successful tenderer.
10. The successful tenderer shall pay 25 percent 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 three months after successful completion. However, no interest shall be paid by the port on the deposit so made.
11. In default of payment of 25 percent of the 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 a vessel was not removed from the harbour for any reason within 30 days or within such extended period as may be permitted by the Deputy Conservator for reasons to be recorded in writing berth hire charges, if the vessel is at a berth or anchorage fees, if the vessel is at anchorage, at one and a half times the rates 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 30days 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 I
[See Regulation 4(1)]

To,

The Master,
M.V./S.S. _____.

Sub : 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 agents, to pay dues to the Port as demanded towards aforesaid rates/ penalties. As on _____ an amount of Rs. _____ is due from the vessel under your command.

Notice is hereby is 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 Trusts Act, 1963, will be invoked to distrain or arrest the vessel and the tackel, 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 distrain or arrest, is paid.

Yours faithfully,

DEPUTY CONSERVATOR

Copy to-
M/s. _____ Owners of M.V.

Copy to-
M/s. _____ Agents of the vessel.

FORM II
[See Regulation 4(5)]

To,

The Master,
M.V./S.S. _____.

Sub : SHIPPING-M.V. rates/ penalties- non payment of rates/ penalties-
Distrain order-issue of.

Ref : My letter of even number dated _____.

Sir,

Please refer to my letter cited. You were, requested to pay a sum of Rs. _____ as on _____ towards the rates penalties due to Mumbai 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 Mumbai 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 to 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 vessel.

Yours faithfully,

DEPUTY CONSERVATOR

Copy to-
M/s. _____ Owners of M.V. _____
Copy to-
M/s. _____ Agents of the vessel.

FORM III
[See Regulation (4)]

ADVERTISEMENT

In exercise of the powers conferred by section 64 of the Major Port Trusts Act, 1963, Mumbai 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 : _____

Nationality/ Flag : _____

G.R.T. : _____

N.R.T. : _____

Length : _____

Breadth : _____

Depth : _____

Deadweight : _____

Classification : _____

Engine : _____

B.H.P. : _____

L.D.T. : _____

Yard : _____

3. Offers in double sealed covers are invited before _____ hrs. on _____ addressed to the Deputy Conservator, Mumbai Port Trust along with an Earnest Money Deposit of Rs. _____ (Rupees _____) by bank draft payable at _____ in favour of _____. The tender should be submitted superscribing on the envelope TENDER FOR THE _____ PURCHASE OF M.V. _____.

contd.2

4. All tenders received after the due date and time will summarily rejected.
5. The sealed tenders for the purchase of the vessel shall be opened on _____ in the presence of Deputy Conservator, Mumbai Port Trust in his office. The acceptance of the offer will be communicated to the successful tenderer.
6. The successful tenderer shall pay 25 percent of the bid amount within 5 days from the date of acceptance of the tender and the balance within 15 days from the date. No Bank guarantee will be accepted. In default of payment of 25 percent of the bid amount within 5 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 and cost of the tenderer, whose tender was accepted. Should the balance of the 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 percent amount already paid shall be retained to meet any shortfall or other expenses arising out of the said re-sale.
7. Customs, Excise and Import Duty, Sales Tax, Local Taxes, *etc.* applicable on "BUYER'S ACCOUNT".
8. The tenders will be opened on _____ at _____ in the presence of the Deputy Conservator, Mumbai Port Trust, in his office and the acceptance of any tender will be at the sole discretion of the Deputy Conservator, Mumbai 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 rates/ 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) Regulations, 1988.
11. Under no circumstances the buyer will be permitted to dismantle the ship inside the harbour and 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 the tenders without assigning any reason whatsoever.