

Merchant Shipping (Amendment) Act, 2002

Section 27 - Insertion of New Part Xc

After Part XB of the principal Act, the following Part shall be inserted, namely:-

'PART XC

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

352S. Definitions. - In this Part, unless the context otherwise requires,-

(a) "contributing oil" means crude oil and fuel oil.

Explanation.-For the purposes of this clause,

(i) "crude oil" means any liquid hydro carbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation and includes crude oils from which certain distillate fractions have been removed or to which certain distillate fractions have been added;

(ii) "fuel oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the 'American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396 - 69)', or heavier;

(b) "discharge or escape", in relation to pollution damage, means the discharge or escape of oil carried by the ship;

(c) "Fund" means the International Oil Pollution Compensation Fund established by the Fund Convention;

(d) "Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 as amended from time to time;

(e) "Fund Convention country" means a country in which the Fund Convention is for the time being in force;

(f) "guarantor" means any person providing insurance or other financial security to cover the owner's liability;

(g) "terminal installation" means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site;

(h) "ton", in relation to oil, means a metric ton.

352T. Contribution to the Fund.

(1) Contributions to the Fund, in respect of contributing oil carried by sea to ports or terminal installations in India, shall be payable in accordance with Articles 10 and 12 of the Fund Convention.

(2) Sub-section (1) shall apply whether or not the contributing oil is imported, and notwithstanding that contributions are payable to the Fund in respect of carriage of the same contributing oil on a previous voyage.

(3) Contributions shall also be payable to the Fund in respect of contributing oil when first received in any installation in India after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.

(4) The person liable to pay contributions to the Fund shall be-

(a) in case of contributing oil which is being imported into India, the importer; or

(b) in any other case, the person by whom the oil is received in India.

(5) A person shall not be liable to pay contributions to the Fund in respect of the contributing oil imported or received by him in any year if the quantity of contributing oil so imported or received in the year does not exceed one hundred and fifty thousand tones or as may be specified from time to time in the Fund Convention.

352U. Contribution payable by persons to the Fund

(1) The contributions payable to the Fund by a person for any year shall be,-

(a) such amount as may be determined by the Assembly of the Fund under Articles 10 and 12 of the Fund Convention;

(b) in such instalments, becoming due at such dates,

as may be notified and if any amount due from such person remains unpaid after the date on which it became due, it shall from that due date bear interest at a rate determined by the said Assembly until it is paid.

(2) The Central Government may require persons, who are or may be liable to pay contributions to the Fund under section 352T, to give financial security for payment of contributions to that Government or the Fund.

352V. Power to call for information.

(1) The Central Government may, for the purpose of transmitting to the Fund the names and addresses of the persons who under section 352T are liable to make contributions to the Fund every year and the quantity of contributing oil in respect of which they are so liable, by notice require any such person to furnish such information as may be specified therein.

(2) A notice under this section may require a person to give such information as may be required to ascertain whether he is liable to contribute to the Fund.

(3) A notice under this section may specify the manner in which, and the time within which, such notice is to be complied with.

(4) In proceedings by the Fund against any person to recover any amount due under section 352T, particulars contained in any list transmitted by the Central Government to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence

of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

(5) No person shall disclose any information which has been furnished to or obtained by him under this section unless the disclosure is made,

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the compliance of this section;
- (c) for the purpose of any legal proceedings arising out of this section or of any report of such proceedings.

(6) A person who,

- (a) refuses or wilfully neglects to comply with a notice under this section; or
- (b) makes, while furnishing any information in compliance with a notice under this section, any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence punishable under this Act.

352W. Liability of the Fund

Where any person suffering pollution damage has been unable to obtain the full and adequate compensation for the damage under the terms of the Liability Convention on any of the grounds specified in Article 4 of the Fund Convention, the Fund shall be liable for pollution damage in accordance with the provisions of the Fund Convention.

352X. Jurisdiction of Courts.

- (1) Any action for a claim against the Fund for compensation under section 352W shall be brought before the High Court.
- (2) The Fund shall have the right to intervene as a party to any legal proceedings instituted in the High Court against the owner or his guarantor.
- (3) Where an action for compensation for pollution damage has been brought against the owner or his guarantor before the High Court each party to the proceedings may notify the Fund of the proceedings.
- (4) Where such notice of proceedings has been given to the Fund, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in that judgment may not be disputed by the Fund on the ground that it has not intervened in the proceedings.

352Y. Extinguishment of claims.

Notwithstanding anything contained in any other law for the time being in force, no action to enforce a claim against the Fund under this Part shall be entertained by a High Court unless-

- (a) the action to enforce is commenced; or

(b) notice of action to enforce a claim against the owner or his guarantor in respect of the same pollution damage is given to the Fund, within three years from the date when the damage occurred:

Provided that in no case an action to enforce a claim shall be brought after six years from the date of the incident that caused such damage.

352Z. Subrogation and right of recourse

In respect of any sum paid by a public authority in India or the Fund, as the case may be, as compensation for pollution damage, that authority shall acquire by subrogation any rights which the person so compensated would have enjoyed under the Fund Convention.

352ZA. Power to make rules

The Central Government may make such rules as may be required to carry out the purposes of the Fund Convention.'