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Tariff Authority for Major Ports

G No. 217 **New Delhi, 5 October 2012**

NOTIFICATION

In exercise of the powers conferred by Sections 48, 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), and in compliance of the direction of the Hon'ble High Court of Kerala in the Writ Petition No.12119 of 2008 filed by M/s.India Steamship and M/s.James Mackintosh & Co. Pvt. Ltd., the Tariff Authority for Major Ports hereby disposes of the proposal received from the Cochin Port Trust for approval of tug hire charges for salvage operation and the joint claim statement received from M/s. India Steamship / M/s. James Mackintosh & Co. Pvt. Ltd. in this regard, as in the Order appended hereto.

(T. S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/21/2012-COPT

Cochin Port Trust and India Steamship / James Mackintosh & Co. Pvt. Ltd.	**- - -**	**Applicants**

O R D E R
(Passed on this 28th day of September 2012)

This case relates to the proposal received from Cochin Port Trust (COPT) dated 20 March 2012 seeking approval of Tug hire charges for salvage operation, based on judgment passed by the Hon'ble High Court of Kerala on 24 February 2012 in the Writ Petition No.12119 of 2008 filed by M/s.India Steamship and M/s.James Mackintosh & Co. Pvt. Ltd.

2. The proposal of COPT dated 20 March 2012 is with reference to a dispute between the port and M/s.James Mackintosh & Co. Pvt. Ltd. (JMCPL) on levy of charges for deployment of tugs for salvage operations and the order passed by the Hon'ble High Court of Kerala thereon with directions to COPT, Petitioner and TAMP. The port has furnished a copy of the order passed by the Hon'ble High Court of Kerala on 24 February 2012 along with a copy of the letter dated 12 March 2012 received by the port from its Advocates forwarding the said judgment. The main points made by COPT in the above-referred letter are summarized below:

(i). The COPT hired two tugs of 50 Tonne Bollard Pull and positioned the tugs in Cochin on 15.09.2007 in anticipation of commencement of Single Point Mooring (SPM) operations.

(ii). SPM operations in COPT being a new service, the Board of Trustees of COPT in its meeting held on 29.06.2007, fixed ad hoc rates of ₹41,000/- per tug per hour and US$ 1708.33 per tug per hour for coastal and foreign going vessels respectively. The port filed a proposal before TAMP on 31.5.2007 for approval of the ad hoc rates. TAMP vide letter dated 11 June 2007 acknowledged receipt of the proposal of the Port for approval of the ad hoc rates.

(iii). Subsequently, the port submitted a fresh proposal for fixing tariff for SPM operations on 13.10.2008 at the request of TAMP based on the actual operations for 10 months from December 2007 to September 2008.

(iv). The Authority vide Order No.TAMP/32/2007-COPT dated 17 December 2008 has approved Tug charges per tug per hour or part thereof for hired tugs for pull back operation at SPM, retrospectively with effect from 3 December 2007 as under:-

For the period from 3 December 2007 upto 30 September 2008		**For the period after 30 September 2008**	
Foreign-going (in US $)	**Coastal (in ₹)**	**Foreign-going (in US $)**	**Coastal (in ₹)**
825.18	19586	560.25	16280

(v). On 16.11.2007, the Oil tanker vessel MT Ratna Shalini of M/s.India Steamship, Kolkata under the agency of JMCPL while moving from outer anchorage to port's COT berth grounded. COPT hired tugs Ocean Symphony and Tug Shiva were used for emergency salvage operations from 16.11.2007 to 20.11.2007.

(vi). COPT applied the rate of US$ 1708.33 to JMCPL for hiring the tugs during period from 16.11.07 to 20.11.07 as only ad-hoc rates were available at that time.

(vii). JMCPL moved the Hon'ble High Court of Kerala on 09.04.2008 against the COPT for applying rate of US$ 1708.33 per tug per hour for emergency salvage operations contending that there was no TAMP approved rates for salvage operation.

(viii). As directed by the Hon'ble High Court vide order dated 10 March 2010, JMCPL paid ₹38,22,038/- to the port as per the revised calculation based on the rates approved by TAMP (i.e. US$ 825.18 per tug per hour).

(ix). The Hon’ble High Court of Kerala has disposed of the case on 24th February 2012 directing the COPT to file appropriate statements before the Authority within one month from 8 March 2012 and the TAMP, the 5th respondent to take a decision in that matter within a further period of six months. The Judgment order of the High Court of Kerala is reproduced below:

"The petitioners (JMCP) and respondents 1 to 4 (COPT and its officials) herein will forward their claims by filing appropriate statements before the additional fifth respondent (TAMP) within a period of one month from the date of receipt of a copy of this judgment. The additional fifth respondent will consider the whole aspects of the claim based on the pleas raised by the respective parties and find out whether the item of service rendered by the Port Trust is covered by the various notifications issued by the TAMP and if not, will fix scale of rates applicable for the service rendered by the Port Trust for the salvage operations and other related activities. The same will be communicated duly to the respective parties. This shall be done within a further period of six months. The whole liability for payment of the amount by the petitioners will depend upon the said decision."

(x). In this backdrop, the COPT has requested this Authority to permit them to apply the TAMP approved rate of US$ 825.18 per tug per hour for the salvage operations carried out in respect of MT Ratna Shalini during the period from 16.11.2007 to 20.11.2007 even though the salvage operation is outside the purview of SPM operation. It has also requested to issue an Order in this regard for settling the issues with JMCPL.

3. This Authority vide its Order dated 17 December 2008 approved the rate for deployment of hired tugs by COPT for pullback operations at SPM based on the proposal filed by the COPT in this regard at that relevant point of time. The position with reference to the said Order of 17 December 2008 is summarized below:

(a). The COPT vide its letter dated 31 May 2007 filed a proposal for fixation of vessel related charges and wharfage for the operations at SPM at the COPT. The COPT filed its proposal based on the provisions of MOU entered by it with BPCL for installation and operations of SPM. The proposal of COPT, inter-alia, included fixation of hire charges for deployment of hired tugs for pull back operations at SPM. The COPT proposed a rate of ₹41,000/- and US$ 1708.33 per tug per hour for coastal and foreign going vessels respectively.

(b). As decided during the proceedings of the case, the COPT filed a revised proposal vide its letter dated 13 October 2008 based on actual performance for the period of 10 months from December 2007 to September 2008. In the revised proposal, the COPT revised the proposed rate to ₹29,200/- per tug per hour as against US$ 1708.33 for foreign and ₹41,000/- for coastal per tug per hour proposed earlier.

(c). In the revised proposal, the COPT informed that even though the SPM operation was commenced only from 3 December 2007, the two tugs hired exclusively for SPM operation were positioned on 15 September 2007.

(d). As can be seen from the cost statement attached as Annex-I to the Order dated 17 December 2008, two sets of rates for the pullback operations - one for the period from 3 December 2007 to 30 September 2008 and another for one year from 1 October 2008 were prescribed. The rate for the period from 3 December 2007 to 30 September 2008 was arrived at after recognizing the hire charges incurred by the port for the period from 15 September 2007 to 2 December 2007 the period during which the tugs were kept as standby.

4.1. As seen from the Judgment order, M/s.India Steamship and M/s.JMCPL (Petitioners 1 & 2 respectively) filed the Writ Petition on 10.4.2008 against COPT through its Board of Trustees, Chairman and its officials (Respondents 1 to 4). TAMP is shown as 5th additional respondent in the Writ Petition and reportedly represented by Advocate, Sri Abraham Thomas, Central Government Counsel. However, this Authority is not aware of such a Writ Petition filed by the petitioners until a reference dated 20 March 2012 was received from COPT forwarding a copy of the Judgment of the High Court of Kerala. This Authority has not heard anything in this regard either from the Central Government Counsel or Registry of High Court of Kerala.

4.2. At paragraph 17 of the judgment order, the Hon'ble High Court have observed that the Petitioner-1 (India Steamship) has already filed a statement before TAMP and TAMP has not filed any counter affidavit. It is a fact that M/s.India Steamship vide its letter dated 7 April 2008, just before moving the Hon'ble High Court on 9 April 2008, brought to the notice of this Authority regarding the dispute with COPT relating to recovery of charges for deployment of Tug Shiva and Ocean Symphony for salvage operations and requested this Authority to call for the relevant records from COPT and after hearing both parties, direct COPT to refund the excess recovery made by it. Though not any action was initiated by us on the letter dated 7 April 2008 of M/s.India Steamship, it is relevant here to mention that this Authority is refrained from entertaining representations made by individual parties as per the directions issued by the Ministry of Shipping (MoS) under Section 111 of the Major Port Trusts Act, 1963 vide MOS letter No.PR-14019/36/2001-PG dated 9 September 2002.

5.1. The Order of the Hon'ble High Court requires both Petitioner (JMCPL) and COPT to forward their claims within one month from the date of receipt of the judgment. Since no claim statement was received from the petitioners, we vide our letter dated 3 April 2012 requested the petitioners, M/s.India Steamship and M/s.JMCPL to file their claims statements within the time limit stipulated by the Hon'ble High Court of Kerala.

5.2. Subsequently, the JMCPL has filed a joint claim statement vide their letter dated 6 April 2012. The main points made by the JMCPL and India Steamship in their joint claim statement are summarized below:

(i). India Steamship is the owner of tanker vessel 'MT Ratna Shalini V-73', which called at Cochin Port on 13/11/2007. The JMCPL is the local steamer agent of the India Steamship in Cochin.

(ii). The vessel 'MT Ratna Shalini' V-73, came to the Cochin Port's outer anchorage on 13/11/2007 at 1618 hrs. carrying 82249 MT crude oil to be received by Bharat Petroleum Corporation Limited (Cochin Refinery). The vessel was subsequently anchored at Cochin Port's outer roads/ outer anchorage as per the instructions given by the port control. On 15/11/2007 night, the Master of the vessel received instructions from the port control to pick up the port's pilot at 0540 hrs. on 16/11/2007 for taking the vessel inside the port through the ports channel for berthing the vessel at the Cochin Ports' Oil Terminal.

(iii). Subsequently, the port's pilot boarded the vessel at 0540 hrs. on 16/11/2007 and he took control of the vessel and as instructed by the port's pilot, the vessel engine was made to move ahead and the pilot ordered engine full ahead. When the vessel was about to enter into the port channel between buoy nos.1 and 2, the vessel grounded. The port's pilot, master and crews on board tried their level best to move the vessel out to the deeper channel. All the efforts to pull the vessel out, using the port tugs in presence of port's Harbour Master, Deputy Conservator were in vain and the vessel could not be re-floated.

(iv). Finally, the claimants decided to lighten the vessel for which another tanker vessel 'MT Lady Chiara' was hired and the cargo of crude oil was transferred from the claimants' vessel MT 'Ratna Shalini' to the hired tanker MT 'Lady Chiara'. Thereafter, the vessel was cleared safely from the channel and the vessel was brought to the outer anchorage and subsequently, the vessel was again brought inside the Cochin Port by the port's pilot and remaining cargo was also discharged at the designated oil terminal of the respondents. After discharging the entire cargo, the vessel sailed out from the Cochin Port on 24/11/2007.

(v). After the rescue of the vessel, the COPT issued a demand statement to the JMCPL showing the details of tugs hire charges of various tugs used for the rescue operation of the vessel MT 'Ratna Shalini' V-73 amounting to ₹22,94,396.00. The JMCPL made arrangements for payment of that amount to its deposit account. Later, the COPT issued another demand statement showing the details of the shifting charges, pilotage and all port dues and expenses relating to the rescue operation of the vessel amounting to ₹9,49,316.00. The India Steamship issued a letter dated 17/12/2007 to the COPT appealing to waive or ameliorate the tugs and pilotage charges.

(vi). In reply to the above, the COPT issued a letter dated 21/12/2007 to the JMCPL stating that the pilotage and hourly rates of the tugs used for the rescue operation are approved by TAMP and that the same cannot be waived or reduced and also stating that the total expenses are much less than what a salvage company would have charged.

(vii). Thereafter, the JMCPL made arrangements for payment of the balance amount of ₹9,49,316/- to its deposit account. In the meanwhile, the COPT again issued another demand statement showing a balance amount of ₹95,67,992.00. The JMCPL requested the COPT to provide the details of the tug hire charges and to issue bills relating to the payment made. In reply, the COPT has stated that the JMCPL's request cannot be acceded to and demanded the remittance of ₹1,28,87,762/- as per a statement of vessel charges. It is pertinent to note that the COPT has charged exorbitant rates for the hired tugs @ US $1708.33 (₹66,915/-) per hour as per the statement whereas the COPT has earlier charged only ₹5625/- per hour for the said tugs.

(viii). India Steamship in their reply to the COPT stated that they have already made the full payments of ₹32,43,712/- calculated as per TAMP approved Scale of Rates for the services rendered by the COPT and hence at this stage the COPT is not entitled to demand any further charges or cost from the claimants.

(ix). In reply to the above, the COPT issued another demand letter to the JMCPL stating that the Port administration has taken a policy decision to apply the rates of tug hire charges approved by the Board of Trustees for SPM (single point mooring) operation if the Tug Ocean Symphony and tug Shiv are utilized for non SPM and emergency purpose. The final charges to be applied would be based on the TAMP approved rates and the excess amount collected, if any, would be reimbursed and arbitrarily demanded the claimant without supporting bills to make the balance payment of ₹94,90,443/- with penal interest within one week. (₹94,90,443/- is the negative balance shown by the Deposit Account.)

(x). The demand made is arbitrary, illegal and against the directions and Scale of Rates fixed by the TAMP. Hence, India Steamship made a representation before the TAMP highlighting the irregularity of the COPT and praying to review and reconsider the demand in the light of the existing TAMP order and Scale of Rates.

(xi). In the meanwhile, the claimants approached the Hon'ble High Court of Kerala by filing W.P (C) 12119/2008 challenging the reported arbitrary action of the COPT and praying for a writ of certiorari quashing demand notice and for an order restraining the COPT from debiting any amount from the claimant's deposit account. Vide interim Order dated 10/04/2008, the Hon'ble High Court had granted stay of recovery of amount on the condition that the claimants furnish Bank Guarantee for ₹95 lakhs. Subsequently, after furnishing the Bank Guarantee, the Hon'ble High Court vide interim order dated 11/06/2008 extended the stay until further orders.

(xii). Subsequently, the COPT notified the TAMP rates for SPM operations which came into effect from 3 December 2007. Even though, the said rates were not applicable in the present case on a bonafide mistake and in order to get back the Bank Guarantee filed before the High Court, the tug hire charges were recalculated and the claimants mistakenly paid an amount of ₹38,22,038/- to

COPT. The Bank Guarantee filed before the High Court was returned to the claimants by the High Court as directed by the interim order dated 10/03/2010 in W.P (C) 12119/2008. As the COPT demanded interest on the said amount, the Hon'ble High Court ordered that the issue of interest would be decided later.

(xiii). Subsequently, the claimants filed a Direction Petition numbered as 1A No.16082/2011 in W.P (C) 12119/2008 for a direction to the COPT to recalculate the actual tug hire charges payable as per the TAMP approved rates which prevailed during the period 16/11/2007 to 20/11/2007. The COPT filed a counter to the said Direction Petition and as directed by the Hon'ble High Court, they also produced the Scale of Rates prevailing during 2007. The said Direction Petition was heard by the Hon'ble High court and finally the W.P (C) 12119/2008 itself was disposed by the Hon'ble High Court of Kerala vide judgment dated 24/02/2012 directing the claimants and the COPT to forward their claims to the TAMP within one month from the date of receipt of a copy of the judgement and that TAMP will consider the whole aspects of the claims based on the pleas raised by the respective parties within a period of 6 months.

(xiv). The points made by claimants for consideration by the TAMP are as follows:

(a). COPT cannot charge any rates not approved by TAMP. The COPT is bound to recalculate the tug hire charges payable for the hired tugs i.e. 'Tug Ocean Symphony' and 'Tug Shiv' as per the TAMP approved Scale of Rates prevalent at the relevant time (16/11/2007 to 20/11/2007) and reimburse the excess amount which was wrongly paid by the claimants with an intention to close the matter and getting back the bank guarantee mistakenly believing the rate applicable for the said period was US$ 825.18/ hr.

(b). The main dispute in the case is the stand taken by the COPT to apply hire charges approved by the Board of Trustees for SPM operations if the 'Tug Ocean Symphony' and 'Tug Shiv' are utilised for non SPM and emergency purposes. But, it is to be noted that such charges has not been approved by the TAMP.

(c). The services of 'Tug Ocean Symphony' and 'Tug Shiv' were provided to the India Steamship's vessel 'MT Ratna Shalini' (a foreign going vessel) for the period from 16/11/2007 to 20/11/2007. As the SPM operations commenced only from 03/12/2007, the TAMP had approved the rates retrospectively only from 03/12/2007. Therefore, the tug hire charges applicable for the said period would only be the existing TAMP approved Scale of Rates for tug hire prevalent during the relevant time.

(d). In fact, the COPT had clarified that the rates already charged by them for the tugs including the hired tugs are approved by the TAMP vide its letter dated 21 December 2007.

(e). Hence, the volte face done by the COPT that the port administration has taken a policy decision to apply the rates of tug hire charges approved by the Board of Trustees for SPM operation if the Tug Ocean Symphony and Tug Shiv are utilised for non-SPM and emergency purpose is per se illegal and made with a ulterior motive to make easy money.

(f). As per Clause 2.17.1 of the tariff guidelines, whenever a specific tariff for a service/ cargo is not available in the notified Scale of Rates, the port can file a suitable proposal. But, it is to be noted that the COPT vide its letter dated 21 December 2007 had clarified that the rates already charged by them for the tugs including the hired tugs are approved rates. Hence, the COPT cannot be heard to say that what they have done was 'salvage operation' and that the TAMP had not fixed any rates for such 'salvage operation' and hence the COPT can act under Clause 2.17.2 of the guidelines for tariff fixation and can levy the proposed rate on an adhoc basis.

(g). The fact that the COPT have not submitted any proposal for fixing any specific tariff for 'Salvage Operation' would itself prove the fallacy of such an argument.

(h). The COPT cannot take a contention that the tariff which was fixed in the Notification No.TAMP/32/2007-COPT dated 30/12/2008 for SPM operation is applicable in the present case. Moreover, it is also to be noted that the validity of the rates fixed by the said notification is only from 03/12/2007.

(i). The judgement dated 24/02/2012 in W.P (C) 12119/2008 of the Hon'ble High Court of Kerala was received by the claimants on 07/03/2012 and the claim statement is filed on 6 April 2012, which is within time.

(xv). In view of the above, it has prayed that the COPT may be directed to refund the excess amount over and above the amount to the extent of ₹38,22,038/- paid by claimants on 5 March 2010 with interest.

6. The proposal of COPT dated 20 March 2012 was forwarded to JMCPL for its comments vide our letter dated 16 April 2012. The JMCPL furnished its comments vide its letter dated 25 April 2012 which was again forwarded to COPT for its further remarks vide our letter dated 1 May 2012. The COPT has also furnished its reply vide its letter dated 19 May 2012. A summary of the comments received from JMCPL on the proposal of COPT and response of COPT thereon are tabulated below:

Sl. No.	Comments of JMCPL on the proposal of COPT	Response of COPT on the comments of JMCPL
(i).	The main dispute in the case is the stand taken by the COPT to apply hire charges approved by the Board of Trustees for SPM operations if the "Tug Ocean Symphony" and "Tug Shiv" are utilised for non SPM and emergency purposes. (Ref Exhibit P8 letter dated 02/04/2008 (Pg.137/c) issued by the 4th respondent to the 2nd claimant). The service rendered by the COPT which is the subject matter of the present case has nothing to do with SPM operations.	The claim that the services rendered had nothing to do with SPM operations cannot be justified. The circumstances and the need of the hour were such that the tugs hired for SPM operation had to be deployed for the salvage operation. Hence, the statement of the petitioners is totally baseless.
(ii).	(a). The COPT after offering various services for rescuing our vessel, which was grounded on 16/11/2007 while she was being brought to the port berth under the control of the Port's Pilot, had issued [Exhibit P1 (Pg.125-126/c)] demand statement for ₹22,94,396/- showing the details of hire charges of various tugs used for the rescue operation of the vessel. The said statement provided full details of tugs and the split up details of the time taken for the rescue operations by each tug. All the details of the rescue work done were provided in the said statement.	(a). The allegation that COPT had issued a demand statement (Exhibit P1) for ₹22,94,396/- towards tug hire charges of various tugs used for rescue operation is incorrect. COPT has never issued such a demand note at any point of time. Exhibit P1 is an internal note which was not final. It is surprising how an internal note came into the custody of the petitioner.
	(b). After the claimants paid the said amount, the COPT issued [Exhibit P2] demand statement dated 05/12/2007 (Pg.127/c) for ₹9,49,316/- showing details of shifting charges, pilotage and all port dues and expenses relating to the rescue operation of the vessel. Hence, the allegation made by the COPT of their claim statement to the effect that for lifting the grounded vessel, the hired tugs were used and since only ad-hoc	(b). Regarding demand statement dated 5/12/2007 for ₹9,49,316/-, after rescue operations the vessel was subjected to several shifting and hence has been billed at the rate prescribed by TAMP, which is in order. It is also submitted that besides port's own crafts/ tugs the tugs hired by the port were also pressed into rescue operation. Rates prescribed by the TAMP were applied in the cases of

	rate was available for the hired tugs, the port had raised bills for ₹94,90,443/- is false and misleading.	crafts/ tugs owned by the port and the Board approved ad-hoc rates were applied in the case of hired tugs.
(iii).	In fact, after the receipt of demand statement [Exhibit P2], the claimant had issued letter dated 17/12/2007 [Exhibit P3] to the Cochin Port appealing to waive the tugs and pilotage charges and in response to the same, the COPT had issued letter dated 21/12/2007 [Exhibit P4] stating that the pilotage and hourly rates of the tugs used for the rescue operation are approved by TAMP and that the same cannot be waived or reduced. Thus, it can be seen that the COPT has stated on 21/12/2007 that the rates charged vide Exhibit P1 and P2 are TAMP approved rates and hence, they cannot now claim that the rates fixed by TAMP vide Notification dated 30/12/2008 for the hired tugs for pull back operations at SPM should be made applicable to the present case.	The contention of the claimant is totally baseless and rejected. Port has charged only the TAMP approved rates in the case of crafts/ tugs owned by the port and Board approved ad-hoc rates in the case of hired tugs. Later, the account of the claimant has been regularised by applying the rate i.e. USD 825.18 notified by the TAMP on 30 December 2008 for the hired tugs, for the period 03/12/2007 to 30/09/2008. Cochin Port appeals to the Authority to permit it to apply the TAMP notified rate of USD 825.18 per tug per hour for the period from 16/11/2007 to 20/11/2007 as the Authority had considered the cost of hire charges and other consumables incurred during the period 15/09/2007 to 30/09/2008 while fixing the tariff for the period 03/12/2007 to 30/09/2008.
(iv).	In para 16, page 10 of the judgement dated 24/02/2012 in W.P (C) 12119/2008, the Hon'ble High Court of Kerala has observed thus *"That the vessel was grounded is an admitted fact in the writ petition. Various operations had to be done for salvaging it. Whether the rates charged are covered by the notification issued by the TAMP, is a disputed question now."* Further in para 18, page 11 of the said judgement, the Hon'ble High Court had directed TAMP to find out whether the item of service rendered by the Port Trust is covered by various notifications issued by the TAMP. Thus, the issue to be decided by TAMP is whether the rates already charged by the COPT vide [Exhibit P1 and P2] demand statement and the present demand of the COPT to apply USD 825.18 per tug per hour for the hired tugs are covered by TAMP notifications.	It is true that no TAMP approved rates were available in the Scale of Rates for the rescue operation as observed by the Honourable High Court. In the absence of specific rates for the rescue operation permission of the Authority is requested to apply the rate of USD 825.18 per tug per hour or part thereof in the case of hired tugs which took part in the rescue operation.
(v).	The Authority had fixed the tug hire charges for SPM operations at Cochin Port Trust vide Notification No.TAMP/32/2007-COPT dated 30/12/2008. As the SPM operations commenced only from 03/12/2007, the Authority had approved the rates retrospectively only from 03/12/2007. The rescue operations were done by the COPT during the period 16/11/2007 to 20/11/2007 and it was not related to any SPM operations. Therefore, the tug hire charges applicable to the claimants for the said period would only be the existing TAMP approved Scale of Rates for Tug Hire prevalent during the relevant time and not the rates prescribed in Notification No.TAMP/32/ 2007-COPT dated 30/12/2008. The existing Scale of Rates prevalent during the relevant time is the Exhibit P11 Scale of Rates.	The prayer of the claimant is not worth considering. The rates available in the Scale of Rates during the rescue operation are related to the Tugs/ Crafts/ Floatilla, etc. owned by the port. Those rates cannot be extended to the tugs hired by the port under any circumstances.

(vi).	As per Clause 2.17.1 of Notification G.No.39 dated 31/03/2005 (Tariff policy guidelines of March 2005) of TAMP, it is stated that wherever a specific tariff for a service/ cargo is not available in the notified Scale of Rates, the port can submit a suitable proposal. As per Clause 2.17.2 of the same, it is stated that alongwith the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified. The proposal which was filed by the COPT which resulted in Notification No.TAMP/32/2007-COPT dated 30/12/2008 was for fixation of vessel related charges and wharfage for the operation at the Single Point Mooring at the Cochin Port. Hence, the Cochin Port Trust cannot demand that the said notification is applicable in the present case.	SPM operation is a new activity introduced in the port service with effect from 03/12/2007. As there was no specific rate for SPM operations port fixed ad-hoc rates in observation of the conditions laid down under clause 2.17.1 to 2.17.2 of TAMP's guidelines. As port is spending huge amount on the hired tugs daily, the prayer of the port to permit it to apply USD 825.18 per tug per hour may be admitted.
(vii).	Thus, it can be seen that the Exhibit P11 TAMP approved Scale of Rates is applicable in the subject case and not the Scale of Rates notified by Notification No.TAMP/32/2007-COPT dated 30/12/08 as claimed by COPT. It is also worth mentioning that the COPT had not submitted any proposal for fixing any specific tariff for 'Salvage Operation'.	Port is always optimistic in rendering services to its customers and adopts a positive way of thinking. Salvage operation is not a regular activity of the port. Hence, it has not submitted any proposal for fixing any tariff for salvage operations.
(viii).	Hence, on the basis of the above, it is submitted that the Scale of Rates which should be applied in the present case is the Exhibit P11 TAMP approved Scale of Rates. The demand of the Cochin Port Trust to apply the Scale of Rates notified by TAMP vide Notification No.TAMP/32/ 2007-COPT dated 30/12/2008 has no basis and the said demand has only to be discarded.	The contention of the claimant is baseless and totally rejected. As mentioned above, the rates available in the Scale of Rates (Exhibit P11) is exclusively for crafts/ tugs/ floatilla etc. which are owned by port. Those rates cannot be applied to the tugs hired by the port on payment of huge hire charges daily. TAMP has fixed the rates for hired tugs based on the details of cost of fuel/ hire charges furnished by the port.
(ix).	On account of the present stalemate, the COPT is illegally withholding an amount of ₹3 lakhs from our Deposit Account on the ground that the same will be released only after a final decision is taken in the case.	The claimant has deliberately withheld payment of legitimate port charges. Port has every right to collect interest for the delayed payment at the rate approved by the TAMP. Releasing of ₹3 lakhs is dependent to the decision of the Authority. The Authority would appreciate the fact that the rates available in the Scale of Rates prevailed during the period of rescue operations cannot be made applicable to the tugs hired by the port, which have been stationed at the port with effect from 15/09/2007 exclusively for SPM operations. Proposal of the port for approval of the TAMP to the Board approved rates had been sent in June 2007. The rate finally notified by the TAMP is also on the basis of the cost sheet presented in support of the proposal.
(x).	Considering the above facts and claim statement dated 06/04/2012, it is prayed that orders may be passed allowing our claim statement and the excess charges collected by the Cochin Port Trust may be directed to be returned back to us. A further direction for releasing the amount of ₹3 lakhs which is currently illegally withheld by the Cochin Port from our Deposit Account may also be passed.	

		Rescue operation is not similar to the SPM operation. The Authority would agree that rescue operation is more risky, fuel and energy consuming and strenuous. The hired tugs specially designed to cater to the need of SPM operation only had to be pressed into rescue operation to pull the grounded vessel away from the live channel at any cost to avoid the vessel sliding into the channel and blocking the vessel traffic. TAMP may kindly accord permission to apply the TAMP notified rates of USD 825.18 per tug per hour or part thereof for the period from 16/11/2007 to 20/11/2007.

7. The submissions of JMCPL vide its letter dated 6 April 2012 was forwarded to COPT for its comments vide our letter dated 16 April 2012. The COPT vide its letter dated 27 April 2012 furnished its comments which was again forwarded to JMCPL for its further remarks vide our letter dated 1 May 2012. The JMCPL has also furnished its reply vide its letter dated 11 May 2012. A summary of the comments received from COPT on the submissions of JMCPL and the response of JMCPL thereon are tabulated below:

Sl. No	Comments of COPT on the submissions of JMCPL	Response of JMCPL on the comments of COPT
(i).	The petitioners' contention that the TAMP approved rate of USD 825.18 per hour for the salvage operation of M.T. Ratna Shalini has to be recalculated cannot be entertained as the Tugs Ocean Symphony and Tug Shiv deployed for the operation were not Port Tugs but tugs hired for operation at SPM. COPT has been accused of utilizing the tugs for non SPM purpose with ulterior motive to make easy money, which is defamatory. The tugs owned by COPT alone would not have been sufficient to pull back the Vessel. Considering the emergency Port deployed the resource at hand. In fact salvage operations involved more effort and cost.	COPT has no justification for charging USD 825.18 because, vide Exhibit P1 and P2 demand statements, the port had demanded ₹22,94,396.00 and ₹9,49,316.00 respectively for the rescue operations showing the split up details of each and every item of service rendered by them. In fact, after the receipt of Exhibit P2 demand statement, JMCPL had issued Exhibit P3 letter dated 17.12.2007 to the COPT appealing to waive the tugs and pilotage charges and in response to the same, the COPT had issued Exhibit P4 letter dated 21.12.2007 stating that the pilotage and hourly rates of the tugs used for the rescue operation are approved by TAMP and that the same cannot be waived or reduced. Thus, it can be seen that the COPT has stated on 21.12.2007 that the rates charged vide Exhibit P1 and P2 are TAMP approved rates and hence, they cannot now claim that USD 825.18 per hour per tug should be charged for 'Tug Ocean Symphony' and 'Tug Shiv'.
(ii).	Petitioners' contention that Port charges should be applied since TAMP rates were not applicable for the period 16.11.2007 to 20.11.2007 cannot be agreed to as pull back tugs hired for SPM operations were used for the operation. The petitioners state that TAMP has not approved any tariff for 'salvage operation' and the Port has not submitted any proposal for fixing any specific tariff for salvage operations. Salvage operations are not everyday occurrence and each such	The JMCPL has never said that TAMP rates were not applicable for the period 16.11.2007 to 20.11.2007, in fact what JMCPL submitted was that there was an existing TAMP approved Scale of Rates for the period 16.11.2007 to 20.11.2007 which is Exhibit P11 Scale of Rates and the same is applicable in the present case. With reference to the point of COPT that non-deployment of these two tugs would

	operation would differ. In this particular case, resources available at COPT were insufficient for salvage operations. So Port deployed the higher capacity tugs hired for SPM operations to meet the emergency situation. Not to do so would have resulted in even heavier loss for the petitioner.	have resulted in heavier loss to the petitioners, the JMCPL has stated that the vessel grounded when she was under the control of the Port's pilot and hence, the Port had the responsibility to salvage the same.
(iii).	The petitioners' contention that the TAMP notification No.TAMP/32/2007-COPT dated 20.12.2008 cannot be applied to this case as the rate is effective only from 03.12.2007, cannot be entertained, as SPM is a new service introduced at COPT and there were no existing scale of rates for operation at SPM at the time of salvage operations. The Petitioner had earlier contented that the said rate alone can be applied.	It is true that JMCPL had contended that the rates notified in TAMP/32/2007-COPT dated 30.12.2008 is applicable (before the Hon'ble High Court of Kerala). But it was only due a bonafide mistake and in order to get back the Bank Guarantee filed before the High Court, that JMCPL contended so and the Tug hire charges were re-calculated as per the said Notification which was published by the COPT vide Exhibit P10 and JMCPL mistakenly paid an amount of ₹38,22,038/- to COPT on 05.03.2010 over and above the amount shown in Exhibit P1 and P2. JMCPL paid the said amount believing the rate applicable for the said period was USD 825.18/hr and for getting back the Bank Guarantee filed before the High Court. The Bank guarantee filed before the High Court was subsequently returned to JMCPL by the High Court as directed by the interim order dated 10.03.2010 in W.P.(C) 12119/2008. It is submitted that even though, JMCPL had mistakenly paid ₹38,22,038/-, the COPT being a statutory authority cannot charge for any service not approved by TAMP and gain undue enrichment.
(iv).	These tugs were hired by the Port from 15.09.2007 and TAMP has considered the cost of hiring during the period from 15.09.2007 to 30.09.2008 while fixing the tariff for the period from 03.12.2007 to 30.09.2008 as may be seen from Para 11 (vii) (e) of the TAMP order dated 17.12.2008.	The COPT cannot charge any rates which is not approved by this Hon'ble Authority and hence they are bound to re-calculate the tug hire charges payable for the hired tugs i.e. 'Tug Ocean Symphony' and 'Tug Shiv' as per TAMP approved Scale of Rates prevalent at the relevant time (16/11/2007 to 20/11/2007) and reimburse the excess amount which was wrongly paid by JMCPL on 5.03.2010. The COPT is also bound to release the amount of ₹3 Lakhs which is currently illegally withheld by COPT from JMCPL deposit Account even after disposal of the Writ Petition.

8.1. The floating craft charges prescribed at Section 5.1 under Chapter-V (Miscellaneous charges) in the then existing Scale of Rates vide Order No.TAMP/63/2005-COPT dated 25 January 2007 covering the period of salvage operations from 16.11.2007 to 20.11.2007 are as follows:

(in ₹)

Sl. No.	**Category**	**Unit**	**Rate in ₹**
1.	Floating Crane		
	F.C. Periyar and Oil Skimmer M.V. Venad		
	Fixed booking charges	Per shift or part thereof	5000.00
	Lifting charges	Per ton	210.00

2.	Dredger – Nehru Shatabdi	Rate per hour or part thereof	25000.00
3.	Mooring tug	Rate per tug per hour or part thereof	13300.00
4.	Pilot & other launch	Rate per launch per hour or part thereof	350.00
5.	Fire float	Rate per equipment per hour or part thereof	560.00
6.	L & T Poclain & Barge Vijaya		
	Fixed Charges	Per load per 8 hrs shift or part thereof	12000.00
	"	Per additional hour or part thereof	1500.00
	Loads above one load	Per load	1000.00

8.2. The tug charges for pull back operation at SPM prescribed at Section 2.5 A (iv) vide Order No.TAMP/32/2007-COPT dated 17 December 2008 prescribing vessel related charges and wharfage for SPM operations at the COPT are as given below:

(**Rate per tug per hour or part thereof**)

For the period from 3 December 2007 upto 30 September 2008		**For the period after 30 September 2008**	
Foreign-going (in US $)	**Coastal (in Rs.)**	**Foreign-going (in US $)**	**Coastal (in Rs.)**
825.18	19586	560.25	16280

9.1. A joint hearing in this case was held on 18 June 2012 at the office of the Authority. At the joint hearing, the COPT and M/s.James Mackintosh & Co. Private Limited have made the following submissions:

<u>Cochin Port Trust</u>

(i). We don't have any objection to the other party being represented by their legal counsel.

(ii). We were having 3 nos. of 10 Tonne Bollard Pull tugs. SPM requires 50 Tonne Bollard Pull tug. Therefore, we hired two tugs for SPM.

(iii). We positioned the hired tugs in September 2007 as per the MoU entered with Cochin Refinery and paid ₹1,35,000/- towards hire charges.

(iv). Ratna Shalini was advised to go to COT. She did not anchor at the place indicated. The Master of the vessel made a mistake. Even before the COPT Pilot boarded, the vessel drifted.

(v). Since the vessel would block the shipping channel, we had to deploy all the tugs at our disposal for rescue operation.

(vi). The fact the tugs hired for SPM operations were also deployed for rescue operation cannot be disputed. Whatever is the rate for tugs at SPM should apply for the same tugs engaged for rescue operations.

(vii). Salvage operation is not routine operation. Pulling a grounded vessel is much more difficult than SPM operation.

(viii). Please allow the earlier approved rates to apply even for November 2007 operations.

<u>James Mackintosh & Co. Private Limited</u>

(i). A statement showing chronology of event is submitted.

(ii). Grounding was not due to the fault of the ship. Ship was brought by Port's Pilot. Therefore, we requested port not to charge or levy only a nominal amount. Port, however, maintained that their bill was based on TAMP approved rates. They refused to review their earlier billing. Also, they demanded a new higher amount.

(iii). We are not concerned with the COPT decision to own or hire tugs. They can't charge beyond their notified Scale of Rates.

(iv). The service was provided to us in November 2007. The Board decided an adhoc rate for 50 Tonne Bollard Pull tugs at SPM only in April 2008. TAMP passed orders in December 2008.

(v). Prior to 3 December 2007, the COPT SOR did not have the rates of tugs, charged by COPT on us. The SOR prescribed only mooring tug charges of ₹13300/- per hour.

(vi). On 16 November 2007, the SOR prescribed a rate of ₹13300/- per hour which shall only apply to us. The retrospective rate revision approved by TAMP was from 3 December 2007, which will not apply to our case.

(vii). We challenge the demand of COPT for ₹1,28,87,762/-.

9.2. The Legal Counsels of M/s.James Mackintosh & Co. Private Limited and India Steamship have submitted a statement at the joint hearing showing the chronology of events and a copy of their Claim Statement submitted earlier by them. The chronology of events furnished by the claimants at the joint hearing is reproduced in the table below:

Date		Details of event
13.11.2007	-	Tanker Vessel 'MT RATNA SHALINI' anchored at the Cochin Port's outer anchorage.
15.11.2007	-	Vessel brought into the port through ships channel by the Port's Pilot and vessel grounded. After few days using other lightening vessel (chartered by the petitioner) part cargo was shifted to another vessel and lightened vessel was pulled out using Tugs.
24.11.2007	-	After discharge of cargo the vessel sailed from Cochin Port.
Dec. 2007	-	**P-1** - Cochin Port demanded Tug charges ₹22,94,396 – Paid by petitioner.
05.12.2007	-	**P-2** - Cochin Port/CPT demanded additional Tug charges ₹9,49,316/- - Paid on 15.1.2008.
17.12.2007	-	**P-3** - Petitioners demanded Port to waive excess Tug Hire charges.
21.12.2007	-	**P-4** - CPT replied the rate are approved by TAMP and cannot be waived or reduced.
15.1.2008	-	**P-5** - Petitioners requested CPT to provide split up of P1 and P2 invoices/bills.
23.1.2008	-	**P-6** - To the petitioners surprise CPT demanded for ₹1,28,87,762/-
13.2.2008	-	**P-7** - Petitioner issued reply to P6 demand of Port as arbitrary and against TAMP.
02.04.2008	-	**P-8** – CPY issued letter and adjusted the payments made against P1 & P2 invoices and demanded balance ₹94,90,443/- and agreed to reimburse after TAMP approval.
Writ Petition filed and demand stayed – B/G for ₹95 Lakhs given.		
07.04.2008	-	**P-9** – Petitioners made appeal to TAMP to revised P6 & P8 demand as arbitrary.
08.01.2009	-	**P-10** – In the meanwhile TAMP revised the rates in P6 & P8 and refixed Tug hire charges rates to US$ 825 per hour instead of US$ 1708/- per hour.
08.07.2009	-	Cochin Port filed a statement in the counter demanding ₹38,93,164/- as per P-10 TAMP's revised order.
06.08.2009	-	Petitioner filed a statement as per P-10 revised order calculating the balance amount due is only ₹38,22,038/-. Thus there was difference of ₹71,126/- (₹38,93,164/- - ₹38,22,038/- = ₹71,126/-)
02.03.2010	-	Port later admitted in their letter that balance amount due is only ₹38,22,038/-
05.03.2010	-	Petitioner also produced **P11, P12 & P13** challans to show the actual outstanding.
05.03.2010	-	**P-14** – Petitioner paid the balance amount ₹38,22,038/-

05.03.2010	-	**P-15** – Petitioner demanded Cochin Port to return the bank guarantee for ₹95 Lakhs dated 19.04.2008.
10.03.2008	-	**R-1** – Port filed a counter along with scale of rates claiming interest for delayed payment.
10.03.2010	-	Hon'ble Court passed an Order directing Cochin Port to return the Bank Guarantee and the issue of interest will be decided in the writ petition later during final hearing. Apart from the Bank guarantee for ₹95 Lakhs given by the petitioner, Cochin Port Trust has additionally arbitrarily retained an amount of ₹3 Lakhs from the petitioner's deposit account as security for interest if awarded by the Court. Thereafter the matter came up before Justice P.N. Ravidran for hearing on various dates and matter was heard on several dates. During hearing since the Court felt that the revised rates was not given effect before 03.12.2007, the Hon'ble Court directed Cochin Port Trust to produce the actual TAMP approved scale of rates prevailed during the period 16.11.2007 to 20.11.2007, because as per the revised order of TAMP (Exhibit – P10 & P16) the revised Tug hire charges came into effect only from 03.12.2007.
10.10.2011	-	Petitioner filed IA 16082/2011 for a direction to recalculate the rates as per actual TAMP approved rate – prevailing during the period 16.11.2007 to 20.11.2007 and reimburse the excess amount of ₹38,22,038/- demanded by CPT and subsequently inadvertently paid by the petitioner.
29.10.2011	-	CPT filed counter and produced Exhibit R1(b) showing the scale of rate prevailing during the period 16.11.2007 to 20.11.2007. As per Ext R1(b) page 41 The mooring Tug hire charges was ₹13,300 per hour whereas the petitioner were forced to pay US$ 825.18 (₹32,322.30 per hour). Refer reply affidavit dated 01.08.2009 filed by the petitioner.
		The petitioner is entitled to get refund of the excess amount of ₹38,22,038/- demanded by CPT and subsequently inadvertently paid by the petitioner.

10.1. At the joint hearing, the COPT was requested to furnish documentary evidence to substantiate the payment made by the port towards hire charges for the two tugs of 50 Tonne Bollard Pull for the period from the positioning of the said tugs prior to December 2007 to this Authority as well as to M/s.James Mackintosh & Co. Pvt. Ltd. / M/s.India Steamship. The COPT was also requested to give its final response to us with documentation and a copy to M/s.James Mackintosh & Co. Private Limited / M/s.India Steamship. M/s.James Mackintosh & Co. Private Limited / M/s.India Steamship was requested to furnish its comments on the final response of COPT to us with a copy to COPT. If there are gaps in the information furnished by COPT and JMCPL, additional information/ clarifications, in writing, will be sought from the concerned parties. It was decided that both the parties should complete the exchange of correspondence within 10 days.

10.2. The decisions taken at the joint hearing were communicated to COPT and JMCPL/ India Steamship vide our letter dated 20 June 2012 with a request to ensure that the exchange of correspondence is completed by both of them by 29 June 2012, as agreed at the joint hearing.

10.3. The COPT furnished its response vide its letter dated 26 June 2012. The COPT has furnished following documents in support of the payment made by it towards hire charges for the two tugs of 50 Ton Bollard Pull for the period from 15 September 2007 to 31 December 2007:

- (i). Letters of Acceptance of Tender for hiring tugs
- (ii). Copy of Charter Party Agreement
- (iii). Copy of Taking Over Certificate of the tugs
- (iv). Copy of the Invoices for the period from 15.9.2007 to 31.12.2007
- (v). Initial proposal submitted by Port dated 31 May 2007
- (vi). Board Resolution no. 51 & 54 dated 29.6.2007
- (vii). Letters from M/s.BPCL-KR dated 25.05.2007 & 2.06.2007 about commissioning period of SBM.

(viii). Copy of the Petitioner's affidavit dated 1 August 2009 before Hon'ble High Court of Kerala praying for direction to COPT for recalculation of tug hire charges as per TAMP approved rates.

10.4. The COPT also furnished a description of chronology of events and facts relating to the incident. As decided at the joint hearing, the COPT also endorsed a copy of its letter dated 26 June 2012 to the claimants, M/s.JMCPL and India Steamship. The JMCPL also vide its letter dated 2 July 2012 furnished its comments on the final response of COPT with copy endorsed to COPT. We have not received any further comments from COPT on the response of JMCPL. The submissions of COPT and the comments of JMCPL are summarized below:

Sl. No	Points made by COPT	Comments of JMCPL
(i).	M.T. Ratnashalini carrying 82249 MT Crude oil, under the ownership of M/s.India Steamship, Kolkata and steamer agency of M/s.James Mackintosh & Co. Pvt. Ltd., Cochin-3 grounded at the outer channel on 16/11/2007 while entering the Port. The Master of this 12.5 metre draft vessel erred in taking the vessel into the Port channels without waiting for boarding of the Port's pilot and his guidance for manoeuvring the vessel. Vessel was asked to wait 0.5 Nautical Mile West of Fare Way Buoy for the Pilots but the Master took the vessel to East of Fair Way Buoy by the time the Pilot boarded, leaving very little time for the Pilot to take control of the vessel.	JMCPL denies the allegations of blaming the Master of M.T. Ratnashalini for allegedly entering the port channel without waiting for the Port's Pilot. In fact, it is for the first time that the COPT is raising such an allegation. Even in the Writ Petition No. 12119/2008 of Hon'ble High Court of Kerala, the COPT had not raised such allegation. Their main contention before the Hon'ble High Court was that the role of the Pilot is only of an advisor and that the Master vessel retains the command of the vessel. Hence, it can be seen that the present allegation is new. Para 6 of the Counter Affidavit dated 18 July 2009 filed by COPT in W.P.No. 12119/2008 shows the falsity of the present allegation. (The JMCPL has furnished a copy of the counter affidavit dated 18 July 2009 filed by COPT.)
(ii).	Apprehensive of the vessel slipping into the active channel in the strong undercurrent and possible traffic blockage, Port immediately deployed its resources including the tugs hired for SPM operation to prevent the slippage, and for rescue operation of the grounded vessel. After lightering the vessel, the vessel could be freed from the grounded point through the help of Port's own and hired tugs.	---
(iii).	The vessel could be re-floated and towed into COT berth after 5 days of arduous struggle. Availability of the hired tugs with 50 ton bollard pull helped to complete this activity within this duration. Had there only the Port Tugs, with bollard pull 30 tons, the operation may not have been succeeded / more time could have been taken for re-floating the vessel.	It is submitted that when the efforts of the Port to re-float MT Ratnashalini failed, we chartered and brought in another tanker vessel 'MT Lady Chiara and the cargo of crude oil was transferred from MT Ratnashalini to MT Lady Chiara and thus lightened MT Ratnashalini and thereafter, MT Ratnashalini was re-floated.
(iv).	Port deployed other crafts like M V Venad, the buoy tender to relay the No.1 buoy in a position inside the channel because of grounding of the vessel just at the edge of the channel. The Port had not raised any bill in respect of this work necessitated by the negligence of the vessel.	---
(v).	The hire charges of tugs and crafts owned by the Port, berth hire charges, Pilotage, Port Dues etc., were collected at the rate	It is submitted that after the rescue operation, the COPT raised Exhibit P1 Demand statement for ₹22,94,396/- and

	notified by the TAMP and available in the Scale of Rates in force during the material time. The steamer agent had remitted the charges without demur.	Exhibit P2 demand statement for ₹9,49,316/- and we had remitted the same without any dispute since the same was in accordance with the TAMP rate prevailing at that time.
(vi).	Port hired two tugs of 50 ton Bollard pull to cater to the requirement of pull back operation at SPM and stationed the tugs at Cochin effective from 15/09/2007 in anticipation of commencement of SPM operation on payment of hire charge of ₹1.35 lakhs per day per tug and incurring expenditure on fuel and other consumables. The fact was intimated to TAMP with documentary evidence and it is mentioned under Para 5 of the Notification dated 30/12/2008.	It is submitted that the Cochin Port had hired the 2 tugs of 50 Tons Bollard Pull exclusively for handling vessels at SBM as per the requirement of the MOU between Cochin Port and Bharath Petroleum Corporation (BPCL-KRL) (See letter dated 31 May 2007 issued by the FA & CAO of Cochin Port to the Director, TAMP which is attached to the above 1st cited letter). In fact the Cochin Port submitted their proposal for vessel related charges for SBM operations considering various factors like berthing / unberthing of vessels and handling of vessels at SBM and the risks involved in the same. Hence, they can collect such TAMP approved charges only for SBM operations and not for any other operations. Moreover, as can be clearly seen from Resolution No.51 (Agenda Item No.BI) of the Board of Trustees of Cochin Port (which is attached to the above 1st cited letter), the delay in commissioning of the SBM is attributable to BPCL-KRL and the Chairman of BPCL-KRL had acceded to the proposal of Cochin Port for meeting the additional financial burden incurred due to the said delay (para 56 of the Reso No.51) and the Board of Trustees of Cochin Port had resolved to realise the hire charges of the tugs for the interim period until the commissioning of the SBM from BPCL-KRL (para 57 of the Resolution No.51). Thus, it can be seen the Cochin Port must have already collected the hire charges of the Tugs for the period from 15/09/2007 till 03/12/2007 (the date of commissioning of the SBM) from BPCL-KRL. The attempt of the Cochin Port in realising the said charges again from the claimants can only be termed unjust enrichment, which is illegal. The JMCPL furnished a copy of the Resolution No.51.
(vii).	The Port fixed charges in respect of hired tugs on ad-hoc basis in compliance with clause 2.17.1 to 2.17.4 of TAMP Guidelines dated 28/03/2005 and requested the TAMP for approval of the rates vide letter no.CAD/Costing/Tug-SBM/2007 dated 31/05/2007. The Authority after due deliberation and final hearing has notified the rates of hire charges on hired tugs on 30 December 2008 giving effect to the rates from 3 December 2007, the day on which the first SPM operation took place in Cochin. The	It is submitted that the ad-hoc rates fixed by the Port and submitted to TAMP vide letter No.CAD/Costing/Tug-SBM/2007 dated 31/05/2007 in compliance of Clause 2.17.1 to 1.17.4 of TAMP Guidelines were for "Vessel Related Charges for SBM Operations" and not for any other operations. Thus, COPT could collect the ad-hoc rates only for the operations carried out/in connections with SBM operations only, which is 20 Nautical Miles from the port. In fact as per Clause 2.17.1 to 2.17.4 of the TAMP notification for tariff

	Board approved this adhoc rate vide Resolution No.54 dated 29.6.2007.	fixation, the port can submit a proposal whenever a tariff is not available in the notified scale of rates and such proposed rate can be levied on an ad-hoc basis and the said rate should be derived based on existing notified tariffs for comparable services and must be mutually agreed upon by the port and the user. It is respectfully submitted that none of the eventualities mentioned in the said clauses applies to the facts and circumstances of the case. In fact, Resolution No.54 (Agenda Item-D2) of the Board of Trustees of Cochin Port (which is attached to the above 1st cited letter) deals only with proposal for 'vessel related charges for SBM operations' in accordance with the MOU executed between Cochin Port and BPCL-KRL. Moreover, Agenda Item-D2 dated 29th June 2007 of Cochin Port (which is attached to the above 1st cited letter) would show that the proposed rate was mutually agreed by the Port and M/s BPCL-KR in the MOU. This would go to show that the proposal submitted by Cochin Port before the TAMP was for vessel related charges for SBM Operations (which facility is being provided to M/s BPCL-KR only) and that the proposed rate was mutually agreed by Cochin Port and M/s BPCL-KR. The Cochin Port cannot take the contention that the said rates should be extended to other operations also.
(viii).	No TAMP notified rates were available for hired tugs during the rescue operation period i.e. 16 to 20 November 2007. Port, therefore, collected the hire charges of hired tugs at the Board approved ad-hoc rate of USD 1708.33 per hour per tug vide bill No.F/72121/11082 dt.26/03/2008 among other charges. M/s.James Mackintosh & Co. Pvt. Ltd. vide letter dated 02/04/2008 was also informed that the account in the case of hired tugs would be regulated at the TAMP notified rates and excess, if any, would be refunded. It may please be noted that the service extended by the Port to the vessel was not an ordinary operation. The vessel was in distress and the Port deployed all its resources to perform the rescue operation which normally would have been carried out by foreign professional companies in the field. The vessel would have paid huge remuneration for such operation if professional salvage companies were engaged. It is also not out of place to mention here that the vessel owner could have availed P & I Club cover in this case since the grounding of the vessel was a known event. Even the full charges levied by the Port could have been reimbursed by P & I Club.	
(ix).	Aggrieved at the decision of the Port, the Owner and Agent of the vessel moved the Hon'ble High Court of Kerala (WP No.12119 of 2008) for order for reversal of the decision to apply the Board approved ad-hoc rate, with prayer for direction to Port to collect the hire charge of hired tugs at the rates available in the Scale of rate in force. After hearing both the sides, the Hon'ble Court vide its order dated 10 April 2008 directed the petitioners to furnish Bank Guarantee to the extent of ₹95 lakhs, which the petitioners duly complied with. Rebutting the arguments, Port contented that rates available in Scale of Rate could not be extended to the hired tugs as the rates notified by the TAMP were exclusively for the Port owned tugs / crafts and the case of hired tugs should be seen through different perspective.	The JMCPL has not furnished any comments.

(x).	When TAMP notified the rates vide order dated 30/12/2008, Port re-calculated the hire charge of hired tugs at the rate notified by the TAMP to ₹47,19,056/- and after adjustment of the amount remitted by the petitioners balance due of ₹38,22,038/- had been remitted on 05/03/2010 and on receipt of the said amount, the Petitioners in their affidavit dated 1 August 2009 also submitted before the Honourable High Court that they were ready and willing to pay the amount if the hire charges was re-calculated at the TAMP notified rates for hired tugs "Ocean Symphony" and "Tag Shiv". Port released the above Bank Guarantee in compliance with the Court Order dated 10/03/2010 as prayed for by the Petitioners in their affidavit dated 01/08/2009.	It is re-iterated (as stated in our letter dated 11 May 2012 submitted before TAMP) that the TAMP Notification No.TAMP/32/2007-COPT dated 30/12/2008 has no applicability in the present case. It is also true that we had in our affidavit dated 1 August 2009 in W.P 12119/2008 submitted that we were ready and willing to pay the amount if the hire charges was re-calculated at the TAMP notified rates. But, as stated in our letter dated 11 May 2012, it was due a bonafide mistake and in order to get back the Bank Guarantee filed before the High Court, that we stated so. We paid the said amount believing the rate applicable for the said period was US$ 825.18/hr and for getting back the Bank Guarantee filed before the High Court. The Bank Guarantee filed before the High Court was subsequently returned to us by the High Court as directed by the interim order dated 10/03/2010 in W.P (C) 12119/2008. It is submitted that even though, we had mistakenly paid ₹38,22,038/- in excess, the Cochin Port being a statutory authority cannot charge for any service not approved by TAMP and gain unjust enrichment.
(xi).	The Hon'ble High Court in its final order dated 24/02/2012 observed that no TAMP approved rate specific for the hired tugs was in existence during the period of rescue operation i.e. from 16 to 20 November 2007, that the TAMP notified rates had come into effect only from 3 December 2007 and directed the TAMP to take a decision in the matter after hearing both the petitioners and respondents within a period of 6 months.	The JMCPL has not furnished any comments.
(xii).	In compliance with the Court Order, Port submitted its claim before the TAMP emphasising the prayer for permission to apply the TAMP notified rates of USD 825.18 during the period of rescue operation i.e. 16 to 20 November 2007 while the petitioner prayed for direction to Port to apply the rates available in the Scale of Rate in force during the rescue operation. It is submitted that since TAMP has already notified a rate of US $ 825.18 per tug per hour for the hire of tugs "Ocean Symphony" and "Tag Shiv" though from 3 December 2007, extension of the same rate for a period which is less than 3 weeks prior to 3 December 2007 is only reasonable.	It is submitted that the Claim filed by Cochin Port before TAMP for permission to apply USD 825.18 during the period of the rescue operation i.e. 16th to 20th November 2007 cannot be granted because as already stated the said rate was approved by TAMP as part of the vessel related charges for SBM Operations and most importantly as stated in para 5 above, the Board of Trustees of Cochin Port had resolved to realise the hire charges of the tugs for the interim period until the commissioning of the SBM from BPCL-KRL and must have already collected the hire charges of the Tugs for the period from 15/09/2007 till 03/12/2007 (the date of commissioning of the SBM) from BPCL-KRL and hence they cannot be allowed to make unjust enrichment by seeking to collect such charges from us.

		As regards the copies of invoices and letters of Ocean Sparkle Limited and TAG Sealogistics Limited produced by Cochin Port along with the above 1st cited letter, it is submitted that the same cannot be relied upon because it does not show that the amount has actually gone from the account of Cochin Port to their respective accounts. No bank statement is produced to prove such debiting. At any rate, the Board of Trustees of Cochin Port had resolved to realise the hire charges of the tugs for the interim period until the commissioning of the SBM from BPCL-KRL and they must have collected such charges from BPCL-KRL. Even otherwise, the said invoices and letters have no relevance to the present case because; the tug hire charges for SBM operations cannot be applied to other operations/ services. In fact, after we paid ₹22,94,396/- and ₹9,49,316/- towards Exhibit P1 and P2 Demand Statements, the Cochin Port themselves have confirmed that the rates charged by them are TAMP approved rates and they cannot waive or reduce the same. (See Exhibit P4 letter dtd 21/12/2007 issued by Cochin Port Trust attached to our Claim Statement). Now, they cannot turn around and say that a new rate has to be applied.
(xiii).	From the above, it is evident that Port has taken all possible measures to rescue the grounded vessel by deploying the hired tugs of the Port. Port has been paying daily hire charges and incurring other costs like fuel, water charges etc. Rescue / salvage operation at outer sea require high powered tugs, more energy, manpower, fuel consumption and is a very risky operation when compared to normal Pilotage operations. The grounded vessel could be re-floated only because of the deployment of the 50 ton Bollard Pull hired tugs. In this context, attention is invited to Port's letter dated 19.5.2012 refuting the various allegations made by M/s.James Mackintosh in their letter dated 25 April 2012. Considering all the above facts and the documents furnished, it has requested that TAMP may kindly accord permission to apply the TAMP notified rates of US $ 825.18 per tug per hour as hire charges for the tugs "Ocean Symphony" and "Tag Shiv" for the rescue operation for the period from 16.11.2007 to 20.11.2007.	This Hon'ble Authority may kindly note that in para 16, page 10 of the judgment dated 24/02/2012 in W.P (C) 12119/2008, the Hon'ble High Court of Kerala has observed thus" That the vessel was grounded is an admitted fact in the writ petition. Various operations had to be done for salvaging it. Whether the rates charged are covered by the notification issued by the TAMP, is a disputed question now." Further in para 18, page 11 of the said judgment, the Hon'ble High Court had directed TAMP to find out whether the item of services rendered by the Port Trust is covered by the various notifications issued by the TAMP. Thus, the issue to be decided by this Hon'ble Authority is whether the rates already charged by the Cochin Port Trust vide Exhibit P1 and P2 demand statement and the present demand of the Cochin Port to apply USD 825.18 per tug per hour for the hired tugs are covered by TAMP notifications. In conclusion it is re-iterated that Cochin Port Trust cannot charge any rates which is not approved by TAMP and hence they are bound to re-calculate the tug hire charges payable for the hired tugs i.e. "Tug Ocean Symphony" and "Tug Shiv" as per the TAMP approved Scale of Rates prevalent at the relevant time (16/11/2007

		to 20/11/2007) and reimburse the excess amount which was wrongly paid by us on 05/03/2010. The Cochin Port Trust is also bound to release the amount of ₹3 lakhs which is currently illegally withheld by the Cochin Port from our Deposit Account even after disposal of the Writ Petition.

11. With reference to the totality of information collected during the processing of the case and submissions made by the parties, the following position emerges:

(i). This case has been initiated based on the order passed by the Hon'ble High Court of Kerala on 24 February 2012 in the Writ Petition No.12119 of 2008 filed by M/s.India Steamship and M/s.James Mackintosh & Co. Pvt. Ltd. (JMCPL) against Cochin Port Trust (COPT) challenging the claim of COPT towards hire charges for deployment of two hired tugs for salvage operations from 16 November 2007 to 20 November 2007. Para 18 of the Order of the Hon'ble High Court contains the following directions:-

(a). The petitioners (JMCPL and India Steamship) and respondents (COPT and its officials) will forward their claims by filing appropriate statements before this Authority within one month from the date of receipt of the copy of the judgment.

(b). The Authority will consider whole aspect of the claim based on the pleas raised by the respective parties and find out whether the item of service rendered by the COPT is covered under various notifications issued by this Authority and if not will fix the Scale of Rates applicable for the service rendered by COPT for the salvage operations and other related activities and communicate the same to the respective parties.

(c). The entire exercise as stated above shall be completed within a further period of 6 months, i.e. 6 months from the date of filing claim statements by the respective parties.

(ii). Based on the directions of the Hon'ble Court, the COPT filed its proposal vide its letter dated 20 March 2012 and the petitioners, M/s.India Steamship and M/s.JMCPL filed a joint claim statement dated 6 April 2012 which was received by us on 9 April 2012. The JMCPL reported that it had received the judgment copy on 7 March 2012 which is supported by documentary evidence and has stated that it has filed the claim statement on 6 April 2012 within the time limit of one month stipulated by the Hon'ble High Court. That being so, considering the time limit of 6 months stipulated by the Hon'ble Court to this Authority to comply with its directions, the time limit granted to this Authority to comply with the directions of the Hon'ble Court expires on 6 October 2012.

(iii). The proposal filed by COPT vide its letter dated 20 March 2012 and joint claim statement filed by JMCPL vide their letter dated 6 April 2012 along with the subsequent comments / submissions made and documents furnished by the respective parties are considered in this analysis.

(iv). The matter brought before this Authority by the parties is related to the dispute between JMCPL and COPT on the charges payable by JMCPL to COPT for the tug "Ocean Symphony" and tug "Shiva" deployed by COPT for salvage operations from 16.11.2007 to 20.11.2007 in connection with reported grounding of the vessel M.T. Ratna Shalini. The position of the COPT is to apply the rate of US$ 825.18 per hour per tug prescribed in the Order dated 17 December 2008 for pull back operations at SPM for the period from 3 December 2007 to 30 September 2008 also for the said tugs deployed for salvage operations from 16 November 2007 to 20 November 2007. On the other hand, the position of JMCPL is that COPT should levy the rate of ₹13,300/- per hour applicable for mooring tugs prescribed in the Scale of Rates of COPT prevailing during the relevant point of time when the salvage operations were carried out by COPT.

(v). (a). As per the directions of the Hon'ble Court, the first issue to be decided is whether the service rendered by the COPT for salvage of the vessel is covered by the Scale of Rates notified by this Authority for COPT.

(b). This Authority passed an Order No.TAMP/63/2005-COPT dated 25 January 2007 disposing off the proposal of the COPT for general revision of its Scale of Rates. This Order dated 25 January 2007 along with the Scale of Rates was notified in the Gazette of India on 9 February 2007 vide Gazette No.38. This SOR came into force after expiry of 30 days from the date of notification with a validity upto 31 March 2009. That being so, the period from 16 November 2007 to 20 November 2007 during which salvage operations were carried out is covered by the Scale of Rates notified in the Gazette of India on 9 February 2007.

Subsequently, this Authority vide Order No.TAMP/32/2007-COPT dated 17 December 2008, inter-alia, prescribed the tug hire charges for pullback operations at Single Point Mooring (SPM) at COPT, which was effective from 3 December 2007 (date of commencement of SPM operations) with validity upto 31 March 2009.

(c). The above mentioned two notifications do not prescribe rates for salvage operations. The services rendered by the COPT for salvage of the vessel appear to be one time operation under emergency conditions at the request of the JMCPL, when the vessel was in distress.

(d). With reference to the position reported by the COPT that ad hoc rates of US$ 1708.33 per hour per tug approved by its Board of Trustees on 29 June 2007 was available during the period of salvage operations from 16 to 20 November 2007, it is to be noted that the COPT in its earlier proposal of 31 May 2007 for fixing tariff for SPM operations did not mention about fixation of ad hoc rates by the Board of Trustees of COPT and also did not seek approval for the ad hoc rates, as claimed by the port now. This is established by the position that the Board of Trustees of COPT had fixed the ad hoc rates in its meeting held on 29 June 2007 subsequent to the date of filing the proposal with this Authority which was on 31 May 2007. It is noteworthy that this Authority did not recognise any ad hoc rates for deployment of tugs for pullback operations in its Order dated 17 December 2008. Hence, the contention of the COPT that levy of ad hoc rate by it for the salvage operations was as per the provisions of clause 2.17.1 to 2.17.4 of the tariff guidelines of March 2005 does not appear to be in order.

(e). The above position shows that tariff for salvage operations was not available in the Scale of Rates of COPT during the relevant period of 16 November 2007 to 20 November 2007. In the absence of rates available at the COPT for salvage operations, this Authority is mandated to fix the rates for the services rendered by the COPT for salvage operations and related activities during the period from 16 November 2007 to 20 November 2007 as per the directions of the Hon'ble High Court.

(f). The details of whole range of services offered by the COPT for salvage operations and other related activities in connection with the salvage of the vessel M.T. Ratna Shalini during the period from 16.11.2007 to 20.11.2007 are not made available to us by any of the parties. In any case, the dispute between COPT and JMCPL, as per their respective claim statements, is only with reference to the charges payable for the two hired tugs deployed for salvage operations from 16 November 2007 to 20 November 2007. That being so, the exercise on hand is limited to fixation of hire charges for the said two tugs deployed by COPT for salvage operations from 16.11.2007 to 20.11.2007.

(vi). (a). The Order of the Hon'ble High Court requires this Authority to consider the whole aspects of claim and pleas made by the respective parties in deciding the case. Accordingly, the submissions of the COPT and JMCPL with reference to the charges payable for the hired tugs "Ocean Symphony" and "Shiva" for salvage operations carried out from 16.11.07 to 20.11.07 are discussed below:

(b). The submission of COPT is that the charges prescribed for deployment of the hired tugs for pull back operations with effect from 3 December 2007 may be made applicable to salvage operations carried out during the period prior to 3 December 2007 since the same tugs were deployed for salvage operations and salvage operations are more difficult and risky than pullback operations. The JMCPL is not agreeable to this position of COPT mainly on the premise that the said rate was not in force during the period of salvage operations and pullback operations which take place at the SPM for which rates were prescribed cannot be compared to the salvage operations.

(c). The tariff guidelines of 2005 require this Authority to fix the Scale of Rates for the services rendered by the Major Port Trusts and Private Terminals thereat on cost plus return on capital employed approach. That being so, the cost incurred by COPT in connection with the deployment of tugs may only be relevant irrespective of the purpose for which the tugs were deployed. The said two tugs are hired by COPT and the hire charges for the said two tugs are same irrespective of the position whether they are deployed for pullback operations or salvage operations. Keeping in view the position that the hire charges is the major cost item in the fixation of charges leviable by the COPT from the users for the hired tugs, applying the rates prescribed for use of the said tugs for pullback operations to salvage operations may not be inconsistent.

However, in the Order dated 17 December 2008, the unit hire rate for deployment of hired tugs for pullback operations for the period from 3 December 2007 to 30 September 2008 was determined based on the revenue requirement from the pullback operations and actual pullback operational time of 2302 hours reported by the port for the said period. The actual pullback operational hours reported by the COPT was based on the actual vessel traffic that availed SPM facility during the period from 3 December 2007 to 30 September 2008. Since the rate so decided was dependent on the vessel traffic that availed SPM facility, the unit rate prescribed for tugs for pullback operations may not be relevant for salvage operations. In view of the position brought out above, the hire rate of US$ 825.18 per tug per hour approved in the Order dated 17 December 2008 for pull back operations for the period from 3 December 2007 to 30 September 2008 cannot be applied to salvage operations carried out from 16 November to 20 November 2007, as requested by COPT.

(d). With reference to the contention of JMCPL that COPT can levy the rate only as per the Scale of Rates in force at the time of salvage operations and therefore, the hire charges for mooring tugs prescribed in the (then) existing Scale of Rates at ₹13,300/- per hour per tug should be applied, it has to be recognised that the hire charges for mooring tugs prescribed in the then existing Scale of Rates for the port owned tugs were fixed based on the overall financial / cost position of the port and not on stand alone basis. Further, the position reported by the COPT that mooring tugs owned by the port are of lower capacity compared to the hired tugs deployed for salvage operations cannot be ignored. The tugs "Ocean Symphony" and "Shiva" deployed by COPT for salvage operations are hired by COPT. The COPT has incurred the hire charges during the period of salvage operations, which is already recognized in the Order dated 17 December 2008. Therefore, this Authority is not inclined to go into the doubts expressed by JCMPL with reference to the actual payment made by COPT. In view of the above, the hire charges for port owned mooring tugs prescribed at ₹13,300/- per hour in the (then) existing Scale of Rates of COPT cannot be applied to hired tugs deployed for salvage operations, as requested by the JMCPL.

Further, the contention of the JMCPL that rates as per the approved Scale of Rates prevalent at COPT at the relevant time should only be applied may not hold good since the Hon'ble High Court of Kerala has mandated this Authority to fix the rate for salvage operations if the same are not covered by the then existing rates. As already brought out, the then existing Scale of Rates of COPT does not cover tariff for salvage operations.

(vii). After considering the whole aspect of the claims / pleas made by the respective parties, as required by the directions of the Hon'ble High Court of Kerala and since the then existing Scale of Rates did not cover rates for salvage operations, it is necessary to fix the rate now for hired tugs "Ocean Symphony" and "Shiva" deployed by COPT for salvage operations from 16 November 2007 to 20 November 2007.

(viii). In the Order dated 17 December 2008, the revenue requirement for deployment of hired tugs for pullback operations was computed by taking into account the hire charges of tugs, fuel cost, water cost, overheads and a margin of 6% on total cost and the unit rate was arrived by taking into consideration the revenue requirement and the pullback operational hours, as proposed by the COPT in the relevant proposal. Since the same tugs which were meant for pullback operations were deployed for salvage operations also, it may be appropriate to follow the same approach for determination of the rate for the hired tugs deployed by COPT for salvage operations from 16 November 2007 to 20 November 2007. The determination of rate is discussed in the following paragraphs:

(a). As recorded in paragraph 11 (vii) (a) of Order dated 17 December 2008, the hire charges payable by COPT for the said two tugs is ₹1,35,000/- per tug per day. Accordingly, the hire charges for the two tugs for 5 days from 16 to 20 November 2007 are considered, which works out to ₹13,50,000/-.

(b). The JMCPL in its claim statement of 6 April 2012 has furnished a copy of the statement of workings giving details of charges in respect of salvage operations reported to be the demand notice raised by COPT. The details, inter-alia, contain the information about actual consumption and cost of fuel in respect of tugs "Ocean Symphony" and "Shiva" during the period of salvage operations from 16 to 20 November 2007. Incidentally, the COPT has neither denied nor pointed out any errors in the figures reported in the statement furnished by JMCPL except saying that it is the internal record of COPT and not the demand notice raised by it. JMCPL also has no disputes over the information contained in the said statement. Therefore, the information with regard to actual fuel cost available in the working statement is taken into account.

As per the statement, Tug "Ocean Symphony" has consumed 7.020 KL of fuel @ ₹33,743 per KL which amounts to ₹2,36,876/-. Likewise, the tug Shiva has consumed 6.12 KL of fuel @ ₹33,743/- per KL amounting to ₹2,06,507/-. The total fuel cost for both tugs works out to ₹4,43,383/- and the same is considered as the actual cost incurred by COPT towards supply of fuel for the said two tugs during the period of salvage operations.

(c). Apart from hire charges and fuel cost, the water charges reported by COPT at actuals was also considered as an item of cost while fixing the hire charges for deployment of tugs for pullback operations from 3 December 2007 to 30 September 2008 vide Order dated 17 December 2008. As per the cost statement attached as Annex-I to Order dated 17 December 2008, the water charges for a period of 302 days from 3 December 2007 to September 2008 has been considered at ₹1,10,601/-

as reported by the COPT. Accordingly, the average cost of water consumption works out to around ₹366/- per day per tug. Therefore, the cost of water during the salvage operation days from 16.11.07 to 20.11.07 (5 days) is calculated based on the average cost of water consumed per day during the period from 3 December 2007 to 30 September 2008. Accordingly, the total water cost for 5 days for two tugs works out to ₹3,662/-.

(d). The overheads @ 10% of the tug hire charges and margin @ 6% of the total cost are considered following the approach adopted in the Order dated 17 December 2008.

(e). The total cost plus margin for the two tugs for 5 days of salvage operation works out to ₹20,47,968/-.

(f). The total hours of deployment of the tugs Ocean Symphony and Shiva for salvage operations from 16 November 2007 to 20 November 2007 is reported at 146 hours in the statement attached to the COPT's letter dated 23 January 2008. Based on the total cost plus margin of ₹20,47,968/- and actual salvage operational hours of the two tugs at 146 hours, the unit rate works out to ₹14,027/- per hour per tug.

(g). A cost statement based on the above analysis showing details of figures considered in the Order dated 17 December 2008 for arriving at the hire charges for deployment of tugs for pullback operations from 3 December 2007 to 30 September 2008 and the figures considered now for the computation of charges for hired tugs deployed by COPT for salvage operations from 16 November 2007 to 20 November 2007 is attached as **Annex**.

(h). Since deployment of tugs for salvage operations is not a regular service rendered by the port and also keeping in view the exercise on hand is limited to fixation of hire charges for the specific occasion of deployment of tugs from 16.11.2007 to 20.11.2007, as directed by the Hon'ble High Court of Kerala, the question of prescribing separate rates for foreign going vessels and coastal vessels does not arise. Further, since the service is already rendered, the exchange rate prevailed during the salvage operations may have to be considered for prescription of the rate in US$ terms. Such an exercise, in this case, may not serve any purpose since the rate is not meant for common application and future use. Accordingly, the hire charges in this case is fixed in Rupee terms only.

(ix). As recorded in paragraph 11 (vii) (c) of the Order dated 17 December 2008, the actual tug hire charges incurred by COPT for the period from 15 September 2007 to 30 September 2008 has been considered as an item of cost for arriving at the revenue requirement for fixation of tug hire charges for pullback operations for the period from 3 December 2007 to 30 September 2008. That being so, the actual tug hire charges incurred by COPT for the period from 16 November 2007 to 20 November 2007 has also been considered as an item of cost while fixing hire charges for pullback operations for the said period. Therefore, recovery of charges for the same tugs for the same period from JMCPL also would result in additional revenue to the port. The JMCPL has also rightly pointed out this position and stated that the COPT must have already recovered the cost incurred by it in this regard from Bharat Petroleum Corporation Limited (BPCL) by levy of tug hire charges for pullback operations and further recovery of the hire charges from JMCPL would be seen as an unjust enrichment to the port. This position calls for direction to the COPT to refund the excess recovery ought to have been made from BPCL by levying the charges prescribed in the tariff Order dated 17 December 2008 for the period from 3 December 2007 to 30 September 2008. The tug hire charges for two tugs for the period from 16.11.2007 to 20.11.07 along with 10% overheads and 6% margin thereon, works out to ₹15,74,100/-. Therefore, the COPT is directed to refund the sum of ₹15,74,100/- to BPCL towards excess recovery of tug hire charges for pullback operations for the period from 3.12.07 to 30.09.08.

(x). As a matter of abundant caution, it is clarified that the rate fixed in this case will be applicable only for the salvage operations carried out by the COPT from 16 November 2007 to 20 November 2007 by deploying two hired tugs and it will not be a commonly applicable rate for salvage operations and it would not be incorporated in the Scale of Rates of COPT.

12.1. In the result, and for the reasons given above, and based on collective application of mind, this Authority approves the hire charge of ₹14,027/- per hour per tug for tug "Ocean Symphony" and tug "Shiva" deployed for salvage operations in respect of vessel M.T. Ratna Shalini from 16 November 2007 to 20 November 2007.

12.2. The COPT is directed to refund the sum of ₹15,74,100/- to BPCL towards excess recovery of tug hire charges for pullback operations for the period from 3.12.07 to 30.09.08.

(T. S. Balasubramanian)
Member (Finance)

ANNEX

COMPUTATION OF TUG HIRE CHARGE FOR DEPLOYMENT OF HIRED TUGS BY COPT FOR SALVAGE OPERATIONS IN RESPECT OF VESSEL M.T.RATNA SHALINI FROM 16 NOVEMBER 2007 TO 20 NOVEMBER 2007

Sr. No.	Particulars	Considered in the tariff Order of 17 December 2008 for the period from 3.12.07 to 30.09.08 for pullback operations vide Annex-I to the Order of 17 December 2008		Considered now for computation of charges for deployment of tugs for salvage operations from 16.11.07 to 20.11.07	
		Workings	**Amount (Rs.)**	**Workings**	**Amount (Rs.)**
1	**Hire charges of Tugs**	(Rs.135000 per day per tug for 381 days from 15.9.07 to 30.9.08)	51435000	(Rs.135000 per day per tug for 5 days from 16.11.07 to 20.11.07 for two tugs)	1350000
2	**Fuel Cost**	(Actual as reported by COPT in Oct'08)	6644781	Tug Shiva 7.020 KL @ Rs 33743/KL - Rs.236876 and Ocean Symphony 6.12 KL @ Rs.33743/KL - Rs.206507 based on details furnished in the statement submitted by JMCPL which is reported to be the internal notings of COPT as per COPT	443383
3	**Water Cost**	(Actual as reported by COPT in Oct'08)	110601	110601 / 302 days (3.12.07 to 30.9.08) x 5 days (16.11.07 to 20.11.07) for two tugs	3662
4	**Overheads**	@ 10% of Tug hire charges	5143500	@ 10% of Tug hire charges	135000
5	**Total cost (1 to 5)**		**63333882**		**1932045**
6	**Margin**	6% on Total Cost (excluding hire charge for the idling period from 15.9.07 to 02.12.07)	3096143	6% on Total Cost	115923
7	**Total cost + margin (5 + 6)**		**66430025**		**2047968**
8	**Actual hrs. of operation of tugs**	Pull back operation hours	2302	Actual salvage operation hours for two tugs	146
9	**Cost per tug per hour (Sl. No.7 / 8)**		**28858**		**14027**
10	**Rate per tug per hour**				**14027**
	Foreign vessel (in US$)		**825.18**		**---**
	Coastal vessel (in Rs.)		**19586**		**---**