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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 233

New Delhi,

2 July 2015

NOTIFICATION

In exercise of the powers conferred under Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the Mormugao Port Trust (MOPT) for fixation of lease rental for commercial building owned and constructed by the MOPT near railway station at Vasco, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/57/2014 – MOPT

The Mormugao Port Trust

- - -

Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Chandra Bhan Singh, Member (Economic)

ORDER

(Passed on this 10th day of June 2015)

This case relates to a proposal received from the Mormugao Port Trust (MOPT) for fixation of lease rental for commercial building owned and constructed by the MOPT near railway station at Vasco.

2. The Land Policy guidelines, 2014 announced by the Government lays down the procedure and methodology to be adopted for determining the market value and the lease rental of the port lands. The land policy does not prescribe the methodology for approving the lease rentals of the port buildings. In view of that the MOPT had, vide its letter dated 12 February 2014, requested for the methodology to be followed for fixation the lease rent of premises to enable them to formulate their proposal on those lines. The reference received from the MOPT was forwarded to the MOS, vide our letter no. TAMP/8/2014-Gen dated 18 March 2014, with a request to advise us in the matter as the land policy guidelines 2014 do not prescribe the methodology for fixing the Scale of Rates (SOR) of the premises of the Port Trust Board. This was followed up with a reminder dated 4 April 2014.

3.1. In the meantime the MOPT, vide its letter dated 30 September 2014 has filed a proposal for fixation of lease rental for a commercial building owned and constructed by the MOPT near Vasco Railway Station. The main submissions made by the MOPT in its proposal dated 30 September 2014 are summarised below:

- (i). The Port owns a commercial building with ground and three floors near the Vasco railway station for which the rentals have to be fixed in order enable it to lease out the premises.
- (ii). The method of fixation of lease rent has to be as per clause 18 (b) based on the market value determined as per clause 18 (a) of the Land Policy Guidelines, 2014. The market value of the land has to be assessed as per the five factors prescribed in clause 18 (a) of the said guidelines. The Reserve Price in terms of the annual lease rent would be considered as a percentage of the latest market value determined in accordance with Para 18 (a) of the guidelines.
- (iii). The Land Policy Guidelines, 2014 states that the Port Trust would make a proposal as outlined in para 18 (a) to TAMP for fixing the market value of the land. This Authority would notify the market value of the land after following due process of consultation with stake holders within 45 days of receipt of the proposal.
- (iv). The Port Trust Board will fix a rate of annual escalation of the lease rent which would not be less than 2%.
- (v). As per definition of "Land" under section 2 (k) of the MPT Act 1963, "Land" includes the bed of the sea or river below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth. This implies that premises also come under the definition of land for which TAMP has to fix the rates.

- (vi). An approved land valuer was appointed by the port to assess the market value of the commercial building. The valuer has assessed the value of the land at a rate of ₹55,000/- per m². The value of land as per the Government of Goa notification is ₹3,500/- per m².
- (vii). The port has considered the value of the property based on the land value and cost of construction as valued by the land valuer.
- (viii). The methodology adopted by the port for arriving at the proposed lease rent for the said commercial building near railway station at Vasco is tabulated below:

Sr. No.	Particulars	Working		Amount (in ₹)
(i).	Plot Area (i.e. land)	293 m ²		
(ii).	Total built up area	668.70 m2		
(iii).	Valuation of the land as per land valuer	₹55000 per m ²		
(iv).	Value of the land	293 * 55000 = ₹1,61,15,000		
(v).	Annual lease rent of the land	6% * 1,61,15,000		9,66,900
(vi).	Value of construction of the building as per the land valuer	1,07,78,000		
(vii).	Annual cost of building			
	(a). Civil Repairs & Maintenance	1% of value of construction	1,07,780	
	(b). Depreciation	3.34% per the Companies Act	3,59,985	
	(c). ROCE on building premises	16% on value of construction	17,24,480	
	(d). Total Annual Cost			21,92,245
(viii).	Total Cost per annum for building	(v) + (vii)(d)		31,59,145
(ix).	Monthly lease rental for the commercial building near railway station excluding service tax and service charge	31,59,145 / 12		2,63,262

- (ix). As per the minutes of the meeting of the Land Allotment Committee (LAC), held on 8 July 2014, the said Committee has approved the reserve price for the commercial building at ₹2,63,262/- excluding 9% special rate and 12.36% service tax subject to the approval of the MOPT Board.
- (x). The Board of Trustees of the MOPT in its meeting held on 17 September 2014 has also approved the lease rent proposed by the LAC.

3.2. Accordingly, the MOPT has sought approval for insertion of the following schedule in Part-III Estate Rentals as below:

- (i). “ IV. LEASE RENTALS FOR PREMISES:

Sr. No.	Description	Rate per month or part thereof (in ₹)	Date of implementation
(i).	Commercial building near railway station at Vasco	2,63,262.00	After expiry of 30 days from the date of notification of the Order in the Gazette

- (ii). The existing note no. 5 approved by this Authority vide Order No. TAMP/8/2012-MOPT dated 2 May 2012 revising the Scale of Rates (SOR) for the estate of MOPT is proposed to be modified follows:

“5. The rates provided in the Scale of Rates shall get automatically escalated by 2% per annum for land at I, II and III and by 5% per annum for lease rentals for Premises at IV after expiry of each year from the effective date of implementation of the Scale of Rates and the escalated rates shall be considered as the prevailing scheduled rent for the concerned year. The rate so arrived is rounded off to nearest Rupee.”

[A copy of the existing lease rent schedule of the MOPT land as prescribed in the existing SOR of the port.]

3.3. The details with Regard to the valuation of the Land at ` 55,000/- per Sq. mtr and cost of construction of the building at ` 1,07,78,000/- as contained in the Valuation Report are summarized below:-

Valuation of Land:

- (i). The subject property is situated in the Central Commercial Area of Vosco city, all the civic amenities being nearby. There exist a building on the property with Ground plus 3 floors. The subject plot admeasures in area 293 Sq. Mtrs and the super built up area of exiting building is 624.90 Sq. mtrs
- (ii). The price shown in the sale deed of a builindg of land located within 300 meters from the subject property is ` 25608.19/- per Sq. mtr. This price paid to the owners includes the value of the 2 storey rented building. This price is low because the rented building has an encumbrance and to obtain its vacant possession, the developer will have to pay compensation to the tenants almost equal to the price paid to the owners.
- (iii). From the market survey, the price quoted for vacant lands in vasco city is almost ` 50,000/- to 60000 per Sq. mtr depending on the area, location, physical features, access road etc., The subject property admeasures in an area of 293 Sq. mtrs and is considered as a small plot. It has good access road and is in the central and commercial area of the city. Being near to the Railway Station there is heavy traffic in front of the property.
- (iv). Considering all the plus and minus factors in respect of the property, the valuer has valued the property at the rate of ` 50,000/- and in the opinion of the valuer it is just price considering that it is not vacant and is emcumbered by the multi storeyed building. Therefore, the value of the plot of land is ` 1,61,15,000/- (` 55,000 X 293 Sq mtrs).

Value of Building:

- (i). Building is at present vacant and unused for almost 3 years since its completion in January 2011. There are shops and godown on ground floor with mezzanine floor. On the 1st Floor, there is a big hall to be used for offices with a balcony and a toilet at the rear. On the 2nd floor, there is a similar hall to be used for office with toilet blocks on one side and balcony with open terrace. The total built up area is 668.70 Sq. mtrs excluding lift area on the 1st and 2nd floors.
- (ii). A residential construction with almost the same specifications of the subject building cost at present ` 18,000/- per Sq. mtr of built up area. In comparison, and considering specifications of construction of the subject building, the plinth area rate of construction is taken as `17,000/- per Sq. mtr of built up area for ceiling height of 3 meters. The ceiling heights of ground floor is 5.20 meter, 1st floor is

3.30 meters and 2nd floor and 3rd floor is 3.20 meters. Accordingly, proportionate rates are calculated for every floor. The present cost of construction of building (May-2014) is ` 1,11,54,500/- The building is 3 years old and its residual life is taken as 77 years. Therefore, depreciation considering salvage value at the rate of 10% at the end of the life is ` 3,76,464/- $(90/80 \times 3/100 \times ` 1,11,54,500)$ . Therefore, the net value of construction is ` 1,07,78,000/- ($` 1,11,54,500 - ` 3,76,400$). The total market value of the property including land and building is ` 2,68,93,000/- ( $` 1,61,15,000 + ` 1,07,78,000/-$)

4.1. While acknowledging the proposal, vide our letter dated 7 November 2014, the MOPT was requested to furnish the entire copy of the report of the land valuer. In response, the MOPT, vide its letter dated 19 November 2014 has furnished the Land Valuer's Report.

4.2. In accordance with the consultative procedure prescribed, the proposal of MOPT dated 30 September 2014 was circulated vide our letter dated 7 November 2014 to all concerned users/ user organisations and lessees, as furnished by the MOPT vide its e-mail dated 30 September 2014 for comments. The Land Valuers' Report as furnished by the MOPT, vide its letter dated 19 November 2014, was also forwarded to all the concerned users/ user organisations and lessees vide our letter dated 01 December 2014 for comments. None of the users / user organisations and lessees consulted in the case have furnished their comments despite our reminder dated 20 November 2014.

5. Based on a preliminary scrutiny of the proposal, the MOPT was requested vide our letter dated 22 December 2014 to furnish information / clarifications on various points. The MOPT has furnished its response vide its email dated 9 January 2014. A summary of the queries raised by us and the response of the MOPT is tabulated below:

Sr. No.	Queries raised by us	Reply of the MOPT
(A).	General:	
(i).	It is seen that the proposal filed by the MOPT for fixation of lease rental for commercial building near Railway Station at Vasco, is combination of two set of tariff guidelines. The Land Policy Guidelines for Major Port 2014 is considered for the lease rent on land component and for building premises the rental component is arrived considering depreciation, repairs and maintenance and 16% ROCE following the principles of 2005 guidelines. MOPT to justify the reasons and basis for following the 2005 guidelines for fixation of lease rental for building premises. MOPT to also clarify how the computation of lease rental for the building premises done by the MOPT fits under 2005 guidelines.	➤ The commercial building has been constructed on Port land and hence there are two factors involved on the basis of which the lease rentals are to be fixed i.e. the value of the land and the cost/value of the construction of the premises. ➤ As per definition, under Chapter I (2) of the MPT Act 1963, Land includes the bed of the sea or river below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth implying that premises also come under the definition of land. ➤ The Land Policy Guidelines refers only to the land, the annual lease rent of which would in no case be less than 6% of the market value of the land. As there is no provision for fixation of the annual lease rent for the premises, the same has been arrived considering depreciation, repairs & maintenance and 16% ROCE. ➤ The port, vide letter nos. FA/Cost/125/2014/52 dated 12 February 2014 and 26 March 2014, had sought clarification on the methodology to be

		followed for fixing of lease rent for premises of the Port which was referred by the TAMP to the MOS for suitable guidelines and advice on the matter. In the absence of any specific guidelines, the Port has adopted the above methodology partly from the Land Policy Guidelines 2014 and partly from other guidelines. ➤ TAMP has been approving only the Licence fees for Port lands in the SOR and the lease rentals for premises have always been fixed internally by the Port. ➤ It is reiterated that the Port has not followed any specific guidelines but adopted different criteria from different guidelines and other internal practices. In case the TAMP requires any specific methodology to be followed, the same may kindly be intimated and the Port will revise the proposal accordingly. ➤ The building was constructed in 2011 and is vacant since then. Due to non-finalization of the land policy it could not be rented out. In view of the new land policy, the reserve price is to be fixed before allotting the premises under tender cum auction. Since no methodology was fixed for fixing rent on premises, the Port has proposed to fix rent on valuation of the land as well as the premises.
(ii).	The MOPT has not furnished the proposal along with the format D prescribed by this Authority for filing proposal for estate rentals. The port to furnish the duly filled prescribed format D.	The format D prescribed by this Authority for filing proposal for Estate Rentals in respect of the land on which the commercial building has been constructed is furnished herewith.
(iii).	MOPT to confirm that the market valuation undertaken by the MOPT of the land on which the building is standing is in conformity with the Land Policy Guidelines, 2014 issued by the MOS. If the proposal of the MOPT with regard to the valuation of the said land deviates from these guidelines, MOPT to furnish the details thereof and the reasons therefor.	The market valuation undertaken by the MOPT of the land on which the building is standing is in conformity with the Land Policy Guidelines, 2014.
(B).	<u>Valuation of the Land:</u>	
(i).	As per the Land Policy Guidelines of 2014, the Land Allotment Committee (LAC) is to take into account the highest of the five (5) factors mentioned in Clause 18(a) to determine the market value of land. As per copy of the minutes of the meeting dated 8 July 2014 of the LAC, forwarded along with the proposal, it is seen that the LAC has considered the valuation of the land on two out of five methods prescribed in the Land Policy Guidelines of 2014. The LAC has	The Land Allotment Committee (LAC) has considered only two out of the five factors mentioned in Clause 18(a) to determine the market value of land. It is also informed that when the said building was tendered out for lease, only the LIC had bid with an offer of ₹2,01,000/- per month exclusive of pension levy for the entire building (copy of bid offer enclosed). The other two factors are not available.

	considered valuation of land as arrived by the approved valuer and the land value as notified by the Government of Goa. In this backdrop, the MOPT to clarify the reasons for considering only two out of the five factors enumerated in the Clause 18(a) of Land Policy Guidelines of 2014. In other words, MOPT to explain the reasons for not considering the other three factors mentioned in Clause 18(a) for assessing the market value of land.	
(ii).	(a). There is wide variation noticed in the market value of land as per the Government notification rate reported at ₹3500/sq. mtr. and ₹55,000 per sq. mtrs arrived by the approved valuer. Justify the wide variation in these two land valuation.	(a). Probably the Government rates are not reflecting the true market value of the land and in any case the Port has had no role in the fixation of the two rates and as such cannot comment on it.
	(b). Please confirm that the valuation of the land considered by the approved valuer for arriving at land value of ₹55000 per sq. mtr of the subject port-land measuring 293 sq. mtrs. is representative enough in terms of physical features, development, facility, proximity to road etc.	(b). The valuation has been done by an independent professional valuer and the Port cannot confirm nor comment on the valuation done by the valuer. It is only confirmed that the building is in the heart of the city and just outside the Vasco railway station having a considerable commercial advantage.
(C).	Valuation of the building:	
	For arriving at the value of construction of the building on the subject land, it is seen that the approved valuer has reportedly considered the unit cost of construction for each floor based on the current unit cost of construction of residential building. In short, the current cost of construction of the building is arrived and then depreciated for a period of three years citing that the building was constructed in the year 2011. In this regard following points need to be clarified:	
	(a). How the cost of building arrived based on the current cost of construction and claiming depreciation, repair and maintenance and 16% return fits under 2005 guidelines as adopted by the MOPT. As per the clause 2.9.3 read with clause 2.9.5 of 2005 guidelines, ROCE at present level of 16% is allowed on the net asset value and not on the current replacement cost of the asset. In this regard it is also relevant to mention that this Authority while fixing the schedule of the rent for land and building at Kolkata and Haldia vide its Order No. TAMP/7/2010-KOPT dated 19 January 2011 has not accepted the methodology adopted by the Kolkata Port Trust (KOPT) for fixation of the rentals for structure based on the current replacement cost method.	The value of construction taken is as arrived at by the approved valuer and not as per the 2005 guidelines. If the TAMP requires that it should be as per the 2005 guidelines, the proposal can be revised and resubmitted. The TAMP is once again requested to kindly specify the methodology to be adopted for fixation of the rentals.
	(b). In terms of Land Policy 2014 reserve price in terms of lease rental is to be fixed at a percentage not less than 6% of the market value. No other factor has to	The Land Policy Guidelines 2014 pertains to the value of the land only and not to the value of the constructions on the land. If it is interpreted as so, then the ROCE would be

	be added to the market value to arrive at the lease rental. That being so, justify consideration of 1% towards Repair and Maintenance and depreciation as per companies Act to arrive at the annual lease rental.	minimum 6% instead of 16% on the value of the construction and also excluding the depreciation and R&M. This Authority may kindly clarify / advise.																
	(c). Since this building is owned by the MOPT and as per the valuation report construction was completed in the year 2011, the MOPT to furnish the following details: (i). Date of capitalisation of building value in its Books of Account. (ii). Gross Value of the subject building premises. (iii). Cumulative Depreciation on the building premises till 30 September 2014. (iv). Net Value of the Asset in its Books of Account as on 30 September 2014.	<table><tr><td>(i).</td><td>Date of Capitalisation</td><td>:</td><td>26/02/2011</td></tr><tr><td>(ii).</td><td>Gross Value</td><td>:</td><td>₹79,26,761/-</td></tr><tr><td>(iii).</td><td>Cumulative depreciation</td><td>:</td><td>₹4,66,320/-</td></tr><tr><td>(iv).</td><td>Net Value</td><td>:</td><td>₹74,60,441/-</td></tr></table>	(i).	Date of Capitalisation	:	26/02/2011	(ii).	Gross Value	:	₹79,26,761/-	(iii).	Cumulative depreciation	:	₹4,66,320/-	(iv).	Net Value	:	₹74,60,441/-
(i).	Date of Capitalisation	:	26/02/2011															
(ii).	Gross Value	:	₹79,26,761/-															
(iii).	Cumulative depreciation	:	₹4,66,320/-															
(iv).	Net Value	:	₹74,60,441/-															
(D).	<u>Estimation of Annual Cost of maintaining the building premises:</u>																	
(i).	MOPT to explain the basis of considering the civil repairs and maintenance on building at 1% of capital cost of construction. Furnish the actual repairs and maintenance cost incurred by the MOPT on the said premises, year-wise (i.e. from 2011-12 to 2014-15 till 30 September 2015).	The civil repairs and maintenance on building is taken at 1% on the basis of Upfront Tariff Guidelines 2008 which stipulates 1% of the cost of Civil Assets. Since the building has not been utilized, no maintenance works have been carried out till date.																
(ii).	2005 guidelines stipulates that the depreciation should be considered on straight line basis adopting the life norms as prescribed in the Companies Act. The Government has recently notified the Companies Act, 2013. MOPT to confirm that the depreciation considered by the port on the building premises is in line with the provisions of the Companies Act, 2013.	The depreciation considered by the Port is 3.34% which is as per SLM for Factory Buildings under the previous Companies Act, whereas the depreciation under the recently notified Companies Act, 2013 for Buildings with RCC frame structure other than Factory Buildings is 1.58%.																
(E).	<u>Proposed Lease Rental and Annual Escalation:</u>																	
	The MOPT has arrived at proposed lease rental of ₹2,63,262 per month considering the total annual lease rent on plot at ₹9,66,900 applying 6% return of land value as per Land Policy Guidelines, 2014 plus annual cost of maintaining the building premises and 16% ROCE on the building cost estimated at ₹21,92,245 aggregating to ₹31,59,145 per annum i.e. ₹2,63,262 per month (₹31,59,145/12 months). The proposed lease rent is subject to escalation at 5% per annum. In this regard, the MOPT to clarify the following points:																	
(i).	The Land Policy Guidelines of 2014 gives liberty to ports to fix annual escalation which would not be less than 2%. The MOPT is seen to have proposed 5% annual escalation. MOPT to explain the reason for seeking higher rate of annual escalation. Further, clause 18 (c) of the	The Land Policy Guidelines 2014 refers only to the value of land and fixes a minimum annual escalation of 2%. Till date the Port has been escalating the annual lease rent of land by 2% and that of Premises by 5% and since this is not in contradiction with the land policy guidelines, the same has been adopted. The																

	Land Policy Guidelines, 2014 stipulates that the Port Trust Board will fix a rate of annual escalation which will not be less than 2%. Please furnish relevant copy of Board approval for 5% annual escalation.	copy of the Board Approval has already been furnished along with the proposal but is enclosed once again as per your requirement. <i>(As per MOPT Board of Trustees Resolution no. 21 dated 17.09.2014, the lease rent of ₹2,63,262/- per month excluding special rate and service tax for the Commercial Building and escalation of rent by 5% annually is hereby approved.)</i>
(ii).	Clause 18(c) of the Land Policy Guidelines for Major Ports 2014 requires the concerned Major Port Trust to file a proposal to this Authority for fixing the market value of the land. As per stipulation contained in Clause 18(c) of the Land Policy Guidelines of 2014, this Authority is required to notify the market value of the port lands. Further, from a harmonious reading of the clauses 18(b), 18(c) and first sentence of 16.2 (d) of the land policy guidelines of 2014, it can be seen that this Authority is mandated to notify reserve price equated to annual lease rent as well as the market value. The MOPT, therefore, to modify its proposal suitably seeking approval for market value of land and Reserve Price equated in terms of annual lease rent complying with the Land Policy Guidelines of 2014.	This issue needs to be taken up with the Ministry by the TAMP. The Port has to fix the Reserve Price for tendering the building and therefore the rent needs to be fixed by this Authority based on the market value and not the book value.
(iii).	The proposed lease rent of ₹2,63,262 per sq mtr/month comprises of, ₹80,575 per sq. mtrs/month (₹9,66,900/12months) being lease rent component on land and ₹1,82,687 per sq. mtr/month (i.e. 21,92,245/12 months) towards lease rent for the building premises. As stated earlier, the lease rent on building premises arrived by MOPT following the principles of the 2005 captures cost plus 16% return. That being so, MOPT to justify the basis of proposing 5% annual increase on the lease rent component on building premises and indicate the relevant clause of the 2005 guidelines which has been followed to arrive at the proposed rate which permits such annual escalation in tariff. The MOPT to, therefore, review its proposal and modify it suitably so as to comply with the relevant guidelines adopted by the MOPT.	The 16% included in the annual cost is to account for the Return on the Capital Employed but the 5% annual escalation is to take into account the inflationary effects. The port is willing to revise its proposal but would be highly obliged if this Authority would clearly specify which guidelines the TAMP wants the Port to follow as well as the methodology to be followed.
(F).	The Scale of Rates of the MOPT approved by this Authority vide its Order No. TAMP/43/2012-MOPT dated 14 June 2013 prescribes validity period till 31 March 2016. Please clarify as to whether the net asset value of said building premises was included in the cost statements considered during the last tariff	The said building was not part of the cost statements considered during the last tariff revision and as such the consideration of depreciation and 16% ROCE would not tantamount to duplication of these items.

	revision. If so, under which activity was it captured. The MOPT to confirm that estimated depreciation, repairs and maintenance and 16% ROCE on the building premises considered in the current proposal will not tantamount to duplication of these items and would not lead to double recovery of tariff for the same asset.	
(G).	<u>Scale of Rates:</u>	
(i).	The unit of the rent proposed by the MOPT for the commercial building is on per month basis. The port may consider to modify the unit of levy on per month or part thereof basis.	The Port has not proposed the unit of Rent on a per month basis but on per month or part thereof basis only, as shown in the Scale of Rates furnished.

6. A joint hearing on the case in reference was held on 22 January 2015 at the MOPT premises. The MOPT made a brief power point presentation of its proposal and made its submissions at the joint hearing.

7.1. As decided at the joint hearing, the MOPT was requested, vide our letter dated 28 January 2015, to initiate action on the following points:

- (i). To review reserve price calculation on the building component of its proposal and file a revised proposal; and
- (ii). To simultaneously, forward a copy of the revised proposal to the concerned users with a request to furnish their comments thereon to this Authority and MOPT within three days thereafter.

7.2. With regard to the first decision taken at the joint hearing, the MOPT has filed its revised proposal dated 30 January 2015. The MOPT in the revised proposal dated 30 January 2015 has reiterated the background of its proposal which is already brought out in earlier paragraph and hence not repeated. The main submissions made by the MOPT in the revised proposal dated 30 January 2015 are summarized below:

- (i). During the joint hearing held by TAMP on 22 January 2015, the Authority observed that different set of guidelines have been adopted by the port to arrive at the lease rent on land and lease rent on building. The Port was advised to re-determine the rentals as a percentage of the highest valuation arrived at as per the Land policy for both land and building as the Land Policy Guidelines considers premises also to be part of land and stipulates the rentals to be fixed at a minimum of 6% of the market value fixed.
- (ii). Prior to the issue of the Land Policy Guidelines 2014, the Port had invited bids for the same building wherein the only bidder was LIC with a bid of ₹2,01,000/- per month exclusive of Special Rate levy, for the entire building.
- (iii). In order to fix the reserve price in line with the amount quoted by the LIC, it is proposed to fix the lease rentals of the building at 9% of the valuation arrived at by the approved valuer which amounts to ₹2,01,698/- per month exclusive of Special Rate levy and service tax.
- (iv). The rent so fixed is proposed to be escalated 5% every year. The same has been approved by its Land Allotment Committee (LAC) during the meeting held on 27 January 2015 and will be placed before the ensuing Board Meeting. The Board Meeting proceedings shall be sent to the TAMP along with the Board Resolution after approval of the Board.

- (v). Accordingly, the methodology to be adopted by the MOPT to arrive at the revised lease rentals in its revised proposal is tabulated below:

Sr. No.	Particulars	Revised proposal dated 30 January 2015	
		Working	Amount (in ₹)
(i).	Plot Area (i.e. land)	293 m ²	
(ii).	Total built up area	668.70 m ²	
(iii).	Rate of the land as per land valuer	₹55000 per m ²	
(iv).	Value of the land as per land valuer	293* 55000 = ₹1,61,15,000	
(v).	Value of the building as per valuer	₹1,07,78,000	
(vi).	Aggregate of value of the land and building	₹2,68,93,000	
(vii).	Annual Return @9% on the aggregate of the value of land and building	9% * 2,68,93,000	₹24,20,370
(viii).	Monthly rental excluding service tax and service charge	₹24,20,370/12	₹2,01,697.50 i.e. ₹2,01,698/-

7.3. Accordingly, the MOPT in its revision proposal dated 30 January 2015 has sought approval of this Authority for insertion of the following in Part–III Estate Rentals:

“

IV. LEASE RENTALS FOR PREMISES:

Sr. No.	Description	Rate per month or part thereof (in ₹)	Date of implementation
(i).	Commercial building near railway station at Vasco	2,01,698.00	After expiry of 30 days from the date of notification of the Order in the Gazette

Note:

5. The rates provided in the Scale of Rates shall get automatically escalated by 2% per annum for land at I, II and III and by 5% per annum for lease rentals for Premises at IV after expiry of each year from the effective date of implementation of the Scale of Rates and the escalated rates shall be considered as the prevailing scheduled rent for the concerned year. The rate so arrived is rounded off to nearest Rupee.”

7.4. With regard to the second decision, the MOPT has confirmed, vide its email dated 4 February 2015, that it has forwarded the revised proposal to the prospective bidders with a request to furnish their comments to this Authority and the Port within 3 days. It is relevant to mention here that none of the users / user organisations and lessees have furnished their comments on the revised proposal.

8. As per clause 18 (a) and 18 (b) of the Land Policy Guidelines, 2014 the Port Trust board has liberty to propose lease rent at minimum 6% of the latest market value and the annual escalation of the rent at minimum 2%. The MOPT in its revised proposal has proposed lease rent at 9% and annual escalation at 5%. The MOPT in its revised proposal has agreed to furnish the approval of its Board for the same. After a reminder, the MOPT vide its email dated 03 March 2015 has submitted that its Board has already approved the said proposal and the proceedings of the meeting and the Board Resolution are under finalization; and, subsequently vide its letter dated 10 March 2015, furnished its Board Resolution no. 74 dated 11 February 2015 approving the lease rentals of the building @ 9% of the valuation arrived at by the approved valuer exclusive of special rate levy with an annual escalation of 5%.

9. As brought out earlier in paragraph 2 above, the MOPT vide its letter dated 12

February 2014, had requested this Authority for the methodology to be followed for fixation of lease rent of premises to enable them to formulate a proposal on those lines. Since the Land Policy Guidelines, 2014 issued by the MOS do not prescribe any specific methodology for determination of lease rent for buildings, the matter was referred to the MOS vide our letter dated 18 March 2014, which was followed by a reminder dated 4 April 2014. The response of the MOS was not received.

Since the MOPT had filed its revised proposal for determination of lease rent for its commercial building following Land Policy Guidelines, 2014, a detailed letter was addressed to the MOS giving the background of the case, the methodology adopted by the MOPT in its original and revised proposal, vide our letter dated 26 February 2015. While furnishing the background of the case the MOS was requested to share its views with this Authority if it had any views different from that adopted by the MOPT since the case has to be disposed of in a time bound manner as per the Land Policy Guidelines, 2014. No response was received from the MOS on this matter till finalization of this case.

10. The MOPT vide its letter dated 5 May 2015 referring to its revised proposal dated 10 March 2015 has requested this Authority to approve its revised proposal at the earliest, as the subject premises is lying vacant since the last four years.

11. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>.

12.1. With reference to the totality of the information collected during processing of the case the following position emerges :

- (i). The Mormugao Port Trust (MOPT) had filed a proposal vide its letter dated 30 September 2014 for fixation of the lease rentals for the commercial building owned and constructed by it near Vasco railway station. As mentioned in the earlier part of the Order, the proposed lease rent for the building premises was arrived by combining the principles prescribed in the Land Policy Guidelines, 2014 and 2005 tariff guidelines. In view of that the port was advised to re-determine the lease rentals for the building premises as per the Land Policy Guidelines, 2014. Accordingly, the MOPT has filed revised proposal vide its letter dated 30 January 2015 for fixation of the lease rentals for its commercial building. The revised proposal dated 30 January 2015 along with additional information/ clarification furnished by MOPT during the proceedings of this case is taken up for consideration.
- (ii). The Land Policy Guidelines, 2014 announced by the Government and made effective from 02 January 2014 lays down the procedure and methodology to be followed for determining the market value and lease rental of the port lands. Clause 18(c) of the Land Policy Guidelines of 2014 mandates this Authority to notify the market value of the Port Land based on the methodology prescribed in Clause 18(a) to 18(c) of the Guidelines. No specific Guidelines are prescribed in Land Policy for fixation of lease rent for the premises owned and constructed by a Port Trust. Upon a request made by the MOPT vide its letter dated 12 February 2014 regarding the methodology to be followed for fixation of lease rent of premises, as brought out in the factual position relating to this case in the earlier paragraphs, the MOS was requested to advise us in the matter vide our letter dated 18 March 2014, followed up with a reminder dated 04 April 2014. The methodology adopted by the MOPT in its revised proposal dated 30 January 2015 for fixation of lease rent was also brought to the notice of MOS vide our letter dated 26 February 2015. The MOS was requested to share with us any views that are different from the methodology followed by MOPT at the earliest since the case has to be disposed of in a time bound manner. The response of the MOS either to the letter dated 18 March 2014 or to the letter dated 26 February 2015 was not received till the finalization of this case. The MOPT vide its letter dated 05 May 2015 has urged this Authority to approve its proposal dated 30 January

2015 since the premises in reference is lying vacant for the last four years. Incidentally, the premises has been lying vacant since its completion in January 2011 as reported by the Valuer even before the MOPT filed its proposal in September 2014 before this Authority for fixation of rentals.

This Authority is statutorily mandated under Section 49(1) of the Major Port Trusts Act, 1963 to frame Scale of Rates (SOR) and conditionalities governing application of the SOR from time to time for any property belonging to or in the possession of a Port Trust. Further, as pointed out by the MOPT, Land as per Section 2(K) of the MPT Act, 1963 includes, *inter alia*, things attached to the earth or permanently fastened to anything attached to the earth. That being so, the methodology prescribed in Clauses 18(a) and 18(b) of the Land Policy, 2014 to determine the market value and reserve price in terms of annual lease rent for port "land" would have to be applied *mutantis-mutandis* for determination of market value and reserve price in terms of lease rent for "buildings" also. In view of the above position, the MOPT proposal dated 30 Jan 2015 is proceeded further to fix the lease rental for the premises following the methodology prescribed in Land Policy, 2014 to avoid any further loss of revenue to the Port Trust on account of the premises lying vacant for want of rate of lease rental.

- (iii). Clause 18 (c) of the Land Policy, 2015 requires a Port Trust to obtain approval for the market value of land. In para 18 (b) of the said policy, the term "Reserve Price" has been equated to the annual lease rent. Further, para 16.2 (d) of the Policy requires approval of this Authority for "Reserve Price". Thus, from an harmonious reading of the clauses 18 (b), 18 (c) and 16 (d), it can be seen that this Authority is mandated to notify reserve price equated to annual lease rent as well as market value. The mandate to notify the reserve price is of course possible subject to the condition that the percentage to be applied on the market value of land (which should not be less than 6%) is approved by the Port Trust Board as per the stipulation in clause 18 (b).

So far as the proposal of MOPT is concerned, the proceedings of the Board of MOPT show that the Land Allotment Committee and the Board have approved the reserve price in terms of monthly lease rental applying 9% of the market value of the land and building. That being so, the proposal of MOPT to fix reserve price in terms of monthly lease rent is taken up for consideration.

(iv). **Valuation of the land:**

- (a). As per clause 18 (a) of the Land Policy Guidelines, 2014, the Land Allotment Committee (LAC) appointed by the Major Port Trust has to determine the latest market value of the port land from the five factors enumerated therein. Further, as per clause 18 (b) of the said guidelines, the LAC shall normally take into account the highest of the factors mentioned in clause 18 (a) for recommending the latest market value of the land. Based on the recommendation of the LAC the Port Trust Board will approve the lease rent and the annual escalation in the lease rent.
- (b). The MOPT has constructed a commercial building on its land admeasuring 293 sq. mtr. near railway station at Vasco which consists of a ground plus three floors. For the purpose of arriving at the proposed lease rent the port had appointed a land valuer for assessing the value of land and building. The land valuer assessed the value of the land at ₹55,000/- per sq. mtr. The port has indicated that the rate for the said land as notified by the State of Goa is ₹3500/- per square meter. The LAC appointed by the MOPT had considered these two factors out of five factors mentioned in clause 18 (a) for assessing the latest market value of the land. When asked to explain the reason for not considering the other three factors mentioned in clause 18(a) for assessing the market value of land, the MOPT stated that other factors are not available. However, while

revising its proposal, apart from considering the above two factors the LAC appointed by the MOPT considered the lease rent of ₹2,01,000/-per month tendered by one bidder, namely LIC, for the entire building prior to issue of Land Policy Guidelines, 2014. The reason cited by MOPT for not considering other two factors is relied upon.

- (c). As the value of land valued by the valuer at ₹55000/- per sq. meter is highest, the LAC has considered this value for arriving at the latest market value of land. Accordingly, the LAC, based on the highest market value the land, has recommended the value of the land at ₹1,61,15,000/- (₹55,000 per sq. mtr * 293 sq. mtr). The value of land recommended by the LAC has the approval of the Board of Trustees of the MOPT.
- (d). Relying on the approval of the Board of Trustees of the MOPT and as none of the users / user organisations and lessees have objected to the valuation as proposed by the MOPT, the value of land at ₹1,61,15,000/- is accepted and considered herein for fixation of the lease rent for the commercial building of the MOPT near Vasco railway station.

(v). **Valuation of building:**

- (a). As per section 49 (1) of the MPT Act, 1963 this Authority is mandated to fix lease rent of the property of the port. The commercial building is the property of the MOPT. Further, section 2 (k) of the MPT Act, 1963 defines land as including, amongst others, things attached to the earth or permanently fastened to anything attached to the earth implying that building premises also comes under the definition of land. Even the MOPT has rightly argued that building premises comes under the definition of land. In view of the above mentioned mandate, this Authority will have to fix the lease rentals of the said building.
- (b). As mentioned above, this Authority is mandated to follow the Land Policy Guidelines issued from time to time by the Government of India. The Land Policy Guidelines, 2014 prescribe methodology for fixing the market value and lease rentals for port land. The guidelines do not specifically prescribe the methodology for fixing the market value and lease rentals for prescribing lease rentals for premises. In the absence of methodology for valuation of premises the MOPT has considered the value of the building at its current cost of construction. As seen from the report of the land valuer appointed by the MOPT, the valuer has valued the entire building based on the current cost of construction. The LAC, based on the current cost of construction, has recommended the value of the entire building at ₹1,07,78,000/-. The value of building recommended by the LAC has the approval of the Board of Trustees of the MOPT.
- (c).
 - (i). As regards the valuation of building based on current cost of construction, it is relevant here to mention that, the Kolkata Port Trust (KOPT) had proposed revision of its rent schedule for land and buildings at Kolkata and at Haldia based on the current cost of replacement. Since this Authority was not inclined to follow the method proposed by the KOPT for revision for the reasons mentioned in the Order, the lease rentals for the land and buildings at Kolkata and at Haldia were increased on adhoc basis vide Order no. TAMP/7/2010-KOPT dated 19 January 2011.
 - (ii). In the proposal of the Paradip Port Trust (PPT), which was recently disposed of by this Authority vide its Order dated 15 May 2015, for revision of Scale of Rates for allotment of port land and built up space, the PPT arrived at the rentals for various structures taking into account the written down value of the

Replacement cost. Therefore, this Authority did not find it appropriate to approve the rentals for the structures taking into account the replacement value thereof.

- (d). Following the decision taken in KOPT and MOPT cases, the methodology adopted by MOPT to value the building based on the Current Construction Cost at ₹1,07,78,000 is not considered.
- (e). It is, however, noteworthy that the third factor (updated highest accepted tender-cum-auction rate) kept in view by the MOPT for fixation of monthly lease rent is the lone bid received from the Life Insurance Corporation of India (LIC) at ₹2,01,000 per month. Though it is not the highest rate and not accepted by the MOPT, the offer of the LIC falls within one of the five methodology prescribed in the Land Policy, 2014 to determine the latest Market Value/ Reference Price. Considering that the monthly rental proposed by the MOPT at ₹2,01,698 is closer to the offer of ₹2,01,000 received by the MOPT, this Authority is inclined to approve the proposal of the MOPT to prescribe the monthly rental for the premises at ₹2,01,698. The approval to the rate of ₹2,01,698 should not be construed as an incidental approval to the methodology adopted by the MOPT to arrive at the market value of the building based on Current Construction Cost.
- (vi). As per clause 18 (c) of the Land Policy Guidelines, 2014 the annual escalation in the lease rent should not be less than 2%. The MOPT has proposed annual escalation of 5% which has the approval of the Board of Trustees of the MOPT. Since the proposed annual escalation in the lease rent of the commercial building is more than the minimum prescribed in the Land Policy, 2014 and as none of the users and lessees consulted have objected to the proposed annual escalation of 5%, the same is approved.
- (vii). (a). This Authority has approved the Scale of Rates (SOR) for estate of the MOPT vide its Order No. TAMP/8/2012-MOPT dated 2 May 2012. This SOR was revised vide Order No. TAMP/8/2012-MOPT dated 8 August 2012. The port in the subject proposal has requested for insertion of the schedule relating to the lease rent for premises in the existing schedule relating to Estate Rentals (Part-III) and amend the existing note no. 5 in its revised SOR for estate rentals.
- (b). As per clause 18 (b) and 18 (c) of the Land Policy Guidelines, 2014, this Authority shall notify the reserve price in terms of annual lease rent and market value of the land. The port has not proposed to notify the market value of the premises. Accordingly, the schedule approved for the premises is inserted in the Part III–Estate Rentals of the existing Scale of Rates of the MOPT as given below, indicating the reserve price in terms of monthly lease rent as proposed by MOPT.

“IV. Lease Rent for Premises:

Sr. No.	Description	Rate per month or part thereof (in ₹)
(i).	Commercial building near railway station at Vasco	2,01,698.00

”

- (c). The existing note 5 in the Scale of Rates of estate of MOPT is given below:

“5. The rates provided in the Scale of Rates shall get automatically escalated by 2% per annum from the effective date of implementation of

the Scale of Rates and the escalated rates shall be considered as the prevailing scheduled rent for the concerned year. The rate so arrived is rounded off to nearest Rupee.”

The note 5 now proposed is given below duly indicating in italics the addition of words proposed in the note:

“5. The rates provided in the Scale of Rates shall get automatically escalated by 2% per annum *for land at I, II and III and by 5% per annum for lease rentals for Premises at IV after expiry of each year* from the effective date of implementation of the Scale of Rates and the escalated rates shall be considered as the prevailing scheduled rent for the concerned year. The rate so arrived is rounded off to nearest Rupee.”

- (d). As per the existing note no. 5 the annual escalation at 2%, of the approved license fee on port land for office building and other structures, occupation of foreshore land and way leave charges, is prescribed. In view of the proposed insertion of the schedule for lease rent for premises, the MOPT has proposed escalation in the annual lease rent at 5%. Since the annual escalation of 5% is approved for the rent schedule for premises the existing note no. 5 is amended as proposed by the port.

12.2. This Authority vide Order No. TAMP/8/2012-MOPT dated 2 May 2012 has approved the existing Estate Rentals which are notified in the Gazette of India on 18 May 2012. The existing Estate Rentals have to come into effect after 30 days from the date of notification of the Order. Accordingly, the existing Estate Rentals have come into effect from 17 June 2012 and are valid till 16 June 2017. The MOPT has proposed for insertion of the lease rent schedule for the commercial building in the existing SOR for Estate Rentals. The proposed schedule and the amended note will be valid till 16 June 2017 co-terminus with the validity of the existing Estate Rentals approved vide Order dated 2 May 2012.

12.3. The MOPT has proposed to implement its proposal after 30 days from the date of notification. In this regard, it is to state that the Orders of this Authority generally come into effect after expiry of 30 days from the date of notification of the Order in the Gazette of India unless otherwise different arrangement is specifically mentioned in the respective tariff orders. In the case in reference, though the MOPT proposed 30 days lead time for the order to become effective, 15 days lead time is prescribed keeping in view the urgency expressed later by its letter dated 5 May 2015 for approval of its proposal since the premises is lying vacant.

12.4. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves insertion of the following Section in Part III–Estate Rentals of the existing Scale of Rates of the MOPT and amended Note No.5 as given below:

“IV. Lease Rent for Premises:

Sr. No.	Description	Rate per month or part thereof (in ₹)
(i).	Commercial building near railway station at Vasco	2,01,698.00

- “5. The rates provided in the Scale of Rates shall get automatically escalated by 2% per annum *for land at I, II and III and by 5% per annum for lease rentals for Premises at IV after expiry of each year* from the effective date of implementation of the Scale of Rates and the escalated rates shall be considered as the prevailing scheduled rent for the concerned year. The rate so arrived shall be rounded off to nearest Rupee.”

(T.S. Balasubramanian)
Member (Finance)

**SUMMARY OF THE ARGUMENTS MADE IN THIS CASE FROM THE PORT DURING THE
JOINT HEARING BEFORE THE AUTHORITY**

F. No.TAMP/57/2014- MOPT - Proposal received from the Mormugao Port Trust (MOPT) for fixation of lease rental for commercial building owned and constructed by the MOPT near railway station at Vasco

A joint hearing on the case in reference was held on 22 January 2015 at the MOPT premises. The MOPT made a brief power point presentation of its proposal. The submissions made by the MOPT at the joint hearing are as follows:

Mormugao Port Trust (MOPT)

- (i) We constructed a building with ground and three floors near the railway station at Vasco. The capital cost of construction is ₹79.27 lakhs.
- (ii). The building has been vacant since construction. The LIC had bid for the entire building at ₹2,01,000/- per month in April 2013. But, when it was on the verge of finalization, the Government issued the new Land Policy Guidelines of 2014. Hence, the lease rent for premises has to be fixed as per the Land Policy Guidelines of 2014.
- (iii). There is no specific guideline or methodology for fixing lease rentals of Premises in the Land Policy Guidelines of 2014.
- (iv). The methodology applicable for arriving at the licence fee of the land cannot be made applicable to the premises which needs to be treated differently.
- (v). In the absence of specific guidelines the port has adopted a combination of the Land Policy and other guidelines.
- (vi). As per the Land Policy, the Port had appointed an approved land valuer to value the land and the commercial building. The valuer has furnished the value of land as per State Govt. ready reckoner at ₹3,500/m² and as per the approved valuer the land value is assessed at ₹55,000/m².
- (vii). Considering the market value of land at ₹55,000 /m², for 293 sq. mtr of land, the approved valuer has assessed the value of land at ₹1,61,15,000/-. For the Building, the current cost of construction is assessed at ₹1,07,78,000/-.
- (viii). Annual lease rent of the plot has been taken as 6% of the value of the land. 16% Return has been considered on the value of the building.
- (ix). The ROCE on book value of the building cannot be considered in case of premises as many old premises to be leased out do not reflect the true market value.
- (x). The monthly lease rentals work out to ₹2,63,262/- which we will use it as a reserve price. Annual escalation of 5% is proposed.
