CHAPTER V

LAWS GOVERNING AND REGULATORY MECHANISM OF WAREHOUSES IN INDIA AND MAHARASHTRA

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REFERENCES
LAWS GOVERNING AND REGULATORY MECHANISM OF WAREHOUSES IN INDIA AND MAHARASHTRA

5.1 INTRODUCTION:

The laws related to warehousing in India can be categorized in two ways, first, the Acts which are passed by the central government of India and state governments’ legislative assembly, for the purpose of establishing warehousing organization under public sector like CWC & SWC’s. Second, the Acts meant for the purpose of licensing the warehouses and there by keeping control on their functioning to safeguard the interest of the depositors. The first category Acts are- The Agricultural produce (Development and warehousing) Corporation Act, 1956, which was bifurcated into two Acts. They are-National Co-operative Development corporation Act (1962), and Warehousing Corporations Act(1962). The various state governments also enacted Acts for establishing state warehousing corporations. These acts empowers the respective governments to establish the warehousing corporation, to decide about activities of warehousing, objectives, board of directors, share capital, maintaining of funds by corporation, powers & duties of the officials, Audits etc. In short these Acts govern the internal functioning of the public sector warehousing organization.

The second category of Acts are the state government Acts, like the Bombay warehouse Act, 1959¹ and the Bombay Warehouse Rules 1960² of the state of Maharashtra and the newly arrived warehousing (Development and regulation) Act 2007³ of the central government of India. These Acts are enacted for the basic purpose of monitoring & controlling the business of warehousing, keeping the state control on warehouse business activities of public, private & co-operative sector warehousing so as to safeguard the interest of depositors who avail the facility of warehousing, especially the farmers community and to make the warehouse receipt a negotiable document etc.

The subject matter of this research is related to this second category of warehousing Acts.
5.2 GIST OF THE LAW:

The Bombay Warehouse Act 1959 and the Bombay Warehouse Rules 1960

1. The act provide for the regulation of the warehousing of certain goods in the then State of Bombay and now in Maharashtra.

2. The rules for conducting warehousing business is given in Bombay Warehouse Rules, 1960 which acts largely as an explanatory to the main provisions mentioned in the Bombay warehouse Act 1959.

3. The certain goods contains 22 items given in the schedule of the Act, warehousing of which is regulated by this Act and the rules made there under.

4. The Act contains Six chapters namely preliminary, Licensing of business of warehousing, Duties of a warehouseman, Inspection and grading of goods, Warehouse receipts and Miscellaneous. There are 43 sections in this Act.

5. The rules contain 5 chapters and 55 rules. Specimen forms are provided for the various rules. The chapters are preliminary, licenses, deposits and maintenance of goods, weighers, samplers and graders and miscellaneous.

6. The first chapter of the act ‘Preliminary’ contains first 2 sections. It gives details about title of the act, its area of jurisdiction, its commencement and explanation of various terms used in the act.

    The first chapter of the rules, ‘Preliminary’ also gives definition of various terms.

7. The second chapter of the Act ‘Licensing of Business of Warehousing’ contains 10 sections from 3 to 10. It directs about licensing of warehousing business, procedure and conditions to obtain license, terms of renewal of license. The conditions and procedure for refusal, granting or revoking of warehouse license by the authority is given in this chapter. If the warehouseman wants to make an appeal against any order of the authority, the terms and procedure related to it, returning and issuance of duplicate license are given in this chapter.

    The second chapter of rules ‘Licenses’ gives details of terms of license, fees, security amount, period of grant & renewal, suspension & revocation of license etc. from rule no. 3 to 10.

8. The sections 13 to 22, ten sections in the chapter three of the Act, “Duties of Warehouseman” gives details of the duties & responsibilities a warehouseman
of a licensed warehouse should follow. It includes taking care of the goods against damage, preserving identity, conditions of disposing of and delivery of goods, maintaining of records and insurance, money lending etc.

The third chapter of the rules ‘Deposit and Maintenance of Goods, etc’ includes rules from no. 11 to 35 and gives details about deposition classification and maintenance of goods, liabilities of warehouseman, contents of warehouse receipts, procedure of insuring goods, delivery of the goods especially in case of negotiable warehouse receipts, mandatory record keeping, Auction sale etc.

9. The sections 23 to 30 of the chapter number four of the Act are related to ‘Inspection and Grading of Goods’ that are kept and to be kept in the warehouse. It gives details about licensing of weighing, sampling & grading and activities related to it.

Fourth chapter in the rules ‘Weighers, Samplers and Graders’ is about activity of weighing, sampling and grading. It is explained from rule no. 36 to 45. It gives details regarding qualifications to act as weighers, samplers & grader, fees to obtain license, its period, duties and certificate to be issued by them, procedure of complaint redressal against weigher, sampler & grader etc. is given. Also in the absence of licensed weighers, samplers & graders in a particular locality what can be done is also provided in these rules.

10. The sections 31, 32, 33 of chapter number five ‘Warehouse Receipt’ of the Act, are related to its issuance, when the receipt can be a negotiable document and issuance of duplicate receipt.

11. The chapter six of the act is ‘Miscellaneous’ and it contains ten sections 34 to 43. It directs us about penalizing for non-compliance of this act by stakeholders, forfeiture of security amount, cancellation or suspension of license, power of state government to delegate powers & amendment of schedules etc.. The section 41 contains five rules and the rule no. 2 contains 23 sub rules giving details about various issues on which the government can make rules for conduction of warehousing business. The section 42 gives details about extension of this act and the organization which doesn’t come under this act.

The chapter number five of the rules is ‘miscellaneous’. Rule no. 46 to 55 are given under this. It contains displays of tariff and license to be exhibited by
warehouseman, about use of weights & measures, working hours, reporting of reports by warehouseman etc. Fourteen formats of forms are provided under various rules which are to be utilized by prescribed authority, warehouseman and by weighers, samplers and graders, while following/implementing procedures mentioned in the Act & Rules.

**The Warehousing (Development and Regulation) Act, 2007 (WDRA)**

1. This Act came into being for the purpose of development and regulation of warehouses, negotiability of warehouse receipts, establishment of regulating authority and for connected matters.

2. The Act contains 11 chapters & 55 sections in it. The 11 chapters are – Preliminary, regulation of warehousing business, warehouseman, warehouse receipts, the warehouse development & regulatory authority, Powers & functions of authority, finance, accounts & audit, powers of central government, appeals, offences & penalties and last one is miscellaneous.

3. The first chapter contains 2 sections. The definitions of 22 terms are provided which are used in the Act. The first section in this chapter tells us that this Act prevails whole of India except Jammu & Kashmir.

4. The second chapter is about regulation of warehousing business & contains three sections. It gives procedure of registration of warehouse seeking license & also registration of accreditation agencies with the authority.

5. The third chapter is about warehouseman. It contains 5 sections. It explains about liabilities & duties of warehouseman, when he will be liable for loss of goods, the compensation to be given by him, delivery of the goods to the depositor, record & account keeping responsibilities, dealing with perishable, hazardous & fungible goods, Lien of warehouseman & others on the goods & how to deal with it etc. is provided in these sections.

6. The chapter number 4 is about warehouse receipts. It contains 12 sections from 11 to 23. The major reason why this Act came into being is to develop negotiable W.R. system in the country. So elaborate provisions have been found related to this. Act directs us about the nature of warehouse receipts, its contents, its negotiability, its transfer by endorsement & without endorsement, warranties on negotiable W.R., non liability of the endorser, impact of fraud, mistake & duress, subsequent negotiation of W.R., transfer of nonnegotiable
receipts, conclusiveness of negotiable W.R., presumption in case of transfer of
W.R. by endorsement, issue of duplicate receipt etc.

7. The chapter 5 is related to the warehousing development & regulatory
authority. It consists 11 sections from 24 to 34. It is about establishment &
incorporation of the authority, its composition, appointment & tenure of the
members, their removal, salary & allowances paid to them, restriction on
members for their future employment, provisions for not making proceedings
of authority invalidate due to some reasons, like any defect in appointment of
members, vacancy of posts, any irregularity in the procedure of authority etc.,
powers of authority in appointment of necessary officers etc.. There is a
provision of warehousing advisory committee to be appointed to give advice
to the authority.

8. The chapter six is about powers and functions of authority, described in
section 35. It is the duty of the Authority to regulate & implement the
provisions of this Act. To facilitate it, sixteen provisions are given in this
section.

9. The chapter seven is related to finance, Accounts and Audit activities of
Authority. Sections 36 to 39 describe these issues. It contains grants by central
government, incoming & outgoing funds to the authority, maintaining the
accounts & making audit by the comptroller and auditor- general of India,
furnishing of returns and annual reports to the central government etc.

10. The chapter eight is about powers of central government to issue directions on
policy matters to the Authority. Also powers are conferred to the central
government by the section 41 of this chapter to supersede Authority on various
matters & situations. It has been given with five sub-clauses in this section.

11. The chapter 9 is about appeals against Authority, if person gets aggrieved by
the order of the authority he can appeal to the Appellate Authority against it.

12. The chapter 10 is about offences and penalties related to warehouse business.
Four likely offences on the part of warehousman are given and the penalty to
it. One likely offence on the part of depositor and penalty to it is also given.
Offences by companies & cognizance of offence by courts are also discussed
in section number 44 and 45.

13. The chapter no. 11 is miscellaneous having sections from 46 to 55. It provides
information about nature of employment of the members of the authority, their
protection from the action to be taken, delegation of powers, exemption from tax on wealth & income to the Authority, power of Authority to make regulations, parliamentary obligations, overriding effect of this Act on other Acts, and negotiable warehouse receipts are not liable to the stamp duty.

Procedural Rules and Regulations of Warehousing (Development and Regulations) Act, 2007

Separate regulations are provided on many sections of WDRA 2007. They are as under.

1. Registration of Accreditation Agency\(^4\), its process, renewal, procedure for suspension, cancellation, revocation etc.
2. System for negotiable warehouse receipts\(^5\), receipt books, its standardization, its issuance, codes used on a negotiable W.R., endorsement on it, surrender of negotiable W.R. book, reporting system about negotiable W.R., format of negotiable W.R.
3. Electronic warehouse receipts system is complex one. In co-ordination with spot exchanges this system is functioning. These regulations are given in fifty two clauses\(^6\). They are about Electronic warehouse Receipt, its issuance and trading, certificate of commencement, certificate that spot exchange is capable of undertaking trading of electronic W.R., Procedure where certificate of commencement of business is not granted, registration of participants with spot exchange, internal & external monitoring, review & evaluation of system & controls, insurance against risks, Manner of keeping and maintaining records, statement of accounts, procedure for participants, manner of creating pledge or hypothecation, inspection, procedure for action in case of default, etc.
4. Regulations are made for records & reports related to Warehouse Receipt and warehouses\(^7\). It includes W.R. register, records of the warehouse which includes receiving & delivery of commodities, financial records, general provisions in relation to records, reports to be submitted to the authority.
5. Provision for the inspection\(^8\) of the warehouses include periodic inspection and surprise inspection to be made by the authority, Inspection of the Accreditation agencies, provisions regarding maintenance of inspection reports & records by the Authority.
6. Regulations related to sale and disposal of goods\(^9\) include sale of goods stored in a warehouse, its effect, warehouseman’s responsibility to give accounts, of sale proceeds, condition of part delivery, removal of deteriorating goods, etc.

7. Regulations regarding grading, sampling & weighing include grading of goods according to specifications given by the Authority\(^10\), compulsion to have licensed grader, sampler & weigher for the related activity, equipments & grades to be used in grading, sampling & weighing, their duties & their inspection, form of records to be issued by them, Action in case of defaults by weigher, sampler & grader, dispute resolution etc.

8. Regulations are framed related to the duties of warehouse receipt holders\(^11\) which asks to maintain W.R. in fair condition, provisions in case of theft or any loss to it etc. Duties of depositors include delivery of goods for storage in a specified manner like marking on goods, its packing, any instruction for separate keeping of goods etc.

Liabilities of warehouseman related to loss of profit to the depositors, for fulfilling the obligations of the WDRA Act are provided in section 5. The regulations related to the duties of warehouseman are provided in section 6 in two parts with 39 clauses. Duties of warehouseman related to delivery of goods, satisfaction of the warehouseman lien are also provided.

9. Regulatory provisions for dispute settlements\(^12\) classified the disputes according to bodies to which the disputes should be given for redressal. It constitutes Appeal to Appellate Authority. Disputes that would be taken by the authority and Disputes that would be settled by the panel of arbitrators appointed by the Authority.

Nature of appeals to Appellate Authority include matters related to certification of registration of warehouse, registration as an accreditation agency, refusal, cancellation or revocation of a certificate of compliance by an accreditation agency.

Disputes coming to Authority include complaints against warehouseman for the fraudulent practice by depositors, appeal against arbitrator in some cases.

Disputes that would be settled by the panel of arbitrators include

i) Resolving disputes with the help of single arbitrator between warehouseman & holders of negotiable W.R., loss or damage to goods
stored, failure to deliver goods, about lien and any matter referred by the authority.

ii) State agency from the panel of arbitrators to resolve issues related to weighers, samplers and graders. Disputes related to compensation payable for loss and any other matter referred by the Authority.

The constitution of single arbitrator, panel of arbitrators, state agency, Arbitration processing is also been provided into the regulations.

1. Regulations are provided for meetings of the Authority\textsuperscript{13} for transaction of business and procedure to be followed, provisions regarding frequency of the meeting, place of meeting, notice to be given, presiding officer, quorum, emergency meeting to take urgent decisions, maintaining minutes of the meeting, invites at meeting and miscellaneous provisions.

2. Regulations are provided regarding recruitment, control and service conditions of staff of the Authority\textsuperscript{14}. It includes categorization of posts and strengths of staff, their placement, recruitment and other conditions of service, remuneration and other benefits, annual assessments, disciplinary proceedings and penalties etc.

3. Regulations related to warehouse Accreditation\textsuperscript{15} include process of grant of certificate of accreditation, warehouse assessment by accreditation agency, form of certificate of accreditation, suspension or cancellation of certificate of accreditation, renewal of certificate of accreditation, fees to be paid to get accreditation certificate, duties of accreditation agency, dispute resolution and overriding power of the Authority in assessing the warehouses.

Thus elaborate provisions are made in every issue of warehousing business in the Act and related regulations, with the provision of amendment and supreme power vesting into the central government and then the Authority.

After the commencement of this Act, three years of time is kept by the section no. 54 of the Act to remove difficulty and make necessary provision.
5.3 THE BOMBAY WAREHOUSES ACT, 1959 -- A CRITICAL ANALYSIS

Preamble of the Act

To provide for the regulation of the warehousing of certain goods in the state of Bombay.

Statement of Objects and Reasons

The object of the bill is to unify the existing laws relating to warehouses which are in force in the different parts of the state, viz.


b) The Central Provinces and Berar Agricultural Warehouse Act, 1947.

c) The Hyderabad Warehouse Regulation, 1358 F.


It is proposed to regulate warehousing of certain goods mentioned in the Schedule attached and to encourage the establishment of independent warehouses for the storage of the goods and to make provisions for their proper supervision and control. The receipt issued by the licensed warehouseman will serve as a collateral security for the purpose of financing seasonal agricultural operations and will be transferable by endorsement.

Licensing of Warehousing Business

This act prohibits for carrying on the business of warehousing without license. A “person” interested in carrying on business of warehousing should apply for a license to the prescribed authority.

This Act defines the warehouse as, warehouse means any building structure or other protected enclosure which is used or may be used for the purpose of storing goods on behalf of depositors, but does not include clock rooms attached to hotels, railway stations, the premises of other public carriers, and the like.

The definition of the warehouse given by this Act seems ambiguous and inadequate. It doesn’t mention any specific requirements so that a working entity should be called as warehouse e.g. like warehouseman should take custody of goods for specific time period, getting rent for service of storage, the manpower requirement in a warehouse etc. Also the structures like cold storage, whether they should be included as warehouse is not clear. The term storing goods on behalf of depositors is used in this definition. In Market yards (The area regulated by agricultural produce
market committees) the commission agents who do business with a shop, keeps the goods of farmer on behalf of him till it gets sold & gets his commission after sales. If we strictly adhere to the definition then all these shops can come under term warehouse.

The prescribed authority empowered by Maharashtra government is District Deputy Registers of co-operative societies. This department of the government is already having many responsibilities and work. Regulating the warehouse becomes the additional one. It means no separate administrative structure is created by government to regulate the warehousing activities.

Conditions for granting license includes applicants competency, Security deposit and warehouse suitability for storing the goods intended. The section 5 (a) doesn’t give clarification about warehouse suitability for storing the goods. It seems that deciding suitability depends on prescribed authorities’ discretion.

The license can be renewed after its expiry. Authorities can refuse to renew license by noting & communicating the reasons to the applicant. Before expiry period also authorities can revoke license under situations of applicants’ insolvency, parting the control over the warehouse, unreasonable changes for services, becomes incompetent or contravenes any of the terms or conditions of license. Before revoking, the licensing authority has to give notice to the applicant warehouseman. Applicant can appeal against refusal of renewal or revoking of license to the registrar of co-operative societies within sixty days. Here the time period gap of notice serving and revoking of license by the authorities is not mentioned in the act. Also the period within which the registrar of cooperative societies will sort out the matter is not given in the Act. The order passed by the Registrar in appeal, subject to revision and every order passed by the state government in revision, shall be final & can’t be questioned in any court of law. The licensed year for warehouse business in Maharashtra starts from 1 October and ends to 30 September of next following year. There is no reason sought by the researcher why this specific date was chosen while framing this section of the Act. There is provision to take license for the three years period also.

In terms of license rule 5 subsection 1 says that applicant warehouseman should maintain in respect of each warehouse, net assets liable for the payment of any indebtedness arising from the conduct of the warehouse to the extent of at least Rs.3.50/- cubic meter storage capacity. There is no change in the fees, asset value to be maintained and security deposit amount from last 30 years.
The rule 6 subsection (b) about a bond of sureties doesn’t clarify the amount of bond. Duplicate license can be given on getting an indemnity bond by the applicant.

**Warehouseman Duties**

The act says that every warehouseman shall take reasonable care of the goods deposited with him. He will take necessary precautions against damage and maintain the goods in good condition, free from pests. Act also directs the warehouseman that he should preserve the identity of goods of each depositor and only standardized & graded goods are allowed to mix. If the goods stored deteriorate because of the causes beyond the control of warehouseman then warehouseman can give notice to the depositor to take delivery of goods & if depositor doesn’t comply with the notice, then warehouseman can sell that goods by public auction at the cost & risk of the depositor. Here act doesn’t not ask warehouseman to inform to Prescribed Authority regarding need of auction sale.

Money lenders like financial institutions are often interested to know the condition of the goods stored in the warehouse on which they have given loan to the depositors. The section 16(2) allows any person interested in any goods, stored in the warehouse to get information about condition of goods from warehouseman by paying charges for such information. If there is change in weight due to absorption of moisture or due to driage the warehouseman shall not held responsible for it. It seems mandatory on the part of warehouseman that the goods stored in the warehouse need to be insured against risk of fire & burglary by the section 20(1)

The additional coverage from the risks of loss due to flood, riot, civil commotion etc. is left with the depositors. With the additional payment he can insure the goods against these risks.

Warehouseman is prohibited from discriminating among depositors for availing the storage facility with him, except co-operative societies, to which he can give concessions but that also with prior permission of Prescribed Authority.

But the kind of concession whether in rates or storage place etc. was not mentioned in the Act. But with amendment by G.N. of 1-2-1971it was included.

It is important that every warehouse Receipt should contain all the eight particulars mentioned in the rules, so as to make warehouse Receipts valid for the purposes of settlement of disputes & claims. For issuing warehouse Receipt format is
provided with form no. 8 of warehouse rules. The actual contents of form no. 8 are more than the mandatory things mentioned in the rule 12 for warehouse receipts. So it remains unclear whether the additional things of the format of form no. 8 are optional. There is facility provided by Act for providing duplicate receipts by adopting some procedure by warehouseman. If the depositor transfers or mortgage the warehouse receipt to other party, then such transfer need to be intimated to prescribed authority. But no time limit is given in the rule for such intimation. For providing warehouse services the charges to be made by warehouseman to depositors need to be displayed in warehouse office, also these charges need to be informed to the prescribed authority while getting license. The warehouse law doesn’t comment on the fixation of warehouse charges (rent). It only says, it should be approved by prescribed authority for the license period. If there are no government directions to levy or limit the service charges to be taken from the depositors then why such approval is necessary is a questionable thing.

The warehouseman need to maintain the warehouse in good condition, also he should take proper precaution against injury to goods. If the depositor feels that due to negligence or because of the improper keeping of goods by warehouseman, his goods are not in good condition while taking delivery & if he wants to make claim for damage, he has to give notice within 72 hours to warehouseman & defer taking delivery till then. Also he has to send one copy of the notice to the prescribed authority.

There is no further process described in the Act, to be adopted by depositor to recover the losses happened due to warehouseman. e.g. deciding about the extent of the loss happened. As many of the agricultural produce is perishable commodity, time bound procedure need to be adopted for deciding it’s loss, like inspecting by third party as an expert grader, time limits to adopt for various steps to be taken etc. There is absence of such guidelines in the Act and it seems that it is left with the depositor & warehouseman. The provision of arbitration is the only thing mentioned related to this issue.

Part delivery of goods is possible by noting such part delivery on warehouse Receipt. Warehouseman can’t release goods which is pledged by depositor for getting finance from banks without due consent from bank. The Act asks for maintaining record of stock register, a ledger for each depositor & general insurance account. These things are compulsory.
**Inspection & Grading of Goods and about Weighers, Samplers & Graders**

The prescribed authority at any time & business hours can inspect & examine the books of accounts of warehouse to satisfy itself, that the warehouse is functioning as per rules.

The person who wants to work as a weigher, sampler & grader has to take license from the prescribed authority for it. The qualification has been set for this purpose & license is granted for one year period. There is provision of board of arbitrators to be appointed by prescribed authority to solve the grievances in case of complaints against weighers, samplers, graders and warehouseman relating to weight, quality or grade of the goods stored in warehouse.

**Warehouse Receipts**

A licensed warehouse can issue negotiable as well as non-negotiable warehouse receipts.

The persons who are going to sign the warehouse receipts as warehouseman or on behalf of him, the name & signature of such persons need to be informed to prescribed authority. After following some procedure warehouseman can issue duplicate warehouse receipt to the depositor for the reasons.

**Penalty for Breach of the Act**

Provision of simple imprisonment for the period of 6 months or fine of thousand rupees or both, for only two sections of the Act is there. One for doing business of warehousing without license & other for lending money to the depositor on the goods kept by him in the warehouse by warehouseman with some exceptions. Breach of any other section & the rules provides for fine up to one thousand rupees. There is no change in this penalty from last few decades.

To reduce the possibility of fraud, maintenance of warehouse & preservation of identity of goods of the depositor is an important activity. If carelessness or malfunctioning in this regard observes, the heavy penalty need to be charged to the warehouseman, but no such provision is provided in Act.

The possibilities of other frauds like providing false information to money lenders on goods deposited or about fake warehouse receipt can be dealt with by provisions of Indian penal code.
5.4 THE WAREHOUSING (DEVELOPMENT & REGULATION) ACT 2007 (WDRA) - A CRITICAL ANALYSIS

Preamble of the Act

An Act 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.

Objects and Reasons of the Act

The summary of objects and reasons of the Act are as follows-

To make warehouse receipt a prime tool of trade and facilitate finance against it throughout the country by making it a valid negotiable instrument, thereby giving higher returns to farmers and better services to consumers.

To provide necessary administrative mechanism and legislative backup for regulating and streamlining the warehousing sector issuing negotiable warehouse receipt.

About negotiable Warehouse Receipt, to provide for it’s contents, conditions for negotiability, it’s transfer, issuance of duplicate receipts.

The Act also seeks to provide for- Registration of warehouses issuing negotiable warehouse receipt and accreditation agencies, the liabilities, duties and lien of warehouseman, for establishment and incorporation of Warehouse Development and Regulatory Authority, the appeal to the appellate authority and defining the offences and penalties in respect of such offences, to empower central government of India to supersede the Authority in certain circumstances.

Regulation of Warehouse

The warehouseman who intend to issue negotiable warehouse Receipt needs to register their warehouse compulsorily with the authority. The warehouseman who are going to issue only non-negotiable Warehouse Receipt need not to register with the authority, yet they want, they can get the registration. All the warehouses who are issuing negotiable Warehouse Receipt should apply within thirty days of notification of this Act.

There is no sufficient clarity, whether the registration of warehouse or warehouseman is necessary. If a person belongs more than one warehouses then, whether he has to take registration separately or not.

Accreditation Agencies are authorized by the Regulatory Authority to issue certification of accreditation to warehouses issuing negotiable warehouse receipts.
The Act doesn’t adequately clarify whether a warehouseman is required to apply for both registration and accreditation or after obtaining registration accreditation procedure will be followed automatically by accreditation agency. The words “registration” and “accreditation” creates ambiguity. Under section 5(1), the accreditation agency is authorized to issue accreditation certificate to warehouses while a warehouseman is required to obtain certificate of registration from the authority.

**Liability of warehouseman**

Section 6 subsection (1) specifies that a warehouseman is liable to compensate in case he fails to exercise care and due diligence in regard to goods stored. The sub section (2) under this section specifies that he is required to compensate even if he has exercised all care and precautions and there happens a loss. These two sub clause statements seem contradictory to each other. The sub section (4) of the same section says that, in case of force majeure, act of war, act of public enemies and the like. But the insurance policies usually cover along with natural calamities the other things like loss due to riots etc. Then whether the responsibility doesn’t lay on warehouseman to get the claim settled from insurance companies & to compensate depositors for the loss?

Section 6, sub section (2) & (3) discuss about the compensation amount given to the depositor in case the loss has happened in spite of due care & diligence. It says that compensation amount would be equal to the original value at the time of deposition of goods. But the fact is that during the period of storage, the price may go up or go down. It also say that loss of profit also need to be compensated, but fact is that it is difficult to decide, because if the commodity is available in the market at a price, the depositor can buy it back from the market & therefore, there is no loss of profit.

The section 8 of the Act asks warehouseman to keep all the records and accounts of warehousing business and make available to the authority for inspection if it demands. The Act has not clarified that if, by any reason, the record gets damaged, defaced or torn, then in such circumstances what are the measures that should be taken? Also the kind of information that is to be reported to the authorities is not clarified.

Under the section 9, In case of perishable goods, if they are deteriorating, the warehouseman is required to give notice to the depositor, asking him to remove the
same immediately. If depositor fails to do so, the warehousemen can dispose off the
same, recover his dues & refund the rest amount to the depositor. In this case the
warehouseman is given liberty & flexibility to apply his discretion to deal with
situation. It seems that how appropriately these rights are used by warehouseman, so
as to safeguard interests of both warehouseman and the depositor will depend upon
the procedural rules made and implemented by the authority and its effectiveness.

**Warehouse Receipts**

To issue a non negotiable warehouse receipt, its non negotiability should be
clearly mentioned on it. For a negotiable warehouse receipt, its negotiability cannot be
limited by mentioning any words on the receipt.

There is a good protection given under section 17 and 18 to the last holder of
the warehouse receipt who purchased a negotiable W.R. for valuable consideration
against any fraud in the chain of negotiation.

A non negotiable W.R. also can be transferred to the purchaser by delivery in writing
executed by the holder and in such case; the transferee is required to inform the
warehouseman in writing about such transfer.

**Regulatory Authority**

From section 24 onwards up to section 34, provisions regarding the
appointment of the Regulatory Authority and warehousing Advisory committee is
given. The Authority will consist of the chairman and two other persons appointed by
the central government. The advisory committee will consist of 15 members to be
appointed by the authority. The role to be played by the Advisory Committee is
confined to advising the Authority on framing the Regulations, to give
recommendation about effective implementation of provisions of the Act and such
other matter, as may be referred to them by the Authority.

Powers of the Authority are laid down under Section 35. The Authority is empowered
to grant registration to warehouses and also to accreditation agencies. It is not clear
whether a warehouse is supposed to apply for registration with the Authority first or
to apply to accreditation agency about its accreditation first or whether both
registration with the Authority and accreditation with the accreditation agency will be
simultaneous activity. Under clause 35(2) v (b), the authority is empowered to
regulate registration of accreditation agency and not to issue registration. There is an
ambiguity whether issuing registration and regulating registration are one and the
same.
The central government is considered highest authority by the Act, which can give directions to the Authority and it will be binding on the authority. The central government will appoint Appellate Authority, with whom appeal can be filed by any party who feels injustice is happened with them due to the decision of the Authority.

**Offences and Penalties**

The Act under Sec.43 specifies elaborate provisions for offences and penalties. Four major misconducts are identified on the part of warehouseman where imprisonment and financial penalties are imposed. They are: willfully issuing a warehouse Receipt without accepting goods, issuing a duplicate negotiable W.R. without following the prescribed procedure, releasing delivery without obtaining negotiable W.R. in discharge and failure on the part of warehouseman to deliver goods on surrender of warehouse receipt by depositor. For above mentioned misconducts three years of imprisonment or with fine up to 1 lakh or both is specified.

For a depositor also if he declares wrongful value of goods at the time of depositing the same, then he can be punished with fine which may extent to Rs. 1 lakh is mentioned.

The fine mentioned to the depositor’s misconduct seems insufficient because, if due to the cheating or fraudulent act of depositors, if the amount of cheating goes for higher than 1 lakh of rupees, then the fine of 1 lakh is insufficient.

By the section no. 44 of this Act if the licensed warehouse working is a company or any organization having association of persons, then any misconduct happens, then liability of it, has to be clarified by this section. Any of the directors of such company or the secretary or manager, if had given consent or with connivance of such person, if offence is committed then they are liable to be proceeded against and can be punished under this Act.

According to the clause 45 of this Act, only from the complaints made by the authorized person of the Authority, the courts can take cognizance of offence. So with this provision, the Appellate authority created under this act is the supreme to redress the grievances and complaints arising out of noncompliance of this Act.

One more unclear issue is that whether the authority will have the power to penalize such warehouses, which are not registered with it as they do not intend to issue negotiable W.R. but later issued it or its powers are confined to registered warehouse only.
License from Other Bodies

Under the process of grant of certificate of accreditation, the applicant warehouse needs to obtain no objection certificate/warehouse license from the Municipal Corporation or local authority for carrying out the business of warehousing. Many municipal corporations haven’t set any criteria to give license to warehouse business or to provide no objection certificate. The only authority at present is D.D.R. offices of respective districts issuing warehouse license on behalf of Maharashtra government under the Bombay warehouse Act 1959. If permission needs to be obtained from local bodies, then some criteria & norms need to be set and informed by higher authorities for the purpose of issuing no objection certificate or license.

About Graders, Weighers & Samplers

Rules asks list of the trained graders, weighers and samplers working in the warehouse. If such persons are not available locally then whether such tasks can be done by the warehouseman is not mentioned. The approved training agency and about the qualifications of the graders, weighers & samplers is also unclear by these regulations.

Power of Central Government

Central government has power to make the rules while Authority has got power to make regulations. Every rule & Regulation made under the Act is required to be laid before each house of parliament.

There is provision of overriding effect of this act over any contrary provision contained under any other act. The stamp Act, 1899 is also amended so that negotiable W.R. shall not be liable to stamp duty. The ambiguity is kept for non negotiable W.R. for whether it is liable for stamp duty or not.

Under the section 54 of this Act, the central government can remove any difficulty arising, in giving effect to the provisions of this Act. It can make such provisions consistent with the provisions of this Act. This thing can be done before completing of three years from commencement of the Act by getting approval of each house of parliament. But again this provision may create hurdle in case if after 3 years any loophole in this system is observed.
5.5 COMPARISON BETWEEN BOMBAY WAREHOUSE ACT 1959 AND THE WAREHOUSING DEVELOPMENT AND REGULATION ACT 2007 ON SOME IMPORTANT ISSUES:

Bombay Warehouse Act 1959=BWA
Warehousing Development and Regulation Act 2007=WDRA

1. Definition of Warehouse

BWA> “warehouse” means any building, structure or other protected enclosure which is used or may be used for the purpose of storing goods on behalf of depositors, but does not include cloak rooms attached to hotels, railway stations, the premises of other public carriers, and the like;
WDRA> “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 the custody of goods deposited by depositor and includes a place of storage of goods under controlled conditions of temperature and humidity;

2. Registration of warehouse

BWA> Registration of warehouses issuing both negotiable as well as non-negotiable warehouse receipt is compulsory.
WDRA> Registration of warehouses which are issuing only negotiable warehouse receipt is compulsory.

3. Regulating body

BWA>The Prescribed Authority is the only regulating body under this Act.
WDRA> Along with Warehousing Development & Regulatory Authority the accreditation agency is another body to regulate the warehousing business.

4. Compensation for loss

BWA> Things related to compensation for loss and claim over the warehouseman is not explicitly mentioned and clarified in the Act.
WDRA> Things related to compensation for loss and claims over the warehouseman due to unavoidable circumstances & due to negligence of warehouseman is explicitly mentioned in the Act.

5. Transferring of Warehouse Receipt

BWA> The possibility of negotiable Warehouse Receipt getting transferred to different holder is there. In such situation and in case of emergency or goods
deteriorating in warehouse, if warehouseman has to contact to the owner of goods to whom he shall contact is not explicitly given in the Act.

WDRA> If the negotiable Warehouse Receipt gets transferred to different holders and the warehouseman has to contact to the owner of goods, he has to contact to the last holder known to it, is explicitly given in the Act.

6. Auction sale

BWA> Procedure of Auction sale for the goods deteriorating in the warehouse is given, if the depositor doesn't come to take the goods. Due procedure of notice with time periods is mentioned in the Act.

WDRA> No need to follow Auction sale, but warehouseman can go for public or private sale without advertising, if holder of the goods doesn’t respond in time to the notice to take out the goods deteriorating in the warehouse.

7. Maintaining of Records

BWA> List & content form of the books & records to be kept by the warehouseman is given in the rules formed under the Act.

WDRA> Description of the records to be kept and maintaining of numerical sequence & distinctness from other business records is mentioned in the Act.

8. Number of documents to be maintained

BWA> The total number of documents directed by the Act to be kept in the warehouse as a maintenance of records are three.

WDRA> Warehouse manual of the Act directs to maintain 65 documents, out of which 18 are kept optional. The warehouseman needs to keep them after completion of the functioning year at least for three years.

9. Lien amount due to warehouseman

BWA> If lien amount due to warehouseman is not paid by the depositor /owner of goods deposited, then it is recoverable any time up to the goods taken out by the owner or his representative or at the time of delivery of goods to the owner.

WDRA> If lien due to warehouseman is not paid by the depositor then warehouseman have to give notice to the owner of the goods within two months of goods deposition, otherwise lien claim becomes void. If the depositor doesn’t give response to the notice in time, then warehouseman can go for sale of the goods with the method instructed by the authority & can recover his lien amount.
10. Insurance

BWA> Insurance on risks of fire and burglary is compulsory & for other risks it is optional, it is duty of warehouseman to insure goods kept.

WDRA> There is no clarification regarding which of the risks that need to be compulsorily covered & which are optional, regulation mention insurance policies for fire/floods/theft/burglary/riots etc. and for the goods stored. Three types of insurance is mentioned, one is for fire & allied perils, second fidelity insurance to cover loss caused by fraudulent practices undertaken by staff & third is insurance policies used for goods stored.

11. Valuation of goods kept in the warehouse

BWA> The Act doesn’t ask about or directs about the method to be used to decide the valuation of the goods in the warehouse.

WDRA> The Act asks about the methodology used to decide the value of the goods, whether either by APMC, spot/future exchange /News paper.

12. Qualification and experience necessary to run a warehouse

BWA> The Act doesn’t ask for any specific qualification to run a warehousing business as a warehouseman. It only says that the person should be competent enough. The qualification for weigher, samplers & graders is mentioned in the Act. (need of training is not mentioned)

WDRA> The Act doesn’t ask for specific qualification or experience to run a warehouse as a warehouseman but asks for availability of trained manpower.

13. Equipments to be kept in the warehouse

BWA> There is no directions regarding the equipment to be kept in the warehouse for the various operations & tasks.

WDRA> Minimum equipment requirement under different category is given to run a warehouse. The total number of equipments is 59.

14. Cancellation of permission granted to run a warehouse

BWA> Due procedure is described in the Act to revoke the license granted to warehouses.

WDRA> Due procedure is given for suspension, Cancellation or Revocation of registration given to the warehouse.

15. Electronic Warehouse Receipt

BWA> There are no directions given in the Act regarding trading through Electronic Warehouse Receipt System.
16. Dispute Resolution

BWA> An appeal against any order of the Prescribed Authority related to licensing can be done to the Registrar of Co-operative Society and state government can intervene in the matter.

WDRA> Elaborate Provisions are provided for the settlement of disputes in the Act. The Disputes are categorized as –

i) Appeals to the Appellate Authority.

ii) Disputes that would be taken to the Authority.

iii) Disputes that would be settled by the panel of arbitrators appointed by the Authority.

17. Duties of Stakeholders

BWA> Duties of warehouseman are instructed in the Act. Duties of depositors are not separately instructed, but the occasions when depositors need to act upon to reduce his loss is mentioned.

WDRA> Duties of holder of warehouse Receipt, duties of depositor, duties of warehouseman has been separately instructed and elaborate provisions are given under the Act.

18. Grading of goods

BWA> For the Activity of Grading, Sampling & Weighing licensing is necessary by the Act. No Grading Specifications have been given in the Act.

WDRA> For the tasks of grading, sampling & weighing license is mandatory & no warehouse could do it without licensed weighers, samplers & graders. Also specific grades or classes have been prescribed in respect of the relevant goods by the Authority.

19. Sale of goods stored in warehouse by warehouseman

BWA> The circumstances in which the warehouseman can sale the goods of depositors is given. It is only if the goods are deteriorating and after issuing notice, the depositor doesn’t turn to take the goods from warehouse. The procedure of Auction sale is given in the Regulation.

WDRA> The circumstances when the warehouseman can sale the goods in the warehouse includes goods deterioration, if the period for which goods have been
stored has expired & if the warehouseman lien has not been satisfied. Due procedure of notification & auction sale is mentioned in the regulation.

20. Inspection

BWA> Inspection can be done by the prescribed Authority. No directions whether a surprise inspection or by giving notice it can be done, is directed in the Act. The prescribed authority can give directions to warehouseman regarding compliance to provisions of the Act.

WDRA> Inspection can be done by the Authority. Inspection can be by giving priory notice or by surprise visit. Periodic inspection is mentioned in the regulations. Inspection of the Accreditation agency can be done by the Authority, which accredits the warehouse. The inspection reports need to be maintained at least for three (3) years by accreditation agency.

5.6 IMPLICATIONS OF OTHER LAWS AND REGULATIONS ON BUSINESS OF WAREHOUSING:

Agricultural Produce Market Committee (APMC) Acts and Warehousing

If a warehouse is located in market committee area and if warehouseman wants to carry warehousing activity in notified agricultural produce, then he has to obtain license from the respective APMC.

State governments in India have enacted APMC Acts\textsuperscript{16} to safeguard the interest of the farmer’s community and to promote agricultural trade in the state. Market committee areas have presence of warehouses for the captive use as well as for giving service to others as a business of warehousing. Under the state APMC Act, warehousing is a regulated activity.

The Warehousing (Development and Regulatory) Act (WDRA) doesn’t specify that warehouses registered with the Authority will not need license from the APMC authorities. It means that along with all other licenses and permissions APMC licensing will be necessary if warehouse has to work in its area.

Though the Bombay warehouse Act and WDRA intends to make warehouse receipts freely transferable and negotiable within the country, the state APMC acts are becoming legal hurdles in it. This is happening because the APMC law states that no body can buy or sell notified agricultural produce, unless he/she holds a license from respective APMC. Therefore a person is not entitled to participate in buying and selling of warehouse receipts pertaining to notified agricultural produce, if he is not an
APMC licensed trader. As the APMC is a localized regulator, which grants license to operate within their notified area only and as there are thousands of APMCs in the country, no person will be able to obtain license in all APMC’s where his warehouse receipt will be traded and to meet continuous compliance requirements. If a person buys a negotiable warehouse receipt and transport such goods to his destination, goods may be confiscated by APMC officials, because he will not be holding a local APMC license. Also he will not be having papers to prove that the goods are mandi tax paid items and that he is entitled to deal in agri. produce. To do away with all such kind of legal hurdles, there should be consistency between warehousing Acts and APMC Acts.

State Warehousing Act and WDRA

Not in every state of India, but in many states like Maharashtra, there are provisions for licensing of warehouses under state warehousing Acts. Since WDRA being the central governments law, does not specify that a warehouse registered with the Authority will not need any license from any other Authority, its implication is that the warehouseman needs to have license from all statutory bodies i.e. he has to take license under both the warehousing Acts.

State Sales Tax/VAT Laws and Transferability of Warehouse Receipts

Under Bombay warehouse Act 1959 and WDRA 2007 warehouse receipt are freely transferable negotiable, but the buying and selling of taxable goods needs state wise VAT license. Its implication is that negotiability of warehouses pertaining to all taxable items will be limited between persons holding VAT license in the state, in which the warehouse is located. One who is not holding license in that state will not be able to buy or sell warehouse receipt.

Negotiable Warehouse Receipt and Negotiable Instrument Act

The negotiability of warehouse receipt is in practice in the country as warehouse Act allows issuance of negotiable warehouse receipt & transferring of it. The point to note is that, the Negotiable Instrument Act of India doesn’t cover warehouse receipts. But it does not prohibit negotiability of warehouse receipts also. It means that one can trade negotiable warehouse Receipts, but in case of default or dispute in respect of such negotiation, the aggrieved party cannot take recourse under Negotiable Instruments Act.
In commodity exchanges, warehouses, both in physical and demat forms, are being transferred on maturity of a futures contract. While goods remain in custody of warehouseman, ownership of warehouse receipt go on changing. The negotiability of warehouses receipt was in practice in the country since long.

Now with the major provisions of Warehousing Development and Regulatory Authority (WDRA) about negotiability, it will be possible for effective regulation, and penalty for offences.

**Storage Control Orders, Dealer Licensing Orders, Essential Commodities Act** 19 and the Business of Warehousing

From its various related activities and schemes it is evident that government wants to promote business of warehousing. Warehousing promotes storage of goods. Storage of goods is sometimes in some situations termed as ‘hoarding’, which is considered as a social evil, so any order issued by the government against hoarding of stock directly affects the warehousing business.

Under essential commodities Act, the state government issues dealer licensing orders, which require a person to obtain license before buying or storing specific commodities. While licensing government specifies stock limits. This directly reduces demand for space to the warehouses. Such orders of the government acts as impediment in promotion of warehousing business. Under such situations trading of warehouse receipt becomes limited, as only licensed holders are able to buy and sell such warehouse Receipts.

**The new Food Security and Standardization Act 2006**

The food safely and standards Act was passed in parliament in 2006. As India became member of WTO, Regulations on food trade becomes obligatory for India so as to trade internationally. Considering this need, provisions of several Acts regulating food trade were brought together and a major comprehensive Act called food safely and standards Act came into being. It became effective from 5th August 2011 and it is at par with the international standards. It includes any order issued under the essential commodities Act, 1955 relating to food, prevention of food Adulteration Act of 1954, fruit products order of 1955, meat food products order of 1973, Vegetable oil products(control) order of 1947, Edible oils packaging(Regulation) order of 1988, solvent extracted oil, De-oiled meal and edible flour(control) order of 1957, milk and milk products order of 1992.
The Food Safety and Standards Authority of India (FSSAI) was established in 2008 under the food safety and standards Act, 2006. It is a statutory body for prescribing science based standards for articles of food regulating, manufacturing, processing, distribution, sale and import of food to ensure safe and wholesome food for human consumption.

**National Food Security Act 2011**

Under heading public distribution system, the section 21- storage of food Grains of this Act, directs central and state government for the provisions to be made regarding storage of food grains. The subsection under this section reads as

1) The central and state government shall take necessary steps to develop adequate buffer stocks.

2) Grain Banks--- The centre and the state government shall support local public distribution system models and grain banks, and assist them to be financially viable.

The purpose of this Act is ‘ An Act to ensure food security to enable assured economic and social access to adequate food and life with dignity, for all persons in the country, at all times , in pursuance of their fundamental right to live with dignity.’

**Model Act and Warehousing**

Maharashtra Agricultural produce Marketing (Development and Regulations) Act, 1963 and Maharashtra agricultural produce marketing (Development & Regulations) Rules, 1967 governs the sales and purchase of agricultural produce in the state.

To develop competitive and developed agricultural markets and there by enhancing the benefits to farmers community, to reduce the control of middleman like commission agents, the need was felt to bring new law. With this consideration, the Maharashtra Agricultural Produce Marketing (Regulation) (Amendment) Rules, 2007 and The Maharashtra Agricultural Produce Marketing (Development and Regulation) (Second Amendment) Rules, 2007 was passed by the state of Maharashtra, which is popularly known as Model Act. The major and important future of this regulation is that

1. Permission to establish private market yards.
2. Promotion of contract farming
3. Development of farmers or consumer markets
4. Establishment of Independent agricultural produce marketing standard bureau. With this bureau functions of gradation certification & quality certification will be done.

5. Development of necessary modern facilitating services like necessary godowns, sorting unit, packing unit, cold storage etc.

   It is expected that this regulation will lead to the development of existing & new warehouses in the agricultural produce market yards.

**Proposed Goods and Service Tax (GST) and Warehousing**

   Introduction of the proposed Goods and Service Tax (GST) would change the game for logistics sector in India\(^{24}\). The present Central Sales Tax (CST) is levied on interstate sale transactions. It makes manufacturer to keep separate stocks to avoid tax burden. While doing so, they have to bear warehousing and supply chain costs. The GST proposes to be a comprehensive indirect tax on manufacturer, sale and consumption of goods and services nationally. With the introduction of GST and abolition of CST, trade boundaries between different states in India will not exist. With this effect business organization can consolidate their supply chains. It can facilitate supplies without stops. With this the intermediate warehousing business will be affected.

**5.7 CONCLUDING REMARKS:**

   The Bombay warehouse act, 1959 prevails in state of Maharashtra which governs the warehousing business in the state for the commodities mentioned in the schedule of that act. Major provisions in the Act are given in 43 sections. These provisions in the Act are backed by Rules, given in Bombay warehouse Rules, 1960. Warehouses issuing both negotiable as well as non-negotiable Warehouse Receipt come under preview of this Act. There is lack of mandatory provisions for the inspections provided in the Act to check the warehousing business by the Prescribed Authority. The punishments provisions are also lenient and inadequate. There is no change in the warehouse license fees & security amount from last thirty years. The Act doesn’t provide any provision for trading of electronic warehouse receipt.

   The WDRA 2007 prevails whole of India except the state Jammu and Kashmir. It came into being for the basic purpose of regulating the warehouses issuing negotiable warehouse receipt and trade related to it. The Act contains elaborate provisions given in 55 sections of the Act. They are backed by necessary
regulations developed by Authority with the sanction of Government of India. The provision for inspections and electronic warehouse receipt trading through commodity exchanges are provided in detail in the regulations. The warehouses interested to take license have to answer two bodies one is Accreditation Agency and second is the Regulatory Authority.

Compared to Bombay warehouse Act, the Warehousing (Development and Regulation) Act 2007, is quiet comprehensive and large number of provisions with details are provided in it. Now the licensed warehouses in Maharashtra which wants to issue negotiable warehouse receipt have to obtain license under both the Acts.

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