

**STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS
AND PUBLIC DISTRIBUTION (2006-07)**

FOURTEENTH LOK SABHA

**Ministry of Consumer Affairs, Food and Public Distribution
(Department of Food and Public Distribution)**

FOURTEENTH REPORT

The Warehousing (Development and Regulation) Bill, 2005



**LOK SABHA SECRETARIAT
NEW DELHI**

, 2006/ 1928 (Saka)

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Presented to Lok Sabha on _____

Laid in Rajya Sabha on _____



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2005

**COMPOSITION OF THE STANDING COMMITTEE ON FOOD,
CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION – 2006-07**

Shri Devendra Prasad Yadav - Chairman

**MEMBERS
LOK SABHA**

2. Shri Govinda Aroon Ahuja
3. Shri Alakesh Das
4. Shri Atma Singh Gill
5. Shri Abdul Mannan Hossain
6. Shri Baliram Kashyap
7. Shri Avinash Rai Khanna
8. Shri W. Wangyuh Konyak
9. Shri Parsuram Majhi
10. Shri Sadashivrao Dadoba Mandlik
11. Shri Harikewal Prasad
12. Shri Munshi Ram
13. Shri Daroga Prasad Saroj
14. Adv. P. Satheedevi
15. Shri Chandrabhan Singh
16. Shri Ramakant Yadav
17. Smt. V. Radhika Selvi
18. Vacant
19. Vacant
20. Vacant
21. Vacant

RAJYA SABHA

22. Shri T.S. Bajwa
23. Smt. Mohsina Kidwai
24. Shri Shantaram Laxman Naik
25. Shri Thanga Tamil Selvan
26. Shri Kanjibhai Patel
27. Shri Rajniti Prasad
28. Shri Nabam Rebia
29. Shri Matilal Sarkar
30. Shri Ram Narayan Sahu
31. Vacant

SECRETARIAT

1. Dr. (Smt.) Paramjit Kaur Sandhu - Additional Secretary
2. Shri P.K. Bhandari - Joint Secretary
3. Shri R.S. Kambo - Deputy Secretary
4. Shri B.S. Dahiya - Under Secretary
5. Shri Rakesh Bhardwaj - Committee Officer

INTRODUCTION

I, the Chairman of the Standing Committee on Food, Consumer Affairs and Public Distribution (2006-07) having been authorised by the Committee to submit the Report on their behalf, present this 14th Report (14th Lok Sabha) on “The Warehousing (Development and Regulation) Bill, 2005” relating to Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution).

2. Hon’ble Speaker referred this Bill to the Standing Committee on Food, Consumer Affairs and Public Distribution (2005-06) under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha on 19th December, 2005 for examination and report. However, on being requested, Hon’ble Speaker granted extension of time to the Committee for three months i.e. upto 18th June, 2006 for presentation of the Report on the Bill.

3. The Committee (2005-06) examined the Bill and took evidence of the representatives of the State Governments and other organisations connected with the Bill and the representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) at their sittings held on 15th June, 2006 and 16th June, 2006 respectively. The Minutes of the sittings form Part-II of the Report.

4. The Committee (2006-07) considered and adopted the draft Report on the Bill at their sitting held on 29th September, 2006.

5. The Committee express their thanks to the representatives of Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution), State Governments, Confederation of Indian Industry (CII) and National Commodity and Derivatives Exchange Limited (NCDEX) for tendering

evidence before the Committee and for furnishing to the Committee detailed information/material desired in connection with the examination of the Bill.

6. The Committee would like to express their thanks to the Committee on Food, Consumer Affairs and Public Distribution (2005-06) for obtaining information and taking evidence on the Bill.

7. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi
, 2006
, 1928 (Saka)

DEVENDRA PRASAD YADAV
Chairman,
Standing Committee on Food,
Consumer Affairs and Public Distribution

REPORT

CHAPTER I INTRODUCTORY

The Warehousing (Development and Regulation) Bill, 2005 was introduced in Lok Sabha on 7th December, 2005 and was referred to the Standing Committee on Food, Consumer Affairs and Public Distribution on 19th December, 2005 for examination and report.

BACKGROUND

1.2 According to the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) the warehousing receipts at present do not enjoy the fiduciary trust of depositors and banks, as there is fear of not being able to recover the loans in events, such as fraud, or mis-management on behalf of the warehouse or insolvency of depositor. The available legal remedies are also time consuming and inadequate. Further, the format of warehouse receipts used in the country is not uniform. Hence, there are impediments in the negotiability of warehouse receipts creating difficulties to the farmers and other depositors of goods. Having regard to the above, it is proposed to establish a negotiable warehouse receipt system for all commodities including agricultural commodities. On the one hand, it will make warehouse receipts a prime tool of trade and facilitate finance against it throughout the country, on the other, it will allow banks to improve the quality of their lending portfolio and enhance their interest in lending in respect of goods deposited in warehouses. It is, therefore, proposed to lay down the requirements for warehouse receipts to become valid negotiable instruments.

OBJECTIVES OF THE BILL

1.3 The Bill inter-alia seeks to provide for :-

- (i) the regulation of warehousing business by registering warehouses issuing negotiable warehouse receipts;
- (ii) the establishment and incorporation of an Authority to be called the Warehousing Development and Regulatory Authority (WDRA);

- (iii) the registration of accreditation agencies for warehouses which would issue accreditation certificates to the warehouses following certain required norms;
- (iv) the conditions for negotiability of warehouse receipts by delivery and endorsement;
- (v) Constitution of the Warehousing Advisory Committee.

1.4 According to Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) it is expected that the system of negotiable warehouse receipt would result in large benefits, both at macro as well as micro levels viz.

- a) increase in the liquidity in the rural areas;
- b) encourage scientific warehousing of goods;
- c) lower cost of financing;
- d) shorter and more efficient supply chains;
- e) enhanced rewards for grading and quality; and
- f) better price risk management.

This would in turn result in higher returns to farmers and better services to consumers.

1.5 On being asked as to how the Bill is likely to benefit the farmers and consumers, the representative of Confederation of Indian Industry (CII) during evidence stated as follows:

“the major problem that is faced by the farmer is the post-harvest lack of marketing facility and liquidity against the commodity that he has produced on his farm land. Today he has no other option but go to the nearest mandi and sell it. All of us know that immediately after harvesting, the prices are at all-time low. He will get remunerative price only if he can wait for some time. But, unfortunately, he cannot because he has a lot of needs for funds because he has to pay back the crop loan that he has taken to meet his consumption needs. He has also to take care of the need of the next harvesting. He needs liquidity against that. Once warehouse receipt gets this kind of tradability and negotiability and when the warehouses becomes responsible and regulated, banks will come wholesale to finance against warehouse receipt financing.

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It is a matter of concern that during the last 30 or 40 years of direct lending by banks, not more than 20 to 22 per cent of the farmers have actually got bank credit till date.

Secondly, it is a fact that not more than 35 per cent of the actual value of produce is being released by the farmer when he has to sell immediately after the harvesting. So, this Bill will give liquidity to his commodity even without selling it. He can keep it in warehouse and take loan. I have been dealing with these kinds of cases in National Bulk Handling Corporation and Banks because we give quality and quantity guarantee as the warehouses are managed by us completely. So, banks are now being more encouraged lending against warehouse receipts. It is also a matter of fact that country wide receipt financing is a preferred way of lending. But in India despite the fact that agriculture is such an important sector, warehouse receipts have not been given that kind of footing till date so as to give liquidity to the farmers. I would like to submit that despite the fact that agriculture produce market size into hundreds and thousands of crores, but still banks have lend just about Rs. 15,000 crore against commodities why because the credibility of the warehouse receipts was suspect till now. Once this Act comes farmers would benefit a great deal.”

1.6 On being asked to give details of specific provisions proposed in the Bill by the Government to protect the interests of farmers and consumers, the Ministry in their written reply stated that to safeguard the interest of the farmers, the power maybe given to Authority to give primacy to agriculture produce for storage in the registered warehouses. The Ministry suggested that following enabling clause be added in CHAPTER (Power and Functions of Authority):

“35(2)(p): To give primacy to agricultural produce for storage in the registered warehouses.”

Moreover, there is a proposal to reserve 10% storage capacity for the storage of agricultural produce in the proposed Bill

1.7 During evidence of the Ministry, the Committee directed that a study be commissioned to ascertain the economical viability if storage capacity is used for agriculture produce. A Committee was, constituted, for the purpose with following composition and terms and reference:-

Composition:-

- (i) Managing Director, Central Warehousing Corporation
- (ii) Managing Director, Maharashtra State Warehousing Corporation

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- (iii) Managing Director, Karnataka State Warehousing Corporation
- (iv) Managing Director, Uttar Pradesh State Warehousing Corporation

(v) Managing Director, Andhra Pradesh State Warehousing Corporation

Terms and Reference:-

- (i) Find out the present average occupancy by agriculture produce in the warehouses;
- (ii) Recommend as to what should be a viable percentage of warehousing space to be kept reserved for agriculture produce keeping in view the economic viability of warehouses.

The above Committee took into consideration the fact that the total utilization of Maharashtra SWC warehouse for agricultural produce was to the tune of 45% to 55% on an average for the last five years whereas Karnataka SWC reported 50% of their capacity being utilised for agricultural produce. Similar experience of approximately 50% utilization of agricultural produce was seems to be with CWC on an average whereas for APSWC the percentage was as high as 85%. The Maharashtra SWC recommended a minimum level of 40% of total storage space to be reserved for agricultural produce whereas the percentage of the same was recommended as 25% by the Karnataka SWC. The CWC data also showed recommendation for reservation to the tune of 40% of the warehousing capacity available at its general warehouses.

The details of the modalities worked out and decision arrived at by the said Committee is given in Annexure.

The Committee was further informed that the said Committee which went into the aforesaid study, agreed that keeping in view the tax holiday which is applicable to a person for the 10 years under the income tax provision for such infrastructure and long term viability, a minimum of 25% of total capacity of the warehouse be earmarked as committed for agricultural produce storage.

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The Committee submitted their Report to the Ministry of Food, Consumer Affairs and Public Distribution for their consideration. The Ministry recommended that 20% storage capacity be earmarked for the storage of agriculture produce in the proposed Bill. The said decision of

the Government was communicated to the Parliamentary Committee for their consideration.

1.8 On being enquired as to what extent the objectives are likely to be achieved by the said Bill, the Ministry in a written note stated that the objective of the proposed Bill is to make warehouse receipt a fully negotiable instrument. On enactment of this legislation, the warehouse receipt would become a negotiable instrument backed by Central Legislation.

1.9 As regards the present mechanism of managing and regulating warehousing business, the Committee have been informed by the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) that the warehousing business of Central Warehousing Corporation in the country is at present managed and regulated by Warehousing Corporation Act, 1962 and Warehousing Corporation Rules, 1963. The operation and regulation of State Warehousing Corporations are carried out as per the respective State Warehousing Corporation Acts.

1.10 The Committee enquired as to what extent the present set up of warehouses business fell short of expectations, thereby needing a separate legislative back-up and how far the Bill propose to fill the gaps, the Ministry in their written reply stated that the warehouse receipt issued by various warehouses against the receipt of goods in their warehouses is not a fully negotiable instrument backed by a suitable legislations and, therefore, banks are reluctant to give loan against such warehouse receipts to farmers/depositors.

1.11 On being asked in which list of the Seventh Schedule of the Constitution, the subject "Warehousing" falls? Is it in State, Central or

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Concurrent List and in the event of passage of this Bill, what would be the fate of State Acts as State Governments have separate Legislation to govern Warehousing Business, the representative of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) during evidence stated:

“Warehousing’ is not shown in any of the Lists- neither in the Union List nor in the State List. CWC Act was the first Central Act to be made in 1958. Moreover, the rules say that where the Central Act is already there, that will prevail. CWC Act was the first Act to be made. It is not mentioned in the list. We took advice of the Legislative Department also. It was found that no law is there. The Central Government enacted the CWC Act at that time.”

1.12 Ministry in their post evidence reply further clarified that as per Department of Legal Affairs, subject matter of the proposed Bill falls under Entry 46 read with Entry 97 (Residuary Powers) of the Union List of the Constitution. The proposed legislation will not interfere in the working of the various States Acts. The warehouses operating under the States Acts who are not interested to issue negotiable warehouse receipt will continue to operate as such under the State Acts.

1.13 The Committee enquired when almost all the States have their own warehousing Act, what necessitated the Union Government to enact an Act on the subject, the Ministry in their post evidence reply stated that the State Warehousing Acts are mainly for giving licence to the persons who are interested to carry out the warehouse business in the respective States. Since long there was a demand that for increasing the financial liquidity in the rural areas, the warehouse receipt issued by various warehouses should be made a fully negotiable instrument. Previously, it was considered if it can be achieved by making amendments in the Negotiable Instrument (NI) Act, 1881. However, the NI Act deals with the

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monetary instruments only, i.e., cheque, bill of exchange and promissory notes. Therefore, it was suggested by RBI and Department of Legal Affairs that a separate Central Legislation should be enacted for making the warehouse receipt a fully negotiable instrument. The present State laws do not make the warehousing receipt a negotiable instrument.

1.14 On being asked whether the Central Act will hinder the activities of present warehousing facilities in the States and their present Acts, the representative of the Ministry during evidence stated :

“actually we want to promote and simplify the lending process from financial institution on the basis of recipients of commodities kept in warehouses. That is why this central Act is being enacted. We want to simplify the procedure. We provide promissory note, cheques or bills, similarly same rules for borrowing loans on the basis of warehouse receipts in the country would make it convenient for the peasants. I submit that an accreditation agency would help to operate the things at same scientific methodology in the country. It will be good enough to have a central Act in this regard.”

1.15 On being asked whether the State Governments and National Association of Warehouse Corporations were consulted at the time of drafting the proposed Bill and whether their views have been incorporated in the proposed Bill, the representative of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) during evidence stated:

“I would like to draw the attention of the Committee towards the fact that an inter-ministerial Task Force was constituted on the recommendations of the Expert Committee that was formed in December, 2000. They had suggested that a Committee be formed, a draft report be submitted after discussing with all concerned and that draft was submitted to the MD in 2004 and was later submitted to the Government. On the basis of this draft, the Government decided to form a core group. As a result a Committee consisting of 15 members including all the stake holders of legislative department, RBI, Ministry of Finance, Ministry of Agriculture, NABARD, NAFED etc. was constituted. After working for four months, the Committee submitted its Report after taking into consideration each and every section. Later on a draft Bill was

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prepared by making improvements in it and the same was circulated to all the Ministries. This draft Bill was also submitted to the State Governments for their comments”.

1.16 The Ministry in their post evidence reply further stated that the draft Warehousing (Development and Regulation) Bill, 2005 was circulated among Managing Directors of State Warehousing Corporations by Central Warehousing Corporation. Secretary (F&PD) had discussed the draft Bill with the Managing Directors of Assam SWC and Karnataka SWC (MD, Karnataka SWC is the Chairman of the National Association of

Warehousing Corporation) and their suggestions were incorporated in the draft Bill. The main demand of the National Association of Warehousing Corporations was to make the warehouse receipt fully negotiable instrument, which is the main objective of the proposed legislation.

1.17 On being asked that the nomenclature of the Bill is Warehousing (Development and Regulation) Bill, 2005, but the scrutiny of the bill reveals that there is nothing about the 'Development' in the Bill, it only speaks of 'Regulations', the representative of the Ministry during evidence stated:

“We have named this Bill as “Warehouse Bill”. You have discussed the word “development” also. Still there are many things proposed to be done through the Bill which will ensure the growth of Warehousing Development in the country. First of all we propose that through this Bill and through regulation being formulated under it, scientific warehousing system should be evolved in the country. The suggestion to constitute accreditation agency will ensure that whatever goods are kept in warehousing, are stored scientifically. Secondly, we have also discussed grading and quality of the goods that will be kept in warehouses. Thirdly, since the supply chain unit will be smaller and more efficient, hence, warehousing activity will go up.

Since all these will be done scientifically and we hope that warehouses will be set up at many places which will support our objective of having smaller and efficient supply chain. It will give our farmers comparatively better facility for price risk management. It will enhance warehousing activities. When the farmer will come to know as to how we have negotiated warehousing and proposed the names of places, he will understand and find it easier to manage

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price risk in a better way. It will promote warehousing activity. So we have specifically used the word development in it.”

1.18 The Ministry in their post evidence reply further clarified that besides, making the warehouse receipt a fully negotiable instrument, the objective of the proposed legislation is to bring reforms and modernization in the warehousing sector. In the Bill, it is proposed to provide necessary administrative mechanism and legislative back-up for regulating and streamlining the warehousing sector issuing warehouse receipt. The proposed legislation, inter alia, seeks to provide for –

- (i) to specify the qualifications, code of conduct and practical training for warehousemen and staff engaged in warehousing business;
- (ii) to promote efficiency in conduct of warehouse business;
- (iii) to promote professional organizations connected with the warehousing business;

Thus, according to the Ministry, the name of the proposed Bill appears to be appropriate.

1.19 The Committee pointed out that the scrutiny of the Bill revealed that the Bill promoted centralization of power in the hands of Union Government at the expense of State Governments, the Ministry in their post evidence reply stated that the proposed Central Legislation is considered to make the warehouse receipt a fully negotiable instrument for increasing financial liquidity in rural areas. A law of this nature should have uniform features throughout the country. Banks and financial institutions having an all India presence will have an important role in the proposed law. Therefore, uniformity in provisions is essential which can be ensured through the central role of the Union Government. It will not interfere in the working of the various States Acts. The warehouses operating under the States Acts and who are not interested to issue negotiable warehouse receipt will continue to operate as such.

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1.20 On being asked about the role the State Governments will play in the present Bill, the Ministry in their post evidence reply stated that the warehouses operated by various State Warehousing Corporations as well as by State Governments may register with the Authority proposed in the legislation; in case these are interested to issue negotiable warehouse receipt.

1.21 On being asked whether the State Governments will not be able to constitute accreditation agencies on their own, the representative of the Ministry of Consumer Affairs, Food and Public Distribution during evidence stated as follows:

“Accreditation Agency can be appointed by a regulator who will decide the guidelines. It be SWC or some other agency. Of course, SWC will not give accreditation certificate for its own godowns but it can do so for other godowns. This regulator will decide the guidelines for a godown. Suppose the godown is for edible oil, it will be a separate commodity. They will be able to set norms for such godowns. These norms will be followed by various godowns. Suppose there is a godown in the village and it does not meet the requirement of the accreditation. For improving the godown, they can take loan from the bank. When we are talking of loan for improving the godowns, ultimately it will also increase the warehousing activity.”

1.22 According to the Ministry the Note for the Cabinet and draft Warehousing (Development and Regulation) Bill, 2005 were sent to the Cabinet and the Cabinet in its meeting held on 29th September, 2005 had approved the proposal of the Department of Food and Public Distribution for introducing the Bill in the Parliament.

1.23 The above said Bill was made available on the website of Lok Sabha <http://www.parliamentofindia.nic.in> on Internet and also advertised in various prominent Dailies/Regional newspapers for general public. The Committee invited the comments/suggestions on the said Bill from the public at large. The Committee received a number of representations/memoranda from experts/NGOs/State Governments containing their suggestions /views on the proposed legislation both favouring and opposing the legislation under reference.

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1.24 The Committee took evidence of the representatives of various NGOs, experts and State Governments on 15th June, 2006 and the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution) on 16th June, 2006.

1.25 The Committee's views on the basis of written replies received from the Department of Food and Public Distribution and oral evidence of the representatives of the Department of Food and Public Distribution and the evidence of the representatives of NGOs, experts and State Governments are given in following paragraphs.

1.26 The Committee recommend that the Bill may be passed subject to the suggestions/recommendations made in the subsequent paragraphs.

1.27 The Committee note that at present the warehousing receipt issued by various warehouses is not a negotiable instrument backed by a suitable legislation. Therefore Banks are reluctant to give loan against such warehouse receipt to farmers and other depositors. While attempting to make the warehouse receipts fully negotiable instrument, the Committee note that the present Bill lays emphasis only on one aspect of the problem. The other aspects about the Bill is to increase the liquidity in the rural areas, scientific warehousing of goods at lower cost of financing, improved

supply chains, enhanced rewards for quality and better price risk management. This would, in turn, is stated to, result in higher returns to farmers and better services to consumers. The Committee while welcoming the making of warehouse receipt negotiable, feel that it is not going to help in achieving all the objectives mentioned above. Thus, there is a need to make suitable provisions in the Bill to achieve the aforesaid objectives as mentioned in the Statement of Objects & Reasons appended to the Bill.

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1.28 During the course of evidence, the Committee specifically asked the representatives of State Governments of Karnataka, Andhra Pradesh, Haryana, Uttar Pradesh and Maharashtra who appeared before the Committee as to whether they were consulted at the stage of drafting of the Bill. The Committee were informed that no consultations were made by the Central government with the State Governments. The Committee feel that State Governments which are the major stake holders in the warehousing business need to be properly consulted in the matter. The Committee, therefore, recommend that State Governments be consulted and their views incorporated in the Bill to make it widely accepted piece of legislation.

1.29 The nomenclature of the Bill talks of Development and Regulation. However, a number of State Governments pointed out that the Bill stresses on regulation and talks nothing about the development of warehousing business. When asked as to how the objective of development was proposed to be achieved by the proposed legislation, the Ministry in their reply stated that it is proposed to provide necessary administrative mechanism and legislative back up to regulate and streamline the warehousing sector issuing negotiable warehouse receipt. The Committee feel that there is a need to incorporate more specific provisions in the Bill about development aspects of the warehousing business which are missing at present.

1.30 The Committee's examination reveals that the subject Warehousing is not specified in any of the lists i.e. Union List, the State List and the Concurrent List of the Constitution of India. The Committee was informed that as per the Department of Legal Affairs, subject matter of the proposed bill falls under Entry 46 read with Entry 97 of the Union List i.e. residuary powers available to the Union Government under the Constitution. Since both the Central Government and State Governments are presently involved in warehousing, the Committee desire that for the sake of clarity, the subject "Warehousing" be included in the Concurrent List and the Constitution of India be amended accordingly.

The Ministry has contended that the proposed legislation will not interfere in the working of the various State Acts as the warehouses operating under the State Acts which are not interested to issue negotiable warehouse receipts will continue to operate as such under the State Acts. The Committee, however, note that this intention of the Government is not properly reflected anywhere in the Bill, giving rise to speculation in the minds of State Governments that the system presently working in different

States will be adversely affected by the proposed Bill. The Committee recommend that suitable provisions should be made in the Bill clearly stating that Warehouses which do not propose to issue negotiable warehousing receipt need not apply for any registration under the proposed Bill and they can continue to work under their respective State

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laws. Most of the States desired during their evidence before the Committee that if warehouse receipt is made negotiable that will greatly help warehousing business. But so far as other matters are concerned, they were satisfied with the present system working in their States and they did not desire any interference from the Central Government. The Committee, therefore, feel that it would be a better proposition if a model Act is framed as chalked out by the Union Government and implementation thereof is left to the respective State Governments.

1.31 The Committee note that the basic aim of the present Bill is stated to provide higher returns to farmers and better services to consumers. However, there does not appear to be any provision for giving primacy to agricultural produce for storage in the registered warehouses issuing negotiable receipts. The representatives of State Governments and CII have also supported to keep certain percentage of storage capacity reserved for agricultural produce in the warehouses. The Committee note that in pursuance to their suggestion to commission a study for ascertaining the economic viability of warehouses where capacity is used for storing agricultural produce, a Committee constituted for the purpose, proposed that at least 25% storage capacity of a warehouse should be earmarked for agricultural produce. However, the Committee note that some of the States have expressed their opinion that 25% to 40% of space be reserved for agricultural sector. The Government, on the other hand, have recommended that 20% storage capacity of a warehouse be earmarked for agricultural produce. The Committee are in agreement with the views of the Committee set up for the purpose and desire that at least 25% of space be reserved for agricultural produce. The possibility of providing higher percentage of space, say 50% or more for reservation of agricultural produce should also be explored.

1.32 The Committee note that a very important role has been assigned to the accreditation agencies in the proposed Bill. The accreditation agencies under Clause 5 will issue Certificate of Accreditation to any person for carrying on the business of warehousing issuing negotiable warehouse receipts. However, the Bill does not provide any details about its constitution, power and working etc. The Committee feel that being a very important agency assigned an important role under the Bill, sufficient details about its constitution, working, power and duties etc. should be clearly mentioned in the Bill. The Committee further note that a large number of powers have been retained by the Central Government without providing any specific details. The Committee, therefore, desire that a specific provision about the constitution, qualification for appointments, mode of selection, functions, terms of office and conditions of service of members, removal of members, working and the powers to be exercised by various authorities under this Bill should be clearly specified in the Bill itself.

1.33 The Bill provides for setting up of accreditation agencies to issue certificate of accreditation to any person carrying on the business of warehouse subject to their satisfying certain terms and conditions. As per Bill, these accreditation agencies can be both private and public bodies. The Committee feel that instead of private agencies being authorized to issue the certificate, the State Governments can be authorized to do this work subject to certain terms and conditions, which can be laid down by the Union Government. This will give a sense of participation to the State Governments as well as enable them to ensure that local and municipal laws are also being complied with by the persons carrying on warehousing business. At the same time, the Committee recommend that wherever possible State based Advisory Councils consisting of nominees of State Governments be constituted and States be consulted for warehousing activities within the State.

1.34 The Committee note that various provisions of the Bill go against the spirit of Sales of Goods Act. As the Bill provide for negotiable warehouse receipts, where goods can be sold by way of endorsement of the warehousing receipts, it is very essential that the basic principle of the Sales of Goods Act is kept in mind, i.e. the title of purchaser cannot be better than that of the seller. However, in the Bill, it has been provided that irrespective of the title of the seller, purchaser will get valid title if he has obtained receipt for valid consideration (clause 15, 16, 17 & 18). The Committee feel that this may give rise to criminal activities where a holder of the receipt may be forced by unscrupulous elements to part with the negotiable warehouse receipt under duress and that receipt may be endorsed to a purchaser for a valid consideration. This will leave the original holder of the receipt with no legal remedy. The Committee desire that the Bill should be suitably amended.

REGULATION OF WAREHOUSING BUSINESS

Clause 3: Requirement of registration for warehouses issuing negotiable warehouse receipt

2.1 Clause 3(1) stipulates as under:-

“No person shall commence or carry on the warehousing business unless he has obtained a registration certificate in respect of the concerned warehouse or warehouses granted by the Authority under this Act:

Provided that a person carrying on the warehouses business immediately before the commencement of this Act shall be allowed to carry on such business, in case he has made an application for registration within thirty days from the date of such commencement.

Explanation.—for the removal of doubts, it is hereby clarified that a warehouse registered under this Act shall also be eligible to issue non-negotiable warehouse receipts”.

2.2 Govt. of UP have stated that there is provision in the clause 3 (I) of the Bill in Question that no person can start or operate any 'Warehousing Business' until he has acquired a Registered Certificate (license) regarding Warehouse or Warehouses from the 'Authority' to be 'constituted under this Act or an empowered agency registered by the said authority or agency (accreditation Agency). Under the definition of Accreditation-Agency, those agencies have been kept which would be registered by the 'authority' under clause-5 of the Bill, notwithstanding the configuration (constitution) of the above agency. The Accreditation Agency will work on similar lines as the authority itself.

2.3 The Ministry have in a reply stated that there appears to be some confusion in this suggestion. Therefore, it is again clarified that for carrying out the business of warehousing (for issuing negotiable warehouse receipt), all the warehouses would have to be registered with the proposed Warehousing Development and Regulatory Authority as per clause 3(1) of the proposed Bill.

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2.4 Govt. of Andhra Pradesh have stated that a provision may be made that all the godowns / warehouses including cold storage units owned by Agricultural Market Committees, Co-operative Institutions, Gram Panchayats shall be brought

under the provisions of Warehousing Act, and the warehouse receipts issued by the Market Committees shall be treated as a negotiable instrument for the purpose of securing bank loans from all the nationalized and scheduled banks on the pledge of agricultural produce.

2.5 The Ministry have in a reply stated that as per clause 3(1) of the proposed Bill, no person shall commence or carry on the warehousing business unless he has obtained a registration certificate in respect of the concerned warehouse or warehouses granted by the Authority under this Act. Therefore, all the warehouses which intend to issue negotiable warehouse receipt may get them registered with the Authority and come within the purview of this Act.

2.6 Clause 3(2) stipulates as under:-

“Notwithstanding anything contained in sub-section (1), the Authority may, subject to such regulations and guidelines issued by it, authorise any person registered under clause 5 as an accreditation agency to issue certificate of accreditation to any person for carrying on the business of warehousing issuing negotiable warehouse receipts.”

2.7 Govt. of Delhi feels that the discretionary powers to the regulatory authority to impose certain terms and conditions may lead to misuse and there is need to provide safeguards against such misuse of powers by the regulatory authority.

2.8 The Ministry have in a reply stated that Clause 3 of Chapter II (Regulation of Warehouse Business) provides that no person shall commence or carry on the warehousing business unless he has obtained registration certificate in respect of concerned warehouse or warehouses granted by the Authority under this Act. This is the most important requirement proposed in the Bill and the warehouses

who are not interested to issue negotiable warehouse receipt need not to be registered with the Authority. Thus, there are no discretionary powers to the Authority, which may be misused. The Government will take necessary action if it feels that the power of the Authority is being misused.

2.9 The Committee note that as per Clause 3 of the Bill all persons who want to carry on the warehousing business issuing negotiable warehouse receipts shall have to obtain a Registration Certificate in respect of the concerned warehouse or warehouses granted by the authority under this Act. It has been further stated in Sub Clause (ii) that the authority may

authorize any person registered under Clause 5 as an Accreditation agency to issue certificate of accreditation to any person for carrying on the business of warehousing issuing Negotiable Warehouse Receipts. However, it has not been clearly mentioned that warehouses not issuing negotiable receipt need not get themselves registered with the authority. The Committee desire that this position should be suitably clarified in the Bill.

The Committee also note that before getting themselves registered with the authority the persons carrying on warehouse business shall have to get a certificate of accreditation from a registered accreditation agency. The Committee desire that this should also be clarified that for applying for the registration with the authority it would be necessary to get a certificate from the accreditation agency.

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Clause 5: Registration of Accreditation Agencies

2.10 Clauses 5(1), 5(2), 5(3) & 5(4) stipulate:

5. (1) “The Authority shall, from time to time, determine the number of accreditation agencies as it may authorise to issue certificate of accreditation to warehouses issuing negotiable warehouse receipts.”

CII have suggested to add ‘public or private’ after the words ‘accreditation agencies’ in clause 5(1).

5(2) “Any person fulfilling the qualifications and other requirements as may be prescribed and desirous of functioning as an accreditation agency under this Act may make an application to the Authority seeking its registration as such under this Act.”

5(3) “Every application under sub-section (2) shall be in such form and manner and shall be accompanied by such fees and security deposit as may be prescribed.”

5(4) “The form in which and the terms and conditions subject to which a certificate of registration as an accreditation agency may be issued under this section shall be such as may be prescribed.”

2.11 Govt. of Haryana has stated that parameters/pre-qualification for registration of accreditation agency may be provided in the Bill. They have further stated that in Clause-5, it has been provided that “the form in which and the terms & conditions subject to which a certificate of registration as an accreditation agency may be issued under this Clause shall be such as may be prescribed. It is felt that parameters/pre-qualification for registration of accreditation agency may be provided in the Warehousing (Development & Regulation) Bill, 2005.

2.12 The Ministry have in a reply stated that clause 5(4) of the Bill provides the form in which and the terms and conditions subject to which a certificate of registration as accreditation agency may be issued shall be such as prescribed.

The format of forms and other terms and conditions including parameters/pre-qualification for registration of an accreditation agency would be described under Rules.

2.13 The Committee feel that the words “public or private” may be added after the words accreditation agencies in clause 5 (1) to make the accreditation agencies more elaborate. The Committee further note that clause 5 has been very vaguely worded without specifying anything about classifications, selection, constitution and functioning of an accreditation agency and certifying agency. It has been simply stated that “these may be as prescribed.” The Committee desire that this is a very important clause of the Bill and various parameters need to be specified.

CHAPTER III

WAREHOUSEMEN

3.1 Clause 7: Duties of Warehousemen

7. (1) "In the absence of a lawful excuse, a warehouseman shall deliver the goods referred to in a negotiable or non-negotiable receipt, to the holder of the receipt on demand made by the holder and on the holder fulfilling all the following conditions, namely:—

(a) satisfying the warehouse lien;

(b) surrendering the receipt in case of non-negotiable receipt and surrendering the receipt with endorsements in case of negotiable receipt;
and

(c) acknowledging in writing the delivery of the goods.”

7(2) “If a warehouseman refuses or fails to deliver the goods in compliance with the provisions of this section, the burden of proof shall lie on the warehouseman to establish the existence of a lawful excuse for the refusal or failure.”

3.2 CII have suggested that the duties of the warehouseman should include the “Storage of goods as per the agreement between the owner of the goods and warehouse”

3.3 Govt. of Delhi have suggested that the phrase ‘lawful excuse’ needs to be elaborated through an explanatory note to avoid unnecessary disputes.

3.4 The Ministry have in a reply stated that certain bio-chemical changes continuously take place during storage of foodgrains including rice. However, these changes are very slow if the storage is scientific and moisture content is low.

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Therefore, there is no problem of quality of stored commodities, including basmati rice, if these are stored in scientific manner by taking all necessary precautions during their storage. These issues, however, may be considered by the Authority while making Regulations. Clauses 7(1) and 7(2) are in order and there appears to be no discrepancy in these clauses.

3.5 The Committee note that Clause 7(1) provides that in the absence of a lawful excuse, a warehouseman shall deliver the goods referred to in a negotiable or non-negotiable receipt, to the holder of the receipt subject to fulfilling certain conditions. The Committee note that the term `lawful excuse' should be properly worded and it should be changed to `lawful cause' or 'lawful reason'. The Committee also observed that one of the conditions to be satisfied by the holder of the receipt for receiving the goods is to acknowledge in writing the delivery of the goods. It seems to be contradictory in view of the fact that delivery of the goods is the duty assigned to the warehouseman and not the receipt holder. It should, therefore, be suitably amended as 'acknowledge in writing the receipt of goods'.

3.6 Clause 9: Special Powers of Warehouseman to deal with perishable and Hazardous goods

Clause 9(1) stipulates as under:-

9(1) "If the goods are of a perishable or hazardous nature, or their keeping shall deteriorate greatly in value or damage other property, the warehouseman may give notice that is reasonable and possible under the circumstances to the holder of the receipt for the goods, if the name and address of the holder is known to the warehouseman or if not known to the warehouseman, then, to the depositor, requiring that person to satisfy the lien on the goods and to remove them from the warehouse".

3.7 Govt. of UP have stated that under Section 9(1) of the Bill, first the notice of a reasonable duration shall be served on the depositor of goods, holder of receipt for the goods by Warehouseman for removal of perishable and

inflammable items the keeping of which may damage other goods / property stored in the warehouse.

3.8 The Ministry have in a reply stated that issuing of notice by advertisement for all the lots of perishable or hazardous goods may not be economically viable for warehouses. It may also be time consuming. Therefore, with the consultation with experts in the warehousing sector, provision of sell of goods at public or private sale without advertisement has been incorporated in the proposed Bill.

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3.9 Clause 9(2) stipulates as under:-

9(2)"If the person to whom a notice under sub-section (1) is given fails to satisfy the lien and remove the goods within the time specified in the notice, the warehouseman may sell the goods at public or private sale without advertising."

3.10 CII have suggested that the warehouseman should not be allowed to sell the goods, not removed within specified time after giving a notice, without advertising.

3.11 The Ministry have in a reply stated that Section 9(2) has been found in order and for perishable commodity and small lot, warehouseman may sell the goods at public or private sale without advertising. It is not against the natural justice and not violating any provision contained in Section 45 to 64(9) of the Sale of Goods Act, 1930, which defines the Rights of Unpaid Seller Against the Goods. This is as per prevalent practices.

3.12 Govt. of UP have stated that Under clause 9(2), the warehouseman has been empowered to sell said goods at public or private sale without advertising in case the goods are not removed within time specified in the notice, In such cases, there is a very possibility of adopting foul means if proper advertisement is not issued.

3.13 The Ministry have in a reply stated that issuing of notice by advertisement for all the lots of perishable or hazardous goods may not be economically viable for warehouses. It may also be time consuming. Therefore, with the consultation with experts in the warehousing sector, provision to sell goods at public or private sale without advertisement has been incorporated in the proposed Bill.

3.14 Clause 9(3) stipulates as under:-

9(3) “The notice referred to in sub-section (1) may be given by sending it by electronic mail, speed post or registered post addressed to the person to whom it is to be given at the last known address of the person and the notice is deemed to be given on the third day of the mailing.”

3.15 Govt. of UP have apprehended that the time period seems to be very short because the warehouse receipt is negotiable and hence, the possibility of

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more time required in communicating the information to its 'holder' cannot be ruled out.

3.16 The Ministry have in a reply stated that Section 9(3) has been re-examined and since 3 days time may not be sufficient for receiving a notice by the registered post, the phrase “registered post” may be deleted from the draft Bill.

3.17 Clauses 9(4) & 9(5) stipulate as under:-

9(4) “If the warehouseman after a reasonable effort is unable to sell the goods, the warehouseman may dispose of them such other manner as he deems proper and shall incur no liability for that reason.”

9(5) “From the proceeds of any sale or disposal of goods made under this section, the warehouseman shall, after satisfying his lien, hold the balance in trust for the holder of the receipt.”

3.18 CII have suggested that the term “Reasonable effort for selling goods not removed within specified time” needs more clarity.

3.19 The Ministry have in a reply stated that Sub clause 9(2) which provide that if the person to whom a notice under sub-section (1) is given fails to satisfy the lien and remove the goods within the time specified in the notice, the

warehouseman may sell the goods at public or private sale without advertising. This has been further clarified under section 9(4).

3.20 Clause 9(6) stipulates as under:-

9(6) "No notice shall be necessary if the warehouseman is satisfied on reasonable grounds that in the circumstances of the case giving such notices is likely to cause further prejudice to the goods."

3.21 CII have suggested that notice to the owner of goods must be mandatory under all circumstances before disposing goods

3.22 The Ministry have in a reply stated that there is a provision of serving notice under section 9(1) for deteriorating, perishable or hazardous goods.

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However, section 9(6) provides that in case such notice may cause further prejudice to the goods, notice may not be necessary.

3.23 Clause 9(7) stipulates as under:-

9(7) "If, at any time, the warehouseman is satisfied that the quality of any fungible goods or any part thereof has so deteriorated or is so deteriorating that it is necessary to do so, to protect the holders of negotiable warehouse receipts from loss and time is not sufficient for him to seek their instructions, he may, subject to the regulations in this behalf, dispose off the goods or any part thereof and keep the sale proceeds after satisfying his lien in an escrow account for the benefit of the holders of receipts."

3.24 CII have suggested that the warehouseman cannot, without consent from the owner or a certifying agency, determine that the quality of the goods stored have deteriorated in quality

3.25 The Ministry have in a reply stated that in such cases warehouseman may seek advise from the quality assaying agencies for which regulations may be framed by the Authority.

3.26 Clause 9(8) stipulates as under:-

9(8) "In case of disposal of fungible goods under sub-section (7), the warehouseman shall, at the choice of the holder of the receipt, either pay the

sale proceeds or deliver equivalent goods of the same grade, quality and quantity to him.”

3.27 Govt. of Haryana have suggested that further, the provisions of Section 9(8) may be restricted to payment of sale proceeds to the holder of the receipt only.

3.28 The Ministry have in a reply stated that Section 9(8) of the proposed Bill provides that in case of disposal of fungible goods, the holder may get either the sale proceeds or equivalent goods of same grade, quality and quantity. This matter was discussed with experts from warehouse sector and it was the

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general opinion that holder should also be given option to get the equivalent goods in this case (goods of same grade, quantity and quality).

3.29 It is clarified that the proposed Bill would cover both Government warehouses as well as private warehouses. To follow the various code of practices of scientific storage of different commodities is the general duty of every warehouseman. Due to variation in moisture of foodgrains at the time of deposit and issue, sometimes there is gain as in case of wheat or loss due to drriage as in case of paddy and rice. There are certain laid down norms in this regard, which are being followed by the storing agencies. The issue will be addressed by the Authority.

3.30 CII have opined that clause 9(7) & 9(8) are contradicting since it would not be practically possible for the warehouseman to satisfy the receipt holder on quality and grade when holder of the receipt ask for equivalent goods of same grade, quality and quantity, after the material is sold. They have also apprehended that this will lead to numerous disputes and litigations. What is the reaction of the Ministry thereto?

3.31 The Ministry have in a reply stated that Sub clause 9(7) and 9(8) are complimentary to each other and not contradictory as mentioned by CII. In sub clause 9(7), there is a provision for disposing off the goods or any part thereof in case the same is deteriorating and there is no sufficient time to seek the instructions from the holder of the receipt. Clause 9(8) provides that in case of disposal of fungible goods under sub clause 9(7), the holder may get the sale

proceeds or equivalent goods of the same grade, quality and quantity from the warehouseman. In case the receipt holder is not satisfied with the quality and grade of the goods, he may get it tested from the quality certifying agency for which regulations may be framed by Authority.

3.32 Clause 9(3) has been re-examined and since 3 days time may not be sufficient for receiving a notice by the registered post, the phrase “registered post” may be deleted from the draft Bill. Clause 9(2) has been found in order and

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for perishable commodity and small lot; warehouseman may sell the goods at public or private sale without advertising. It is not against the natural justice and not violating any provision contained in Section 45 to 64(9) of the Sale of Goods Act, 1930, which defines the Rights of Unpaid Seller against the Goods. This is as per prevalent practices. Clauses 9(4)(5)(6) (7) and (8) have been found to be in order. The mixing of defective fungible goods with good quality goods would amount to unfair trade practices and action would be taken by the Authority in such cases.

3.33 On being asked whether the Ministry was satisfied with the special powers of warehouseman to deal with perishable and hazardous good as it has been apprehended that this power can be misused, what safeguards the Ministry have to prevent the misuse, the Ministry have in a reply stated that the special powers of the warehouseman to deal with the perishable and hazardous goods have been drafted carefully keeping in view the interest of the warehouseman as well as that of depositor. Warehousing Development and Regulatory Authority proposed in the legislation (Bill) would ensure that this power is not misused by warehouseman and is exercised judiciously.

3.34 The Committee note that Clause 9 provides for special powers to warehouseman to deal with perishable or hazardous goods. This clause requires the warehouseman to give notice to the holder of the receipt requiring that person to satisfy the lien on the goods and to remove them from the warehouse. It provides that notice would be given to the holder if his name and address is known to the warehouseman or if not known then to the depositor. The Committee feel that it should be made obligatory on the part of the endorser and endorsee to intimate the address of the holder of the receipt to the warehouseman after every endorsement of the receipt so that the notice can be given to the proper person. This clause also lays down the method by which the notice can be sent. The Committee suggest that this notice may be sent telephonically and telegraphically also. This clause should be amended suitably.

3.35 Clause 10: Lien of Warehouseman on Goods

Clause 10(5), 10(6), 10(7) & 10(10) stipulate as under:

10(5) “If the goods on which a lien exists were not deposited by the owner or by his authority but by a person entrusted by the owner or his authority with the possession of the goods, the warehouseman shall, within two months after the date of deposit, give notice of the lien to the owner of the goods on which a lien exists or to the person owning the right of property of the goods.”

10(6) “The notice under sub-section (5) shall be in writing and contain all the details about the goods, the location of warehouses, date of deposit, name of depositor and a statement of lien claimed by the warehouseman for the goods stored in the warehouse.

10(7) “If a warehouseman fails to issue the notice required by sub-section (5), his lien, as against the person to whom he has failed to issue notice shall become void from the expiration of a period of two months from the date of deposit of the goods.”

10(10) “The notice under sub-section (7) shall –

(a) contain all the details about the goods, the location of warehouse, date of deposit, the name of depositor and a statement of lien claimed by the warehouseman for the goods stored in the warehouse; and

(b) state that unless the charges are paid within the stipulated time mentioned in the notice, the goods shall be advertised for sale and sold by public auction at a time and place as specified in the notice.”

3.36 CII have sought clarification on operative part [clause 10(5)] as to how would the warehouseman verify whether it is the owner who is depositing goods or somebody else?

3.37 The Ministry have in a reply stated that this issue will be addressed by the Authority

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3.38 The Committee note that as per clause 10(5) of the Bill if the goods on which a lien exists were not deposited by the owner or by his authority but by a person entrusted by the owner or his authority with the possession of the goods, the warehouseman shall, within two months after the date of deposit, give notice of the lien to the owner of the goods on which a lien exists or to the person owning the right of property of the goods. The Committee note the apprehension of CII as to how would the warehouseman verify whether it is the owner who is depositing the goods or somebody else. The Committee also note the contention of the Government that this issue would be addressed by the Authority. The Committee feel that the duty imposed on warehouseman to give notice of his lien to the actual owner where the goods have been deposited by a person entrusted by the owner or his authority. The notice, shall be in writing and contain all details about the goods and location of warehouses etc. to the owner. The Committee fail to understand the idea behind putting an owner's obligation on the warehouseman to inform the owner of the goods about the lien of the warehouseman. In fact this duty should be cast on the person who has deposited the goods with the warehouseman. The warehouseman has always a lien on the goods stored in his warehouse to recover his lawful storage and handling charges and whosoever deposited the goods or is the holder of the negotiable warehouse receipt shall be responsible to clear the lien of warehouseman. The Committee, therefore, recommend that sub clauses 5, 6, 7 and 10 of clause 10 should be amended accordingly.

3.39 Clause 10(11) stipulates as under:-

10(11) "If the charges are not paid on or before the day mentioned in the notice, then, unless any other mode of sale is specified by the Authority, by regulations an advertisement of the sale shall be published in a leading newspaper having circulation in the locality where the sale is to be held and the sale shall be held not less than fourteen days from the date of first publication of the advertisement.

3.40 CII have suggested that the advertisement for auction needs to be published in at least one newspaper in the place where the owner of the goods is located

3.41 The Ministry have in a reply stated that Section 10(11) has been re-examined and appears to be appropriate since it is not necessary to publish the notice for sale of advertisement in the news paper in the place where the owner of the goods is located. The publication is proposed in a leading news paper having circulation in the locality, where the sale is to be held.

3.42 The Committee note that as per clause 10(11) of the Bill if the charges are not paid on or before the day mentioned in the notice, then, unless any other mode of sale is specified by the Authority, by regulations an advertisement of the sale shall be published in a leading newspaper having circulation in the locality where the sale is to be held and the sale shall be held not less than fourteen days from the date of first publication of the advertisement. The Committee feel that advertisement for auction needs to be published in at least one leading newspaper in the place where the owner of the goods is located and recommend that the advertisement for auction may be published in a leading newspaper where the owner of the goods is located so that he may get to know about the sale as there are chances that he may not have received the notice of the sale due to some reasons.

4.1 Clause 11: Warehouse Receipts

11 (1) A warehouse receipt, which may be either in writing or in electronic form, shall be a document of title to goods in writing if it contains all the following particulars, namely:—

(a) receipt number;

(b) warehouse registration number and date up to which it is valid;

(c) name of the warehouse and its complete postal address;

(d) name and address of the person by whom or on whose behalf the goods are deposited;

(e) date of issue of the warehouse receipt;

(f) statement that the goods received shall be delivered to the holder thereof, or that the goods shall be delivered to the order of a named person;”

4.2 Clause 11(1) (g) stipulates as under:-

“rates of storage charges and handling charges”

4.3 On being asked that the proposed Bill provides for 'handling charges' and “storage charges” to be levied then what is the necessity of deciding the handling charges and storage charges at the central level. The handling charge differs from godown to godown then why the handling charges be decided at Central level and why it cannot be left to the States to levy the handling charges, the Ministry in their post evidence reply stated that the storage and handling charges would not be decided at central level by the Authority, As per Section 11(1)(g) of the proposed Bill, the rates of storage charges and handling charges are required to be mentioned on the warehouse receipt by the warehouseman (whosoever decides these charges).

4.4 Government of Andhra Pradesh as well as Government of Karnataka have suggested for deleting ‘and handling charges’ from section 11(g) – ‘from storage and handling charges’ as according to them, storage charges are by and large uniform throughout the State, whereas handling charges differ from warehouse to warehouse.

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4.5 The Ministry have in a reply stated that Legislative Department has opined that storage and handling charges should be mentioned in the format of the Warehouse Receipt. If the handling charges differ from warehouse to warehouse, the actual will be mentioned on the receipt. The prevailing storage charges and handling charges at the time of issue of the negotiable warehouse receipt may be

mentioned by the warehouseman. There should not be any problem in writing these charges on the warehouse receipt.

4.6 Govt. of Maharashtra have stated that as per Clause 11(1)(g), it is proposed that storage charges and handling charges to be written on the Warehouse Receipt, this cannot be practicable. Presently only storage charges are written on Warehouse Receipt. For recording endorsement on Warehouse Receipt the TEXT may be fixed.

4.7 The Ministry have in a reply stated that the prevailing storage and handling charges would be indicated on the warehouse receipt as per the requirement of Section 11(1)(g) and there should not be any problem in this regard. For recording the endorsement of the receipt for fixing the text, the issue may be addressed by the Authority.

4.8 Clause 11(1) (h) stipulates as under:-

“description of the goods or of the packages containing them with particulars of quantity and quality or grade”

4.9 CII have suggested that it would be difficult for the warehouseman to ascertain the quality of goods and even if the warehouseman try to ascertain the same, it will attract dispute between the warehouseman and the depositor on non-agreement of the grade designated by the warehouseman

4.10 The Ministry have in a reply stated that in such cases warehouseman may seek advise from the quality assaying agencies for which regulations may be framed by the Authority. As per provisions contained in Section 11(1) (h) of the proposed Bill, description of goods or of the package containing them with particulars of quantity and quality or grade would be mentioned. In case of tinned

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items, the quantity, quality and grade as mentioned on the packing would be mentioned on the warehouse receipt. Besides, the agricultural produce would be stored in scientific manner by adopting proper of code of practices for the storage of different commodities. This will result better quality for consumers.

4.11 In reply to a query of the Committee as to what factors weighed in proposing Negotiable Warehouse System for all commodities including agricultural commodities as this seems to negate the very purpose of the

recommendation made by the Committee which went into the agriculture credit delivery system in rural areas and recommended that warehouses Receipt be made negotiable, the Ministry in a written reply stated that the recommendation was made to introduce negotiable receipt system for all commodities including agricultural commodities because warehouses allowing this facility to only agricultural commodities may not be economically viable and their storage capacity may not be utilised to optimum level round the year. The multiplicity of law should be avoided. Moreover, in other countries like USA, there is only one Warehousing Law for all commodities.

4.12 Clause 11(1) (i) stipulates as under:-

“market value of the goods at the time of deposit”

4.13 Govt. of Delhi has suggested that some documentary evidence may be shown while declaring the market value of the goods at the time of deposit.

4.14 Deptt. of Food and Public Distribution have stated that now a days price of agricultural and other commodities are displayed every day by APMC, Commodity Exchanges, newspapers, etc. Warehouseman may take the market value of the goods at the time of deposit from these sources.

4.15 CII have apprehended that it would be difficult for the warehouseman to ascertain the correctness of goods declared by the depositor and suggested that some documented procedure needs to be defined on the issue like insurance policy[clause.

4.16 The Ministry have in a reply stated that have stated that this issue will be addressed by the Authority.

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4.17 Clause 11(1) (k) stipulates as under:-

“name of the insurance company indemnifying for fire, flood, theft, burglary, misappropriation, riots, strikes or terrorism”

4.18 CII have suggested that responsibility for insurance of the goods should also be defined in the Act and it should lie with the depositor of the goods

4.19 Govt. of Andhra Pradesh have suggested for mentioning rate of insurance charges in the warehouse receipt since insurance coverage is must to take care of all possible risks arising out of fire, theft etc.

4.20 The Ministry have in a reply stated that rates of insurance charges differ from commodity to commodity and also go on changing. It has been decided that a new sub section 11(4) may be added as follows:

Sub section 11(4): *“Authority may, with the prior approval of Central Government, add, delete or modify any particulars as specified in sub section (1) above for all or any commodity or class of commodities or for any class of warehouses.”*

Therefore, the Authority may mention any other particulars including storage charges on the warehouse receipt if it feels necessary.

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4.21 The Committee note that clause 11(1) enumerates various particulars which should appear on a negotiable warehouse receipt to make it a valid document. The Committee desire that the following two particulars should also be compulsorily added on the Negotiable Warehouse Receipt :-

- (i) the fact that the Warehouseman holds the lien on the goods deposited for his storage and handling charges.**

- (ii) **that the receipt would be valid only till the date of expiry of declared shelf life of the goods for which it is issued.**

This will go a long way to protect the interest of Negotiable Warehouse Receipt holder.

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4.22 The Committee note that Clause 11 (1) (k) stipulates the name of the insurance company indemnifying for fire, flood, theft, burglary, misappropriation, riot, strikes or terrorism. The Ministry has now proposed to add the following words:-

Sub clause (11) (4) “authority may, with the prior approval of the Central Government, add, delete or modify any particulars as specified in section 1 above for all or any commodity or class of commodities or for any class of warehouses”.

The Committee do not agree with the amendment being proposed by the Ministry in sub-clause 11(1) of the Bill.

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4.23 Clause 15: Warranties on Negotiation of Warehouse Receipt

15. “A person who, for valuable consideration, negotiates a negotiable warehouse receipt by endorsement and delivery, including one who assigns for valuable consideration, a claim secured by a receipt, unless a contrary intention appears, warrants the following: –

- (a) that the receipt is genuine;
- (b) that the person has a legal right to negotiate or transfer it;
- (c) that the person has no knowledge of any fact that would impair the validity of the receipt;
- (d) that the person has a right to transfer the title to the goods; and
- (e) that the goods are merchantable or fit for a particular purpose when those warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented by it.”

4.24 Clauses 16 17 & 18 stipulate:

16. "The endorsement of a receipt does not make the endorser liable for any failure on the part of the warehouseman or previous endorsers of the receipt to fulfill their respective obligations."

17. "The validity of the negotiation of a receipt is not impaired by the fact that–

(a) the negotiation was a breach of duty on the part of the person making the negotiation; or

(b) the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to that person, if the person to whom the receipt was negotiated or a person to whom the receipt was subsequently negotiated, paid value for it without knowing of the breach of duty, fraud, mistake or duress."

18. "If a person having sold, mortgaged or pledged goods that are in the custody of a warehouseman and for which a negotiable receipt has been issued, continues in possession of the negotiable receipt, the subsequent

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negotiation of it by that person under any sale or other disposition of the goods to any person receiving the receipt in good faith, for valuable consideration and without notice of the previous sale, mortgage or pledge, has the same effect as if a previous purchaser, mortgagee or pledgee of the goods, as the case may be, had expressly authorised the subsequent negotiation."

4.25 Clause 19: Stoppage of Delivery of Goods in certain cases

19." When a negotiable warehouse receipt has been issued in respect of any goods, no lien or right of stoppage of the seller in transit shall defeat the rights of a purchaser for value in good faith to whom the receipt has been negotiated, whether the negotiation is before or after notifying to the warehouseman who issued the receipt of the claim of the seller to a lien or right of stoppage in transit,

and the warehouseman shall not deliver the goods to an unpaid seller unless the receipt is first surrendered for cancellation.”

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4.26 Clause 19 provides for stoppage of delivery of goods in certain cases. However, it also says that lien or right of stoppage of the seller in transit shall not affect the rights of purchaser for value in good faith to whom the receipt has been negotiated. It further provides that Warehouseman shall not deliver the goods to an unpaid seller unless the receipt is first surrendered for cancellation. The Committee feels that this clause has been very loosely worded and conveys contradictory meanings and recommend that this should be suitably amended.

CHAPTER V

THE WAREHOUSING DEVELOPMENT AND REGULATORY AUTHORITY

5.1 Clause 25: Composition of Authority

25. “The Authority shall consist of –

(a) a Chairperson; and

(b) not more than two other members,

to be appointed by the Central Government from amongst persons of ability, integrity and standing who have wide knowledge and experience in inventory management, insurance, preservation, quality control, banking, finance, economics, law or administration.”

5.2 Confederation of Indian Industry (CII) have suggested that the Warehousing Development and Regulatory Authority (WDRA) may consist of five members including the chairperson having expertise in the field of

management, insurance, preservations, quality control, banking, finance and economic, law and administration as according to them three members may not be adequate to deal with various subjects.

5.3 On being asked why CII wanted five Members in the Authority, the representatives of CII during evidence stated as under:

“ we are getting into a sector which has been unregulated till now. This sector does not only include only warehousing, there are a lot of players in this to make it a real vibrant sector for which representatives of financial institutions, representatives of forward market commission, representatives of spot exchanges like multi-commodities exchange is contemplated, floating its own spot exchange also which is unprecedented in the world. So, if these representatives are there, then the Authority can take always a very comprehensive view.

Secondly, like we have requested that all commodities stored in accredited warehouses should be insured. There will be some cost and there will be new angle to it. So, insurance companies, their representatives; may be representatives from the Insurance Regulatory Authority should come in. Those will really synergise the entire affairs.”

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5.4 Govt. of Delhi have suggested that the number of other members besides the Chairperson may be three instead of two to facilitate decision making by majority of votes and for completion of quorum.

5.5 Govt. of Maharashtra have suggested the Composition of Authority may have members of Central Warehousing Corporation/State Government/State Warehousing Corporation. They will have to be given representation in Warehousing Advisory Committee.

5.6 The Ministry have in a reply stated that Chairperson and members of would be amongst persons of ability, integrity and understanding who have wide knowledge and experience in inventory management, insurance, preservation, quality control, banking, finance, economics, law or administration. There seems to be no justification for giving representation to CWC / SWCs etc as proposed. They have further stated that In Clause 25(b), there is a provision that there would not be more than two members (in addition to Chairman) and for regulatory body, the two members appear to be appropriate.

5.7 Clause 25 deals with the composition of Warehousing Development and Regulation Authority stating that the members of the Authority shall be from amongst persons of ability, integrity and standing who have wide knowledge and experience in inventory management, insurance, preservation, quality control, banking, finance, economics, law or administration. Since agricultural produce is likely to be the major component of Warehousing business, at least one person well versed in agricultural field must be included in the Warehousing Development and Regulation Authority. The Committee desires that this clause may be amended suitably.

5.8 Clause 26: Tenure of office of Chairperson and other persons

26(1) "The Chairperson and every other member shall hold office for a term not exceeding five years from the date on which he enters upon his office and shall be eligible for re-appointment:

Provided that no person shall hold office as the Chairperson or other member after he has attained the age of sixty-five years."

5.9 The Committee note that as per the provisions of the Bill, no person shall hold office of Chairperson or other member of the Authority after he/she attains the age of sixty five years. The Committee desires that the age limit for holding such office be reduced to 60 years so as to make the Authority more youthful and dynamic.

5.10 Clause 31 (2): Meetings of Authority

31(2) “The Chairperson, or if, for any reason he is unable to attend a meeting of the Authority, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.”

5.11 The Committee note that the Warehousing Development and Regulatory Authority shall consist of three Members including the Chairperson. It has been provided that in the absence of the Chairperson, any other member chosen by the Members present from amongst themselves shall preside over the meeting. The Committee note that it would be difficult to decide the case by majority as there are only two members of the Authority. And in case only one member is present, this provision will not be required at all since the Member present will be presiding over the meeting. The Committee desire that this clause may be amended suitably by indicating that in case where two members are present, the senior member should preside the meeting

CHAPTER VI

POWERS AND FUNCTIONS OF AUTHORITY

6.1 Clause 35: Powers and Functions of Authority

Clause 35(2) stipulates as under:

35(2) “ the powers and functions of the Authority shall include the following, namely:

(a) to issue to the applicants fulfilling the requirements for warehousemen a certificate of registration in respect of warehouses, or renew, modify, withdraw, suspend or cancel such registration;

(b) to regulate the registration and functioning of accreditation agency, renew, modify, withdraw, suspend or cancel such registration, and specify the code of conduct for officials of accreditation agencies for accreditation of the warehouses;

(c) to specify the qualifications, code of conduct and practical training for warehousemen and staff engaged in warehousing business;

(d) to regulate the process of pledge, creation of charges and enforcement thereof in respect of goods deposited with the warehouse;

(e) to promote efficiency in conduct of warehouse business;

(f) to make regulations laying down the standards for approval of certifying agencies for grading of goods;

(g) to promote professional organisations connected with the warehousing business;

(h) to determine the rate of, and levy, the fees and other charges for carrying out the provisions of this Act;

(i) to call for information from, undertaking inspection of, conducting enquiries and investigations including audit of the warehouses, accreditation agencies and other organisations connected with the warehousing business;

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(j) to regulate the rates, advantages, terms and conditions that may be offered by warehousemen in respect of warehousing business;

(k) to specify, by regulations, the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by warehousemen;

(l) to maintain a panel of arbitrators and to nominate arbitrators from such panel in disputes between warehouses and warehouse receipt holders;”

(m) to regulate and develop electronic system of holding and transfer of credit balances of fungible goods deposited in the warehouses;

(n) to exercise such other powers and perform such other functions as may be prescribed.”

6.2 On being asked about the reasons behind the suggestion that the composition of arbitrators to settle disputes between warehouse and warehouse receipt holders may be provided in the Bill. It was also asked what according to CII should be the composition of arbitrators to settle disputes between warehouse and warehouse receipt holder and what is the harm if it is provided in the Rules, the representatives of CII during evidence stated as follows:

“arbitrator should be one person who has no vested interest either in the warehousing sector or in the people who are using that business. That is a very important thing. Arbitrator should have a good legal background, should have sufficiently enough long experience in arbitration of one kind or the other. We are entering into an area where there is a lot of subjectivity today. It will need a lot of patience and a lot of effort to bring this to a very good objective situation- the way we see it in the western side where warehouse receipts and warehousing are one of the most preferred activities in the agricultural produce area. So, our humble submission is that the persons who are being appointed as arbitrators should be persons of eminence, impeccable integrity and high quality of mind.”

6.3 The representative of NCDEX also during evidence submitted as follows:-

“The next submission we have made is regarding section 35(L) of the proposed Bill which deals with arbitration. Today, the arbitration provision covers only warehouses and the depositories. Our submission is that it should also cover

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banks, grading agencies and depositories as well as collateral managers. The provision under section 35 (L) should be enlarged to give this facility to other participants also in the value chain. The last thing is about natural loss. There is a provision about it in Bombay Warehousing Act and Tamil Nadu Warehousing Act that the gains because of moisture absorption do not go to the warehouses. Our submission is that losses should also not be towards the warehouses. The regulator may be permitted to stipulate commodity-wise from time to time what is the maximum natural loss permitted in every commodity.

6.4 CII have suggested that there should be a provision of classification/grading warehouse based on quality of services (star rating) and Warehousing Development and Regulatory Authority (WDRA) should fix the rates/levy/fee accordingly.

6.5 Govt. of Delhi have suggested that authority should consider subsidized rates for storage of essential commodities while regulating the rates.

6.6 The Ministry have in a reply stated that in the Bill [Section 35(2)(j)], it has been provided that the Authority would regulate the rates, the advantages, terms and conditions that may be offered by warehouseman in respect of warehousing business. In case, the Authority feels to subsidize the storage charges for essential commodities, it may consider and make the regulation accordingly.

6.7 Govt. of Maharashtra have pointed out that the Bill does not speak about stock against ACKNOWLEDGEMENT. The procedure for recovery on par with warehouse receipt may be provided in the Bill. The provisions may also be made for issuing acknowledgement to depositor on their demand.

6.8 The Ministry have in a reply stated that there is no provision of keeping stocks against acknowledgement in the proposed legislation. On deposit of the goods in the warehouse, a printed negotiable warehouse receipt would be issued by the warehouseman and, therefore, provision for issuing acknowledge to depositors on their demand has not been made in the Bill. However, this issue

will be taken care by the Authority and, if necessary, regulations may be formulated by the Authority.

6.9 Govt. of Karnataka have stated that in order to protect the interest of the farmers who are willing to store their produce to get remunerative prices in future and to avoid distress sale, it is necessary to assure storage facilities in the proposed Bill. If this is not done, the farmers would be subjected to unnecessary hardship by way of distress sale, which, on the other and would seriously affect the economic efficiency of the farmers. So it is desirable to earmark certain percentage of storage capacity at least minimum 10% so that the Agricultural Sector would be given priority in the proposed Bill. Hence, after section 35(2) (m) to insert sub clause "(n) to earmark a minimum of 10% of the space for the benefit for farmers at large" and to modify the existing sub clause (n) as (o).

6.10 The Ministry have in a reply stated that this issue has been discussed with experts including the members of the Core Group constituted for drafting the proposed Bill and it was suggested that some percentage (10%) of storage capacity may be earmarked exclusively for the farmers. However, Authority should be empowered to exempt this condition in cases of warehouses where there is no demand in this regard.

An enabling Clause 35(2)(o) as suggested below may be added in Chapter VI of the proposed Bill:

"to earmark 10% of the storage capacity for the benefit of farmers. The Authority may exempt such warehouses in this regard in case there is no demand for the storage of agriculture produce by the farmers."

FICCI have sought a standard process for claiming insurance dues on pledged stocks. They have also suggested for inclusion of dematerialization of commodity balances and subsequent strengthening of the negotiability of dematerialized commodity balance through a linkage to the depositories Act.

6.11 Government of Karnataka have suggested that a sub-clause (n) be inserted after section 35(2) (m) to earmark a minimum of 10% of the storage space for the benefit of farmers at large and modify the existing sub-clause (n) as (o).

6.12 Department of Food and public Distribution have proposed for adding a sub clause in Chapter VI, Powers and functions of Authority:-

“35 (2)(o): If any warehouseman or accreditation agency, who is required under this Act or any rules or regulation made thereunder to follow certain guidelines, fails to follow such guidelines, he/it shall be liable to a penalty of upto Rupees fifty thousand (Rs.50,000/-) for each failure.”

6.13 Department of Food and public Distribution have proposed for adding an enabling clause in Chapter VI (Powers and functions of Authority):-

“35 (2)(p): to give primacy to agricultural produce for storage in the registered warehouses”.

6.14 Department of Food and Public Distribution have proposed for adding a sub clause in Chapter VI (Powers and functions of Authority) for prescribing the duties and responsibilities of warehouseman as follows:-

35 (2)(q): “To prescribe the duties and responsibilities of the warehouseman.”

6.15 Govt. of Delhi have suggested for addition of clause 35 (2) (o) to develop and maintain an integrated information system about all accredited warehouses They have suggested for addition of clause 35 (2) (p) to make recommendation to the Central Govt. for providing finance at lower rates for construction of warehouses in rural areas for benefit of farmers.

6.16 The Ministry have in a reply stated that once the warehouses are registered with the Authority, it will maintain a complete information about these warehouses. Regarding the vacant space, etc., electronic software may be developed by the Authority, which need not to be specified in the Bill. There is no provision in the Bill for providing financial assistance for the construction of warehouses in rural areas. Such a scheme already exists in the Department of Agriculture & Cooperation which are being implemented through NABARD and

NCDC.

6.17 The Committee note that sub clause (j) of clause 35(2) provides for regulating the rates, advantages, terms and conditions etc. to be offered by warehousemen in respect of warehousing business. The Committee desire that a specific provision be made for the essential and agricultural commodities to be stored at subsidized rates.

Sub Clause (l) provides for an authority maintaining a panel of arbitrators to settle disputes between warehouses and warehouse receipt holders. The Committee desire that the persons to be placed on this panel should have sufficient experience in the field of warehousing. This Clause may be amended accordingly.

Provision imposing penalty on warehouseman or accreditation agency for their failure to carry out their assigned duties and responsibilities may be suitably added in this Clause.

The Committee note that Sub Clause (l) of Clause 35(2) provide for maintaining a panel of arbitrators for disputes between warehouses and warehouse receipt holders. However, there are various other parties also which can be involved in one or the other kind of disputes amongst themselves while dealing with the warehouse business, like banks, grading agencies, depositories as well as collateral manager. The Committee desire that dispute amongst these parties should also be referred to arbitrators, mentioned in sub clause (l). This should be suitably included in the Clause 35.

CHAPTER VII

POWERS OF CENTRAL GOVERNMENT

7.1 Clause 41: Power of Central Government to supersede the Authority

Clause 41 (1) (a) and (c) stipulate as under:

41(1) If, at any time, the Central Government is of the opinion—

(a) “that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; “or

(c) “that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period not exceeding six months, as may be specified in the notification and nominate a person to look after the functions of the Authority:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representation, if any, of the Authority.”

7.2 The Committee note that this Clause provides the circumstances where Central Government can supersede the Authority. Sub Clause (a) of 41(1) states that if in the opinion of the Central Government, the Authority

is unable to discharge the functions or perform the duties imposed under provisions of this Act on account of circumstances beyond the control of the Authority, even then, Central Government can supersede it. The Committee do not agree with this procedure when the government itself admit that Authority is unable to discharge its functions on account of the circumstances beyond its control. The Committee feel it would be unjustified to supersede the Authority and this amounts to excessive powers in the hands of Central Government. The Committee recommend that this provision should be deleted.

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CHAPTER VIII

APPEALS

8.1 Clause 42: Appeals to Appellate Authority

Clause 42(1) & (4) stipulate as under:

42. (1) “Any person aggrieved by an order of the Authority made under this Act, or any rules or the regulations made thereunder may prefer an appeal to such person or authority appointed by the Central Government (hereafter referred to as the Appellate Authority) within sixty days from the date of such order:

Provided that an appeal may be admitted after the expiry of the said period of sixty days but not beyond a total period of ninety days if the appellant satisfies the Appellate Authority that he had sufficient cause for not preferring the appeal within the said period.”

42 (4) “An appeal filed before the Appellate Authority shall be heard and disposed of as expeditiously as possible and endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its filing. “

8.2 The Committee note that clause 42 provides for appeals to Appellate Authority. But the Committee note that no details have been given for constitution, functioning, duties and responsibilities of Appellate Authority anywhere in the Bill. It has also not been mentioned the time within which the Appellate Authority would be constituted. The Committee, therefore, desire that suitable specific provision should be made in the Bill for

constitution, composition and functioning of the Appellate Authority containing the details regarding the number of persons, their qualifications, manner of appointment, terms of office, terms and conditions of service etc.

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CHAPTER IX

OFFENCES AND PENALTIES

9.1 Clause 43(1): Offences and Penalties

43. (1) “Any warehouseman knowingly issuing a warehouse receipt without taking the actual physical delivery of the goods in his warehouse or a warehouseman or an agent or servant of the warehouseman who issues a warehouse receipt without reasonably satisfying himself that the goods for which such warehouse receipt is issued have actually been received or the number, weight or grade of the goods corresponds to the number, weight or grade

specified in the warehouse receipt or the goods are under his actual control at the time of issuing such warehouse receipt, commits an offence and shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to four times the value of the goods or with both.”

9.2 Govt. of UP have stated that a provision in respect of offence and punishment therefore has been made in Section 43 (I) of the Bill according to which warehouseman is to be made liable for three years of imprisonment and a penalty of upto four times the value of the damaged goods or both, which is too much and does not seem recoverable in case such a situation arises.

9.3 The Ministry have in a reply stated that penalty provisions under Section 43(1) have been got re-examined by the Department of Legal Affairs and they have opined that these are not too harsh.

9.4 Clause 43(4) stipulates as under:

43 (4) “A warehouseman who fails, on surrender of a negotiable warehouse receipt by the depositor or endorsee and payment of all his lawful charges and cancellation of encumbrances endorsed on the receipt, within the declared shelf-life of the goods, as mentioned therein to deliver the goods represented by the receipt commits an offence and shall be punishable for such offence with imprisonment for a term which may extend to three years or with fine which may extend to three times the value of the goods or with both.”

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9.5 Govt. of UP have stated that there is a provision under section 43(4) of the Bill which provides that in case a warehouseman fails to give delivery of the stored goods then he will be punished with three years of imprisonment or with a penalty of up to three times of the value of the goods or both. In case warehouseman fails to deliver the goods due to the reasons i.e. theft, natural calamities etc., which are beyond his control, then in such situation, there should be made an appropriate provision treating such situations as an exception.

9.6 The Ministry have in a reply stated that Section 43(4) wherein penalty provisions are there for warehouseman who fails to deliver the goods represented in the warehouse receipt even after payment of all law-full charges has been found to be in order. For loss of goods due to theft and other natural

calamities which are not in the control of warehouseman, the warehouseman would take action as per Section 6(2) of the proposed Bill and the holder of the receipt will be paid compensation equal to the value of goods at the time of deposit of the goods shall be payable by the warehouseman.

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9.7 Sub Clauses (1) to (3) of Clause 43 refer to warehouse receipts whereas Sub Clause (4) refers to negotiable warehouse receipt. The Committee is of the opinion that the term `warehouse receipt' would cover both negotiable as well as non-negotiable warehouse receipts. By restricting the provisions of Sub Clause (4) to negotiable warehouse receipt only, no provision seems to have been made for similar circumstances in case of non-negotiable warehouse receipts. The Committee desire that similar provisions should also be made in case of non negotiable warehouse receipts also.

9.8 Clause 45: Cognizance of offences by courts

45. (1) “No court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Authority or by any officer authorised in writing in this behalf by the authority.”

45(2) “No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.”

9.9 Resident Commissioner of Karnataka has stated that this draft Section 45 is against the principle of natural justice and would be liable to be struck down by the Courts as unlawful. How can an affected party be debarred from making a complaint, and the right of complaint can vest only with the Authority? What would happen if there is collusion by the authority, or some officials working in the Authority, along with the “warehouseman”, or there is bribery and suppression of facts by the Authority? Principles of natural justice demand that anybody who is affected by an injustice can always seek justice.

9.10 The Ministry have in a reply stated that Section 45(1) defines that no court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Authority or by any officer authorized in writing in this behalf by the authority and 45(2) specifies that no court inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. These have been re-examined and found to be in order. In section 42(1) of the Bill, there is a provision of an appeal by any person aggrieved by an order of the Authority.

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9.11 The Committee note that Clause 45 provides for cognizance of offences by court and state that no court shall take cognizance of any offence punishable under this Act unless a complaint is made by authority or by officer authorized in writing in this behalf by the authority. The Committee feel this amounts to denial of fundamental rights to the warehouse receipt holder by barring their right of seeking judicial remedy which is available to him under the Constitution. The Committee desire that this clause may be reviewed and modified suitably, if need be by stating that any party may go to the Court after exhausting available remedies under the Act.

CHAPTER-X
MISCELANEOUS

10.1 Clause 46: Chairperson, Members, Officers and other employees of Authority to be public servants

46. “The Chairperson, members, officers and other employees of Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.”

10.2 The Committee note that under clause 46 the chairperson, members, officers and other employees of Warehousing Development and Regulatory Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code. The Committee desire that the members and other employees of Appellate Authority should also be deemed to be public servants and this clause be amended suitably

10.3 Clause 49: Exemption from tax on wealth and income

49."Notwithstanding anything contained in the Wealth Tax Act, 1957, the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived."

10.4 The committee note that Clause 49 provides for exemption from tax on wealth and income to the Authority. They feel that in the era of economic liberalization and when the ministry of Finance is trying to widen its tax net it would be contrary to that spirit if exemption is given to the Authority from wealth and income tax, that too for life. The Committee, therefore, recommend that no exemption should be given to the Authority from wealth and income tax

10.5 Clause 50: Power of Central Government to make Rules

50. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any or the following matters, namely:—

(a) the form and manner in which an application for obtaining a certificate of registration for commencing or carrying on the business of warehousing issuing negotiable warehouse receipts may be made and the fees which shall accompany such application under sub-section (2) of section 4;

(b) the form in which a certificate for registration of warehouses may be issued under sub-section (3) of section 4;

(c) The financial, managerial and other eligibility criteria and competence which an applicant for registration of warehouses shall satisfy under sub-section (4) of section 4;

(d) The qualification and other requirements which a person applying for functioning as an accreditation agency shall fulfil under sub-section (2) of section 5;

(e) the form and manner in which an application for registration as an accreditation agency may be made and the fees which shall accompany such application under sub-section (3) of section 5;

(f) the form of certificate of registration of accreditation agency under sub-section (4) of section 5;

(g) the salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other members under section 28;

(h) such other powers that may be exercised by the Authority under clause (n) of sub-section (2) of section 35;

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(i) the form and manner of maintenance of annual statement of accounts to be maintained by the Authority under sub-section (1) of section 38;

(j) the form and manner in which and the time within which returns and statements and particulars are to be furnished by the Authority to the Central Government under sub-section (1) of section 39;

(k) the form and the manner in which an appeal may be made to the Appellate Authority and the fee which shall accompany such appeal under sub-section (2) of section 42;

(l) the procedure to be followed by the Appellate Authority in disposing of an appeal under sub-section (3) of section 42;

(m) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules.

10.6 The Committee note that as per clause 50 the Central Government shall make rules for the Warehousing Development and Regulatory Authority. The Committee desire that similar rules may also be framed for the Appellate Authority by the Central Government.

**New Delhi
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2006
, 1928 (Saka)**

**DEVENDRA PRASAD YADAV
Chairman,
Standing Committee on Food,
Consumer Affairs and Public Distribution**

**MINUTES OF THE EIGHTH SITTING OF THE STANDING COMMITTEE ON
FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON
MONDAY, THE 16TH JANUARY, 2006.**

The Committee sat from 1500 hrs. to 1615 hrs. in Committee Room No.
'53', Parliament House, New Delhi.

Present

Shri Devendra Prasad Yadav - Chairman

**MEMBERS
LOK SABHA**

2. Shri A.P. Abdullakutty
3. Shri Ranen Barman
4. Shri Alakesh Das
5. Shri Gadakh Tukaram Gangadhar
6. Shri Baliram Kashyap
7. Shri Parsuram Majhi
8. Shri Harikewal Prasad
9. Shri Chandrabhan Singh
10. Shri Ramakant Yadav

RAJYA SABHA

11. Shri T.S. Bajwa
12. Shri Palden Tsering Gyamtso
13. Smt. Bimba Raikar
14. Shri Nabam Rebia
15. Shri Vikram Verma
16. Shri Vijay Singh Yadav

SECRETARIAT

1. Shri R.S. Kambo - Deputy Secretary
2. Shri B.S. Dahiya - Under Secretary
3. Shri Jagdish Prasad - Assistant Director

**REPRESENTATIVES OF MINISTRY OF CONSUMER AFFAIRS, FOOD AND
PUBLIC DISTRIBUTION (DEPARTMENT OF FOOD AND PUBLIC
DISTRIBUTION)**

1. Shri Vivek Mehrotra, AS & FA
2. Shri S.K.Srivastava, Joint Secretary
3. Smt. Anju Nigam, Director

At the outset, Hon'ble Chairman welcomed the representatives of Department of Food and Public Distribution to the sitting of the Committee convened to have briefing by them on the Warehousing (Development and Regulation) Bill, 2005 as introduced in Lok Sabha on 7th December, 2005.

The representatives of the Department of Food and Public Distribution made a power-point presentation before the Committee. The Committee sought clarifications from the representatives of the Department of Food and Public Distribution on the Bill. The following points emerged during the deliberations of the Committee:-

- (i) Salient features of the Warehousing (Development and Regulation) Bill, 2005;
- (ii) Applicability of Warehousing (Development and Regulation) Bill, 2005 to non-agricultural commodities; the disadvantages to agricultural commodities;
- (iii) Advantages of Negotiable warehouse Receipts;
- (iv) Regulation of Warehouse Business;
- (v) Requirement for registration of warehouses and advantages thereof
- (vi) Basic requirements for registration of warehouses
- (vii) Functions of Warehousing Development and Regulatory authority
- (viii) Provisions of penalties for various offences under the Act.

The representatives replied to the queries raised by the Members.

The Chairman then thanked the witnesses for appearing before them and sharing their views with the Committee.

A verbatim record of the proceedings has been kept on record.

The Committee then adjourned.

**MINUTES OF THE FOURTEENTH SITTING OF THE STANDING COMMITTEE
ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON
THURSDAY, THE 15TH JUNE, 2006.**

The Committee sat from 1500 hrs. to 1730 hrs. in Committee Room 'C',
Parliament House Annexe, New Delhi.

Present

Shri Devendra Prasad Yadav - Chairman

**MEMBERS
LOK SABHA**

2. Shri A.P. Abdullakutty
3. Shri Suresh Angadi
4. Shri Ranen Barman
5. Shri Alakesh Das
6. Shri Atma Singh Gill
7. Shri Abdul Mannan Hossain
8. Shri Baliram Kashyap
9. Shri Avinash Rai Khanna
10. Shri Harikewal Prasad
11. Shri Ajit Kumar Singh

RAJYA SABHA

12. Shri T.S. Bajwa
13. Shri Shyam Benegal
14. Shri Surendra Motilal Patel
15. Shri Rajniti Prasad

SECRETARIAT

1. Shri P.K.Bhandari - Joint Secretary
2. Shri R.S. Kambo - Deputy Secretary
3. Shri B.S. Dahiya - Under Secretary

REPRESENTATIVES OF ORGANISATIONS/STATE GOVERNMENTS

Confederation of Indian Industry (CII)

1. Ms. Indrani Kar Senior Director & Head Agriculture and
Food Processing Confederation of
Indian Industry (CII).
2. Shri. D.S. Chadha Technical Advisor (CII)
3. Shri Ashit Kumar Director, ITC Ltd.

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4. Shri Anil Rajput Vice President,
Consumer Affairs, ITC Ltd.
5. Shri V.K. Khurana Regional Manager,

6. Shri Anil Choudhary
Mother Dairy
Managing Director &
CEO- National Bulk Handling Corp.

National Commodities & Derivatives Exchange Ltd. (NCDEX)

1. Shri P.H. Ravi Kumar MD & CEO, NCDEX
2. Shri A. Karati Head Institutional Group, NCDEX
3. Shri Ravinder Sachdev Head Legal, NCDEX
4. Shri A. Hari Prasad MD & CEO, NCMS Ltd.

GOVERNMENT OF ANDHRA PRADESH

1. Shri Bhanwar Lal, IAS
Commissioner of Civil Supplies and
Ex. Office Secretary to Government
Consumer Affairs, Food and Civil
Supplies Department.

GOVERNMENT OF KARNATAKA

2. Shri A. Ramaswamy, IAS
Principal Secretary,
Government of Karnataka.,
Department of Agricultural and
Horticulture and Department of
Co-operation.

GOVERNMENT OF HARYANA

3. Smt. Asha Sharma, IAS
Financial Commissioner and Principal
Secretary to Government of Haryana
Agriculture Department

GOVERNMENT OF MAHARASHTRA

4. Dr. Shaileshkumar Sharma
Chairman & MD Maharashtra
Warehousing Corp.

GOVERNMENT OF UTTAR PRADESH

5. Shri S.K.Srivastava
Managing Director, Uttar Pradesh
Warehousing Corporation

At the outset, Hon'ble Chairman welcomed the representatives of Confederation of Indian Industry (CII) to the sitting of the Committee convened to hear their views on the Warehousing (Development and Regulation) Bill, 2005.

The representatives of CII made a power-point presentation before the Committee. The Committee sought further clarifications from the representatives of CII on the Bill. The following points emerged during the deliberations of the Committee:-

- (i) Consultation with CII at the time of drafting of the Bill
- (ii) Benefits to the farmers and consumers in Bill
- (iii) The composition of Warehousing Development and Regulatory Authority and the qualifications for the Chairman and Members of the Authority
- (iv) the composition of arbitrators to settle disputes between warehouse and warehouse receipt holders

The Chairman thanked the representatives of CII for expressing their views on the Bill. The witness then withdrew. The representatives of NCDEX were then called in

Hon'ble Chairman welcomed the representatives of National Commodities and Derivatives Exchange Ltd. (NCDEX) to the sitting of the Committee. The Committee sought clarifications from the representatives of NCDEX on the Bill.

The following points emerged during the deliberations of the Committee:-

- (i) consultation with NCDEX at the time of drafting of the Bill
- (ii) Benefits to the farmers and consumers in the proposed Bill
- (iii) Permission to the regulator to stipulate commodity-wise from time to time the permissible maximum natural loss in every commodity.

Hon'ble Chairman thanked the representatives of NCDEX for placing before the Committee their views on the Bill. The witness then withdrew.

Hon'ble Chairman then welcomed the representatives of various State Governments to the sitting of the Committee. The Committee sought

clarifications from the representatives of different State Governments on the Bill.

The following points emerged during the deliberations of the Committee:-

- (i) Consultation with the State Governments at the time of drafting of the Bill
- (ii) Centralization of power in the hands of Union Government at the expense of State Governments in the Bill
- (iii) Earmarking some percentage of the storage capacity of each warehouse for storage of agricultural commodities.
- (iv) The fate of the State Warehousing Acts after the passing of the Bill.
- (v) No mention of the 'Development' in the Bill

The Chairman thanked the representatives of State Governments for appearing before them and sharing their views with the Committee.

A verbatim record of the proceedings has been kept on record.

The Committee then adjourned.

**MINUTES OF THE FIFTEENTH SITTING OF THE STANDING COMMITTEE ON
FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON
FRIDAY, THE 16TH JUNE, 2006.**

The Committee sat from 1100 hrs. to 1215 hrs. in Committee Room 'C',
Parliament House Annexe, New Delhi.

Present

Shri Devendra Prasad Yadav - Chairman

**MEMBERS
LOK SABHA**

2. Shri A.P. Abdullakutty
3. Shri Suresh Angadi
4. Shri Ranen Barmans
5. Shri Gadakh Tukaram Gangadhar
6. Shri Parsuram Majhi
7. Shri Abdul Mannan Hossain
8. Shri Baliram Kashyap
9. Shri Harikewal Prasad
10. Shri Chandrabhan Singh

RAJYA SABHA

11. Shri Vikram Verma
12. Shri Narayan Singh Kesari
13. Shri Shyam Benegal
14. Shri Surendra Motilal Patel
15. Shri Rajniti Prasad
16. Shri Nabam Rebia

SECRETARIAT

1. Shri P.K.Bhandari - Joint Secretary
2. Shri R.S. Kambo - Deputy Secretary
3. Shri B.S. Dahiya - Under Secretary

**REPRESENTATIVES OF MINISTRY OF CONSUMER AFFAIRS, FOOD AND
PUBLIC DISTRIBUTION (DEPARTMENT OF FOOD AND PUBLIC
DISTRIBUTION)**

1. Shri Vivek Mehrotra, AS & FA
2. Shri S.K.Srivastava, Joint Secretary
3. Shri N.K.Chaubey, MD, CWC

At the outset, Hon'ble Chairman welcomed the representatives of the Department of Food and Public Distribution to the sitting of the Committee. The Committee sought clarifications from the representatives of the Department of Food and Public Distribution on the Bill. The following points emerged during the deliberations of the Committee:-

- (i) Consultations with State Governments at the time of drafting of the Bill- Deptt. asked to furnish a note on the matter
- (ii) The centralization of power in the hands of Union Government at the expense of State Governments proposed in the Bill
- (iii) The Bill i.e. Warehousing (Development and Regulation) Bill, is silent on the 'Development' aspect and emphasizes only on Regulation
- (iv) Levy of handling charges by warehouses
- (v) Possibility of framing Central law for uniformity and leaving administration thereof to the State Governments.

The representatives replied to the queries raised by the Members.

The Chairman then thanked the witnesses for appearing before them and sharing their views with the Committee.

A verbatim record of the proceedings has been kept on record.

The Committee then adjourned.

**MINUTES OF THE THIRD SITTING OF THE STANDING COMMITTEE
ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION (2006-
2007) HELD ON FRIDAY, 29th SEPTEMBER, 2006.**

The Committee sat from 1130 hours to 1215 hours in Committee Room 'B', Parliament House Annexe, New Delhi.

Present

Shri Devendra Prasad Yadav - Chairman

MEMBERS

LOK SABHA

2. Shri Alakesh Das
3. Shri Atma Singh Gill
4. Shri Abdul Mannan Hossain
5. Shri Sadashivrao Dadoba Mandlik
6. Shri Harikewal Prasad
7. Shri Munshi Ram
8. Adv. P. Satheedevi
9. Shri Chandrabhan Singh
10. Shri Ramakant Yadav

RAJYA SABHA

11. Shri T.S. Bajwa
12. Smt. Mohsina Kidwai
13. Shri Kanjibhai Patel
14. Shri Shantaram Laxman Naik
15. Shri Rajniti Prasad
16. Shri Matilal Sarkar
17. Shri Ram Narayan Sahu

SECRETARIAT

1. Shri R.S. Kambo - Deputy Secretary
2. Shri B.S. Dahiya - Under Secretary
3. Shri Jagdish Prasad - Assistant Director

Cond/-.....

2. At the outset, the Hon'ble Chairman welcomed the Members to the sitting of the Committee. The Committee then took up Draft 14th Report on "Warehousing (Development and Regulation) Bill, 2005" for consideration and adopted the same with some minor modifications/ amendments.

3. The Committee authorized the Chairman to finalise the Report after making consequential changes arising out of factual verification of the report by the concerned Department and present the Report to the Hon'ble Speaker during the current intersession period and thereafter present/lay the Report in both the Houses of Parliament during the ensuing Winter session of Parliament.

The Committee then adjourned.

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LOK SABHA
A
BILL

to make provisions for the development and regulation of warehouses, negotiability of warehouse receipts, establishment of a warehousing development and regulatory authority and for matters connected therewith or incidental thereto.

(Shri Sharad Pawar, Minister of Agriculture and Consumer Affairs, Food and Public Distribution)

THE WAREHOUSING (DEVELOPMENT AND REGULATION) BILL, 2005

ARRANGEMENT OF CLAUSES

CHAPTER I
PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

REGULATION OF WAREHOUSING BUSINESS

3. Requirement of registration for warehouses issuing negotiable warehouse receipts.
4. Registration of warehouses.
5. Registration of accreditation agencies.

CHAPTER III

WAREHOUSEMEN

6. Liabilities of warehousemen.
7. Duties of warehousemen.
8. Duties of warehouseman to keep records and accounts of warehouse business.
9. Special powers of warehouseman to deal with perishable and hazardous goods.
10. Lien of warehouseman on goods.

CHAPTER IV

WAREHOUSE RECEIPTS

11. Warehouse receipts.
 12. Negotiability of warehouse receipts.
 13. Negotiation of warehouse receipts by delivery.
 14. Transfer of negotiable warehouse receipt without endorsement.
 15. Warrantees on negotiation of warehouse receipt.
 16. Endorser not a guranteer.
 17. Negotiation of warehouse receipt not impaired by fraud, mistake or duress.
 18. Subsequent negotiation of warehouse receipts.
 19. Stoppage of delivery of goods in certain cases.
 20. Transfer of non-negotiable receipts.

21. Conclusiveness of negotiable warehouse receipt.
22. Presumption in certain cases.
23. Issue of duplicate receipt.

CHAPTER V

THE WAREHOUSING DEVELOPMENT AND REGULATORY AUTHORITY

CLAUSES

24. Establishment and incorporation of Authority.
25. Composition of Authority.
26. Tenure of office of Chairperson and other members.
27. Removal from office.
28. Salary, allowances and other terms and conditions of Chairperson and other members.
29. Bar on future employment of members.
30. Chairperson to be the chief executive of Authority.
31. Meetings of Authority.
32. Vacancies, etc., not to invalidate proceedings of Authority.
33. Officers and employees of Authority.
34. Warehousing Advisory Committee.

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POWERS AND FUNCTIONS OF AUTHORITY

35. Powers and functions of Authority.

CHAPTER VII

FINANCE, ACCOUNTS AND AUDIT

36. Grants by Central Government.
37. Constitution of fund.
38. Accounts and audit.
39. Furnishing of returns, Annual Report, etc., to Central Government.

CHAPTER VIII

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40. Powers of Central Government to issue directions.
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CHAPTER IX

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42. Appeals to Appellate Authority.

CHAPTER X

OFFENCES AND PENALTIES

43. Offences and penalties.
44. Offences by companies.
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MISCELLANEOUS

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46. Chairperson, members, officers and other employees of Authority to be public servants.
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49. Exemption from tax on wealth and income.
50. Power of Central Government to make rules.
51. Power of Authority to make regulations.
52. Rules and regulations to be laid before Parliament.
53. Act to have overriding effect.
54. Power to remove difficulties.

**Amendment
of Act 2 of 1899.**

THE WAREHOUSING (DEVELOPMENT AND REGULATION)
BILL, 2005

A

BILL

to make provisions for the development and regulation of warehouses, negotiability of warehouse receipts, establishment of a warehousing development and regulatory authority and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

1. (1) This Act may be called the Warehousing (Development and Regulation) Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

(a) “accreditation agency” means an agency, whatever be its constitution, registered with the Authority under section 5;

(b) “actionable claim” shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882;

(c) “Authority” means the Warehousing Development and Regulatory Authority established under sub-section (1) of section 24;

(d) “depositor” means a person who delivers goods to the warehouseman for storage;

(e) “endorsee” means the person to whom the warehouse receipt is negotiated;

(f) “endorsement” means signing on the warehouse receipt by the depositor or holder of the warehouse receipt for the purpose of its negotiation;

(g) “electronic form”, with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated micro fiche or similar device;

(h) “fungible goods” means any goods of which any unit is, by nature or usage of trade, the equivalent of any other like unit and are received by a warehouseman as fungible goods;

(i) “goods” means all tangible movable goods (other than actionable claims, money and securities), whether fungible or not;

(j) “grade” means the quality standard of any goods as notified as grade designation by the Central Government under the Agriculture Produce (Grading and Marking) Act, 1937 or any other law for the time being in force;

(k) “holder” means,—

(i) in relation to a negotiable warehouse receipt, a person who is in possession of such receipt and a right to goods endorsed on it; and

(ii) in relation to a non-negotiable warehouse receipt, a person named in it as the person to whom the goods are to be delivered or the assignee of that person;

(l) “member” means a member of the Authority and includes its Chairperson;

(m) “negotiable warehouse receipt” means a warehouse receipt under which the goods represented therein are deliverable to the depositor or order, the endorsement of which has the effect of transfer of goods represented thereby and the endorsee for which takes a good title;

(n) “non-negotiable warehouse receipt” means a warehouse receipt other than a negotiable warehouse receipt;

(o) “notification” means a notification published in the Official Gazette;

(p) “person” includes a firm, co-operative society or any association or body of persons, whether incorporated or not;

(q) “prescribed” means prescribed by rules made under this Act;

(r) “regulation” means a regulation made under this Act;

(s) “warehouse” means any premises (including any protected place) conforming to all the requirements including manpower specified by the Authority by regulations wherein the warehouseman takes custody of the goods deposited by the depositor and includes a place of storage of goods under controlled conditions of temperature and humidity;

(t) “Warehousing business ” means the Business of maintaining warehouses in storage of goods and issuing negotiable warehouse receipts;

(u) “warehouse receipt” means an acknowledgement in writing or in electronic form issued by a warehouseman or his duly authorised representative of the receipt for storage of goods not owned by the warehouseman;

(v) “warehouseman” means any person who is granted a certificate of registration in respect of any warehouse or warehouses by the Authority or an accreditation agency for carrying on the business of warehousing.

CHAPTER II

REGULATION OF WAREHOUSING BUSINESS

3. (1) No person shall commence or carry on the warehousing business unless he has obtained a registration certificate in respect of the concerned warehouse or warehouses granted by the Authority under this Act:

Provided that a person carrying on the warehouses business immediately before the commencement of this Act shall be allowed to carry on such business, in case he has made an application for registration within thirty days from the date of such commencement.

Explanation.—For the removal of doubts, it is hereby clarified that a warehouse registered under this Act shall also be eligible to issue non-negotiable warehouse receipts.

(2) Notwithstanding anything contained in sub-section (1), the Authority may, subject to such regulations and guidelines issued by it, authorise any person registered under section 5 as an accreditation agency to issue certificate of accreditation to any person for carrying on the business of warehousing issuing negotiable warehouse receipts.

4. (1) Any person desirous of commencing or carrying on the business of maintaining a warehouse issuing negotiable warehouse receipts may make an application to the Authority for registration in respect of one or more warehouses owned or occupied by him.

(2) Every application for registration under sub-section (1) shall be in such form and manner and shall be accompanied by such fees as may be prescribed.

(3) The Authority may, after such enquiry and subject to such terms and conditions as it thinks fit, grant a certificate of registration of the warehouse in the prescribed form and bearing a registration number to the applicant authorising him to carry on the business of maintaining a warehouse or warehouses and to issue negotiable warehouse receipts.

(4) The Authority may not grant a certificate of registration under this section unless it is satisfied that the warehouse in respect of which the application has been made has adequate facilities and safeguards required to warehouse the goods of the nature specified in the application and the applicant satisfies the financial, managerial and other eligibility criteria and competence as may be prescribed:

Provided that no certificate of registration shall be refused to any applicant under this section unless the applicant has been given an opportunity of being heard.

5. (1) The Authority shall, from time to time, determine the number of accreditation agencies as it may authorise to issue certificate of accreditation to warehouses issuing negotiable warehouse receipts.

(2) Any person fulfilling the qualifications and other requirements as may be prescribed and desirous of functioning as an accreditation agency under this Act may make an application to the Authority seeking its registration as such under this Act.

(3) Every application under sub-section (2) shall be in such form and manner and shall be accompanied by such fees and security deposit as may be prescribed.

(4) The form in which and the terms and conditions subject to which a certificate of registration as an accreditation agency may be issued under this section shall be such as may be prescribed.

WAREHOUSEMEN

6. (1) A warehouseman is liable for loss of, or injury to, goods caused by his failure to exercise such care and diligence in regard to the goods as a careful and vigilant owner of the goods of the same bulk, quality and value would exercise in the custody of them in similar conditions.

(2) In case the goods are damaged or lost in spite of taking all care and precautions by the warehouseman due to unavoidable circumstances, the compensation equal to the value of goods at the time of deposit of the goods shall be payable by the warehouseman.

(3) In case the goods are damaged or lost due to the negligence of the warehouseman, then, the compensation shall be equal to value of goods plus the loss of profit to the holder of the receipt.

(4) The warehouseman shall not be responsible for any loss, destruction, damage or deterioration of the goods delivered to him for storage attributable to circumstances such as *force majeure*, act of war, act of public enemies and the like.

7. (1) In the absence of a lawful excuse, a warehouseman shall deliver the goods referred to in a negotiable or non-negotiable receipt, to the holder of the receipt on demand made by the holder and on the holder fulfilling all the following conditions, namely:—

(a) satisfying the warehouse lien;

(b) surrendering the receipt in case of non-negotiable receipt and surrendering the receipt with endorsements in case of negotiable receipt; and

(c) acknowledging in writing the delivery of the goods.

(2) If a warehouseman refuses or fails to deliver the goods in compliance with the provisions of this section, the burden of proof shall lie on the warehouseman to establish the existence of a lawful excuse for the refusal or failure.

8. (1) Every warehouseman shall keep in a place of safety a complete and accurate set of records and accounts of all transactions pertaining to the operation of a warehouse including records and accounts of all goods received in the warehouse and withdrawn therefrom, of all unissued receipts in his possession, of all receipts issued, returned to, or cancelled, by him.

(2) Subject to the provisions of sub-section (1), the warehouseman shall keep all the records and accounts of the warehouse business in numerical sequence separate and distinct from the records and accounts of any other business in such form and in such manner and for such period as the Authority may, by regulations, specify.

(3) The warehouseman shall make available to the Authority for inspection the records and accounts of the warehouse business at any time as may be desired by the Authority.

9. (1) If the goods are of a perishable or hazardous nature, or their keeping shall deteriorate greatly in value or damage other property, the warehouseman may give notice that is reasonable and possible under the circumstances to the holder of the receipt for the goods, if the name and address of the holder is

known to the warehouseman or if not known to the warehouseman, then, to the depositor, requiring that person to satisfy the lien on the goods and to remove them from the warehouse.

(2) If the person to whom a notice under sub-section (1) is given fails to satisfy the lien and remove the goods within the time specified in the notice, the warehouseman may sell the goods at public or private sale without advertising.

(3) The notice referred to in sub-section (1) may be given by sending it by electronic mail, speed post or registered post addressed to the person to whom it is to be given at the last known address of the person and the notice is deemed to be given on the third day of the mailing.

(4) If the warehouseman after a reasonable effort is unable to sell the goods, the warehouseman may dispose of them such other manner as he deems proper and shall incur no liability for that reason.

(5) From the proceeds of any sale or disposal of goods made under this section, the warehouseman shall, after satisfying his lien, hold the balance in trust for the holder of the receipt.

(6) No notice shall be necessary if the warehouseman is satisfied on reasonable grounds that in the circumstances of the case giving such notices is likely to cause further prejudice to the goods.

(7) If, at any time, the warehouseman is satisfied that the quality of any fungible goods or any part thereof has so deteriorated or is so deteriorating that it is necessary to do so, to protect the holders of negotiable warehouse receipts from loss and time is not sufficient for him to seek their instructions, he may, subject to the regulations in this behalf, dispose off the goods or any part thereof and keep the sale proceeds after satisfying his lien in an escrow account for the benefit of the holders of receipts.

(8) In case of disposal of fungible goods under sub-section (7), the warehouseman shall, at the choice of the holder of the receipt, either pay the sale proceeds or deliver equivalent goods of the same grade, quality and quantity to him.

10. (1) Every warehouseman has a lien on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his agent.

(2) The lien of the warehouseman is for the amount of the storage and maintenance charges including –

(a) all lawful charges for storage and preservation of the goods;

(b) all reasonable charges for–

(i) any notice required to be given under the provisions of this Act;

(ii) notice and advertisement of sale;

(iii) sale of goods where default is made in satisfying the lien of the warehouseman; and

(iv) compliance of statutory provisions.

(3) In case of any endorsement on the face of a negotiable warehouse receipt, by a bank or the warehouseman, such endorsement shall be evidence of

a pledge and the pledgee shall have priority over the interest of the holder of the receipt.

(4) In case of any pledge referred to in sub-section (3), the warehouseman shall not deliver the goods unless the endorsement of the pledge has been duly got cancelled.

(5) If the goods on which a lien exists were not deposited by the owner or by his authority but by a person entrusted by the owner or his authority with the possession of the goods, the warehouseman shall, within two months after the date of deposit, give notice of the lien to the owner of the goods on which a lien exists or to the person owning the right of property of the goods.

(6) The notice under sub-section (5) shall be in writing and contain all the details about the goods, the location of warehouses, date of deposit, name of depositor and a statement of lien claimed by the warehouseman for the goods stored in the warehouse.

(7) If a warehouseman fails to issue the notice required by sub-section (5), his lien, as against the person to whom he has failed to issue notice shall become void from the expiration of a period of two months from the date of deposit of the goods.

(8) In case the goods are not taken back within the declared period of storage, the warehouseman shall have the right to recover his charges, selling the goods by public auction, or in any other manner provided in this section any goods upon which he has a lien.

(9) The warehouseman shall give a notice in writing of his intention to sell the goods to the person liable as debtor for the charges for which the lien exists or to the owner or person owning the right of property of the goods.

(10) The notice under sub-section (7) shall –

(a) contain all the details about the goods, the location of warehouse, date of deposit, the name of depositor and a statement of lien claimed by the warehouseman for the goods stored in the warehouse; and

(b) state that unless the charges are paid within the stipulated time mentioned in the notice, the goods shall be advertised for sale and sold by public auction at a time and place as specified in the notice.

(11) If the charges are not paid on or before the day mentioned in the notice, then, unless any other mode of sale is specified by the Authority, by regulations an advertisement of the sale shall be published in a leading newspaper having circulation in the locality where the sale is to be held and the sale shall be held not less than fourteen days from the date of first publication of the advertisement.

(12) The warehouseman shall, from the proceeds of the sale, satisfy his lien and shall pay over the surplus, if any, to the person entitled thereto.

(13) If the surplus is not demanded by the person entitled thereto within ten days after the sale of goods or if there are different claims, the warehouseman shall seek instructions from the Authority and act as per the orders of the Authority.

CHAPTER IV

WAREHOUSE RECEIPTS

11. (1) A warehouse receipt, which may be either in writing or in electronic form, shall be a document of title to goods in writing if it contains all the following particulars, namely:—

- (a) receipt number;
 - (b) warehouse registration number and date up to which it is valid;
 - (c) name of the warehouse and its complete postal address;
 - (d) name and address of the person by whom or on whose behalf the goods are deposited;
 - (e) date of issue of the warehouse receipt;
 - (f) statement that the goods received shall be delivered to the holder thereof, or that the goods shall be delivered to the order of a named person;
 - (g) rates of storage charges and handling charges;
 - (h) description of the goods or of the packages containing them with particulars of quantity and quality or grade;
 - (i) market value of the goods at the time of deposit;
 - (j) private marks of depositor on the goods or packages, if any, except in the case of fungible goods;
 - (k) name of the insurance company indemnifying for fire, flood, theft, burglary, misappropriation, riots, strikes or terrorism;
 - (l) whether the warehouse receipt is negotiable or non-negotiable;
 - (m) statement of the amount of any advance made and of any liability incurred for which the warehouseman claims his lien;
 - (n) date and signature of the warehouseman or his authorised agent;
- and
- (o) declared shelf-life of goods.

(2) In case a warehouseman wilfully omits from a negotiable warehouse receipt any of the particulars set out in sub-section (1), he shall be liable for damages caused by such omission.

(3) No warehouse receipt shall, by reason of the omission only of any of the particulars set, forth in sub-section (1), be deemed to be invalid for the purpose of settlement of disputes or claims.

12. (1) The words in a negotiable warehouse receipt limiting its negotiability shall be void.

(2) A warehouseman who issues a non-negotiable warehouse receipt shall cause to be plainly marked upon its face the words “non-negotiable” or “not negotiable” in English or in the language in which it is issued.

(3) In case of non-compliance of sub-section (2), a holder of the warehouse receipt who purchases it for valuable consideration believing it to be a negotiable warehouse receipt may, at his option, treat the receipt as vesting in him all rights attaching to a negotiable warehouse receipt and imposing upon the warehouseman the same liabilities which he would have incurred had the receipt been a negotiable warehouse receipt and the warehouseman shall be liable accordingly.

(4) A negotiable warehouse receipt shall be valid for delivery till the date of expiry of the declared shelf-life of the goods for which it is issued.

13. A negotiable warehouse receipt may be negotiated by its delivery if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a named person, and that person or a subsequent endorsee has endorsed it.

14. Where a negotiable receipt is transferred for valuable consideration by delivery, and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to endorse the receipt, unless a contrary intention appears, and the negotiation takes effect as of the time when endorsement is made.

15. A person who, for valuable consideration, negotiates a negotiable warehouse receipt by endorsement and delivery, including one who assigns for valuable consideration, a claim secured by a receipt, unless a contrary intention appears, warrants the following: –

(a) that the receipt is genuine;

(b) that the person has a legal right to negotiate or transfer it;

(c) that the person has no knowledge of any fact that would impair the validity of the receipt;

(d) that the person has a right to transfer the title to the goods; and

(e) that the goods are merchantable or fit for a particular purpose when those warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented by it.

16. The endorsement of a receipt does not make the endorser liable for any failure on the part of the warehouseman or previous endorsers of the receipt to fulfil their respective obligations.

17. The validity of the negotiation of a receipt is not impaired by the fact that–

(a) the negotiation was a breach of duty on the part of the person making the negotiation; or

(b) the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to that person, if the person to whom the receipt was negotiated or a person to whom the receipt was subsequently negotiated, paid value for it without knowing of the breach of duty, fraud, mistake or duress.

18. If a person having sold, mortgaged or pledged goods that are in the custody of a warehouseman and for which a negotiable receipt has been issued, continues in possession of the negotiable receipt, the subsequent negotiation of it by that person under any sale or other disposition of the goods to any person receiving the receipt in good faith, for valuable consideration and without notice of the previous sale, mortgage or pledge, has the same effect as if a previous purchaser, mortgagee or pledgee of the goods, as the case may be, had expressly authorised the subsequent negotiation.

19. When a negotiable warehouse receipt has been issued in respect of any goods, no lien or right of stoppage of the seller in transit shall defeat the rights of a purchaser for value in good faith to whom the receipt has been negotiated,

whether the negotiation is before or after notifying to the warehouseman who issued the receipt of the claim of the seller to a lien or right of stoppage in transit, and the warehouseman shall not deliver the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

20. (1) A non-negotiable warehouse receipt may be transferred by the holder by delivery to a purchaser or donee of the goods in writing executed by the holder.

(2) A person to whom the goods covered by a non-negotiable warehouse receipt is transferred acquires –

(a) the title of the transferor to the goods; and

(b) the right to deposit with the warehouseman the receipt or duplicate thereof or to give notice in writing to the warehouseman of the transfer.

(3) The transferee shall acquire the benefit of the obligation of the warehouseman to hold goods in storage for him according to the terms of the receipt upon deposit of the transfer of the goods and on giving notice in writing of the transfer and upon the warehouseman having a reasonable opportunity of verifying the transfer.

21. In the hands of a holder who has purchased a negotiable warehouse receipt for valuable consideration, it shall be conclusive evidence of the goods described in it as against the warehouseman or any person claiming through him.

22. In a dispute between an endorser of a negotiable warehouse receipt and his endorsee unless it is proved otherwise, it shall be presumed that –

(a) the endorsement has been made voluntarily;

(b) the endorsement has been made for full consideration;

(c) the endorser had full legal title in the goods represented by the receipt; and

(d) the endorsement has extinguished all the rights, title and interest of the endorser in the goods.

23. (1) No warehouseman shall issue a warehouse receipt without actually receiving the goods of the quantity, quality or grade and other particulars as may be mentioned in the receipt.

(2) No warehouseman shall issue more than one receipt for the same goods deposited by any person:

Provided that in case of a loss or destruction, a duplicate receipt may be issued in such manner as may be specified by the Authority by regulations.

(3) If a warehouseman fails to comply with the provisions of sub-section (2), he would be liable for all such damages caused by the failure to any person who has transacted on such receipt for valuable consideration, believing it to be an original, even though the transaction is after the delivery of the goods by the warehouseman to the holder of the original receipt.

(4) A receipt on the face of which the word “duplicate” is plainly marked is a representation and warranty by the warehouseman that it is an accurate copy of a receipt properly issued and uncanceled on the date of issue of the duplicate warehouse receipt.

CHAPTER V

THE WAREHOUSING DEVELOPMENT AND REGULATORY AUTHORITY

24. (1) With effect from such date as the Central Government may, by notification, specify in this behalf, there shall be constituted an authority to be called the Warehousing Development and Regulatory Authority to exercise the powers conferred on, and to perform the functions assigned to it by or under this Act.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Authority shall be at New Delhi and the Authority may, with the previous approval of the Central Government, establish offices at other places in India.

25. The Authority shall consist of –

(a) a Chairperson; and

(b) not more than two other members,

to be appointed by the Central Government from amongst persons of ability, integrity and standing who have wide knowledge and experience in inventory management, insurance, preservation, quality control, banking, finance, economics, law or administration.

26. (1) The Chairperson and every other member shall hold office for a term not exceeding five years from the date on which he enters upon his office and shall be eligible for re-appointment:

Provided that no person shall hold office as the Chairperson or other member after he has attained the age of sixty-five years.

(2) Notwithstanding anything contained in sub-section (1), a member may–

(a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 27.

27. (1) The Central Government may remove from office any member who–

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as a member; or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position as to render his continuation in office detrimental to the public interest.

(2) No such member shall be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

28. Subject to the rules as may be made in this behalf, the salaries and allowances payable to, and other terms and conditions of service of—

(a) **the Chairperson shall be the same as that of a Secretary to the Government of India;**

(b) **the other members of the Authority shall be the same as that of Joint Secretaries to the Government of India.**

29. The Chairperson and the other members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept any employment in any concern in the warehousing sector.

30. The Chairperson shall be the chief executive of the Authority.

31. (1) The Authority shall meet at such times and places and shall observe such rules of procedure in regard to transaction of business at its meetings (including the quorum at such meetings) as may be determined by regulations.

(2) The Chairperson, or if, for any reason he is unable to attend a meeting of the Authority, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the members present and voting, and in the event of an equality of votes, the Chairperson, or the person presiding shall have a second or casting vote.

32. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

33. (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its function under this Act.

(2) The terms and conditions of service of officers and other employees of the Authority appointed under sub-section (1) shall be governed by regulations made under this Act.

34. (1) The Authority may, by notification, constitute a Committee to be known as the Warehousing Advisory Committee to advise the Authority on

matters relating to the making of regulations under section 51 and make recommendations for effective implementation of the provisions of this Act.

(2) The Warehousing Advisory Committee shall consist of not more than fifteen members excluding the members of the Authority to represent the interests of commerce, industry, engineering, agriculture, consumers, organizations engaged in warehousing, quality control, preservation and research bodies.

(3) Without prejudice to the provisions of sub-section (1), the Warehousing Advisory Committee may advise the Authority on such other matters as may be referred to it by the Authority.

CHAPTER VI

POWERS AND FUNCTIONS OF AUTHORITY

35. (1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate and ensure implementation of the provisions of this Act and promote orderly growth of the warehousing business.

(2) Without prejudice to the generality of the foregoing provisions, the powers and functions of the Authority shall include the following, namely: –

(a) to issue to the applicants fulfilling the requirements for warehousemen a certificate of registration in respect of warehouses, or renew, modify, withdraw, suspend or cancel such registration;

(b) to regulate the registration and functioning of accreditation agency, renew, modify, withdraw, suspend or cancel such registration, and specify the code of conduct for officials of accreditation agencies for accreditation of the warehouses;

(c) to specify the qualifications, code of conduct and practical training for warehousemen and staff engaged in warehousing business;

(d) to regulate the process of pledge, creation of charges and enforcement thereof in respect of goods deposited with the warehouse;

(e) to promote efficiency in conduct of warehouse business;

(f) to make regulations laying down the standards for approval of certifying agencies for grading of goods;

(g) to promote professional organisations connected with the warehousing business;

(h) to determine the rate of, and levy, the fees and other charges for carrying out the provisions of this Act;

(i) to call for information from, undertaking inspection of, conducting enquiries and investigations including audit of the warehouses, accreditation agencies and other organisations connected with the warehousing business;

(j) to regulate the rates, advantages, terms and conditions that may be offered by warehousemen in respect of warehousing business;

(k) to specify, by regulations, the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by warehousemen;

- (l) to maintain a panel of arbitrators and to nominate arbitrators from such panel in disputes between warehouses and warehouse receipt holders;
- (m) to regulate and develop electronic system of holding and transfer of credit balances of fungible goods deposited in the warehouses;
- (n) to exercise such other powers and perform such other functions as may be prescribed.

CHAPTER VII

FINANCE, ACCOUNTS AND AUDIT

36. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act.

37. (1) There shall be constituted a fund to be called the Warehousing Development and Regulatory Authority Fund and there shall be credited thereto—

- (a) all Central Government grants, fees and charges received by the Authority;
- (b) all sums received by the Authority from such other source as may be decided upon by the Central Government;
- (c) all sums realised by way of penalties under this Act.

(2) The fund shall be applied for meeting—

- (a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;
- (b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

38. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books of account, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit-report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

39. (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed, or as the Central Government may direct to furnish such returns, statements and other particulars in regard to any proposed or existing programme for the promotion and development of the warehousing industry as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Authority shall, within nine months after the close of each financial year, submit to the Central Government an Annual Report giving a true and full account of its activities including the activities for promotion and development of the warehousing business during the previous financial year.

(3) Copies of the reports received under sub-section (2) shall be laid, as soon as may be after they are received, before each House of Parliament.

CHAPTER VIII

POWERS OF CENTRAL GOVERNMENT

40. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers and performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

41. (1) If, at any time, the Central Government is of the opinion—

(a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period not exceeding six months, as may be specified in the notification and nominate a person to look after the functions of the Authority:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representation, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the authority,—

(a) the Chairperson and other members shall, as from the date of supersession, be deemed to have vacated their offices;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person nominated by the Central Government under clause (c) of sub-section (1);

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for reappointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action to be laid before each House of Parliament at the earliest.

(5) Notwithstanding anything contained in any law or in any contract, or memorandum or articles of association, on the removal of a person, from office under this section, that person shall not be entitled to claim any compensation for the loss or termination of office.

CHAPTER IX

APPEALS

42. (1) Any person aggrieved by an order of the Authority made under this Act, or any rules or the regulations made thereunder may prefer an appeal to such person or authority appointed by the Central Government (hereafter referred to as the Appellate Authority) within sixty days from the date of such order:

Provided that an appeal may be admitted after the expiry of the said period of sixty days but not beyond a total period of ninety days if the appellants satisfies the Appellate Authority that he had sufficient cause for not preferring the appeal within the said period.

(2) Every appeal made under this section shall be made in such form and manner and shall be accompanied by a copy of the order appeal against and by such fees as may be prescribed.

(3) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

(4) An appeal filed before the Appellate Authority shall be heard and disposed of as expeditiously as possible and endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its filing.

CHAPTER X

OFFENCES AND PENALTIES

43. (1) Any warehouseman knowingly issuing a warehouse receipt without taking the actual physical delivery of the goods in his warehouse or a warehouseman or an agent or servant of the warehouseman who issues a warehouse receipt without reasonably satisfying himself that the goods for which such warehouse receipt is issued have actually been received or the number, weight or grade of the goods corresponds to the number, weight or grade specified in the warehouse receipt or the goods are under his actual control at the time of issuing such warehouse receipt, commits an offence and shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to four times the value of the goods or with both.

(2) A warehouseman or an agent or servant of the warehouseman, who knowingly issues a duplicate warehouse receipt without substantially following the procedure for the issue of a duplicate warehouse receipt, commits an offence and shall be punishable for such offence with imprisonment for a term which may extend to three years, or with fine which may extend to one lakh rupees, or with both.

(3) A warehouseman or an agent or servant of the warehouseman, who, knowingly that the warehouse receipt in respect of such goods is outstanding and is uncanceled, delivers the goods without obtaining possession of such warehouse receipt at or before the time of such delivery and thereby causes unlawful loss or gain to any person, commits an offence and shall be punishable for such an offence by imprisonment for a term which may extend to three years or with fine which may extend to one lakh rupees, or with both.

(4) A warehouseman who fails, on surrender of a negotiable warehouse receipt by the depositor or endorsee and payment of all his lawful charges and cancellation of encumbrances endorsed on the receipt, within the declared shelf-life of the goods, as mentioned therein to deliver the goods represented by the receipt commits an offence and shall be punishable for such offence with imprisonment for a term which may extend to three years or with fine which may extend to three times the value of the goods or with both.

(5) Any depositor, who declared as the value of the goods delivered by him for storage with a warehouseman an amount which he does not have reason to believe to be the proper value, commits an offence and shall be punishable for such an offence by imprisonment for a term which may extend to three years or with fine which may extend to one lakh rupees, or with both.

44. (1) Where an offence under this Chapter is committed by a company, every person, who at the time the offence was committed, was in charge of the company or was responsible for making the deposit, as the case may be, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Chapter has been committed by a company and it is proved that such an offence has been committed with the consent or connivance of any director,

manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section, —

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

45. (1) No court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Authority or by any officer authorised in writing in this behalf by the authority.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

CHAPTER XI

MISCELLANEOUS

46. The Chairperson, members, officers and other employees of Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

47. No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government or any member, officer or other employee of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder:

Provided that nothing in this Act shall exempt any person any suit or other proceedings which might, apart from this Act, be brought against him.

48. The Authority may, by general or special order in writing, delegate to the Chairperson or any other member or officer of the Authority subject to such conditions, if any, as may be specified in the order, such of its powers and functions (excluding the power to make regulations under section 51) under this Act as it may deem necessary.

49. Notwithstanding anything contained in the Wealth Tax Act, 1957, the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

50. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any or the following matters, namely:—

(a) the form and manner in which an application for obtaining a certificate of registration for commencing or carrying on the business of warehousing issuing negotiable warehouse receipts may be made and the fees which shall accompany such application under sub-section (2) of section 4;

(b) the form in which a certificate for registration of warehouses may be issued under sub-section (3) of section 4;

(c) The financial, managerial and other eligibility criteria and competence which an applicant for registration of warehouses shall satisfy under sub-section (4) of section 4;

(d) The qualification and other requirements which a person applying for functioning as an accreditation agency shall fulfil under sub-section (2) of section 5;

(e) the form and manner in which an application for registration as an accreditation agency may be made and the fees which shall accompany such application under sub-section (3) of section 5;

(f) the form of certificate of registration of accreditation agency under sub-section (4) of section 5;

(g) the salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other members under section 28;

(h) such other powers that may be exercised by the Authority under clause (n) of sub-section (2) of section 35;

(i) the form and manner of maintenance of annual statement of accounts to be maintained by the Authority under sub-section (1) of section 38;

(j) the form and manner in which and the time within which returns and statements and particulars are to be furnished by the Authority to the Central Government under sub-section (1) of section 39;

(k) the form and the manner in which an appeal may be made to the Appellate Authority and the fee which shall accompany such appeal under sub-section (2) of section 42;

(l) the procedure to be followed by the Appellate Authority in disposing of an appeal under sub-section (3) of section 42;

(m) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules.

51. (1) The Authority may, with the previous approval of the Central Government, and in consultation with the Warehousing Advisory Committee, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the matters regulating the authorities of accreditation agencies under sub-section (2) of section 3;

(b) the form and manner and the period for which a warehouseman shall keep the records and accounts of the warehousing business under sub-section (2) of section 8;

(c) the manner of disposal of goods or any part thereof and the keeping of sale proceeds in an escrow account by the warehouseman under sub-section (7) of section 9;

(d) the mode of sale under sub-section (11) of section 10;

(e) the manner of issuance of duplicate warehouse receipt under the proviso to sub-section (2) of section 23;

(f) the time and places of meetings of the Authority and the procedure to be followed at such meetings including the quorum necessary for the transaction of business under sub-section (1) of section 31;

(g) the terms and conditions of service of officers and other employees of the Authority under sub-section (2) of section 33;

(h) the registration and functioning of accreditation agencies, renewal, modification, withdrawal, suspension or cancellation of such registration and the code of conduct for officials of accreditation agencies for accreditation the warehouses under clause (b) of sub-section (2) of section 35;

(i) the standards for approval of certifying agencies for grading of goods under clause (f) of sub-section (2) of section 35;

(j) the rate of fees and other charges to be levied for carrying out the provisions of this Act under clause (h) of sub-section (2) of section 35;

(k) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be or may be made by regulations.

52. Every rule made by the Central Government and every regulation made by the Authority under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

53. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for time being in force or in any instrument having effect by virtue of any law other than this Act.

54. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made be laid, before each House of Parliament.

55. After section 8A of the Stamp Act, 1899, the following section shall be inserted, namely:—

“8B. Notwithstanding anything contained in this Act, negotiable warehouse receipts shall not be liable to stamp duty.”.

STATEMENT OF OBJECTS AND REASONS

At present, the warehousing receipts issued by the warehouses in the country do not enjoy the fiduciary trust of depositors and banks as there is a fear that it is not possible to recover the loans in case of fraud, mis-management, etc., by the warehousemen or insolvency of the depositor. The available legal remedies are also time consuming and inadequate. Further, the format of warehouse receipts issued by the various warehouses in the country is not uniform. Hence, there are considerable impediments in the negotiability of warehouse receipts creating difficulties to the farmers and other depositors of goods. Having regard to the above, it is proposed to establish a negotiable warehouse receipt system for all commodities including agricultural commodities. On the one hand, it will make warehouse receipts a prime tool of trade and facilitate finance against it throughout the country, on the other, it will allow banks to improve the quality of their lending portfolio and enhance their interest in lending in respect of goods deposited in warehouses. It is, therefore, proposed to lay down the requirements for warehouse receipts to become valid negotiable instruments.

2. It is expected that the system of negotiable warehouse receipts would result in providing considerable benefits, both at the macro as well as micro levels and increase the liquidity in the rural areas, encourage scientific warehousing of goods, lower cost of financing, improve supply chains, enhance rewards for grading and quality and better price risk management. This would, in turn, result in higher returns to farmers and better services to consumers. It is also proposed to provide necessary administrative mechanism and legislative backup for regulating and streamlining the warehousing sector issuing negotiable warehouse receipts.

3. The proposed legislation, *inter alia*, seeks to provide for—

(i) the regulation of warehousing business by registering warehouses issuing negotiable warehouse receipts;

(ii) the registration of accreditation agencies for warehouses which would issue accreditation certificates to the warehouses following certain required norms;

(iii) the liabilities, duties and lien of warehousemen;

(iv) the contents of negotiable warehouse receipts;

(v) the conditions for negotiability of warehouse receipts by delivery and endorsement;

(v) the transfer of negotiable warehouse receipts without endorsement and warranties on sale of warehouse receipts;

(vi) the issue of duplicate receipts in case of loss or destruction;

(vii) the establishment and incorporation of an Authority to be called the Warehousing Development and Regulatory Authority to regulate and ensure implementation of the provisions of the proposed legislation and to promote orderly growth of the warehouse business in the country;

(viii) the empowerment of the Central Government to issue directions on questions of policy to the Authority and to supersede the Authority in certain circumstances;

(ix) the appeal to the appellate authority; and

(x) defining the offences and penalties in respect of such offences.

4. The Notes on clauses explain in detail the various provisions contained in the Bill.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 26th November, 2005.

SHARAD PAWAR.

Notes on Clauses

Clause 1.—This clause provides for the short title of the Bill, the area of its operation and its commencement. The proposed legislation shall not be applicable to the State of Jammu and Kashmir. As certain preparatory steps are required to be taken before the proposed legislation is brought into force, it is proposed to empower the Central Government to bring it into force from a date to be appointed by it.

Clause 2.—This clause contains definitions of certain words and expressions used in the Bill. The definitions of “accreditation agency”, “actionable claim”, “authority”, “endorsement”, “goods”, “grade”, “negotiable warehouse receipt”, “warehouse” and “warehousing business” are some of them. The expression “accreditation agency” is defined to mean an agency, whatever be its constitution, registered with the Authority under proposed section 5. It would certify and issue accreditation certificates to warehouses based on certain norms. The words “actionable claim” shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882. The word “Authority” means the Warehousing Development and Regulatory Authority established under proposed sub-section (1) of section 24. “Endorsement” means signing on the warehouse receipt by the depositor or holder of the warehouse receipt for the purpose of its negotiation. The expression “negotiable warehouse receipt” is defined to mean a warehouse receipt under which the goods represented therein are deliverable to the depositor or order, the endorsement of which has the effect of transfer of goods represented thereby and the endorsee for which takes a good title.

Clause 3.—This clause provides for compulsory registration of those warehouses which would issue negotiable warehouse receipts. They would be required to obtain a registration certificate from the Warehousing Development and Regulatory Authority. However, a warehouseman issuing negotiable warehouse receipts immediately before the commencement of the proposed legislation shall be allowed to carry on such business if he has made an application for registration within thirty days from the date of such commencement. The warehouses registered under the proposed legislation would be eligible for issuing non-negotiable warehouse receipts. Sub-clause (2) provides that the Authority would authorise the registered accreditation agencies to issue accreditation certificates to the warehouses based on specified norms so as to enable the Authority to quickly issue registration certificates.

Clause 4.—This clause lays down the procedure for registration with the Authority of the warehouses issuing negotiable warehouse receipts. Sub-clause (1) requires that any person desirous of commencing or carrying on the business of warehousing issuing negotiable warehouse receipts should make an application to the Authority for registration of the warehouse or warehouses. Sub-clause (2) provides for rules being made for determining the manner in which the application shall be made and the fee required to be paid in respect of such application. Sub-clause (3) authorises the Authority to conduct necessary inquiry and subject to such terms and conditions as it thinks fit to grant of a certificate of registration bearing registration number. Sub-clause (4) provides that the Authority may refuse a certificate of registration in case it feels that the warehouse has not adequate facilities and safeguards required to store the goods of the nature specified in the application and the applicant does not meet the financial, managerial and other eligibility criteria and competence.

Clause 5.—Sub-clause (1) of this clause authorises the Warehousing Development and Regulatory Authority to determine from time to time the number of accreditation agencies required for issuing certificate of accreditation to the warehouses issuing negotiable warehouse receipts. Sub-clause (2) provides that any person fulfilling the requirement and qualifications laid down by rules as accreditation agencies may apply to the Authority seeking their registration as accreditation agencies. Sub-clause (3) empowers the Central Government to lay down by rules the form and manner and the fees and security deposit to be paid for applying to become accreditation agencies.

Clause 6.—Sub-clause (1) of this clause defines the liabilities of warehouseman in case of loss of, or injury to, goods caused by his failure to exercise such care and diligence in regard to the goods as a careful and vigilant owner of the goods should take in similar conditions. Sub-clause (2) specifies the compensation to be provided to the depositor in case the goods are damaged or lost in spite of taking all the care and precaution by the warehouseman due to unavoidable circumstances. The compensation shall be equal to value of goods at the time of its deposit. Sub-clause (3) specifies the compensation in case the goods are damaged or lost due to negligence of warehouseman. In that case the compensation shall be equal to value of goods plus the loss of profit to the holder of the receipt.

Clause 7.—Sub-clause (1) of this clause defines the duties of warehousemen and lays down that in the absence of a lawful excuse, a warehouseman should deliver the goods referred to in a negotiable warehouse receipt to the holder of the receipt on demand made by the holder and on the holder fulfilling all the conditions *viz.* satisfying the warehouse lien; surrendering the receipt in case of non-negotiable receipt and surrendering the receipt with endorsements in case of negotiable receipt and acknowledging in writing the delivery of the goods. Sub-clause (2) provides that in case a warehouseman refuses or fails to deliver the goods in compliance with the provisions of this clause, the burden of proof shall lie on the warehouseman to establish the existence of a lawful excuse for the refusal or failure.

Clause 8.—Sub-clause (1) of this clause provides that every warehouseman shall maintain in a safe place the complete and accurate accounts and records of all transactions pertaining to the operation of a warehouse including records and accounts of all goods received in the warehouse and withdrawn therefrom and of all unissued receipts in his possession as well as of all receipts issued, returned to, or cancelled, by him. Sub-clause (2) provides that such records and accounts of the warehouse business would be kept in numerical sequence separate and distinct from the records and accounts of any other business. Sub-clause (3) provides that the warehouseman shall make available all such records and accounts of warehouse business for the inspection of the Authority.

Clause 9.—Sub-clause (1) of this clause contains certain special powers of the warehouseman to deal with perishable and hazardous goods. Sub-clause (2) provides that if a person to whom the notice has been issued fails to satisfy the lien and remove the goods within the specified time, the warehouseman may sell the goods at public or private sale without advertising. Sub-clauses (3) and (4) lays down the procedure for issuing notice to the person to whom it is to be given. The notice is to be given at the last known address of the holder of the receipt of the goods and in case the warehouseman after making reasonable effort is unable to sell the goods, the warehouseman may dispose of them in any

other manner as he may deem fit and incur no liability for that reason. Sub-clauses (7) and (8) lay down the steps required to be taken by the warehouseman in case the quality of fungible goods is deteriorating. In case of disposal of fungible goods, the warehouseman should, at the choice of the holder of the receipt, either pay the sale proceeds or deliver equivalent goods of the same grade, quality and quantity to him.

Clause 10.—Sub-clause (1) of this clause specifies the lien of warehouseman on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his agent. Sub-clause (2) clarifies that the lien of the warehouseman is for the amount of storage and maintenance charges including all lawful charges for storage and preservation of goods, for all reasonable charges for notice and advertisements for sale of goods, etc. Sub-clauses (3) and (4) provide that in case of any endorsement on the face of a negotiable warehouse receipt, by a bank or warehouseman, such endorsement shall be the evidence of a pledge and the pledgee shall have priority over the interest of the holder of the receipt and the warehouseman shall not deliver the goods unless the endorsement of the pledge has been duly got cancelled. Sub-clauses (5) and (6) provide that if the goods on which a lien exists were not deposited by the owner or by his authority but by a person entrusted by the owner or his authority with the possession of the goods, the warehouseman shall issue a notice of lien to the owner of the goods on which lien exists or to the person owning the right of property of goods within two months after the date of deposit and the notice shall be in writing and contain all details about the goods and warehouses, etc. Sub-clauses (7) and (8) provide that if a warehouseman fails to issue the notice required under sub-clause (5), his lien shall become void from the expiration of a period of two months from the date of deposit of goods. Sub-clauses (9) and (10) lay down the procedure for issuing notice in writing and shall contain all details about the goods, warehouse, name of depositor and details of lien and a stipulation that if the charges are not paid within the specified time mentioned in the notice, the goods shall be advertised and sold by public auction at a time and place specified in the notice. Sub-clauses (11) and (12) lay down the procedure for issuing an advertisement for sale of goods in case the charges are not paid on or before the date mentioned in the notice and from the proceeds of the sale, the warehouseman shall satisfy his lien and shall pay over the surplus, if any, to the person entitled thereto. Sub-clause (13) states that if the surplus is not demanded by the person entitled thereto within ten days after the sale of goods, the warehouseman shall seek instructions from the Authority and act as per the orders of the Authority.

Clause 11.—This clause enumerates the various particulars of a warehouse receipt such as receipt number, registration number, date of validity, name and address of warehouse, date of issue of receipt, description of goods, market value, whether negotiable or non-negotiable and signature of warehouseman, etc.

Clause 12.—This clause provides that any word in a negotiable warehouse receipt limiting its negotiability shall be void and a warehouseman shall mark upon its face the words “non-negotiable” or “not negotiable” in English or in the language in which it is issued. It also provides that in case of non-compliance of sub-clause (2), a holder of the warehouse receipt purchasing it for valuable consideration and believing it to be a negotiable warehouse receipt may, at his

option, treat the receipt as vesting in him all rights attaching to a negotiable warehouse receipt and imposing same liabilities on the warehouseman which he would have incurred had the receipt been a negotiable warehouse receipt. The negotiable warehouse receipt in respect of any goods shall be valid till its declared shelf life.

Clause 13.—This clause lays down the mode of negotiability of negotiable warehouse receipts. It may be negotiated by its delivery if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a named person, and that person or a subsequent endorsee has endorsed it.

Clause 14.—This clause deals with the transfer of negotiable receipts without endorsement. Where a negotiable warehouse receipt is transferred for valuable consideration by delivery and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to endorse the receipt, unless a contrary intention appears, and the negotiation takes effect as of the time when the endorsement is made.

Clause 15.—This clause provides that a person who, for valuable consideration, negotiates a receipt by endorsement or delivery, including one who assigns for valuable consideration, a claim secured by a receipt, unless a contrary intention appears, warrants that the receipt is genuine, the person has a legal right to negotiate or transfer it, has no knowledge of any fact that would impair the validity of the receipt, has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose.

Clause 16.—This clause provides that the endorsement of a receipt does not make the endorser liable for any failure on the part of the warehouseman or previous endorsers of the receipt to fulfil their respective obligations.

Clause 17.—This clause stipulates that the validity of negotiation of a warehouse receipt is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation or the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to that person, if the person to whom the receipt was negotiated or a person to whom the receipt was subsequently negotiated, paid value for it without the knowledge of the breach of duty or fraud or mistake or duress, as the case may be.

Clause 18.—This clause provides that if a person having sold, mortgaged or pledged goods that are in the custody of a warehouse and for which a negotiable warehouse receipt has been issued, continues in possession of the negotiable receipt, the subsequent negotiation of it by that person under any sale or other disposition to any person receiving the receipt in good faith, for valuable consideration without notice of the previous sale, mortgage or pledge, has the same effect as if a previous purchaser, mortgagee or pledgee of the goods, as the case may be, had expressly authorised the subsequent negotiation.

Clause 19.—This clause deals with stoppage of delivery of goods in certain cases. It is provided that when a negotiable warehouse receipt has been issued in respect of any goods, no lien or right of stoppage of the seller in transit shall defeat the rights of the purchaser for value in good faith to whom the receipt has been negotiated, whether the negotiation is before or after notifying the warehouseman who issued the receipt of the claim of the seller to a lien or right

of stoppage in transit and the warehouseman shall not deliver the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

Clause 20.—This clause lays down the procedure for transfer of non-negotiable receipts. Sub-clause (1) provides that a non-negotiable warehouse receipt may be transferred by the holder by delivery to a purchaser or donee of the goods in writing executed by the holder. Sub-clause (2) provides that a person to whom the goods covered by a non-negotiable warehouse receipt is transferred acquires the title of transferer to the goods and the right to deposit with the warehouseman the receipt or duplicate thereof or to give notice in writing to the warehouseman of the transfer. Sub-clause (3) clarifies that the transferee shall acquire the benefit of the obligation of the warehouseman to hold goods in storage for him according to the terms of the receipt upon deposit of transfer of goods and on giving notice in writing of the transfer and upon the warehouseman having a reasonable opportunity of verifying the transfer.

Clause 21.—This clause relates to the conclusiveness of a negotiable warehouse receipt. As per this clause, in the hands of a holder who has purchased a negotiable warehouse receipt for valuable consideration, it shall be conclusive evidence of the goods described in it as against the warehouseman or any person claiming through him.

Clause 22.—This clause relates to presumption in respect of negotiable warehouse receipts in certain cases. In a dispute between an endorser of a negotiable warehouse receipt and his endorsee unless it is proved otherwise, it shall be presumed that the endorsement has been made voluntarily and for full consideration and the endorser had full legal title to the goods represented by the receipt. The endorsement extinguishes all the rights, title and interest of the endorser in the goods.

Clause 23.—This clause deals with issue of duplicate warehouse receipts. Sub-clause (1) provides that no warehouseman shall issue a warehouse receipt without actually receiving the specified goods as per the quantity, quality and other particulars as mentioned in the receipt. Sub-clause (2) stipulates that no warehouseman shall issue more than one receipt for the same goods deposited by any person. However, in case of loss or destruction, a duplicate receipt may be issued in such manner as may be specified by the Authority by regulations. Sub-clause (3) provides that if a warehouseman fails to comply with the provisions of sub-clause (2), he would be liable for all such damages caused by the failure to any person who has transacted on such receipt for valuable consideration, believing it to be the original, even though the transaction is after the delivery of goods by the warehouseman to the holder of the original receipt. Sub-clause (4) provides that a warehouse receipt on the face of which the word “duplicate” is plainly marked is a representation and warranty by the warehouseman that it is an accurate copy of a receipt properly issued and uncanceled on the date of issue of the duplicate.

Clause 24.—This clause deals with the establishment and incorporation of an authority to be called the Warehousing Development and Regulatory Authority. The Authority shall exercise the powers conferred on, and perform the functions assigned to it by or under the proposed legislation. Sub-clause (2) provides that the Authority shall be a body corporate by the name aforesaid having perpetual succession and common seal with power, subject to the provisions of the proposed legislation, to acquire, hold and dispose off property, both movable and

immovable, and to contract and shall, by the said name, sue or be sued. Sub-clause (3) mentions that the head office of the Authority shall be at New Delhi. The Authority with the previous approval of the Central Government may establish offices at other places in India.

Clause 25.—This clause defines the composition of the Warehousing Development and Regulatory Authority. The Authority shall consist of a Chairperson and not more than two other members to be appointed by the Central Government from amongst persons of ability, integrity and standing and having wide knowledge and experience in inventory management, insurance, preservation, quality control, banking, finance, economics, law or administration.

Clause 26.—Sub-clause (1) of this clause specifies the tenure of office of Chairperson and other members of the Authority. The Chairperson and other members of the Authority shall hold office for a term not exceeding five years from the date on which they enter upon their office and shall be eligible for re-appointment. However, no person shall hold office as a Chairperson or other member after attaining the age of sixty-five years. Sub-clause (2) provides that a member may relinquish his office by giving a notice in writing to the Central Government of not less than three months. The Chairperson or any other member may be removed from his office in accordance with the provisions of clause 27.

Clause 27.—This clause empowers the Central Government to remove from office any member of the Authority in certain cases. In case, the member has been declared as an insolvent or has become physically or mentally incapable of acting as a member or has been convicted of an offence or has acquired disproportionate assets of his income and misused of his position he could be removed. Sub-clause (2) provides that before a member is removed from his office, he should be given a reasonable opportunity of being heard.

Clause 28.—This clause deals with the salary, allowances and other terms and conditions of the Chairperson and other members of the Authority. Subject to rules as may be made in this behalf, the salary, allowances and other terms and conditions of service of the Chairperson shall be the same as that of a Secretary to the Government of India and those of a member shall be equal to that of a Joint Secretary to the Government of India respectively.

Clause 29.—This clause bars the Chairperson and other members of the Authority except with the previous approval of the Central Government from accepting any employment in any company in the warehousing sector for a period of two years from the date on which they cease to hold their office.

Clause 30.—This clause stipulates that the Chairperson shall be the Chief Executive of the Authority.

Clause 31.—This clause deals with the procedure for convening the meetings of the Authority in regard to transaction of its business. Sub-clause (2) provides that if the Chairperson is unable to attend the meeting of the Authority, any other member chosen by the members present shall preside over the meeting. Sub-clause (3) clarifies that all issues which come up before the meeting shall be decided by a majority of the votes by the members present and voting.

Clause 32.—This clause provides that, no act or proceedings of the Authority shall be invalid merely by reason of any vacancy or any defect in the constitution of the Authority, or any defect in the appointment of a person acting as a member

or due to any irregularity in the procedure of the Authority not affecting the merits of the case.

Clause 33.—This clause deals with the appointment of officers and other employees of the Authority for the efficient functioning under the proposed legislation. Sub-clause (2) lays down that the terms and other conditions of service of officers and other employees of the Authority shall be governed by regulations made by the Authority.

Clause 34.—This clause deals with the constitution of Warehousing Advisory Committee to advise the Authority on matters relating to the making of regulations under clause 51. Sub-clause (2) lays down that the Advisory Committee shall consist of not more than fifteen members excluding the members of the Authority to represent the interests of various organisations engaged in warehousing, quality control, preservation and research activities. Sub-clause (3) provides that the Warehousing Advisory Committee may advise the Authority on such other matters as may be referred to it by the Authority.

Clause 35.—This clause deals with the powers and functions of the Authority. Sub-clause (1) provides that the Authority shall regulate and ensure implementation of the provisions of the proposed legislation and promote orderly growth of the warehousing business. Sub-clause (2) enumerates the various powers and functions of the Authority. These functions and powers, *inter alia*, include issuing registration certificate to warehouses issuing negotiable warehouse receipts, regulation of accreditation agencies and specifying their requisite qualifications, code of conduct and practical training for warehousemen and other staff engaged in the warehousing business, promoting efficiency in conduct of warehouse business, making regulations laying down the standards for approval of certifying agencies for grading of goods, levying the fees and charges for carrying out the provisions of the Bill, appointing arbitrators for adjudicating of disputes between warehouses and warehouse receipt holders and regulation and development of electronic system of holding and transfer of credit balances of goods deposited in the warehouses.

Clause 36.—This clause provides that the Central Government may, after due appropriation made by the Parliament by law in this behalf, could provide grants of such sums of money to the Authority as the Central Government may think fit for being utilised for the purpose of the proposed legislation.

Clause 37.—This clause provides for constitution of a fund to be called the Warehousing Development and Regulatory Authority Fund. All Central Government grants and the fees and charges received by the Authority shall be credited to this Fund. All sums received by the Authority from such other sources as may be decided upon by the Central Government and all sums realized by way of penalties under the proposed legislation are also proposed to be credited to the Fund. Further, the Fund shall be applied for meeting the expenses on salary, allowances and other remuneration of members, officers and other employees of the Authority.

Clause 38.—This clause deals with the accounts of the Authority and their audit. Sub-clause (1) provides that the Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be laid down by the Central Government by rules in consultation with the Comptroller and Auditor-General of India. Sub-clause (2) stipulates that the accounts of the Authority shall be audited by the Comptroller and Auditor-

General of India. Sub-clauses (3) and (4) provide that the Comptroller and Auditor-General of India and any other person appointed by him for the audit of the accounts of the Authority shall have the same rights and privileges as the Comptroller and Auditor-General of India shall have and he can demand the records and books of accounts for the purpose of audit. The audit report certified by the Comptroller and Auditor-General of India is required to be laid before each House of Parliament.

Clause 39.—This clause deals with furnishing of returns, Annual Report, etc. by the Authority to the Central Government. Sub-clauses (1) and (2) require that the Authority shall furnish such returns, statements and other particulars as regards to its programmes and activities to the Central Government. An Annual Report containing full accounts of activities of the Authority shall also be submitted to the Central Government. Sub-clause (3) requires that copies of the Annual Reports of the Authority shall be laid before each House of Parliament.

Clause 40.—This clause deals with the powers of the Central Government to issue directions on questions of policy of the Authority.

Clause 41.—This clause deals with the powers of the Central Government to supersede the Authority in certain cases. Sub-clause (1) empowers the Central Government to supersede the Authority at any time in case the Authority is unable to discharge its functions or perform its duties under the provisions of the proposed legislation or the Authority not compiling with any direction given by the Central Government under the proposed legislation or under circumstances which render it necessary in public interest to supersede the Authority. However, reasonable opportunity shall be given by the Central Government to the Authority to make representation against any proposed supersession. Sub-clause (2) provides that on supersession, the Chairperson and other members of the Authority shall be deemed to have vacated their offices and shall not have any powers, functions or duties under the proposed enactment. Sub-clauses (3) and (4) provide that on or before of the expiration of the period of supersession of the Authority, the Central Government shall reconstitute a fresh Authority and appoint its Chairperson and other members. The Central Government shall also lay a copy of the notification superseding the Authority with a full report before each House of Parliament at the earliest. Sub-clause (5) stipulates that a person removed from his post under sub-clause (1) shall not be entitled to any claim or compensation on account of such removal.

Clause 42.—This clause provides for appeals to the Appellate Authority. Sub-clause (1) provides that any person aggrieved by an order of the Authority made under the proposed legislation may file an appeal to such person or authority appointed by the Central Government which would be referred to as Appellate Authority within sixty days. However, the said period may be relaxed if the appellant satisfies the Appellate Authority the reasons of delay. Sub-clause (2) provides that every appeal made under this clause shall be in the form and manner laid down by the Central Government by rules. The appeal should also be accompanied by the fees prescribed by the Central Government. Sub-clauses (3) and (4) lay down that an appellant shall be given reasonable hearing and that the appeal shall be disposed of within ninety days from the date of its filing.

Clause 43.—This clause deals with the offences and penalties related to the proposed legislation. Sub-clause (1) provides that any warehouseman knowingly

issuing a warehouse receipt without taking actual physical delivery of the goods or taking less delivery of goods than the quantity mentioned on the warehouse receipt commits an offence and shall be punishable with imprisonment for a term which may extend to three years or with fine which may be extended to four times the value of the goods, or with both. Sub-clause (2) provides that a warehouseman or his agent who issues a duplicate warehouse receipt without following the prescribed procedure commits an offence and shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to one lakh rupees, or with both. In sub-clauses (3), (4) and (5) other related offences and penalties have been defined.

Clause 44.—This clause deals with offences by companies. Sub-clause (1) provides that when an offence under Chapter X is committed by a company, every person of the company who at the time of committing the offence was responsible for making the deposits shall be deemed to be guilty of the offence and shall be liable to be proceeded and punished accordingly. Sub-clause (2) provides that if such an offence has been committed with the connivance of any official of the company, he shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Clause 45. – This clause relates to cognizance of offences by courts. Sub-clause (1) provides that no court shall take cognizance of any offence punishable under the proposed legislation without a complaint being made by the Authority or an officer authorised by the Authority. Sub-clause (2) provides that these offences shall not be tried by a court inferior to that of a Metropolitan Magistrate or the Judicial Magistrate of the first class.

Clause 46.—This clause provides that the chairperson, members, officers and other employees of the Authority, while acting or purporting to act in pursuance of the provisions of the proposed legislation, would be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 47.—This clause seeks to provide immunity to Central Government or any other member or officer of the Authority from suits, prosecution and other legal proceedings in respect of anything which is done in good faith under the proposed legislation.

Clause 48.—This clause provides that the Authority may delegate its powers (other than the power to make regulations under clause 51) by general or special order in writing to the Chairperson or any other member or officer of the Authority under the proposed legislation.

Clause 49.—This clause provides that the Authority shall not be liable to pay wealth tax, income tax or any other tax in respect of its wealth, income, profits or gains derived by it.

Clause 50.—This clause empowers the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) enumerates the various matters in respect of which such rules may be made. These matters, *inter alia*, include the form and manner in which an application for obtaining a certificate of registration for commencing warehousing business issuing negotiable warehouse receipts is to be made, the form and manner in which a registration certificate is to be issued, the form and manner for getting registration certificate by the accreditation agencies, the financial, managerial and other eligibility criteria for registration of warehouses, the requirements for an

accreditation agency, salary and allowances payable to members of the Authority and all such other matters that may be exercised by the Authority under clause (n) of sub-clause (2) of clause 35.

Clause 51.—This clause empowers the Warehousing Development and Regulatory Authority to make regulations with the previous approval of the Central Government and in consultation with the Warehousing Advisory Committee to carry out the provisions of the proposed legislation. Sub-clause (2) enumerates the various matters in respect of which such regulations may be made. These matters, *inter alia*, include procedure regulating the issuance of certificate of accreditation under clause 5 by an accreditation agency, the form and manner and the period for which a warehouseman shall keep the records and accounts of warehousing business under sub-clause (2) of clause 8, the manner of disposal of goods or any part thereof and keeping of sale proceeds in and escrow account by the warehouseman under sub-clause (7) of clause 9, the terms and conditions of service of officers and other employees of Authority under sub-clause (2) of clause 33, the manner of issuance of duplicate warehouse receipt under sub-clause (2) of clause 23, the time and place of the meeting of the Authority and the procedure to be followed under sub-clause (1) of clause 31, functioning of the grading agency, standard for approval of certifying agencies for grading of goods under clause (f) of sub-clause (2) of clause 35, the fees and other charges to be levied under the proposed legislation and any other matter which is required to be, or may be, specified by regulations.

Clause 52.—This clause provides that every rule made by the Central Government and every regulation made by the Authority under the proposed legislation shall be laid, as soon as may be after it is made, before each House of Parliament.

Clause 53.—The clause provides that the provisions of the proposed legislation shall have effect notwithstanding anything inconsistent therewith contained in any other law for time being in force or in any instrument having effect by virtue of any law other than the proposed legislation.

Clause 54.—This clause relates to the power of the Central Government to remove difficulties. Sub-clause (1) empowers the Central Government to remove any difficulty which may arise in giving effect to the provisions of the proposed legislation by order published in the Official Gazette. Such provisions shall not be inconsistent with the provisions of the proposed legislation. This power can be exercised only within three years from the commencement of the proposed legislation. Sub-clause (2) stipulates that every order issued under this clause shall be required to be laid before the each House of Parliament.

Clause 55.—This clause seeks to insert a new section 8B in the Stamp Act, 1899 so as to provide that negotiable warehouse receipts shall not be liable to stamp duty.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 24 of the Bill provides that the Central Government shall, by notification in the Official Gazette, constitute for the purpose of the proposed legislation, an authority to be called the Warehousing Development and Regulatory Authority to exercise the powers conferred on, and to perform the functions assigned to, it by or under the proposed legislation.

2. Clause 25 of the Bill provides that the Authority shall consist of a Chairperson and not more than two other members who are experts in the field of inventory management, insurance, quality control, banking, finance, economics, law or administration.

3. Clause 28 of the Bill provides that the salaries and allowances payable to and the other terms and conditions of service of the Chairperson of the Authority shall be the same as that of a Secretary to the Government of India and those of other members shall be the same as that of a Joint Secretary to the Government of India.

4. Sub-clause (1) of clause 33 provides that the Authority may, appoint officers and such other employees as it considers necessary for the discharge of its function under this Bill. Sub-clause (2) of clause 33 provides that the terms and conditions of service of officers and other employees of the Authority appointed under clause 33 of the Bill shall be governed by regulations made by the Authority.

5. Clause 36 of the Bill provides that the Central Government may after due appropriation made by Parliament by law make to the Authority grants for being utilized for the purposes of the proposed enactment. Clause 37 of the Bill provides for the constitution of a fund to be called the Warehousing Development and Regulation Authority Fund. All Central Government grants, fees and charges shall be credited to the said Fund.

6. The implementation of aforesaid provisions would involve certain expenditure from the Consolidated Fund of India. However, it is not possible to give any specific estimate of the expenditure, both recurring and non-recurring, at this stage as it would depend upon the specific decisions which may be taken and the manner of implementation by the Authority. However, it is estimated that a sum of approximately two crores of rupees for a financial year may be required to meet the expenditure of the Authority by way of grants to be given to the Authority by the Central Government. During the Financial Year 2005-2006, no expenditure, however, is envisaged to be incurred.

7. It is estimated that the Bill will not involve any other expenditure of a recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 50 of the Bill empowers the Central Government to make rules, by notification in the Official Gazette, for carrying out the provisions of proposed legislation. Sub-clause (2) of that clause enumerates the matters in respect of which rules may be made under the proposed legislation. These matters, *inter alia*, relate to the form and manner in which an application for obtaining a certificate of registration for commencing or carrying on the business of warehousing issuing negotiable receipts is to be made and the fees which shall accompany such application, the form in which a certificate of registration of warehouses is to be issued, the form and manner in which an application for registration as an accreditation agency is to be made and the fees which shall accompany such application, the form of certificate of registration of accreditation agency, the salary and allowances payable to and the other terms and conditions of the service of Chairperson and members of the Authority, the form of annual statement of accounts to be maintained by the Authority, the form and manner in which and the time within which returns and statements and other particulars are to be furnished to the Central Government and any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

2. Sub-clause (1) of clause 51 empowers the Warehousing Development and Regulatory Authority to make, by notification in the Official Gazette and with the previous approval of the Central Government and not inconsistent with the provisions of the proposed legislation and the rules made there under, regulations to provide for matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of the proposed legislation. Sub-clause (2) of that clause enumerates the matters in respect of which such regulations may be made under the proposed legislation. These matters, *inter alia*, include procedure for regulating the issuance of certificate of accreditation under clause 5 by an accreditation agency, the form and manner and the period for which a warehouseman shall keep the records and accounts of warehouse business under sub-clause (2) of clause 8, the manner of disposal of goods or any part thereof and keeping of sale proceeds in an escrow account by the warehouseman under sub-clause (7) of clause 9, the terms and conditions of service of officers and other employees of Authority under sub-clause (2) of clause 33, the manner of issuance of duplicate warehouse receipts under sub-clause (2) of clause 23, the time and place of meetings of the Authority and the procedure to be followed in such meetings under sub-clause (1) of clause 31, functioning of the grading agency, standard for approval of certifying agencies for grading of goods under clause (f) of sub-clause (2) of clause 35, the fees and other charges to be levied under the proposed legislation and any other matter which is required to be, or may be, specified by regulations.

3. Clause 53 of the Bill requires that the rules and regulations made under the proposed legislation shall have to be laid before Parliament.

4. The matters in respect of which rules and regulations may be made are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

