

MULTIMODAL TRANSPORTATION OF GOODS ACT,1993

Statement Of Objects & Reasons On The Multimodal Transportation of Goods Act, 1993

Due to advances in the transport technology including the advent of containers various structural changes have taken place in the international transportation of goods. Containers are increasingly being used for transportation of goods from one country to another, using more than one mode of transport and more than one carrier. Multimodal transportation of goods has become standard practice in the international trade. Overseas general cargo of India has also started moving in containers. Several container depots have been set up in the country. In order to facilitate containerised trade, container handling facilities in major Indian Ports, container railway flat wagons, inland container depots and container freight stations have been developed and are being developed. A Working Group was set up by the Government of India to examine the prevalent situation and to recommend a law on multimodal transportation of goods for India which should clearly determine the liabilities and responsibilities of multimodal transport operators for loss of, or damage to, the goods. The Working Group formulated proposals which were substantially based on the rules framed by the International Chamber of Commerce. The Group also took note of the provisions of the United Nations Convention on Multimodal Transport of Goods, 1980. In the meanwhile Government took various measures to liberalise controls, simplify procedures, facilitate smooth flow of international trade and promotion of exports and in this context it became necessary to immediately, regulate multimodal transportation of goods by law. On the recommendation of the Working Group the President promulgated the Multimodal Transportation of Goods Ordinance, 1992 on 16th October, 1992. To replace this Ordinance the Multimodal Transportation of Goods Bill was introduced in the Parliament.

Statement of objects & Reasons

International transportation of general cargo has undergone important structural changes due to advances in the transport technology including the advent of containers. Containers are increasingly being used for transportation of goods from one country to another, using more than one mode of transport and more than one carrier. Such unbroken multimodal transportation of goods is also being done under a single transport document. Covering all the modes of transport and the multimodal transport operator remains liable and responsible to all the cargo owner. Multimodal transportation of goods has become a standard practice in the trade between developed countries and the same is now gradually spreading to developing countries also.

2. India's overseas general cargo trade has also started moving in containers. The containerised cargo is also moving from the hinterland, particularly from the inland container depots set up in the country, to the ports. In order to facilitate containerised trade, container handling facilities in major Indian ports, container railway flat wagons, inland container depots and container freight stations, have been and are being developed. The quantum of India's general cargo trade moving in containers is thus gradually increasing. The Government of India had set up a Working Group to examine the prevalent situation and to recommend a law on multimodal transportation of goods for India which should clearly determine the liabilities and responsibilities of multimodal transport operators for loss of, or damage to, the goods. This Group formulated proposals for the said legislation which were substantially based on the rules framed by the International Chamber of Commerce. The Group also took note of the provisions of the United Nations Convention on Multimodal Transport of Goods, 1980. The Group also recommended certain amendments to the Carriers Act, 1885, the Indian Carriage of Goods by Sea Act, 1925 and the Sale of Goods Act, 1930.

3. In the context of various measures taken by the Government of India to liberalise controls, simplify procedure, facilitate smooth flow of international trade and promotion of exports, it became necessary to immediately regulate multimodal transportation of goods by law with a



view to reducing and eliminating interruption in the continuous movements of goods from their origin to the ultimate destination as also reducing cost and delays and improving the quality of transport services. The President accordingly promulgated the Multimodal Transportation of Goods Ordinance, 1992 on the 16th October, 1992 to provide a legal regime to govern, on a uniform basis, the liabilities and responsibilities of a multimodal transport operator who can provide services under a single document to shippers engaged in international trade.

4. The Bill seeks to replace the said Ordinance.

Act 28 of 1993

The Multimodal Transportation of Goods Bill was passed by both the Houses of Parliament and was assented by the President on 2nd April, 1993 and came on the Statute Book as THE MULTIMODAL TRANSPORTATION OF GOODS ACT, 1993 (28 of 1993).

Traditionally Cargo is mostly carried under the following predominant prevailing systems:

a. Single mode of Transportation (Also called ‘uni-modal’ transport)

As the word proposes ‘uni-modal’, the cargo is carried by a single carrier. The character of the document issued to the consignee/shipper depends on the kind of contract that he chooses to enter into with the carrier, for the single leg of transportation.

b. Segmented Transportation

Segmented effectively means ‘divided legs’ transportation. The cargo is carried by different modes of transportation. Thus, separate contracts are entered into for each segment by the transporter from place of dispatch to the final destination. The character of the document issued to the shipper depends on the kind of contract that he chooses to enter into with the carriers, for the combined legs of transportation.

c. Multimodal Transportation

Effectively means the carriage of goods by at least two different modes of transport on the basis of a single contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country. In this form of contract, the shipper enters into a single contract with the multi modal operator (MTO).

With the growth of the logistic supply chain system, multimodal transportation has become one of the most valuable value added service, world over to facilitate easy door-to-door service.

What is multimodal transport system?

The concept of international multimodal transport covers the door-to-door movement of goods under the responsibility of a single transport operator. Although the concept might not be new, it developed with the container revolution. The emergence of the container technology and of the multimodal transport concept came from and facilitated growing international trade. Trade and transport are inextricably linked: efficient transport services are a prerequisite to successful



trading. International transport generally implies the use of various transport links (interfaces and modes), each link corresponding to a transfer, storage or transport operation either in the country of origin, in a transit country, or in the country of final destination. This situation has created a number of problems over the years, as more and more shippers are realizing that this new concept is involving the effective participation of various transport mode operators but does not always make clear who is responsible for delivering cargo at destination in safe conditions, according to agreed schedules. Considering the variety of cultures, languages and commercial practices at both ends of a trade, and the resulting complexity of assembling such an international transport operation, it would appear reasonable to a trader to let one qualified operator organize and be responsible and accountable for the entire transport chain. Beginning from the present unimodal transport conditions and legal environment, transport operators have developed transport systems to fulfil customers' requirements, offering competitive services and thereby making trade more efficient by offering multimodal transport services to their clients. Since the introduction of containerization and the later development of EDI, international trade has increasingly demanded efficient commercial transactions. To take advantage of the potential offered by the new technologies, the international trading community updated its uniform commercial practices regarding trading terms, letters of credit, and multimodal transport documents. Multimodal transport implies the safe and efficient movement of goods, where the MTO accepts the corresponding responsibility from door-to-door. With technological development of transport means and operations, as well as in communications, coupled with liberalization in the provision of services, more and more transport operators are able to provide such safe and efficient transport.



PROPOSED AMENDMENTS TO THE MULTIMODAL TRANSPORTATION OF GOODS ACT, 1993

- The Statement of Objects and Reasons of the Multimodal Transportation of Goods Act, 1993 states that *“in the context of various measures taken by the Government of India to liberalize controls, simplify procedure, facilitate smooth flow of international trade and promotion of exports, it became necessary to immediately regulate multimodal transportation of goods by law with a view to reducing and eliminating interruption in the continuous movements of goods from their origin to the ultimate destination as also reducing cost and delays and improving the quality of transport services”*.
- Carriage of goods from door to door is not a new concept and has been in practice under the segmented transportation system, for years. Multimodal Transportation of Goods under one multimodal document or contract is just another service being provided by these providers. Hence the Multimodal Transportation of Goods Act, 1993 should necessarily govern those service providers who wish to contract as Multimodal Transport Operators and the entire system, bearing in mind that, promotion of enormous contemporary growth of transnational commercial activity should be the mantra of the day, in order to take India into in the global trade supply-chain-logistics-practice. This can be achieved by devising statutory and regulatory formats that enhances and promotes concepts like Multimodal Transportation of Goods through “Single window clearance” & “Aid-To-Trade” systems. Hence, the primary focus of the Multimodal Transportation of Goods Act, 1993 should be to enhance and improve the legal governance of one of the most important link of a logistic supply chain system, which is “Multimodal Transportation of Goods”.
- Hence, it becomes imperative for the lawmakers to attract more operators to offer multimodal service and simultaneously, the Act should also protect the interest of the Consignee/ Shipper form being cheated by fly-by-night Multimodal Transport Operators. The main aim of this Act was to enhance trade and commerce and this should

be the main sprit of the Act.

- A few broad based suggestions to make the present Act more attractive and lucrative are listed hereinbelow.

I. Amending Section 4 (3) (a) (i) of the said Act, as it violates Article 14 of the Constitution of India.

Proposed Justification For Amendment

Section 4 (3) (a) (i) of the Multimodal Transportation of Goods Act, 1993 strictly prohibits any body other than those engaged in the business of *Shipping, or freight forwarding in India* to be registered as an Multimodal Transportation Operator, which in itself is contrary to the Preamble of the said Act. The question of reasonableness of a restriction on individual rights to carry on trade could only arise where the purported law does not fail on other tests. In this case the law fails the test of granting freedom of equality. This section shows a keen bias and monetary waivers extended to people engaged in “business of Shipping”, or freight forwarding, whereas, it leaves out the rest of the community who are and have been in the industry of transportation, other than the business of shipping.

Background

1. **The Preamble of the Act States**

“An Act to provide for the regulation of the multimodal transportation of goods, from any place in India to a place outside India, on the basis of a multimodal transport contract and for matters connected therewith or incidental thereto”.

2. **Section 2 (j) of the said Act defines “mode of transport”**

“As carriage of goods by road, air, rail, inland waterways, or sea”;

3. **Section 2 (k) of the said Act defines “multimodal transportation”**

“As carriage of goods, by atleast two different modes of transport under a multimodal transport contract, from the place of acceptance of goods in India to a place of delivery of the goods outside India”;

4. **Section 2 (l) of the said Act defines “multimodal transport contract”**

“As a contract entered into by the consignor and the multimodal transport operator for multimodal transportation”;

5. **Section 2 (m) of the said Act defines "multimodal transport operator"**

as any person who—

- (i) *concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;*
- (ii) *acts as principal, and not as an agent either of the consignor or of the carrier participating in the multimodal transportation, and who assumes*



responsibility for the performance of the said contract; and

(iii) is registered under sub-section (3) of section 4;

6. Section 4 of the said Act states “Registration for Multimodal Transportation - 4. (1)

Any person may apply for registration to the competent authority to carry on or commence the business of multimodal transportation.

(2) An application under sub-section (1) shall be made in such form as may be prescribed and shall be accompanied by a fee of ten thousand rupees.

(3) On receipt of the application, the competent authority shall satisfy that the applicant fulfils the following conditions, namely:-

(a) (i) that the applicant is a company, firm or proprietary concern, **engaged in the business of Shipping**, or freight forwarding in India or abroad with a minimum annual turnover of fifty lakh rupees during the immediately preceding financial year or an average annual turnover of fifty lakh rupees during the preceding three financial years as certified by a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949;

(a) (ii) that if the applicant is a company, firm or proprietary concern other than a company, firm or proprietary concern specified in sub-clause (i), the subscribed share capital of such company or the aggregate balance in the capital account of the partners of the firm, or the capital of the proprietor is not less than fifty lakh rupees;

7. Relevant provisions from the Constitution of India:

- **Article 14** of our Constitution demands that the

"State shall not deny to any person equality before the law or the equal protection of the laws".

- **Art. 301** of the Constitution provides:

"Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free". Article 302 limits the powers of Parliament to impose "restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India", to such restrictions "as may be required in the public interest". Restrictions falling under Art. 304 (b) must not only be reasonable but are expressly required to be in public interest. It is in order to ensure that purposes of Art. 304 (b) are satisfied that a bill in a State Legislature has to obtain the previous sanction of the President. It is worth remembering that Art. 255 of the Constitution provides for a retrospective curing of the defect of want of previous sanction by the President so that, where this requirement has been overlooked before an enactment, public interest may not suffer by any want of sanction.



8. Suggested amendment to Section 4 (3) (a) (i)

Hence, Section 4 (3) (a) (i) should also include all those people who have been in the business of transportation and the criteria to avail the monetary exclusion should be, and it is suggested that the said fraternity in other business of transportation should have been in the said business for a minimum of 5 years, with a minimum annual turnover of fifty lakh rupees during the immediately preceding financial year or an average annual turnover of fifty lakh rupees during the preceding three financial years as certified by a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949;

II. Powers and Functions of the Competent Authority

Presently the Act has not listed specific functions and duties to be conducted by the Competent Authority. The Act has only empowered him to issue licenses and renew the same. Whereas, if a Competent Authority has been created under a statute, there should be a provision detailing his functions and powers also.

The “Single window clearance” & “Aid-To-Trade” route can make the Multimodal Transportation of Goods Act, 1993 highly efficient and user friendly. Hence, the key person administering the Act should have powers and functions which facilitate smooth, unhindered functioning of the system.

Therefore, the recommended/suggested concepts of the powers and functions to be vested in the Competent Authority are as under:

- i. The Competent Authority should follow procedures as set out under the law and should not be vested with unlimited powers, superseding the provisions of the statute, permitting him to form new rules or sub rules or procedures, beyond the scope of the Act.
- ii. The Competent Authority shall strictly abide by the prescribed rules laid under the Act to renew licenses and if found that the authority has not renewed or given reasonable justification to renew licenses, strictly as per the applicable provisions under the statute, within 60 days of applying for the same, the same should be deemed renewed.
- iii. The Competent Authority should not come across as an investigating or a prying officer, rather bearing in mind the spirit of the Act is to facilitate smooth flow of trade and commerce. To simplify procedures of international trade and promotion of exports, the Competent Authority should be vested with specific Administration powers to monitor the entry of legitimate players and to assist the trade as stated below :
 - Powers to issuing show cause notices to all those multimodal transport operators who have not registered themselves as licensed MTO's under the Act and who have represented themselves as “multimodal transport operators” and have issued a “multimodal transportation document” for transportation of goods. The Authority should be empowered to impose a non-registry penalty amounting to Rs. 25,00,000/- on such MTO's. Those MTO's thereafter have an option to register under the said Act as licensed MTO's, following the due process laid down under the Act. In the event they fail to pay the said non-registry penalty, the Authority should be vested with powers to file suitable civil and/or criminal action against such MTO's, given the fact that if the Authority should be vested with powers to try such cases, in such an event, the other Constitutional remedies, should be



amended accordingly.

- The Multimodal Transportation of Goods Act, 1993 is a commercial Act and hence, by large the legal remedies available under this Act are civil in nature and can be tried only by Civil Courts. Whereas, in the event any Consignee/ Shipper and/or the Consignor intends to file a criminal complaint against an MTO, except in a case of cheque bouncing, only in such event, the Act should provide for a procedure to file Criminal complaints against MTO's, which is suggested as under:
 - a. The aggrieved party, who intends to initiate a criminal case against a MTO should first approach the Competent Authority;
 - b. The Authority upon receiving such a complaint should be vested with powers to issue show cause notices to such registered and non-registered Multimodal Transport Operators, calling upon them to produce all the transaction and transportation related documents, issued at every leg of the carriage of goods;
 - c. The Authority should thereafter scrutinize the same and issue his findings, under his seal. His main focus should be to test the documents to see if there has been any act and/or omission by the MTO, punishable under the criminal laws. The markings of the Authority should only be factual, not suggestive and/or opinionated;
 - d. If the Authority finds from the scrutiny of the documents that the MTO has committed a criminal offence, in that event, the Authority should be vested with powers to suspend his license until proven innocent and the Authority should also be given powers to charge a suspension penalty of Rs. 10,00,000/- against such MTO;
 - e. The document issued by the Authority should become a mandatory part of the FIR that the aggrieved party intends to file against the MTO.

JUSTIFICATION

- iv. Given the fact that Multimodal Transportation of Goods is a highly specialized subject which involves carriage of goods by air/sea/rail and road nationally and internationally. Understanding the complexity and technicality of this niche subject is not the forte of every Court in India. Hence, in all fairness to the Multimodal Transport Operators, at the very outset, the Competent Authority who understands the Multimodal Transportation of Goods trade practice should be approached for the scrutiny of the documents;
- v. This will also open doors to more legitimate and genuine Multimodal Transport Operators to enter the Multimodal Trade, as they will be more secure given the fact that they will not be dragged to the criminal courts at a drop of a hat by a inimical & spiteful party.

III. Other Broader Issues

- 1. India's Multimodal Transportation of Goods Act 1993 provides for "the regulation of the multimodal transportation of goods, from any place in India to a place outside India, on the basis of a multimodal transport contract and for matters connected therewith or incidental thereto." The Act defines the term "multimodal



transportation” as the “carriage of goods by two or more modes of transport from the place of acceptance of the goods in India to a place of delivery of the goods outside India” (section 2 (k)). The Act also includes provisions for regulation and conditions for registration of the MTOs.

2. **Definitions:** The list of definitions provided in section 2 includes those of the terms carrier, consignee, consignment, consignor, delivery, endorsee, endorsement, goods, mode of transport, MT contract, MTO, as well as negotiable and non-negotiable multimodal transport documents. Scanty definition of an MT document itself is provided, and the MT contract is merely defined as “a contract entered into by the consignor and the MTO for multimodal transportation” (section 2 (l)).
3. **Documentation:** Provisions of chapter III of the Act, dealing with the issuance of the MT document, its contents, reservations and evidentiary effect as well as the responsibility of the consignor, are mainly derived from the MT Convention. These are contractual provisions and certain mandatory requirements are to be spelt out in the Act;

Liability of the MTO

4. **Basis of liability:** The MTO is liable for any loss of, damage to, or delay in delivery of, the consignment as well as any consequential loss or damage arising from such delay, if such loss, damage or delay took place while the goods were in his charge. The MTO, however, is not to be liable if he proves that no fault or neglect on his part or that of his servants and agents, had caused or contributed to such loss, damage or delay in delivery (section 13 (1)). While it is evident from the provision of section 13 (1) that the MTO is liable for loss, damage or delay while the goods are in his charge, there is no provision specifically setting out period of responsibility of the MTO.
5. **Localized damage:** Provisions of section 13 (1) seem to govern the liability of the MTO both in cases of localized and non-localized damage, since the section 15 of the Act makes only the limits of liability of the MTO subject to the relevant law applicable to the stage of transport during which the loss or damage is known to have occurred (i.e. modified network system).
6. **Delay in delivery:** Similar to the UNCTAD/ICC Rules, the MTO is only liable for loss or damage arising from delay if the consignor has made a declaration of interest in timely delivery, which had been accepted by the MTO (section 13 (1)). The definition of “delay in delivery” is provided by way of explanation to the relevant section of the Act, that is section 13 (1). The claimant may treat the consignment as lost if it has not been delivered within ninety consecutive days following the date expressly agreed for delivery or the date it should have been reasonably expected to be delivered.
7. **Limitation in liability:** Provisions dealing with the limitation of liability of the MTO for loss, damage or delay is based on the UNCTAD/ICC Rules. Thus, the MTO’s liability is limited to 2 SDR per kilogram of the gross weight of the consignment lost or damaged, or 666.67 SDR per package or unit, whichever is the higher. And if according to the MT contract, no carriage by sea or by inland waterways is involved, the liability limit is increased to 8.33 SDR per kilogram of the goods lost or damaged (section 14 (1) (2)).
8. In case of localized damage, unless the nature and value of the goods have been declared before they have been taken in charge by the MTO, the limit of liability of the MTO for loss or damage will be determined in accordance with the provisions



of the relevant laws applicable to the mode of transport during which the loss or damage occurred. Any stipulation to the contrary in the MT contract shall be void and unenforceable.

9. The MTO's liability for delay in delivery and any consequential loss or damage arising from such delay, is limited to the freight payable for the delayed consignment (section 16). Similarly provisions dealing with the assessment of compensation for loss or damage, loss of right to limit liability, the aggregate liability of the MTO and notice of loss or damage to goods, are based on those of the UNCTAD/ICC Rules.
10. **Jurisdiction:** Provisions of section 25, dealing with jurisdiction, are based on those of article 26 (1) of the MT Convention, giving the claimant a wide option for instituting an action.
11. **Arbitration:** As far as the arbitration is concerned it is merely provided that the parties to a MT contract may agree to submit any dispute relating to multimodal transportation under the Act to arbitration. The place of, and procedure for, such arbitration is left to be specified in the MT document (section 26).
12. **Time-bar:** Similar to the UNCTAD/ICC Rules, a period of nine months has been fixed for instituting an action, under the provisions of the Act, against the MTO. The limitation period commences from the time of delivery of the goods, the date they should have been delivered, or the date on which the party entitled to receive the goods could treat them as lost (section 24).
13. **Lien:** Provisions are also made concerning the MTO's in right of lien, for payment of freight under the MT contract, on the goods and on the document in his possession. Furthermore, non-delivery of the goods in the exercise of the MTO's right of lien is not to be considered as delay in delivery (section 22).
14. The Act is to override any other enactment and is to have effect notwithstanding anything inconsistent therewith contained in any other law (section 29). Thus, an MT Contract inconsistent with the provisions of the Act shall be void and unenforceable (section 28).
15. The act should discharge the MTO of his liability **ONLY** if he can prove that an event which has led to the loss, damage or delay in delivery of goods occurred because of an act of negligence on the part of the consignor, the consignee or his representatives or agents; insufficient or defective packaging, marking or numbering of the goods; handling, loading, unloading, storage of goods effected by the consignor/consignee or his representative or agent; inherent or latent defect in goods; strikes, lock-out, work stoppage, total or partial restraint on labor; (Presently the Act is weak on this front);
16. Without exception, the MTO is responsible throughout the entire transport even if the performance of some or all parts of the transport has been sub-contracted to others. The liability clauses of the said Act indicate that the liability of the MTO is based on "presumed fault" in line with the MT Convention and the carrier's liability under the Hamburg Rules, many delegates were of the view that the sections provides sufficient protection to the MTO and the sweeping clause, "other acts duly proved. . ." appears to offer unlimited protection to the MTO. The liability clauses of the MTO should be framed watertight to ensure the safety of the Consignee/ Shipper. This will attract more consignees/ shippers to avail Multimodal Transportation facility under the Multimodal Transportation of Goods Act, 1993 because they are assured of adequate protection.



17. The Multimodal Transportation Document is a commercial understanding between two parties. Hence, it would defect the Statement of Objects and Reasons and purpose of the Act and violate the Constitution Right of an Individual to Freedom and Equality. Hence, the Government should insist on mandatory protective clauses to be incorporated into the MMTD and thereafter relax the other commercially accepted provisions between the contracting parties, as long as they don't violate the statutory provisions and are valid in law.
18. Section 25 of the Multimodal Transportation of Goods Act, 1993 defines Jurisdiction for instituting action as "Any party to the multimodal transport contract may institute an action in a court which is competent and within the jurisdiction of which is situated one of the following places, namely.....":-The biggest issue arising is the interpretation of the word "**Court**". Consignees have been suing the MTO's at different forums, construing them as Courts. The Multimodal Transportation being a specialized subject, given the fact that there are various modes of transportations involved domestically and internationally and various technical documents are issued, it becomes very cumbersome and nuisance value for a MTO or the Consignee to litigate in forums and lower courts with inadequacy or no knowledge or experiences to deal with these subjects. This dissuades the MTO's from entering this segment, hence, creating monopolistic trade practice because only big players who can afford litigation costs enter this segment. Hence, institutions of suits should be limited to the procedures set out strictly under Code of Civil to avoid any ambiguity.
19. E-formats should be provided for renewal and filing complaints against the MTO. As far as possible, the systems should be by E-MODE. This will ensure less personal interaction of the Authority with the Industry and vis-a- versa and by that method, we can look forward to a clean smooth functioning system.
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