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Tariff Authority for Major Ports

G.No. 623 **New Delhi,** **30 November 2021**

NOTIFICATION

This Authority, in exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), has disposed of the proposal received from Mumbai Port Trust (MBPT) for fixation of Schedule of Rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for Port Trust structures falling under various RR Zones of MBPT on 01 November 2021. However, considering the time involved for notifying the Speaking Order along with the new section relating to prescription of calculation of base rentals as on 1.10.2012 and 1.10.2017 for the quinquennial period 1.10.2012 to 30.9.2017 and 1.10.2017 to 30.9.2022 respectively for the Port Structures (PT structures) for non-home occupations/ Home occupations in Township Areas of MBPT, on case to case basis in the respective Schedule of Lease rentals of MBPT, approved by this Authority, this Authority decided to notify only the new section relating to prescription of calculation of base rentals as on 1.10.2012 and 1.10.2017 for the quinquennial period 1.10.2012 to 30.9.2017 and 1.10.2017 to 30.9.2022 respectively for the Port Structures (PT structures) for non-home occupations/ Home occupations in Township Areas of MBPT, on case to case basis in the respective Schedule of Lease rentals of MBPT, approved by this Authority on 01 November 2021 was notified in the Gazette of India on 12 November 2021 vide Gazette no.557. It was stated in the said Notification that this Authority will notify the Speaking Order, in due course of time. Accordingly, this Authority hereby notifies the Speaking order connected with the disposal of proposal of MBPT for fixation of Schedule of Rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for Port Trust structures falling under various RR Zones of MBPT as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/55/2021-MBPT

Mumbai Port Trust	**- - -**	**Applicant**

QUORUM

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Sunil Kumar Singh, Member (Economic)

O R D E R

(Passed on this 1st day of November 2021)

This case relates to a proposal received from Mumbai Port Trust (MBPT) vide its letter No. FA/OEA-L/38(21)/Gen/266 dated 23 September 2021 seeking approval for fixation of Schedule of Rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for Port Trust structures falling under various RR Zones.

2.1. The main highlights of the MBPT proposal dated 23 September 2021 are as follows:

(i). Government has issued Policy Guidelines on Land Management for all major ports vide letter No. PD-13017/2/2014/-PD.IV dated 17.07.2015. By Clarification Circular No. 1 of 2018 dated 14.05.2018, and Clarification Circular No.1 of 2019-20 dated 29.04.2019 Ministry has extended the applicability of the PGLM 2015 to the non-home occupation / commercial areas of the township areas of Mumbai, Kolkata and Kandla Port. Clause 13 (c) of PGLM of 2015 requires the port to refix the SOR once in five years and obtain TAMP's approval thereto.

(ii). As provided in Clause 13 of PGLM, Land Allotment Committee (LAC) has recommended rates for various Ready Reckoner Zones. Same have been approved by MBPT Board. Subsequently, the MBPT vide its letter dated 12 October 2020 has furnished a copy of the Board Resolution approving the proposal vide Board resolution no. 153 dated 24 August 2021

(iii). In this backdrop, the MBPT has come up with the subject proposal for seeking approval for fixation of Schedule of Rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for Port Trust structures falling under various RR Zones which is submitted for approval to the SOR in terms of Clause 13 (c) of PGLM 2015.

2.2 The background and other main points made by the MBPT in its proposal dated 23 September 2021 are summarized below:

A. Background :

(i). Mumbai Port Trust owns about 944 Ha of land in Mumbai City. The land in the Mumbai city limits falls under the jurisdiction of A, B, C, M, G-North, E, F-North and F-South Wards and letout lands in outside island city of Mumbai. The said land stretches from Colaba to Wadala, Mahim, Worli, Govandi, Pir Pau, Mahul, Titwala etc. and is divided into 15 administrative units for management of these estates. The landed estates are divided into 2 main categories, viz. (i) lettable land and (ii) non-lettable land. Non-lettable land includes areas occupied by offices of sister department, administrative offices of Mumbai Port Trust, Port Trust quarters, Port Trust hospital, etc. The lettable category includes areas let out on long term leases, 15 monthly leases, monthly tenancies and licenses. There are also a few plots which are vacant and can be let out.

(ii). The Board vide TR 153 of 2021 accorded approval to Schedule of Rates (SoR) for the period from 01.10.2012 to 30.09.2017 and from 01.10.2017 to 30.09.2022 in respect of Mumbai Port Trust letout PT structures falling under various Ready Reckoner Zones applicable to all the Expired leases/Fifteen Monthly leases/Monthly Tenancies/Licenses.

B. Policy Guidelines:

(i). The Land Management Policy Guidelines for Major Ports, 2010 issued by the Ministry was adopted by the Board vide TR No.21 of 2011 read with Supreme Court Judgement. The Ministry subsequently, with the approval of the cabinet, issued Land Policy guidelines for Land Management by Major Ports 2014 (PGLM), which was applicable for all Ports except for the land relating to the township areas of Kandla, Mumbai and Kolkata Port, for which it was stated that separate policy will be formulated. The amended policy guidelines were issued in 2015.

(ii). The Ministry vide clarification Circular (Land Management) No.1 of 2018 dated 14.05.2018, Clarification No.2 of 09.03.2019 and Clarification No.1 of 2019-20 dated 29.04.2019 issued clarification circular on various issues of PGLM 2014/15 extending the applicability of the PGLM 2015 to the non-home occupation/ commercial areas of the township areas of Mumbai, Kolkata and Kandla Port upto 31.03.2020 with a sunset clause. The PGLM 2015 has thus become applicable to the township areas of Mumbai Port Trust. The Ministry vide further letter dated 27.01.2021 has clarified that "*since PGLM 2014 has been approved by the cabinet, it is valid until it is revised by the cabinet. Hence, compiled PGLM, 2015 issued on 29.04.2019 will be applicable for both the land of major port trust and the township area subject to the condition mentioned in the letter dated 29.04.2019."*

(iii). As per the PGLM-2015, the Land Allotment Committee is required to consider the following factors for determining the market value of the Port land:

I). *"a) State Government's Ready Reckoner of land values in the area, if available for similar classification/ activities.*

b) Highest rate of actual relevant transactions registered in the last 3 years in the ports vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards) with an appropriate annual escalation rate to be approved by the Port Trust Board.

c) Highest accepted tender-cum-auction rate of Port land for similar transaction updated on the basis of the annual escalation rate approved by the Port Trust Board.

d) Rate arrived at by an approved valuer appointed for the purpose by the Port.

e) Other relevant factor as may be identified by the Port.

II) The Land Allotment Committee shall, while recommending the latest market value for any land would normally take into account the highest of the factors mentioned in Para 13(a) above. Reserve price in terms of the annual lease rent would be latest SoR determined in accordance with Para 13 (a) and 13 (c) and would in no case be less than 6% of the latest value recommended by the Port trust.

III). The Port trust would make a proposal as outlined in Para 13 (a) to TAMP for fixing the latest SoR of the land. The TAMP would notify the latest SoR of the land after following due process of consultation with stake holders within 45 days of the receipt of the proposal. The Port trust board will fix a rate of annual escalation which would not be less than 2 %. SoR would be refixed once in every 5 years by TAMP".

C. Legal Issues :

TAMP had vide notification No. TAMP/10/98-Misc of 28.03.2000 issued orders dated 15.03.2000 on its jurisdiction for framing scale of rates and statement of condition on the issue of applicability of SOR to all lands of all Major Ports. The said notification was challenged by the Mumbai Port by Writ Petition 1153 of 2000. In the writ petition, by interim order dated 02.05.2000, the Bombay High Court had stayed the applicability of TAMP's order to areas not falling within Port limit and Port approaches. The issue of withdrawal of Writ Petition and necessary advice for the same was been taken up with the Ministry in the light of PGLM 2015. TAMP has since by letter dated 15th July 2019 intimated that TAMP is required to fix the SOR for all areas of Mumbai Port including Township areas with effect from 01.10.2012 onwards in terms of advisory from the Ministry of Shipping and therefore notification dated 28th March 2000 may be seen to have become infructuous. Therefore, the Writ Petition was also withdrawn by High Court order dated 08.08.2019.

D. LAC Report:

(A) Fixation of SoR for PT Structures for the period 2012-17 and 2017-22

(i). In some of the PT structures in Township areas, were letout on Monthly Tenancy, Fifteen Monthly Lease and some cases the leases have been expired. As per the practice approved by the Board vide TR No.253 of 1991 and TR No.539 of 1994 for computation of rent/compensation of PT structures is fixed at 2.5 times of the applicable letting rates but since the maintenance of the structure is with lessee/tenants, it was allowed to retain 0.5 times of the rate towards repairs and maintenance of the structures. Vide TR 127 of 2006, it was decided to fix rent rates at 6% per annum on tenement value. The lessees/tenants shall retain 20% of the rent for repairs and maintenance of structure to be done by lessee/ tenant and pay a net rent at 4.8% per annum return on tenement values.

(ii). Keeping the same analogy, it is proposed to fix the SoR for base rate for one Sq.M for FSI 1.00/ BUA of PT Structures on the basis of following formula

6% X [(FMV of land for 1 SqM of BUA) + (80% of Depreciated cost of PT structure based on age of the Building and type of building)]

Note:

1. Cost of the PT Structure for the period 01.10.2012 to 30.09.2017 has been provided in the RR Booklet 2012 is furnished at page nos. 6-7/c and percentage of depreciation shown in table No. B of the same booklet.

2. Cost of the PT Structure for the period 01.10.2017 to 30.09.2022 has been provided in the RR Booklet 2017-18 is furnished at page nos. 8-9/c and percentage of depreciation shown in table No. B of the same booklet.

3. The above SoR rates will have annual escalation of 4% in every October and with revision of SoR every 5 years.

(B). Port Trust is billing the monthly tenants with MCGM Property Cesses (WBT, SBT, EGC & ED) @ 55.5% of Annual Rent as per SC Judgement and recovery of the same was MbPT's responsibility.

LAC vide report dated 23.08.2021 recommended that same practice is to be followed in future, however, the MCGM cesses will be reworked out in accordance with the proposed SOR 2012-2017 and 2017-2022 as may be approved by the TAMP, in respect of all the monthly tenancies and licenses upto 11 months (home and hon-home occupations) of all the Ready Reckoner zones of Mumbai Port Trust land. The same is approved by the Board vide TR 155 of 2021.

(C). All the demand notices of differential arrears as per the revised SoR for 2012-2017 and SoR 2017-2022 will be issued to all monthly tenancies, fifteen monthly leases, expired leases and licenses as a compensation for wrongful use of the premises without interest and giving time limit of 3 months from the date of receipt of demand notices and interest at the applicable rates will be charged for delayed payments subject to TAMP's approval.

2.3. Thus, MBPT has sought TAMP's approval to the SOR approved by the Board vide TR 153 of 2021 for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for occupations in let out PT Structures. These rates will be applicable to all the Expired Leases, Fifteen Monthly Leases, Monthly Tenancies and Licenses including vacant PT structures (for calculation of Reserve Price, Annual Rent/Upfront Premium for allotment) of the plots falling under the respective ready reckoner zones. The details of which are as given below :

REVISION OF SOR FOR THE PERIOD FROM 01.10.2012 TO 30.09.2017 (PT Structure)

(in ₹.)

A	B	C	D	E	F	G	H	I
Sr. No.	**RR Zone**	**Unit**	**Description as per Ready Reckoner**	**Land value of open land as per State Government RR 2012 Per SqM for FSI-1.00 Reckoner 2012**	**Proposed base rates per sqm per month for FSI 1.00/BUA (as per 6 % return p.a. in terms of Land policy) on land values and cost of structure as per Ready Reckoner 2012 as on 01.10.12**			
					RCC Construction (Rs. 17500 Per sq mtr BUA)	**Other Pucca Construction (Rs. 14000 Per sq mtr BUA)**	**Semi/half Pucca Construction (Rs. 9000 Per sq mtr BUA)**	**Kutcha Construction (Rs. 6000 Per sq mtr BUA)**
1	14/101	1	All the Portion on East of Harbour Railway Line.	24000	190.00	176.00	156.00	144.00
2	16/110	1	North, East & South boundary of Division, on West Harbour Railway Line (Part) and	51800	329.00	315.00	295.00	283.00

A	B	C	D	E	F	G	H	I
			boundary of the Division.					
3	11/86	1, Bunders	Portion towards East of Harbour Line, On South Acharya Donde marg (King Edward Road) upto Sewri Railway Station, on East sea, on North boundary of ward and on West Harbour Railway Line. All the portion surrounded.	13800	139.00	125.00	105.00	93.00
4	11/84	2	On East Barister Nath Pal Marg, T. Jeevraj Marg, Rafi Ahmed Kidwai Marg, on West G.D. Ambedkar Marg, on North Jerbai Wadia Marg. All the portion surrounded.	66500	402.50	388.50	368.50	356.50
5	11/85A	3	On East B. P. T. railway line, on West Harbour railway line, on South Division boundary (First Avenue Road).	20600	173.00	159.00	139.00	127.00
6	11/85	4,5,Bunders	On East Division boundary, from Sewri Station toward south Hindustan Level Company's East side Road, on West B.P.T. Railway Line, on South Division boundary.	17300	156.50	142.50	122.50	110.50
7	10/79	2,6	On East division boundary (portion of Harbour Railway line and G.D. Ambedkar	33600	238.00	224.00	204.00	192.00

A	B	C	D	E	F	G	H	I
			Marg) on West central railway line, division boundary, on North division boundary, Dattaram Laud Marg, on South Sant Savatmalimarg.					
8	10/79 A	8	On East B.P.T. railway line, on West central railway harbour line, on North Division boundary upto First Avenue Road, trangular portion of all the land.	16700	153.50	139.50	119.50	107.50
9	10/80	4,7,8,9, Bunders	On West B.P.T. Railway Line (East Oilfield Freeway) on East sea on South Jijabhai Mulji Rathod Marg (Wadi Bunder Road) and on North B.P.T. Railway line and first Avenue Road. All the portion Surrounded.	16900	154.50	140.50	120.50	108.50
10	10/78B	8	On East B.P.T. Railway line, on West Central railway harbour line, on south Jeenabai Rathod Marg (Wadi Bunder Road) trangular portion of all the land.	21500	177.50	163.50	143.50	131.50
11	3/36	8,Docks	All portion of B Ward on Eastside of P.D' Mello Road upto sea shore (Victoria Dock & Princess Dock).	26800	204.00	190.00	170.00	158.00

A	B	C	D	E	F	G	H	I
12	3/35	10	Area Between North Boundary of B Ward (Ramchandra Bhatt Marg,2013), South Boundary of B Ward (Lokmanya Tilak Marg,2013), Central Railway Line and P.D'Mello Road.	48900	314.50	300.50	280.50	268.50
13	2/23	9, 11, 15 Docks	Indira Dock land Portion towards East of P.D'Mello Road upto sea and from G.P.O. to North boundary of Ward.	53000	335.00	321.00	301.00	289.00
14	2/9	11	Shahid Bhagat Singh Marg from Regal Cinema to General Post Office.	93300	536.50	522.50	502.50	490.50
15	2/22	11	Ballard Estate part. Portion towards East of Shahid Bhagat Singh Marg from Mint to General Post Office upto indira Dock Portion and Dock railway and portion upto division boundary.	54700	343.50	329.50	309.50	297.50
16	2/12	12	Madam Cama Road between Regal Cinema and Gateway of India.	133500	737.50	723.50	703.50	691.50
17	1/6	12, Bunders	Colaba portion: East portion of Prakash Pethe Marg and Jagannath Bhosale Marg and South portion of Madam Cama Road, except portion of Sub-zone 1/3 above.	106800	604.00	590.00	570.00	558.00

A	B	C	D	E	F	G	H	I
18	1/6A	12	On East Sea, on West Shahid Bhagat Singh Road, on South Homi Bhabha Road on North division boundary. (Refer Note No.9)	98900	564.50	550.50	530.50	518.50
19	1/3	12	Shahid Bhagat Singh Marg from Colaba to Regal Cinema	253200	1336.00	1322.00	1302.00	1290.00
20	90/419	1	All the properties of Mahul village	13700	138.50	124.50	104.50	92.50
21	96/436	1	All the properties of Aanik village, except Bhakti Park Complex	23000	185.00	171.00	151.00	139.00
22	26/81	5	Zone 2A. Division Manda (34)(A) Manda West - All properties on West of Central Railway Line	6900	104.50	90.50	70.50	58.50
23	17/119	14	on South Sitladevi Temple Road, on East Western Railway Line and on North and West Mahim Creek. All the portion surrounded.	60100	370.50	356.50	336.50	324.50
24	17/116	14	Mahim Bunder	71800	429.00	415.00	395.00	383.00
25	1/5	14	Pilot Bunder (Sea Cadet)	214000	1140.00	1126.00	1106.00	1094.00
26	2/13	15	PD'Mello Road	125800	699.00	685.00	665.00	653.00

NOTES:

1. Actual quantum of Rent will be worked out on the base rent and factor as may be recommended by the committee appointed for the purpose of applicability of FSI.
2. Taxes, service charges, penalties, interest rates are not included in the above rates.
3. Rate for let out structures constructed / owned by MBPT i.e. P.T. Structures will be calculate based on the above rates by using this formula "6% X [(FMV of land for 1 SqM of BUA) + (80% of Depreciated cost of PT structure based on age of the Building)]"
4. Percentage of depreciation based on age of structure and type of construction will be considered for calculation of PT structure rentals as given in Annexure I by using above rates.
5. Differential Arrears, liabilities and other dues/charges for a period from 01.10.2012 to 30.9.2017 are calculated based on above rates.
6. These rates are applicable for Non-Home, Home and Mixed (Home and Non-Home) occupations in PT Structures.
7. Estate lands of Old Sassoon Dock, Ferry Wharf and Jawahar Dweep are excluded from the above rates.

8. These rates are not applicable to occupations given on nominal rents to public bodies and for public amenities.
9. Interest would be chargeable beyond permissible period as per Board's policy from time to time.
10. Whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month.
11. These rates are subject to Audit verification.

REVISION OF SOR FOR THE PERIOD FROM 01.10.2017 TO 30.09.2022 (PT Structure)

(in ₹.)

A	B	C	D	E	F	G	H	I
Sr. No.	**RR Zone**	**Unit**	**Description as per Ready Reckoner**	**Fair market value of open land as per valuers report for the year 2017-18 Per SqM for FSI-1.00 (FMV)**	**Proposed base rates per sqm per month for FSI 1.00/BUA (as per 6 % return p.a. in terms of Land policy) on land values and cost of structure as per Ready Reckoner 2017 as on 01.10.17**			
					RCC Construction (Rs. 27500 Per SqM BUA)	**Other Pucca Construction (Rs. 23375 Per sq mtr BUA)**	**Semi/half Pucca Construction (Rs. 16000 Per sq mtr BUA)**	**Kutcha Construction (Rs. 9625 Per sq mtr BUA)**
1	14/101	ND - Unit 1	Dadar-Naigaum	1,15,000	685.00	668.50	639.00	613.50
2	14/101A	ND - Unit 1	Dadar-Naigaum	1,15,632	688.16	671.66	642.16	616.66
3	11/86	ND/CD/ Bunders Unit 1, 5,13	Parel-Sewree	1,20,200	711.00	694.50	665.00	639.50
4	11/85A	ND- Unit 3	Parel-Sewree	1,78,450	1002.25	985.75	956.25	930.75
5	11/85	ND/CD/ Bunders Unit 4, 5,13	Parel-Sewree	1,68,450	952.25	935.75	906.25	880.75
6	11/84	ND Unit 2	Parel-Sewree	1,71,310	966.55	950.05	920.55	895.05
7	11/84A	ND Unit 2	Parel-Sewree	1,71,310	966.55	950.05	920.55	895.05
8	10/80	ND/CD/ SD/Bunders Unit 4,7,8,9, 13	Mazgaon	1,87,700	1048.50	1032.00	1002.50	977.00
9	10/79	ND/CD- Unit 2, 6,7	Mazgaon	1,71,310	966.55	950.05	920.55	895.05
10	10/79A	ND Unit 3	Mazgaon	1,85,585	1037.93	1021.43	991.93	966.43
11	10/78A	CD Unit 6,8	Mazgaon	1,70,240	961.20	944.70	915.20	889.70
12	10/78B	CD Unit 8	Mazgaon	1,70,240	961.20	944.70	915.20	889.70

A	B	C	D	E	F	G	H	I
13	3/36	SD - Unit 9	Princess Dock	1,70,240	961.20	944.70	915.20	889.70
14	3/35	SD/Bunders - Unit 9, 10,14	Princess Dock	1,70,240	961.20	944.70	915.20	889.70
15	3/35B	SD - Unit 9, 10	Princess Dock	1,89,633	1058.17	1041.67	1012.17	986.67
16	2/22	SD- Unit 11	Fort	1,91,040	1065.20	1048.70	1019.20	993.70
17	2/23	SD/Bunders Unit 9,11,15	Fort	2,11,500	1167.50	1151.00	1121.50	1096.00
18	2/13	SD/Bunders Unit 9,11,15	Fort	2,52,500	1372.50	1356.00	1326.50	1301.00
19	2/9	SD - Unit 11	Fort	2,11,500	1167.50	1151.00	1121.50	1096.00
20	2/12	SD - Unit 12	Fort	2,90,635	1563.18	1546.68	1517.18	1491.68
21	1/6A	SD/Bunders Unit 12, 14	Colaba	2,90,635	1563.18	1546.68	1517.18	1491.68
22	1/4	Unit 14 (Pilot Bunder)	Colaba	2,90,635	1563.18	1546.68	1517.18	1491.68
23	1/3	SD - Unit 12	Colaba	2,90,635	1563.18	1546.68	1517.18	1491.68
24	1/3A	SD - Unit 12	Colaba	3,31,600	1768.00	1751.50	1722.00	1696.50
25	17/119	BD - Unit 14	Mahim	1,90,000	1060.00	1043.50	1014.00	988.50
26	17/116	BD - Unit 14	Mahim	1,90,000	1060.00	1043.50	1014.00	988.50
27	90/419 Pir Pau	ND - Unit 1	Mahul	53,820	379.10	362.60	333.10	307.60

NOTES:

1. Actual quantum of Rent will be worked out on the base rent and factor as may be recommended by the committee appointed for the purpose of applicability of FSI.
2. Taxes, service charges, penalties, interest rates are not included in the above rates.
3. Rate for let out structures constructed / owned by MBPT i.e. P.T. Structures will be calculate based on the above rates by using this formula “6% X [(FMV of land for 1 SqM of BUA) + (80% of Depreciated cost of PT structure based on age of the Building)]”
4. Percentage of depreciation based on age of structure and type of construction will be considered for calculation of PT structure rentals as given in Annexure II by using above rates.
5. Differential Arrears, liabilities and other dues/charges for a period from 01.10.2012 to 30.9.2017 are calculated based on above rates.

6. These rates are applicable for Non-Home, Home and Mixed (Home and Non-Home) occupations in PT Structures.
7. Estate lands of Old Sassoon Dock, Ferry Wharf and Jawahar Dweep are excluded from the above rates.
8. These rates are not applicable to occupations given on nominal rents to public bodies and for public amenities.
9. Interest would be chargeable beyond permissible period as per Board's policy from time to time.
10. Whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month.
11. These rates are subject to Audit verification.

2.4. The MBPT has stated that the proposal is formulated in terms of the Land Policy Guidelines for Land Management 2015. Further, the MBPT has stated that under Section 49 of MPT Act, 1963 and para 13 (c) of PGLM-2015, TAMP's approval to the SOR for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 applicable to all occupations in letout PT Structures of the Expired Leases, Fifteen Monthly Leases, Monthly Tenancies and Licenses including vacant PT structures (for calculation of Reserve Price, Annual Rent/Upfront Premium for allotment) of the PT structures falling under the respective Ready Reckoner zones.

3.1 On a preliminary scrutiny of the proposal forwarded by MBPT, it is found certain additional information/ clarification is required from MBPT. Therefore, the MBPT was requested vide letter dated 06 October 2021 to provide the detailed calculation arriving the lease rentals, the life of the structure, and depreciated value for each of the types of the structures under each of the zone and to provide statement of existing rentals being levied by MBPT and the proposed lease rentals, for various plots of land, for which the approval is being sought.

3.2. Accordingly, the MBPT vide its letter dated 12 October 2021 has furnished its response, which is as follows;

(i) The table containing different rates for RR zones attached to the proposal, is only indicative arrived based on the methodology used for arriving rentals per sq.m. per month and are not the schedule of lease rentals to be approved by the TAMP.

(ii) However, considering the variable parameters like, date of construction, type of construction, type of building, etc., No Schedule of Lease rentals can be tabulated and the actual quantum of the rentals will have to be worked out as per the formula given at para 4(A) i.e. "LAC recommendations" and at the Notes in Annexure-III and IV of the proposal submitted to TAMP, which is reproduced as below:

"It is proposed to fix the SoR for base rate for one Sq.M for FSI 1.00/ BUA of PT Structures on the basis of following formula :
6% X [(FMV of land for 1 SqM of BUA) + (80% of Depreciated cost of PT structure based on age of the Building and type of building)]

Note:

i) Cost of the PT Structure for the period 01.10.2012 to 30.09.2017 has been provided in the RR Booklet 2012 annexed as Annexure I and percentage of depreciation shown in table No. B of the same booklet.

ii) Cost of the PT Structure for the period 01.10.2017 to 30.09.2022 has been provided in the RR Booklet 2017-18 annexed as Annexure II and percentage of depreciation shown in table No. B of the same booklet.

iii) The above SoR rates will have annual escalation of 4% in every October and with revision of SoR every 5 years. SoR 2012-17 table for letout PT structures for different zones is enclosed as Annexure III *based on Ready Reckoner rates 2012 and SoR 2017-22 table for letout PT structures for different zones is enclosed as Annexure IV based on Valuation Reports."*

In view of the above, the MBPT has requested TAMP to approve and endorse the same formula for calculation of rentals, case by case instead of prescribing the Zone wise SOR for the Port Structures for the period 2012-17 and 2017-22. The MBPT has suggested that the extract of RR 2012 for rates for new construction and depreciations and extract of RR 2017 for rates for new construction and depreciation be annexed as Annexures to TAMP's final orders in the subject matter.

3.3. Thus, the MBPT has come up with a proposal seeking approval for prescription of a formula relating to calculation of base rentals as on 1.10.2012 and 1.10.2017 for the quinquennial period 1.10.2012 to 30.9.2017 and 1.10.2017 to 30.9.2022 respectively for the Port Structures (PT structures) for non-home occupations/ Home occupations in Township Areas of MBPT, on case to case basis considering the variable parameters like, date of construction, type of construction, type of building, etc., in the respective Schedule of Lease rentals approved and notified by the Authority.

4.1. Considering the huge list of registered tenant / lessees as suggested by the MBPT, the MBPT was requested vide letter dated 14 October 2021 to upload subject proposal in its website and intimate to all the registered tenant / lessees about hosting of the subject proposal in the MBPT website and give the designated email address of Port as well as TAMP for furnishing comments within 15 days' time.

4.2. Accordingly, the MBPT vide its email dated 25 October 2021 has confirmed that it has informed all Tenants / Lessees about hosting of subject proposal for comments/ opinion of the users on the subject proposal in reference. The MBPT has furnished a copy its Notice No.EM/AS(G)/F-382/2078 dated 20 October 2021, wherein the MBPT has intimated the Tenants/ Lessees about hosting of subject proposal in the website of MBPT and has sought for comments/ opinion of the users on the subject proposal in reference, to be sent to the Authority as well as MBPT.

4.3. In this connection, large numbers of submissions/ comments have been received from various lessees/ tenants. As intimated by MBPT in its Notice, a copy of the said comments have also been forwarded by the lessees/ tenants/ users to MBPT as well. The MBPT vide its email dated 31 October 2021 has responded.

5. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received from the users / user organisations will be sent separately to them. These details will also be made available at our website http://tariffauthority.gov.in.

6.1. Before going into the analysis of the proposal, it is noteworthy to mention that MBPT in the first week of August 2021 has filed two proposals seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for `non-home occupations in Township Areas of MBPT. The said proposals were taken up on consultation with the relevant users/tenants/lessees. We have received numerous representations from various individual tenants/ lessees strongly objecting to the said proposal, on the ground that there is no provision under the Major Port Trust Act, 1963, permitting MBPT to charge the rent retrospectively. It has also been stated that retrospective revision will be highly destructive for all the occupants and it is likely that the same may be challenged in Court of law. Some lessee/ tenants have also stated that the retrospective revision would act as a financial shock to their business and it will be very difficult for them to sustain it financially. Further, considering the adverse impact that the COVID-19 pandemic had on the business, it has been further stated that the retrospective revision and the payment of arrears thereon, would further strain the financial condition of the lessees/ tenants. Thereafter, a joint hearing was held on 03 September 2021 on the said proposal, wherein, users/tenants/ lessees has raised similar issues no other than issues brought out in written submission. Subsequently, users/tenants/lessees were given an opportunity to submit their writing submission, if any, on the power point presentation of the proposal made by MBPT during the Joint Hearing. We have received written submission from the various user/ users/tenants/lessees reiterating the submissions made earlier and during the joint hearing, which have been duly brought to the notice of this Authority.

6.2. An action has already been initiated to notify the said order in the Official Gazette of India. Simultaneously, the MBPT has also filed 6 similar proposals seeking approval for Schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 for non-home occupations/ home occupations in Township Areas of MBPT for let out land falling under various Ready Reckoner Zones, which have been dealt separately.

6.3. The present proposal seeks approval for prescription of a formula relating to calculation of base rentals as on 1.10.2012 and 1.10.2017 for the quinquennial period 1.10.2012 to 30.9.2017 and 1.10.2017 to 30.9.2022 respectively for the Port Structures (PT structures) for non-home occupations/ Home occupations in Township Areas of MBPT, on case to case basis.

The users/tenants/lessees have made their submissions similar to that of submission made earlier with regard to proposals of MBPT seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT, which have been forwarded to MBPT for its comments. The response of the MBPT is also similar to the response given in the earlier similar proposals. No specific comments are received on the formula proposed to prescribe in the respective SOR.

6.4. Since, the submissions made by users/ response of MBPT thereon is akin to the earlier proposals of MBPT seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT and given that the proposal in reference has already been taken on consultation with stakeholders, as provided in PGLM, 2014, this Authority has decided not to hold joint hearing on the case in reference.

6.5. In this regard it may be noted that, mere non holding of Joint hearing shall not be construed as this Authority having not followed the consultation process.

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

(i) The MBPT has come up six separate proposals seeking retrospective fixation of lease rentals for Schedule of Rates and revision of rent/ compensation for non-home occupations/ residential and mixed used occupations/ Port Trust structures in Township Areas of MBPT for the quinquennial period from 01 October 2012 to 30 September 2017 and for the period from 01 October 2017 to 30 September 2022. The present proposal is for incorporation of new section to calculate base rentals as on 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for Port Structures (PT) for non-home occupations / home occupations in township areas of MBPT on case to case basis in its respective schedule of lease rentals of MBPT.

In this regard, the MBPT has stated that some of the Port Trust (PT) structures in Township areas, were letout on Monthly Tenancy, Fifteen Monthly Lease and some cases the leases have been expired. As per the practice approved by the

Board vide TR No.253 of 1991 and TR No.539 of 1994 for computation of rent/compensation of PT structures is fixed at 2.5 times of the applicable letting rates but since the maintenance of the structure is with lessee/tenants, it was allowed to retain 0.5 times of the rate towards repairs and maintenance of the structures. Vide TR 127 of 2006, it was decided to fix rent rates at 6% per annum on tenement value. The lessees/tenants shall retain 20% of the rent for repairs and maintenance of structure to be done by lessee/ tenant and pay a net rent at 4.8% per annum return on tenement value.

(ii) In the backdrop, the MBPT has come up with a proposal seeking approval for prescription of a formula relating to calculation of base rentals as on 1.10.2012 and 1.10.2017 for the quinquennial period 1.10.2012 to 30.9.2017 and 1.10.2017 to 30.9.2022 respectively for the Port Structures (PT structures) for non-home occupations/ Home occupations in Township Areas of MBPT, on case to case basis considering the variable parameters like, date of construction, type of construction, type of building, etc., in the respective Schedule of Lease rentals approved and notified by this Authority.

(iii) The users/tenents/lessess objections on the retrospective revision of the lease rentals from the 01 October 2012 and 01 October 2017 on the ground that there is no provision under the Major Port Trust Act, 1963, permitting MBPT to charge the rent retrospectively, highly destructive for all the occupants, financial shock to their business very difficult to sustain it financially, adverse impact that the COVID-19 pandemic etc. which has been dealt elaborately while considering the proposal of the SOR of the respective zones. Since the proposal is limited to proposal for prescribing the formula for arriving the Lease rentals of Port Trust Structures, the objections of the users/tenants/lessees are not being discussed now.

(iv) Further, the users/tenants/lessees comments on method of valuation of land to arrive the fair market value as per PGLM, 2015 were already been dealt elaborately while considering the proposal of the SOR of the respective zones. Since the proposal is limited to proposal for prescribing the formula for arriving the Lease rentals of Port Trust Structures, the objections of the users/tenants/lessees are not being discussed herein this case.

(v) Thus, the current analysis is limited to the proposal for prescription of a following formula for calculation of base rentals as on 1.10.2012 and 1.10.2017 for the quinquennial period 1.10.2012 to 30.9.2017 and 1.10.2017 to 30.9.2022 respectively for the Port Structures (PT structures) for non-home occupations/ Home occupations in Township Areas of MBPT.

Base rate for one Sq.M for FSI 1.00/ BUA of PT Structures on the basis of following formula :

6% X [(FMV of land for 1 SqM of BUA) + (80% of Depreciated cost of PT structure based on age of the Building and type of building)]

(vi) The proposed formula for arriving the base rental as on 1.10.2012 and 1.10.2017 is based the parameters viz. Fair Market Value of BUA, Depreciation, Life of the structure etc. Analysis on the each of the parameters are discussed in the preceding paragraphs;

(a). The Port has proposed to consider the 6% of the Fair Market value of the BUA for arriving land cost of the building. In this regard, it is to state that the Major Port Trusts Act, 1963 mandates this Authority to notify Scale of

Rates and Statement of conditions for use of port properties. Also, the Land Policy Guidelines, mandates this Authority to prescribe lease rent based on the market value of the land and not the market value. As such, this Authority may not be in a position to prescribe the Fair market value of land, as proposed by MBPT. Hence, the applicable lease rentals for the respective RR zone approved by this Authority in the respective schedule of lease rentals is to be considered instead of 6% of fair market value of the BUA.

Since, the lease rentals approved by this Authority are based on the 6% of the land value considered for the respective RR zone, it may not be disadvantageous position to the port or the users to consider applicable lease rentals for the respective RR zone instead of 6% Fair Market of value of the BUA.

(b). To arrive at the market value of the structures, the port has adopted the following methodology;

(i) The Port has considered to adopt the value of the structures as on 01.10.2012 and 01.10.2017 given in the Stamp Duty Ready Reckoner, Mumbai, 2012 and Stamp Duty Ready Reckoner, Mumbai, 2017 respectively for the various type of the structures. The Rates of structures for the New Construction as given in Stamp Duty Ready Reckoner, Mumbai, 2012 and 2017 are as follows :

Sr.No	**Type of Construction**	**Cost per Sq.Mtr(Built-up) in**	
		As on 2012 ₹	**As on 2017 ₹.**
A)	**R.C.C. Construction** R.C.C. slabs , Brick wall made and plastered with cement mortar in side the wall, tiles flooring	17500	27500
B)	**Other Pukka Construction** Load bearing Structure, R.C.C slab, Brick wall plastered with cement, Kaccha or cement flooring	14000	23375
C)	**Semi/Half Pukka Construction** Load bearing structure, wall made of brick or stone with mud, Shahbad floor mud or other type of flooring and construction other than slab	9000	16500
D)	**Kaccha Construction** Mud wall with bricks, Mud Gilav, with roof of clay tiles/asbestos or tin	6000	9625

(ii) To arrive the depreciated cost, the Port has considered to adopt the depreciation rates of old buildings given in the Stamp Duty Ready Reckoner, Mumbai, 2012/2017, which is given is below :-

Completed Age of building in Years	**Value in Percent after Depreciation**	
	RCC Pukka Structures/ Other Pukka Structures	**Half or Semi-Pukka Structures**
0 to 2 years.	100%	100%
Above 2 and upto 5 Years	95%	95%
Above 5 and upto 10 Years	90%	85%
Above 10 and upto 20 Years	80%	75%
Above 20 and upto 30 Years	70%	60%
Above 30 and upto 40 Years	60%	45%
Above 40 and upto 50 Years	50%	30%
Above 50 and upto 60 Years	40%	20%
Above 60 Years	30%	15%

(iii) The MBPT has reported that as per the practice approved by the Board vide TR No.253 of 1991, TR No.539 of 1994 and TR No. 127 of 2006 for computation of rent/compensation of PT structures, users/tenants/lessees of Port Trust structures were allowed to retain 20% of the lease rentals towards repairs and maintenance of the structures. Accordingly, the lease rentals for the port structures are proposed to arrive at 6% of 80% of the depreciated value.

As per the clarification on the PGLM, 2014 issued by the Ministry of Shipping, the valuation of the structure should be done by taking into account the current market value of the original asset less the depreciation for the period of usage and obsolescence. In this regard, the methodology proposed to be followed MBPT for determination of value of Port Structures is seen to be in line with the methodology prescribed for valuation of structures as per the clarification issued by the MOS in the year 2018.

(vii) Clause 13(b) of the guidelines stipulates that Reserve Price in terms of annual lease rent would be arrived, as a percentage of latest market value of land determined based on the five factors in accordance with para 13(a) and that the percentage should not be less than 6% which is to be fixed by the Port Trust Board. Accordingly, the formula prescribes to arrive the lease rental at 6% of the value of the Port Trust structures.

(viii) Since the proposed prescription of a formula for calculation of base rentals as on 1.10.2012 and 1.10.2017 for the quinquennial period 1.10.2012 to 30.9.2017 and 1.10.2017 to 30.9.2022 respectively for the Port Structures (PT structures) for non-home occupations/ Home occupations in Township Areas of MBPT, on case to case basis is in line with the PGLM, 2014 and given that the Board of Trustee of MBPT has approved the same on the recommendation of the LAC, the proposed prescription of formula with slight modification as discussed above is approved. The comparative position with an illustrative example is given below :

Description	As proposed by the Port.	As modified by the TAMP.
Formula	*6% X [(FMV of land for 1 SqM of BUA) + (80% of Depreciated cost of PT structure based on age of the Building and type of building)]*	*Approved Lease Rentals applicable of the zone + 6% X (80% of Depreciated cost of PT structure based on age of the Building and type of building)*
Illustrative Example		
RR Zone	14/101	14/101
FMV of the Land	₹.24000.00	--
Type of Construction of the structure	RCC	RCC
Applicable Lease rentals (per sq.mtr.per month)	--	₹.120.00 (As approved by TAMP)
Cost of the Structure before depreciation	₹.17500.00 (As per RR 2012)	₹.17500.00 (As per RR 2012)
Life of the Structure	Above 30 years and upto 40 years	Above 30 years and upto 40 years
Value in percentage after depreciation	60%	60%
Cost of the Structure after depreciation	₹.10,500.00	₹.10,500.00
Lease Rentals for the Port Structure including land. per sq.mtr. per month)	₹.162.00 *[6% X [(24000)+(80% x10,500)]/12*	₹.162.00 120 + [(80%x10,500 x 6%)]/12

(ix) Clause 13(c) of the Land Policy Guidelines of 2014 gives flexibility to the ports to fix annual escalation which would not be less than 2%. Accordingly, the MBPT in its proposal has indicated that the lease rental as fixed for the year 2012-13 and 2017-18 will be subject to 4% annual escalation. However, no note is seen to have proposed by the port in the matter. Thus, a note is, therefore, prescribed in the Schedule stating that the lease rent is subject to an increase @ 4% p.a. and that first such increase shall be effective from 01 October 2013 and 01 October 2018 respectively.

However, in the prescription of lease rent for PT structures as notified vide Gazette No. 557 on 12 November 2021, an inadvertent error has been noticed with regard to first effective date of 4% increase p.a. Therefore, the corrected dates may be read as follows :

Sl. No.	Reference to the Notification dated 12.11.2021	As appeared in the Notification	To be read as given below
1.	Para 4, A, (i) Note No.3	The lease rent is subject to an increase @ 4% p.a. and that first such increase shall be effective from 01 October 2012.	The lease rent is subject to an increase @ 4% p.a. and that first such increase shall be effective from 01 October 2013.
2	Para 4, B, (i) Note No.3	The lease rent is subject to an increase @ 4% p.a. and that first such increase shall be effective from 01 October 2017.	The lease rent is subject to an increase @ 4% p.a. and that first such increase shall be effective from 01 October 2018.

(x) Clause 13 (C) of the amended Land Policy Guidelines, 2014 stipulates that the rates will be revised once in every five years by this Authority. Since the rental is being prescribed with effect from 01 October 2012 for the quinquennial period 2012-17 and from 01 October 2017 for the quinquennial period 2017-22, accordingly, a note is being prescribed in the Rent Schedule that the annual lease rentals may remain in force for a period of five years thereon.

(xi) The MBPT has proposed a note to the effect that rent will be worked out on the basis of actual Built- Up Area, subject to minimum of FSI 1.00. Given that the base lease rent approved by this Authority shall remain intact and would be only proportionately increased based on the FSI, this Authority is inclined to approve the note as proposed by MBPT in this regard.

(xii) The MBPT has proposed another note to the effect that the rates are exclusive of all Taxes (GST, Municipal Taxes, etc.), Service Charges, Penalties, and Interest etc. and that the same are separately payable by lessees/ tenants/ licensees, as may be applicable. In this regard, it is to state that the tariff approved by this Authority is exclusive of any taxes and statutory duties. The taxes and statutory duties are to be levied by the Port at the applicable rates on the tariff so approved by this Authority. In view of this position, the note as proposed by the Port is approved.

(xiii) The Port has proposed a note stating that the percentage of depreciation based on age of structure and type of construction will be considered for calculation of PT structure rentals as given in TABIE-I by using above rates, which is approved.

(xiv) The MBPT has also proposed notes to the effect that interest would be chargeable beyond permissible period as per Board's policy from time to time and that whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month. Since the proposed notes give clarity and would avoid ambiguity and would instill discipline amongst the tenants/ lessees in the payment of rentals, the proposed notes are approved.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves incorporation of the new section for prescription relating to calculation of base rentals as on 1.10.2012 and 1.10.2017 for the quinquennial period 1.10.2012 to 30.9.2017 and 1.10.2017 to 30.9.2022 respectively for the Port Structures (PT structures) for non-home occupations/ Home occupations in Township Areas of MBPT, on case to

case basis in the respective Schedule of Lease rentals of MBPT which has been notified separately vide Gazette No. 557 dated 12 November 2021.

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE COMMENTS RECEIVED FROM THE VARIOUS PORT USERS / TENANTS/ LESEEES

TAMP/55/2021-MBPT	:	Proposal received from the Mumbai Port Trust (MBPT) seeking approval for fixation of Schedule of Rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for Port Trust structures falling under various RR Zones.

A summary of the comments received from various users/ tenants/ lessees which were similar in nature have been grouped together by MBPT. The response of Mumbai Port Trust (MBPT) on each of the group wise comments are tabulated below:

Sr. No	Common issues raised by Users/ tenants/ lessees – Group 1	Reply of MBPT
1	MBPT is a trust and its scope of business is primarily of dealing in PORTS and Shipping Business but Not of Collecting Rental incomes considering the rent as the primary income	Though the core activity of the Port relates to Dock and Shipping activity, land management is a supplementary activity and the returns on the land are utilized in Managing and expanding the core functions, carrying out the activities in terms of the objectives of the Major Port Trust Act, maintenance of the existing infrastructures, creation of new infrastructures, besides taking care of salaries and wages of its existing workforce and pension of retirees.
2	The said premise was primarily allotted to us by the Welfare Officer of MBPT to serve the tenants and employees of MBPT to conduct a specific trade which bounds us to have a limited business from the said premise. Raised rent may affect our service to the colonies' tenants.	The proposed revision of rent is strictly in accordance with the provision of PGLM 2014-2015. All the tenants/lessees were clearly intimated about the revision due from 01.10.2012 and MbPT is therefore within its right to recover the increased rentals due from 01.10.2012. Once TAMP approves/ notifies the SoR, the details will be worked out and communicated to all the affected tenants and lessees and all the tenants/ lessees would be liable to pay the rates as may be approved. Since rentals from MbPT landed assets is important part of MbPT revenue which is essential for sustenance of MbPT, no concessions are admissible on the grounds raised in the representation. Further there is no such provision in PGLM 2014-2015.
3	MBPT has stated in the proposal that the rents were fixed as per compromised policy for further 20 years Since 1992 which was valid till 30.09.2012 but MBTP issued charge certificate to each individual tenant has never mentioned on the charge certificate that which letting rates are charged whether they will charge to us on the compromised policy rates or regular ready reckoner rate.	Charge certificate is only a certificate of handing over of the premises mentioned in the said certificate and the terms governing the letting are contained in the terms and conditions under which the letting is allowed to continue. Once the contract period of letting expires, the holding over continues at then applicable lettings rates/SOR and is recovered as compensation as the tenants continue to occupy the premises without a valid contract. The new rates always depends upon the policy and the Schedule of rates prevalent at the relevant time.

4	Bringing to your notice that the rent which has been paid to MBPT has been substantially increased by MBPT at the Rate of 4% every year and abiding such amount have paid such rents regularly.	The annual increase of 4% is in terms of the compromise proposals upheld by the Supreme Court by its judgement dated 13.01.2004 in the rent revision matter of MbPT and the same only partly offsets the inflation over a period of time. The basic land value has remained frozen since 1980 which has led to a sharp erosion in the values of rents fixed under the compromise proposals which even otherwise were only valid till 30.09.2012 and the revision were due from 01.10.2012.
5	Being in the good faith, we have never breached the MBPT tenancy by Sub-letting my tenancy and always have been abide to the MBPT. We had paid the rent that have been charged by MBPT on the regular letting rates which were as per the ready reckoner and not as per the compromised policy.	The billing only in respect of plots/premises which has been let out to tenants/lessees and in which cases the leases have expired and the paid up capital of such tenants/lessees is more than Rs.1 Crore are being billed w.e.f. September 2006 at 6% return per annum on land value as per Supreme Court and in all the other cases the bills are raised strictly in terms of the compromise proposals. In respect of the case of Shop No.5, Tejas Nagar, the tenancy being a Port Trust structure, the bills are raised at the rates applicable for Structures under the compromise proposals upheld by the Supreme Court.
6	The Property Tax that has been imposed by MCGM (BMC) has been paid by me on the regular basis to the authority. Whereas, as mentioned in the said proposal ready reckoner rate from some of the private estate agency, Collectors of Stamp has been taken into consideration while calculating the SOR. But if we follow such letting rates that has been charged it is in the bad faith because, in scenario of a Regular property the property tax is borne by the owner of the property and not the tenant. Whereas, we being sincere tenant still abiding the Bye Laws of MBPT have been paying property tax of the property hold regularly.	As per the provisions of BMC Act, 1888, if the tenure of a letting is less than a year, the burden of paying municipal taxes lies on the landlord who can recover the same from the tenant and if the tenure of letting is more than a year the burden of paying the taxes lies upon the tenant. Either way, the tenant is liable for payment of both the rent for the premises let out and the taxes as per municipal assessment either directly or indirectly. In the cases of leave and licences, the landlord factors the element of taxes in the rent being recovered by recovering higher rent. MbPT has been raising bills strictly in terms of the provision of Compromise Proposals under which in respect of monthly tenancy only cesses are being recovered and not property taxes, the burden of which is borne by MbPT under the quinquennial assessment of MCGM.
7	MBPT does not facilitate maintenance or repair of said premise, cleanliness of surrounding area and general urinals, improvement in sewerage facility which in turn results in severe floods every monsoon causing heavy damage to our goods and furniture every year. There is no compensation provided by MBPT for the said damage.	Under the compromise proposals upheld by the Supreme Court, in respect of Port Trust structures the letting rates are 2.5 times the letting rates applicable to the plots and the tenants are allowed to retain 0.5 times the letting rate towards maintenance of the structures and are required to pay 2 times the letting rate applicable to land. Thus the liability of maintenance of the structure lies upon the tenants. As regards to complaints on cleanliness, maintenance of urinals, sewerage, drainage, etc. the same is looked after by the local site office of the Civil

		Engineering Department who attends to the same from time to time and also on specific complaints.
8	Bringing to your Notice that Not only the Property tax but also various taxes such as Sewerage Tax, Trade Removal Charges, License Fee, Water Tax and many expenses that which an owner of the land should be liable to paid, but in tenancy of MBPT such charges are imposed on the tenant and MBPT does not play any role in paying such expenses.	This has been covered under the reply to item 6 above.
9	The rates which are given in SOR are given as per the ready reckoner where I sought that even if such rates were imposed by BMC, BMC allows the consideration for additional FSI and Built Structure. But the same cannot be applied with the said land of BPT as it is contradictory to the MBPT bye laws which could lead into breach of tenancy.	The rates given in the Ready Reckoner for developed land are for 1 FSI and it can be seen that there is a vast difference in the rates given in the Ready Reckoner for land and structure. It needs to be noted that the rates would increase proportionate to the increased FSI being utilized. One cannot carry out any development beyond the permissible FSI.
10	It is suggestible to collect the outstanding rent from tenants who are irregular towards their rent payment rather than introduce a raise in rent for the tenants who are regular towards their rental payments.	The revised SoR are applicable to all cases Monthly Tenancies, 15 Monthly lease, expired long leases and licences. MbPT is strictly bound by the provisions of PGLM and there is no provisions as proposed in the present representation in the PGLM.
11	We suggest to MBPT to rethink on the revised SoR which had been proposed for the year 2012-2017 and year 2017-2022 and take a step in good faith of me and other tenants.	The revised SoR being strictly in terms of the provisions of PGLM no review is possible. TAMP is the authority to take a decision on the proposal submitted in terms of the PGLM.

SR. NO.	Common issues raised by Users/ tenants/ lessees – Group 2	Reply of MBPT
1	At the very outset, we state that we are most shocked and surprised that such onerous, retrospective, steep and arbitrary Proposal is being forwarded by MbPT for consideration by TAMP amidst a worldwide and on-going pandemic of COVID-19, which has so heavily impacted the entire world, our country, our people and our economy to such an extent that many have lost their lives, lost their loved ones, and also their livelihood, their homes, leaving many unemployed & depleted of cash to sustain themselves. Pertinently, several businesses (including mine/ ours) have been tremendously affected by the pandemic and they have either shut-down, or are on the verge of shutting down. Instead of being sensitive, sympathetic and considerate in these trying times; proposals have been framed by MbPT (which is an Instrumentality of the State within the meaning of Article 12 of the Constitution of India) seeking to exponentially and retrospectively increase/ hike and attempt to impose the Scale of Rates of rent to such an extent that, if given effect to;- it will be impossible for any commercial enterprise to survive. Even private	The SoR was due from 01.10.2012 and 30.09.2017 when there was no pandemic. Covid-19 pandemic started from March 2020 and as per present circumstances there has been substantial relaxation given by the Govt. to the trade and general public and most of the premises have been operational. Further (a) any relaxation which the Govt. of India extends under any special circumstances in the case would be applicable to the tenants/lessees, though presently there are no such directions and even in any clarification from MoPS&W, Govt. of India on giving any concession, relaxation, compensation and assistance during pandemic time. In this connection, attention is invited to Delhi High Court Judgement, Ramanad and others V/s. Dr. Girish Soni and others dated 21.05.2020 has held that the period of lockdown on account of Covid-19 does not excuse in payment of rental amounts and no concession in rental charges is admissible. b) As the parties have continued to occupy

	landlords have, in most cases, shown a lot of benevolence and forbearance towards their tenants/ licensees/ lessees etc. in these trying times. By no stretch of imagination can retrospective fixation/ framing of steep, unlawful and arbitrary rates of rent be justified under present circumstances of the on-going pandemic of Covid-19. It is well settled that an Instrumentality of State such as MbPT has to be fair, just and reasonable in all their activities; and all their must be for public purpose and public good, and must not violate Article 14 of the Constitution. In this context, the real question which falls for TAMP's consideration is – what is the real effect of the Covid-19 pandemic on the economy, on the business of MbPT's lessees/ tenants/ occupants, on their ability to absorb the proposed heavy, steep, onerous, unlawful and unreasonable rentals; and whether in such circumstances or even otherwise should MbPT's captioned Proposal be accepted by TAMP? It may also be noted that MbPT permits us to carry out only fish-industry based activity (and no other activity) from our premises, and that the Government of India as well as MbPT shuts down the docks for a period of three (3) months during every monsoon season. During such a period, we are forced to shut down since there is no business. This aspect has been not at all been considered by MbPT under the Proposal under reply.	the premises and MbPT being Public body which continued to provide its services in COVID period and rendered the monthly invoices of compensation and also paid the GST on the invoice for the period there is no question of granting any relief. MbPT's expenditure on infrastructure and also liability towards salary/wages, maintenance etc. have continued even in COVID pandemic period. Since rentals from MbPT landed assets is important part of MbPT revenue which is essential for sustenance of MbPT, no such concessions are admissible on this ground in the proposed SoR w.e.f. 01.10.2012. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. In case of Sasson Dock (RR zone 1/6A), the valuer in his valuation report had recommended to consider 80 % of land rate of Ready Reckoner (i.e. 20% reduction on the Ready Reckoner rate) in view of the Sassoon Dock is reserved for Fishing Industries in the Development Plan. LAC had considered the valuers recommendation and recommended only 80% land rate of Ready Reckoner rate and same was approved by Board.
2	At the further outset, it is submitted that the issue of rent revision by MbPT (which finds its roots since the early 1980's) has plagued its lessees/ tenants/ occupants for decades; and the same was finally set to rest and adjudicated upon (after more than 20 years) by the Hon'ble Supreme Court in its said judgement dated 13.01.2004 in the matter of *Jamshed Hormusji Wadia Vs. The Board of Trustees of the Port of Mumbai*, *(2004) 3 SCC 214* (viz. "Wadia's Case"); wherein, the Hon'ble Supreme Court has *inter alia* upheld with (downward revision in rent and interest) MbPT's own "Compromise Proposals", further holding that the said "Compromise Proposals" would be applicable to all the lessees of MbPT even if they	Present monthly rental are as per valuation report of 1980's which are no way comparable with present market rate. An average Kirloskar land values of Rs. 1406/- per sqm for FSI 1.33 has increased to Rs. 1,75,718/- per sqm for FSI 1.00 as on 2017, i.e. increase of almost 125 times of the land values of 1980's. Rentals as per Supreme Court Judgement dt. 13.01.2004 as on 01.10.2017 was on an average of Rs. 70/- per sqm per month for FSI 1.00 which will be revised to on an average of Rs. 878 per sqm per month for FSI 1.00 i.e. increase by almost 11 times. Infact, MbPT had fixed rent as 2 times of the applicable letting rates i.e.

	were not parties to the proceedings. As such, MbPT is therefore obligated under the law declared by the Hon'ble Supreme Court in Wadia's Case (supra) to strictly adhere to the ratios, principles and directions set out therein and settle the cases and grant lease for a period of 30 years w.e.f. 1.04.1994 with annual 4% increases on rents as set out in the Compromise Proposals even beyond 2012 right upto 31.03.2024. *What is shocking to say the least is* *<u>that the said judgement of the Hon'ble Supreme Court in Wadia's Case (supra) (& its ratios, principles and directions) has not even been referred to, or followed by the MbPT in the Proposal under reply</u>*.	10% return on Kirloskar land values with 4% every year from 01.10.1994 onwards in terms of Supreme Court Wadia Judgment. However, the rental returns from 01.10.2017 onwards will be just 6% of the FMV given by valuer and the depreciated cost of the port trust structure based on the age of building and type of construction in MbPT estate areas. Apart from the fact that the Port Trust tenancies have never been covered by the Rent Control Legislation that all the entities that have now been exempted under Section 3(1)(b)of the Maharashtra Rent Control Act 1999 would otherwise have been covered by and enjoyed the protection of the Rent Control Legislation then in force ,even if the quondam Rent Act had applied to the Port Trust tenancies . The important factor to be considered is that the tenants of the Port Trust who have been exempted from the Maharashtra Rent Control Act are legislatively mandated, inter alia, not to have any statutory or other limitations or constraints in the fixation of payment of rents . It is further submitted that to continue to insist on levy of letting rates frozen on the basis of land values of 1980 in the year 2006-2007 or such exempted persons despite the fact such persons do not any longer enjoy even the protection of the Rent Act would be extremely unfair to the Port Trust and would be in effect be contrary to the principle laid down by the Supreme Court in the Wadia Judgement. (b) Even though the Maharashtra Rent Control Act (and the old Bombay Rent Act) would not and does not apply to the lettings by the Port Trust, the fact that such entities have lost the protection of the Rent Act and are now legislatively mandated to face the open market in land and rentals ,such revise the letting rates for such categories of tenants.
3	Under the said judgement, the Hon'ble Supreme Court whilst examining the question (@ para 13 thereof), viz. *"What is the status of BPT as landlord? Is it free to charge any rent from its lessees as it pleases in view of its having been exempted from the operation of rent control law or is it only to act in a fair and reasonable manner in the matter of dealing with its lessees and charging rent from them? "* - has in express terms, and whilst upholding a catena of earlier judgments; categorically held that the position of law is well settled, viz. that State and its authorities including instrumentalities of State (such as MbPT) have to be *just, fair and reasonable* in all their activities, including those in the field of contract. Even whilst playing the role of landlord and tenant, the State and its authorities continue to remain so and cannot be heard or even seen causing displeasure or discomfort to Article 14 of the Constitution of India. It may be noted that the Hon Supreme Court, has further and in express terms at para 18 thereof, held that:- "*18……The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent, so as to compensate themselves against the loss cost by inflationary tendencies. They can - and rather must – also save themselves from negative balances caused by the cost of maintenance, payment of taxes and cost of administration*…………*However, the State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical and unreasonable evictions or bargains."* The aforestated ratio in the Hon'ble Supreme Courts' Judgment in Wadia's case circumscribes the principles for fixation of rent in respect of MbPT properties- which has not only clearly been lost sight of, but has clearly been ignored and transgressed.	
4	It is pertinent that MbPT themselves by their own T. R. No. 31 dated 10th March 2004 ("T.R. 31 of 2004") had *inter alia* resolved to implement the aforesaid judgment of the Hon'ble Supreme Court	Jamshedji Wadia judgement is the Hon'ble Supreme Court Judgement dated 13.01.2004 by which Hon'ble Supreme Court upheld the Board compromise policy

	in Wadia's case (supra); and had expressly accepted therein that the rates fixed under their own Compromise Proposals as upheld in Wadia's case; would be applicable to their landed estates from 1.04.1994 upto 31st March 2024, with 4% annual increases *"thereby extending the application of the proposals to 2024"*. By not settling cases in terms thereof, and by seeking approval of the above referred Proposal under reply, it seems that MbPT is attempting to circumvent the directions and ratios of the Hon'ble Supreme Court in Wadia's Case (supra), and is also going back on its promises for settlement of matters under its own said "Compromise Proposals". These were the very proposals propounded by MbPT before the Hon'ble Bombay High Court, and thereafter, before the Hon'ble Supreme Court, under several sworn Affidavits of its own officers.	rates which were valid for 20 years w.e.f. 01.10.1992 to 30.09.2012. Though the SC concluded the dispute with regard to rates only for the period upto 31.03.2000, the Board decided to continue the said rate for the period upto 30.09.2012. Further the said facts have been confirmed by Attorney General's of India (AG) Shri Mukul Rohatgi by opinion dated 29.07.2016 wherein AG stated that MbPT is legally empowered to fix revised rates w.e.f. 01.10.2012 and also as per guidelines issued by MoPS&W, GoI, and rates are to be approved by TAMP. The TAMP is authorized to approve the SoR retrospectively w.e.f. 01.10.2012, subject to withdrawal of Writ Petition 1153 of 2000 filed by MbPT against TAMP, which is withdrawn on 08.08.2019. These facts were rightly pointed out in para 3 of proposal for SoR 2012-17. Thus there is no violation of S. C. Judgement dt. 13.01.2004 and MbPT is legally within its rights and empowered to revise the rates w.e.f. 01.10.2012 onwards. TR 31/2004 is only direction for implementation of the SC judgement and the rates were valid only till 30.09.2012. Therefore TR 31/2004 and TR 127/2006 are not applicable There is no provision of compromise proposal in PGLM 2015 issued by MoPS&W, GoI. The validity of rates under S.C. judgement was upto 30.09.2012 and thereafter MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoPS&W, GoI. TAMP is given power for framing the rate/ rectify the rates. As per PGLM's guidelines of 2014, MbPT has adopted highest value among the 5 factors.
5	Further, *it is also shocking that even MBPT's own said T.R. No. 31 of 2004 has not been mentioned by MbPT under the captioned Proposal.*	
6	TAMP may kindly examine (in letter and spirit); the content, purport and the true effect of the said judgement of the Hon'ble Supreme Court in Wadia's case (supra), MbPT's said T.R. 31 of 2004, as also all of the sworn Affidavits of the MbPT's officers before the Hon'ble Supreme Court and the Hon'ble Bombay High Court – filed in the matter of its General Rent Revision litigation.	
7	Pertinently, under the MbPT's own T. R. 105 of 2018; it has been recorded that the Shipping Ministry vide its letter dated 18.02.2014 (bearing reference No. PD-11020/34/2013.MbPT), had:- *"conveyed the opinion of the Ministry of Legal Affairs that the order of the Hon'ble Supreme Court dated 13.01.2004 should be implemented in letter and spirit and also clarified that the matter being an important public issue, any interpretational issue arising out of the Apex Court judgement the Administrative Department should seek clarification from Supreme Court to avoid any legal complications";* and that *"The Shipping Ministry has further directed that Mumbai Port Trust to initiate necessary steps for immediate implementation of the order of the Hon'ble Supreme Court dated 13.01.2004 without any further delay.";* and further that *"the Port should also seek clarification from the Hon'ble Supreme Court in respect of any interpretational issues such as re-fixing the letting*	The MoS Letter dated 18.02.2014 bearing no. PD/11020/34/2013 MbPT, directing MbPT to seek clarification in respect of interpretational issues such as re-fixing letting rates after 30.09.2012, the matter was referred to respective MbPT advocate dealing in the matter in the Supreme Court for opinion and accordingly, letter dated 15.04.2014 addressed to MoS, GoI requesting them to forward copy of opinion from Ministry of Legal Affairs. Opinion from PT Advocate and AG (Mr. Mukul Rohatgi) was obtained by MbPT on applicability of Wadia Judgment Rates (SCJ) post 30.09.2012 and MbPT's rights to revise the rentals w.e.f 01.10.2012 onwards. The opinion received from PT Advocate and AG, GoI confirming the Port Trust's rights to revise rentals w.e.f 01.10.2012. Accordingly, then Chairman, directed to prepare SoR rates for Estate Lettings from 01.10.2012 onwards affected by SC Judgment. The letter dated 09.10.2014 was

	rates after 30.09.2012 arising out of the said judgement" It is submitted that despite the clear direction from the Ministry in the year 2014; MbPT appears not to have taken heed of the aforesaid directions, but has (on the contrary) now sought TAMP's approval to its Proposal under reply which are not only in the teeth of the Hon'ble Supreme Court's judgement in Wadia's case, and also in teeth of the clear directions of the Ministry of Shipping/ Ministry of Legal Affairs;- but also are patently unlawful, illegal, retrospective, steep, exorbitant, arbitrary and capricious.	written to MoS, seeking Ministry's direction on revision of SoR on township areas of MbPT (Estate lettings). Meanwhile, vide TR No. 123 of 2014 committee of officers was constituted (Chairman, EM and FA) by MbPT for fixation of rentals w.e.f 01.10.2012 onwards. The Ministry sought further information from MbPT on 08.10.2015 which was forwarded to Ministry on 02.12.2015 and Ministry was once again requested to give directions on fixation of SoR from 01.10.2012 and also approve the cases settled under compromise policy by the Board in terms of SC Judgment, 2004. However, neither such approval for renewal of settled cases under compromise formula (61 cases) had been received from Ministry nor any directions received from Ministry till the issuance of general clarification circular No. 01 of 2018, PGLM 2015 which was extended to the township areas of MbPT covering the lettings affected by SC Judgment 2004 i.e. MT, FML, Expired leases and licenses. Accordingly, Board vide TR 122/2021 forwarded SoR proposal approved by Board vide TR 222 of 2015 based on the LAC report dated 29.12.2014 which annexed as part of proposal for revision of SoR for the period 2012-17.
8	On a thorough reading of the said Proposal under reply, it is apparent that MbPT has overlooked the very directions, ratios, dictates and guiding principles set out in the said judgment Wadia's Case; and has completely summersaulted on its promises made under the said "Compromise Proposals" as were upheld with modifications by the Hon'ble Supreme Court in Wadia's Case, and as admitted (and approved for implementation) in its own T.R. 31 of 2004.	
9	What is truly unfair and absurd is that MbPT having gone before the Hon'ble Supreme Court and Hon'ble Bombay High Court with sworn affidavits of their Officer viz. Shri A.D. Vasaigara dated 9th July 1998 and 29th June 2000, seeking approval of the Compromise Proposals to bring an end to decades of litigation; is itself acting contrary to its obligations and promises thereunder, & is thereby seeking to take advantage of its own wrong. Had the MbPT settled the matters as aforesaid there would be no necessity of seeking fixation / framing of SOR till 2024.	
10	Moreover, and considering that the said "Compromise Proposals" are applicable till 2024 (as stated hereinabove), and in any event; the subsequent guidelines issued by the Ministry cannot override and/ or supersede and/ or circumvent the ratios, dictates and directions of the Hon'ble Supreme Court in Wadia's Case, and in particular - qua the MbPT's own "Compromise Proposals".	
11	The fact that the return of 6% is based on the PGLM 2015 has been accordingly applied by the MbPT's Board does not bless it with any legality so far as the law declared by the Hon'ble Supreme Court and the Hon'ble High Courts and particularly by the Judgment of the Hon'ble Supreme Court in Wadia's case is concerned – which law will prevail over any such policy/ guidelines. The SOR's therefore proposed by the MbPT are neither fair nor reasonable nor permissible in law. The Ready Reckoner rates published by the State Govt. cannot be accepted as a parameter or criteria for fixation of the lease rents as has been proposed by MbPT; and that too certainly not with retrospective effect.	

12	It may be appreciated that on account of the failure of MbPT to abide by the said judgement in Wadia's Case and by its own promises under its own said "Compromise Proposals"; no less than 41 Writ Petitions (Writ Petition No. 2085 of 2009 being the lead Petition) have been filed before the Hon'ble Bombay High Court challenging:- MbPT's failure to settle matters as directed by the Hon'ble Supreme Court in Wadia's Case, and MbPT's T.R. 127 dated 22.08.2006 ("T.R. 127 of 2006") attempting to wrongfully modify the terms of the said "Compromise Proposals", and thereby seeking to levy higher rates of rent (on sitting tenants/ lessees), based on hypothetical market values of lands, viz. the very action that the Hon'ble Supreme Court, and the Courts below prohibited MbPT from doing.	Pending Writ Petitions challenging TR 127/2006 are not relevant to the proposed SoR revision. There is no stay from any court for the recovery of rent/ compensation from any court based on SoR rates under PGLM 2015 by MoS, GoI.
13	2. xii. In the abovementioned Writ Petitions, the Hon'ble Bombay High Court has been pleased to issue Notice under Order 1 Rule 8 of the Code of Civil Procedure, 1908, making the outcome of the aforesaid 41 Writ Petitions applicable to all lessees/ tenants/ occupants of MbPT, whether they were/ are before the Hon'ble Bombay High Court or not. Further, these Petitions, including the Writ Petitions filed by several obstructionists, and by lessees/ tenants not on record with the MbPT; have all been admitted by the Hon'ble High Court, and are to come up for final hearing. For this and other several reasons set out herein;- the objections (though invited only from registered lessees/ tenants), would also impact obstructionists and occupants of MbPT Lands, whose cases ought to have already been settled by MbPT under their own said "Compromise Proposals" (as upheld by the Hon'ble Supreme Court). Hence, they are also entitled to submit their comments/ objections on the said Proposal/s and be heard by TAMP. It would be highly unfair to call for objections only from registered lessees. MbPT cannot take advantage of its own wrongs.	The contentions are irrational. Pending Writ Petitions are not relevant to SoR revision. The revision of rates are strictly in accordance with the provision of PGLM 2014-2015.
14	It may be further appreciated that MbPT had filed its Cross-Objections before the Hon'ble Supreme Court in Civil Appeal No. 5559 of 2001 (viz. the aforesaid Wadia's Case) and the other connected Appeals before it. In the said Cross-Objections, MbPT had *(at the very first ground (A) thereof)* sought to contend that *"there is no legal bar on the Port Trust to charging rent which may be necessary even equal to market rent"*; and had also sought to resile from the said "Compromise Proposals". The Hon'ble Supreme Court in its said judgement in Wadia's Case not only dismissed MbPT's said cross-objections as being *"not maintainable"*, but also expressly held them to be *"devoid of merit"*. Thus, as is well and clearly cemented by the Hon'ble Supreme Court;- there is no question of any increase in rents by MbPT (much less retrospectively) w.e.f. 2012 and onwards based on any hypothetical and	The compromise formula modified under Wadia Judgement/Supreme Court Order dated 13.01.2004, was valid for the period of 20 years, i.e. from 1992 to 30.09.2012. MbPT had sought advice of P.T. advocate, Supreme Court regarding applicability / validity of S.C. judgement before LAC report dated 29.12.2014 and before TR 222 of 2015 were passed, which has categorically confirmed that MbPT is not bound to levy lease rentals beyond 30.09.2012 at the SoR rates applied by the Supreme Court (Wadia Judgement). The said advice was based on Addl. Solicitor General of India, Shri Trivedi opinion dated 07.02.2005 which clearly stated that compromise proposal was for period ending 2012 and therefore fresh revision is expected to be fair and reasonable, thereafter. MbPT had obtained

	exploitative increases in market values of land, and or otherwise till 31.03.2024.	the opinion of learned Attorney General of India Shri Mukul Rohatgi on 29.07.2016 confirmed that SC judgment Rate was valid only upto 30.09.2012 and opined that the Board is empowered to re-fix the rentals / compensation rates w.e.f. 01.10.2012. MbPT is governed by policy guidelines issued by Ministry from time to time and MbPT has honoured the Supreme Court judgement till its validity, i.e. 30.09.2012.Also as per guidelines issued by MoSP&W, GoI, and rates approved by TAMP. The TAMP is authorised to approve the SoR retrospectively w.e.f. 01.10.2012 onwards, subject to withdrawal of Writ Petition 1153 of 2000 filed by MbPT against TAMP, which is withdrawn on 08.08.2019. These facts were rightly pointed out in para 3 of proposal for SoR 2012-17 simultaneously submitted to TAMP. Thus, there is no violation of S. C. Judgement dt. 13.01.2004 and MbPT is legally within its rights and empower to revise the rates w.e.f. 01.10.2012 onwards. There is no provision of compromise proposal in PGLM 2015 issued by MoSP&W, GoI. The validity of rates under S.C. judgement was only upto 30.09.2012 and thereof MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoSP&W, GoI. PGLM 2015 guidelines are very clear in fixation of SoR/Revision of SoR as per Para 13 and MbPT is following the same. Hence the contentions raised are irrelevant.Supreme court judgement is not an indefinite licence to lessees and tenants to go on committing the major breaches of lease terms and occupying the premises even after the expiry indefinitely and multiple transfers and still want to enjoy meagre/ concessional lease rentals based on 1980 land values and regularisation of breaches as per compromise rates of 1982 and restrict Port Trust to major revenue return on its let out land. Therefore, contentions raised are incorrect.
15	In fact, at least in our particular case (as is in most of the cases), there is no necessity for framing of any Proposal/s whatsoever for any SOR right up to 31st March 2024. This is because as per MbPT's own understanding of the Hon'ble Supreme Court's judgement in Wadia's case and the rents chargeable (right upto 2024) under their own T.R. 31 of 2004; *had the MbPT settled cases* and granted fresh lease of 30 years; then the rents chargeable by MbPT in terms of the said "Compromise Proposals" would continue right up to 2024 with 4% increases over the previous year. MbPT's failure to do so is a manifest wrong, which does not entitle them to take any advantage	Already stated in para 14 above.

	thereof, much less by framing proposal/s for fresh SOR retrospectively w.e.f. 2012 and beyond. In fact, as already stated hereinabove, this failure to abide by the directions of the Hon'ble Supreme Court to settle the cases has been challenged in the aforestated batch of 41 Writ Petitions. Thus, in light of the aforesaid, it is reiterated that MbPT cannot and ought not be permitted to propose any such new SORs and that too with retrospective application w.e.f. 2012.	
16	In light of the aforesaid, these Proposal under reply, therefore, *warrant immediate and outright rejection by TAMP*.	The contention are denied and the SoR as proposed needs to be approved.
17	Without prejudice to our aforesaid contentions/ objections; we further wish to point out that under Section 49 of the Major Port Trust Act, 1963 ("MPT Act"), it is the TAMP who has the power to, from time to time, by notification in the Official Gazette '*frame'* SORs, and a statement of conditions for any property belonging to, or in the possession or occupation of the Board or any place within the limits of the Port or the Port approaches. From a bare perusal of the Proposal under reply and its enclosures thereto, it appears that it is the LAC who has "formulated" the Proposal in terms of PGLM 2015 and has forwarded the same for MbPT's Board's "approval", who in turn have forwarded the same to TAMP for its "approval for fixation of SORs". Thus, in the present case, the statutory obligation of "framing" of SOR by TAMP, under the MPT Act, 1963, - appears not only to be hollow and illusory; but a hurried and unlawful attempt to seek approval of TAMP under the MPT Act, 1963; knowing fully well that :- The MPA Act, 2021 has been passed by both Houses of Parliament, assented to by the President, and also Gazetted; The MPA Act, 2021 prohibits (in clear terms) any retrospective fixation of rents / SOR's, TAMP will cease to exist once the MPA Act, 2021 will come to effect. MbPT had itself (in its WP 1153 of 2000 filed before the Hon Bombay High Court);- challenged the Order issued by TAMP dated 15th March 2000 upholding its Jurisdiction to frame Scale of Rates; wherein it had decided that:- "In the result, and for the reason given above, based on a collective application of mind, this authority hereby decides as follows:- For purposes of framing Scale of Rates and Statement of Conditions, this Authority has jurisdiction over all the properties and assets, wherever located, of a Major Port Trust. Under section 49(1) of the Major Port Trust Act, this Authority will frame Scale of Rates and Statement of Conditions for use of the following categories of properties :-	The contentions are incorrect. The letting rates under the Compromise Proposal had been fixed taking into account the market values of the land rates prevailing in the year 1980. Apart from the fact that the Port Trust tenancies have never been covered by the Rent Control Legislation that all the entities that have now been exempted under Section 3(1)(b) of the Maharashtra Rent Control Act 1999 would otherwise have been covered by and enjoyed the protection of the Rent Control Legislation then in force ,even if the quondam Rent Act had applied to the Port Trust tenancies. The important factor to be considered is that the tenants of the Port Trust who have been exempted from the Maharashtra Rent Control Act are legislatively mandated, inter alia, not to have any statutory or other limitations or constraints in the fixation of payment of rents. It is further submitted that to continue to insist on levy of letting rates frozen on the basis of land values of 1980 in the year 2006-2007 or such exempted persons despite the fact such persons do not any longer enjoy even the protection of the Rent Act would be extremely unfair to the Port Trust and would be in effect be contrary to the principle laid down by the Supreme Court in the Wadia Judgement. (b) Even though the Maharashtra Rent Control Act (and the old Bombay Rent Act) would not and does not apply to the lettings by the Port Trust, the fact that such entities have lost the protection of the Rent Act and are now legislatively mandated to face the open market in land and rentals ,such revise the letting rates for such categories of tenants.

	Property belonging to the Board. Property in possession of the Board. Property in occupation of the Board. Property in any place within the limits of the ort area or Port Approaches. For purpose of framing Scale of Rates and Statement of Conditions, all lease cases (irrespective of any time limitation) relating to all the properties of the Major Port Trust shall be seen to fall within the jurisdiction of this Authority. This order shall come into force with immediate effect after notification in the Gazette of India." (Hence the very authority and jurisdiction of TAMP to frame scale of rates in respect of properties of the MbPT (wherever located) had been challenged by MbPT themselves. This Order impugned under the said W.P. came to be stayed by the Hon Bombay High Court by its Order dated 2nd May 2000, and the stay continued until recently and for reasons which are now apparent; the MbPT thought it now fit to withdraw the said W.P. – which request for withdrawal came to be allowed by the Hon Bombay High Court by its Order dated 8th August 2019.) The aforesaid decision to withdraw the said challenge and their WP 1153 of 2000, is also indicative of MbPT's undue haste & convenient positioning - in proceeding unlawfully with the said Proposal No. 2.	
18	Assuming, whilst emphatically denying, that MbPT (through LAC) may be entitled to, or frame of any fresh SOR *other than* in consonance with the directions and within the principles and ratio of the judgment of the Hon'ble Supreme Court in Wadia's Case, and other than under the umbrella of the "Compromise Proposals" as upheld with downward modifications by the Hon'ble Supreme Court;- we are strongly opposed to the same, and place on record our further strong objections in respect to MbPT's Proposal/s under reply, as follows:- 1. Any attempt, as contained in the Proposal/s under reply to frame such steep and exorbitant SORs from 2012 (retrospectively), and based on hypothetical market values of lands; would not only be unlawful, but violative of Article 14 of the Constitution of India.	There is no provision of compromise proposal in PGLM 2015 issued by MoSP&W, GoI.
	There is no provision in the MPT Act, 1963 or the Rules thereunder, or under any delegated/ subordinate legislation thereunder; enabling the framing/ fixation of the SORs retrospectivity.	The MPA Act 2021 is yet to be notified for its implementation and hence not relevant to present proposal
19	A perusal of MbPT's T.R. 122 of 2021 would reveal that the MbPT is well aware that TAMP would cease to function after coming into force/effect of the Major Ports Authorities Act, 2021 - on the	

	appointed date. It is public knowledge that the MPA Act 2021 has received Presidential assent on 17.02.2021 and has been published, for general information in the official gazette on 18.02.2021. Thus, it is a matter of time before its effective date would be notified. There appears to be an undue haste even in seeking TAMP's approval of MbPT's proposals when Parliament has (under the said MPA Act, 2021); expressly inter alia provided (under the proviso to Sec. 27 thereof) that fixation and implementation of scale of rates, fees shall be in consonance with the norms as may be prescribed, and that the same shall not be with retrospective effect, and also shall not be inconsistent with the provisions of any other law for the time being in force. The legislative intent of the Parliament is thus manifest and clear in this regard; and clearly not only frowns upon but also bars any retrospective fixation and also bars any fixation contrary to Statute or settled law. In the light of the aforestated, it may be appreciated that in the Land Allocation Committee Report dated 18.08.2021 it is stated (at para 4 thereof) that :- "4. However, since till date new Township Policy from Ministry of Shipping, Govt. of India and the matter of seeking approval of TAMP fo the SoR 2012-2017 and 2017-22 has remained pending and the TAMP is likely to cease to function after the notification of Major Port Authorities Act, 2021 comes into effect and it is necessary to obtain approval of TAMP to the SoR for the period 2012-2017 and 2017-22 for one sq. mtr. of land for each RR zone with FSI 1.00 as a base rate " From the above statement it is abundantly clear that the very reasoning and basis (for MbPT hurriedly and on legally unsustainable grounds); seeking approval of TAMP to the SOR for the said 2 periods - are fallacious and misconceived viz. that : a) New Township Policy is not received, and b) Matter of seeking approval of TAMP to the SOR for the two periods has remained pending, and c) TAMP is likely to cease to function after coming into effect of MPA Act, 2021. Merely because Township Policy is not received is no reason at all for the proposed action. The fact that matter of seeking approval has remained pending is also no reason at all much less to penalise the tenants / lessees for MbPT's own wrongs. And the fact that TAMP is likely to cease to function is also no ground to make a hurried and unlawful decision in the matter, particularly when the MbPT had itself challenged the very jurisdiction and authority of TAMP to fix scale of rates by its WP 1153 0f 2000 before the Hon Bombay High Court in the aforesaid terms.	

20	A Division Bench of the Hon'ble Bombay High Court in *Ratti Pallonji Kapadia v. State of Maharashtra & Ors.,* (1992 Mh. L.J. 1356) – (whilst examining the revision of lease Rent in cases of renewals of leases of Govt. Land) has held that: *"22. What is worse, although the leases have expired on 1-1-1981, they were not renewed till 1986 or later and the increased rent is being charged retrospectively from 1-1-1981. This in our view is also unfair."*	Mumbai Port Trust is facing great difficulty to meet overall expenditures of the organisation because of the non-paying attitude of rent / compensation of lessees and tenants by taking the undue advantage of the various legal means and making Port Trust to invest huge amounts of money in the litigation. Because of this attitude the Port Trust is in huge loss. There is no question of any profit in the scenario as contended in this para. There are about 5000 employees and 35000 pensioners to whom port trust has to pay every month, thereby MbPT has to carry responsibilities of about 40,000 families. Port Trust is providing free-medical facility to all the family members of these families. Even Port Trust is giving concession to the Government Organisations like BEST, MGCM, Defence, Police etc. and most of the land of the MbPT is occupied by them.
21	The said judgment in Ratti Pallonji's Case has been cited with approval by the Hon'ble Supreme Court in the said Wadia's case (supra). The Hon'ble Supreme Court at para 17 therein specifically holds in respect thereof that: *"A Division Bench of the Bombay High Court presided over by Mrs. Sujata Manohar J. (as her Lordship then was) held in Ratti Pallonji Kapadia v. State of Maharashtra that the exemption from the provisions of the rent control casts an obligation on the State and its instrumentalities and authorities to comply with public policy of ensuring a fair return of investments without charging exorbitant rates <u>based on the prevalent market prices of land…</u>".*	
22	Further, it may be appreciated that the rationale behind enacting the Taxation Laws Amendment Act, 2021 (which has been Gazetted on 13th August 2021 after receiving Presidential assent on the same day), was also that retrospective effect given to amendments militate against the principles of tax certainty and damage India's reputation as an attractive destination, and that the Country today stands at a juncture when quick recovery of the Country after the COVID-19 pandemic is the need of the hour to promote faster economic growth and employment. Trite to say that the same principle applies vis-à-vis the said Proposal/s under reply which are also retrospective, and would have the very same effect that Parliament is now consistent in not only frowning upon, but even legislatively barring any such effects.	The SoR was due from 01.10.2012 and 30.09.2017 when there was no pandemic. Covid-19 pandemic started from March 2020 and as per present circumstances there has been substantial relaxation given by the Govt. to the trade and general public and most of the premises have been operational. Further (a) any relaxation which the Govt. of India extends under any special circumstances in the case would be applicable to the tenants/lessees, though presently there are no such directions and even in any clarification from MoPS&W, Govt. of India on giving any concession, relaxation, compensation and assistance during pandemic time. In this connection, attention is invited to Delhi High Court Judgement, Ramanad and others V/s. Dr. Girish Soni and others dated 21.05.2020 has held that the period of lockdown on account of Covid-19 does not excuse in payment of rental amounts and no concession in rental charges is admissible. b) As the parties have continued to occupy the premises and MbPT being Public body which continued to provide its services in COVID period and rendered the monthly invoices of compensation and also paid the GST on the invoice for the period there is no question of granting any relief. MbPT's expenditure on infrastructure and also liability towards salary/wages, maintenance etc. have continued even in COVID pandemic period.
23	Considering that it is well settled that increase/ fixation of rents based on hypothetical market values of land, and that too retrospectively from 2012 - is itself unlawful, unsustainable in law and violative of Art. 14 of the Constitution of India; there is no question of TAMP approving the scale of rents under MbPT's Proposal under reply. It may be appreciated by TAMP that the tenants/ lessees/ occupants have neither been permitted to, nor were in a position to enjoy all the incidents of the lease. All the leases which had expired, were subject to onerous conditions thereby substantially diminishing their earning potential. Even after the express directions of the Hon'ble Supreme Court judgment in Wadia's case MbPT failed to renew the lease/s. Returns	

	on MbPT lands can thus be nowhere near, nor be compared with other freehold / leasehold occupations enjoying all the incidents of ownership / leasehold rights, as well as security of tenure.	Since rentals from MbPT landed assets is important part of MbPT revenue which is essential for sustenance of MbPT, no such concessions are admissible on this ground in the proposed SoR w.e.f. 01.10.2012.
24	The said Proposal under Reply does not even consider the State Governments / Collectors / MCGM's Lease renewal policy/ies for expired leases which fixes much much lower rates as compared to the rates sought to be approved under the Proposal under reply - which are not only unlawful, but artbitrary, capricious, discriminatory and utterly unaffordable.	The contents are incorrect and unacceptable as already stated in earlier para 4, MbPT is bound by PGLM 2015 issued by MoPS&W, GoI which have been scrupulously followed by MbPT while computing SoR. The comparison with the practice followed by Collector of Mumbai, State Govt. and any other PSUs is irrelevant and not applicable in this present case.
25	We do not therefore accept the principles/s, the basis, the computation of SOR etc, and /or the valuation reports either considered, justified, or recommended by the LAC for approval by TAMP - as being unsustainable in law.	The contentions are denied and the SoR as proposed needs to be approved.
26	In the light of our aforestated objections/ comments, which may be kindly appreciated by TAMP in their true light, it is humbly requested that MbPT's Proposal No.1 under reply be outright rejected by TAMP; as being unlawful, arbitrary, capricious, exorbitant, unaffordable, ultra vires and unconstitutional. I/We reserve our right to alter, amend, add, modify and/or delete any and all of our reasons, comments and/or objections. I/We also crave leave for a personal hearing in the matter before any final decision is taken in respect of the Proposal under reply. Nothing contained in the Proposal under reply (including the documents annexed thereto and/ or referred to therein, and/ or uploaded on the MbPT Website in connection thereto, and/or their content thereof), - shall be deemed to have been admitted by us or accepted as applicable in our case - for want of specific traverse. Needless to submit that, if you do proceed to impose the above schedule of revised rates as proposed by MbPT, I/we shall be constrained to take legal recourse as may be advised in law which shall be entirely at your cost and consequence - which may please be noted.	

Sr. No.	Common issues raised by Users/ tenants/ lessees – Group 3	Reply of MBPT
1	I say and submit that the Policy Guidelines for Land Management for Major Ports (PGLM), 2015 has not been uploaded on the website of MbPT although it has been referred to repeatedly in the documents uploaded. In fact, the Clarification 1of 2018, Clarification 1 of 19-20 and Clarification 2 of 19-20 also could not be seen on the website. You are requested to upload these documents so as to facilitate comments. Further, at the very outset,	The Proposal no 1 to 4 were uploaded on MbPT website on 06.08.2021. 15 days' time granted after uploading the proposal on MbPT website i.e, upto 20.10.2021 as per directions of the TAMP Notices to intimation of uploading the proposal and also dates of hearing were

	considering the complexities involved and in face of a recent corrigendum issued, the time of 12 days for inviting comments seems to be very short and unreasonable. You are requested to kindly upload all the documents and thereafter, provide a time of at least 3 months to make comments. Please appreciate that in the absence of such documents being uploaded it would not be possible to properly deal with the matter and make comments. For the purpose of assimilating inputs from our legal advisors/ consultants, it would also be advisable to hold physical meetings to understand the problems involved and the difficulties.	send to all the registered lessees and tenants whom proposal is applicable. No extension recommended and it will delay the process PGLM 2015 with its clarifications uploaded on MbPT website https://www.mumbaiport.gov.in
2.	I say that we are the legal heirs Janardan Parshuram Salunke and continuous possession, use and occupation of the premises being Shop No-15, BPT Bldg, lying and being Area of 34 SQM, and Unit No.15 , Mallet Bunder Road, Mumbai (the "said Premises") since past several years under and pursuant to the lease granted by the Board of Trustees of the Port of Mumbai to the original Lessee. I have been duly and regularly paying all the rent, charges and taxes to the MbPT who are accepting the same without any protest and that there are no outstanding or pending dues. I say that you are issuing Bills/Invoices to me under the Code No. 41412113. Instead of following the orders of the Hon'ble Supreme Court and settling the matters as directed, you have approved a resolution (TR. 127 of 2006) which are contrary to the directions of the Hon'ble Supreme Court. The said TR 127 of 2006 was challenged by Jamshed Hormusji Wadia by way of Writ Petition No. 2085 of 2009 before the Hon'ble Bombay High Court. The record shows that the said Writ Petition is pending for hearing.	(a) Mere occupation and continuous possession of the premises do not constitute legal rights of the parties unless there is a lease agreement entered with party by MbPT by extending the expired leases / extension of tenancy rights by agreement clearly stating that the total period lease granted. As pointed out by MbPT in the proposal and PPT, the proposal for revision of SoR is only limited MT, FML , Expired Leases and valid running leases which are yet to expired are kept out of proposed SoR revisions. MbPT, it is to place on record that , the MbPT has been sending the invoices to all MT, FML, Expired leases and licenses as a compensation for wrongful use of the premises, without prejudice to MbPT rights to take legal action against breaches and also without prejudice to revised SoR for compensation w.e.f 01.10.2012 onwards as per applicable polices. All the payments made by the parties are accepted by the MbPT as compensation for wrongful use of the premises by parties with provisional acknowledgement. Thus , there is no written commitment of MbPT for extending the leases or protecting and allowing the occupations of defaulters of FML / MT/ Expired Leases / licences. Since, the revision of SoR is pending MbPT has not raised / sending demand notices for differential arrears which is due from 01.10.2012 onwards. (b) Analysis of the RR rates 2012 is given in the said analysis in PPT would show that the RR Rates for 2012 which is the basis of the SoR (letting rates) are amongst the lowest rates (in comparison with adjoining RR zones to MbPT lands). It is further submitted that a rate of return of 6% is a very reasonable rate.

		TR 127/2006 is challenged by 47 Writ petitions and matter is still subjudice in High Court, Not relevant to the present proposal
3	3. The proposed revision of SOR, as per Ready Reckoner value is not acceptable to me. a) The charges as calculated based on the SOR proposed by you would be unreasonable and horrendously high. The schedule of rates is based on arbitrary calculations unsubstantiated by any material and are even higher than the “market rates” i.e. the current ready reckoner values. The SOR for 2017-22 goes on an adhoc valuation which isn’t even substantiated by any material. This is without prejudice to the fact that such market valuation reports cannot be made the basis of the rent fixed. Further, the SOR 2012-17 takes rent on the basis of higher percent return on market value. When worked at using this factor, the rates would be exponentially higher than the amounts the tenants were paying under the original contract. b) Financial condition due to COVID-19 pandemic i) I say and submit that due to the COVID-19 pandemic and the lockdowns, my business is gradually decreased. Hence, I will not be in a position to make payment of the proposed revision of SOR, as the same is higher than the current rent which I am paying pursuant to the Supreme Court Judgment.	While computation of SoR 2017-2022 MbPT had engaged Govt. approved Valuers on panel and entrusted the work of valuation of MbPT land as per the jurisdiction of RR zones (36 nos.). MbPT is constituted under Major Port Act, 1963 and under supervision and control of MoSP&W. PGLM, 2015 are the statutory direction under Section 111 of Major Port Act. Hence MbPT is bound by such statutory direction for implementation of PGLM, 2015 and accordingly scrupulously followed guidelines issued by Ministry of Shipping and Waterways (MoSP&W), Government of India (GoI) for fixation of current SoR which is approved by Board of Trustees and submitted to the TAMP being statutory authority constituted under section 47 A of Major Port Act for fixation of SoR under section 49 of the said act. The para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. The SoR was due from 01.10.2012 and 30.09.2017 when there was no pandemic. Covid-19 pandemic started from March 2020 and as per present circumstances there has been substantial relaxation given by the Govt. to the trade and general public and most of the premises have been operational. Further (a) any relaxation which the Govt. of India

		extends under any special circumstances in the case would be applicable to the tenants/lessees, though presently there are no such directions and even in any clarification from MoPS&W, Govt. of India on giving any concession, relaxation, compensation and assistance during pandemic time. In this connection, attention is invited to Delhi High Court Judgement, Ramanad and others V/s. Dr. Girish Soni and others dated 21.05.2020 has held that the period of lockdown on account of Covid-19 does not excuse in payment of rental amounts and no concession in rental charges is admissible. b) As the parties have continued to occupy the premises and MbPT being Public body which continued to provide its services in COVID period and rendered the monthly invoices of compensation and also paid the GST on the invoice for the period there is no question of granting any relief. MbPT's expenditure on infrastructure and also liability towards salary/wages, maintainance etc. have continued even in COVID pandemic period. Since rentals from MbPT landed assets is important part of MbPT revenue which is essential for sustenance of MbPT, no such concessions are admissible on this ground in the proposed SoR w.e.f. 01.10.2012. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones.
4	It is further stated that the Schedule of rent/lease charges has to be decided in accordance with the Compromise Proposal sanctioned by The Hon'ble Supreme Court in case of Jamshed Hormusji Wadia vs. The Board of Trustees of the Port of Bombay 2004 (3) SCC 214 and based on the principles of the said judgement, the rates need to be decided now by working out a fresh compromise proposal by and between the tenants/ lessees on the one hand	Present monthly rental are as per valuation report of 1980's which are no way comparable with present market rate. An average Kirloskar land values of Rs. 1406/- per sqm for FSI 1.33 has increased to Rs. 1,75,718/- per sqm for FSI 1.00 as on 2017, i.e. increase of almost 125 times of the land values of 1980's. Rentals as per Supreme Court Judgement dt. 13.01.2004 as on

	and the Port Trust on the other. As of recently, you are increasing 4% of the rent in every year, which is reasonable.	01.10.2017 was on an average of Rs. 70/- per sqm per month for FSI 1.00 which will be revised to on an average of Rs. 878 per sqm per month for FSI 1.00 i.e. increase by almost 11 times. Infact, MbPT had fixed rent as 2 times of the applicable letting rates i.e. 10% return on Kirloskar land values with 4% every year from 01.10.1994 onwards in terms of Supreme Court Wadia Judgment. However, the rental returns from 01.10.2017 onwards will be just 6% of the FMV given by valuer and the depreciated cost of the port trust structure based on the age of building and type of construction in MbPT estate areas. SoR 2017-2022 MbPT had engaged Govt. approved Valuers on panel and entrusted the work of valuation of MbPT land as per the jurisdiction of RR zonesThe para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. The compromise formula modified under Wadia Judgement/Supreme Court Order dated 13.01.2004, was valid for the period of 20 years, i.e. from 1992 to 30.09.2012.
5	The Port Trust ought to be conscious of the fact that there are tenants who are occupying properties since 50-60 years and there are complete eco systems and markets thriving on such properties. Rack renting would totally finish and eradicate running eco – systems which is against the public policy and is neither desirable nor possible. We are providing employment to lot of peoples. We are also adding to the tax exchequer. Therefore, we are not just directly but also indirectly contributing to the	It is observed from the inspection that the market real estate sale transactions are at very high rate as compared to current rent charged by MbPT based on compromise formula upheld by SC judgement, 2004. The erstwhile lessee/tenant who are unauthorizedly holding over the plots even after the expiry of the lease without valid lease agreement or extending their period of occupation beyond the permitted period

<table>
<tr><td></td><td>nation in the form of taxes and revenue and employment</td><td rowspan="2">in the agreement still want to enjoy meagre/ concessional rates based on the compromise formula of 1982.
It is estimated that 80% of MT, FML, expired leases have unauthorisedly and unlawfully subletted the premises and transferred the premises to third party which is a violation of tenancy, lease agreement even after the expiry of lease. Therefore, all such parties who are illegally and unauthorisedly holding the premises are liable to pay compensation for unlawful use of premises at prevailing SoR rates. These parties have failed to surrender the premises after termination of lease / tenancy terms and continue to hold over the MbPT land without any valid agreement and failed to give vacant possession to MbPT. As these Monthly tenancies, FML, expired leases and licensees are not having any running contract with MbPT. MbPT had correctly and rightfully worked out the SoR for MT, FML, expired leases and licensees based on PGLM guidelines by adopting the highest of 5 factors as furnished by Govt. approved Valuers who are empaneled by MbPT and the SoR rates are worked out @ 6% return on the prevailing market rates and also concessions and rebates have been given by the valuers taking into consideration the present infrastructure and lack of benefits.</td></tr>
<tr><td>6</td><td>As stated herein above, MbPT cannot enhance the SOR from 2012-2017 retrospectively, as the same is opposed to the constitutional scheme. The legal opinions obtained by the Port Trust which have been referred to in the proposals are not shared on the website and hence in the interest of transparency, equity and fair play, the Port Trust is requested to put up all the relevant material on the official website of the Port Trust. It is not legally possible for the port trust to enhance rates and levy them retrospectively. The aspects of issuance of valid commercial invoices shall also have to be examined and the liability of MbPT as regards Goods and Service Tax (GST) etc. also has to be worked out. All this is only possible through physical meetings in a participatory manner by inviting representatives of stakeholder groups to sit and negotiate with the authorities of the Port Trust and the Shipping Ministry.</td></tr>
<tr><td>7</td><td>In order to decide the further road map, we request the Port Trust to hold meetings so as to workout Compromise Proposals as has been done successfully earlier in the 1994. TAMP is requested to kindly fix up workable rates through participatory process. A win-win situation in the form of compromise proposal by and between the Port trust on the one hand and the Tenants on the other hand is the only way going forward and a second compromise formula can be arrived at taking the Supreme Court's formula of 2004 as a benchmark and guiding force.</td><td rowspan="3">The contents are incorrect and unacceptable as already stated in earlier para 4, MbPT is bound by PGLM 2015 issued by MoSP&W, GoI which have been scrupulously followed by MbPT while computing SoR. The comparison with the practice followed by Collector of Mumbai, State Govt. and any other PSUs is irrelevant and not applicable in this present case. The Hon'ble Supreme Court order dated 13.01.2004, Board's compromise formula was only valid upto 30.09.2012 (only for 20 years i.e. 01.10.1992 to 30.09.2012) and such there is no violation of S. C. and no permission of S. C. Judgement is necessary for revision of rate from 2012. The Para 13 of PGLM, 2015 has stated the methodology of calculation of latest market value of port land and accordingly as stated in para 4 above, MbPT fixed SoR 2017-22. The entire proposal submitted to TAMP along with all the DA of the Proposal such as (i) supporting TRs (ii) LAC reports and (iii) statements of SOR were uploaded on MbPT website.</td></tr>
<tr><td>8</td><td>In the circumstances stated hereinabove, it is requested to kindly upload the relevant material on the website of the Port Trust and work out the Schedule of rates based on the rents paid in 2012 and not based on ready reckoner values and then seek proposals from the Tenants.</td></tr>
<tr><td>9</td><td>Without prejudice to the above, it is also requested that pending the negotiation and decision making process, no coercive steps be taken based on new proposed rates in the interest of equity, justice and fair play.</td></tr>
<tr><td>10</td><td>We request a physical meeting with the officers of the TAMP, the Shipping Ministry and the Port Trust</td><td></td></tr>
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	so as to try to arrive at a win- win situation. For the purpose of records, the Schedule of Rates proposed for 2012-17 and 2017-22 are not acceptable to us for the reasons stated hereinabove and for other reasons that we shall argue in person or through our counsel if a personal hearing is provided by TAMP	There is no provision of compromise proposal in PGLM 2015 issued by MoPS&W, GoI. The suggestions are not acceptable and contentions are denied. There is not provision of compromise proposal in the PGLM 2015 and its clarifications issued by MoPS&W and MbPT is bound to implement PGLM 2015 Guidelines issued by MoPS&W, GoI which are mandatory directions to MbPT under section (III) of MPA Act 1963. Rates under SCJ 2004, is no more valid and applicable to MbPT and MbPT is well within the rights to revise SoR from w.e.f 01.10.2012 (i.e.) post validity of SCJ rates.
11	In view of what is stated hereinabove, I plead as follows: a) Not to implement the revision of Schedule of Rates for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 of MbPT Estate Land in term of your notice no. FA/OEA-I/38(21)Gen/270 dated 23rd September,2021 ,EM/AS(G)/F-382/1923 dated 6th October, 2021, Proposal No.2:P.T. Structures Occupations, as they being unacceptable, arbitrary and without any substantial basis. b) Not to implement/issueany TR on the basis of the revisions of Schedule of Rates, as proposed in your notices nos nos. FA/OEA-I/38(21)Gen/270 dated 23rd September,2021 ,EM/AS(G)/F-382/1923 dated 6th October, 2021, Proposal No.2:P.T. Structures Occupations, as the same is not acceptable being capricious, arbitrary and without any basis; c) Implement the Schedule of Rates, as directed by the Hon'ble Supreme Court in the matter of Jamshed Hormusji Wadia vs. The Board of Trustees of the Port of Bombay 2004 (3) SCC 214; d) Implement the directions passed by the Hon'ble Supreme Court in the letter and spirit and in the interest of all affected parties.	
12	This draft comments are without prejudice to any and all the rights and remedies that I have in law and equity and nothing stated herein should be construed or interpreted as a waiver of such rights. I have with limited resources, material information and have tried my best to submit the information that was required and called for, with a shorter notice, if, however, you were to seek further information on my status as tenant/lessee I would urge you to peruse your digital records being my Code no. 41412113.	MbPT is bound by TAMPs final order in the matter and directives given under PGLM 2015 issued by MoPS&W
13	Needless to say, should the port trust seek to arbitrarily impose the schedule of rates suggested without paying heed to any of the inputs received from tenant groups, leading to horrendously high unreasonable rents, we shall be left with no other option but to seek judicial recourse at the sole risks, costs and consequences of the Port Trust which please note.	
14	I would anticipate your favourable response in view of the long term relationship enjoyed between me and MbPT and accept rents on a periodical basis without any dispute, demur or protest.	

Sr. No.	Common issues raised by Users/ tenants/ lessees – Group 4	Reply of MBPT
1	For the following amongst other reasons (which are without prejudice to and independent of each other), and without admitting any applicability and/ or liability whatsoever and/ or howsoever based on Proposal No.2A; kindly note and take into consideration my serious objections to MbPT's retrospective, steep, arbitrary, unreasonable and unlawful Proposal No.2A under reply. 1. At the very outset, we state that we are most shocked and surprised that such onerous, retrospective, steep and arbitrary Proposal is being forwarded by MbPT for consideration by TAMP amidst a worldwide and on-going pandemic of COVID19, which has so heavily impacted the entire world, our country, our people and our economy to such an extent that many have lost their lives, lost their loved ones, and also their livelihood, their homes, leaving many unemployed & depleted of cash to sustain themselves. Pertinently, several businesses (including ours) have been tremendously affected by the pandemic and they have either shutdown, or are on the verge of shutting down. Instead of being sensitive, sympathetic and considerate in these trying times; proposals have been framed by MbPT (which is an Instrumentality of the State within the meaning of Article 12 of the Constitution of India) seeking to exponentially and retrospectively increase/ hike and attempt to impose the Scale of Rates of rent to such an extent that, if given effect to;- it will be impossible for any commercial enterprise to survive. Even private landlords have, in most cases, shown a lot of benevolence and forbearance towards their tenants/ licensees/ lessees etc. in these trying times. By no stretch of imagination can retrospective fixation/ framing of steep, unlawful and arbitrary rates of rent be justified under present circumstances of the ongoing pandemic of Covid-19. It is well settled that an Instrumentality of State such as MbPT has to be fair, just and reasonable in all their activities; and all their actions must be for public purpose and public good, and must not violate Article 14 of the Constitution. In this context, the real question which falls for TAMP's consideration is – what is the real effect of the Covid-19 pandemic on the economy, on the business of MbPT's lessees/ tenants/ occupants, on their ability to absorb the proposed heavy, steep, onerous, unlawful and unreasonable rentals; and whether in such circumstances or even otherwise should MbPT's captioned Proposal be accepted by TAMP? 2. i. At the further outset, it is submitted that the issue of rent revision by MbPT (which finds its roots	The SoR was due from 01.10.2012 and 30.09.2017 when there was no pandemic. Covid-19 pandemic started from March 2020 and as per present circumstances there has been substantial relaxation given by the Govt. to the trade and general public and most of the premises have been operational. Further (a) any relaxation which the Govt. of India extends under any special circumstances in the case would be applicable to the tenants/lessees, though presently there are no such directions and even in any clarification from MoPS&W, Govt. of India on giving any concession, relaxation, compensation and assistance during pandemic time. In this connection, attention is invited to Delhi High Court Judgement, Ramanad and others V/s. Dr. Girish Soni and others dated 21.05.2020 has held that the period of lockdown on account of Covid-19 does not excuse in payment of rental amounts (copy enclosed) and no concession in rental charges is admissible. b) As the parties have continued to occupy the premises and MbPT being Public body which continued to provide its services in COVID period and rendered the monthly invoices of compensation and also paid the GST on the invoice for the period there is no question of granting any relief. MbPT's expenditure on infrastructure and also liability towards salary/wages, maintenance etc. have continued even in COVID pandemic period. Since rentals from MbPT landed assets is important part of MbPT revenue which is essential for sustenance of MbPT, no such concessions are admissible on this ground in the proposed SoR w.e.f. 01.10.2012. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for

	since the early 1980's) has plagued its lessees/ tenants/ occupants for decades; and the same was finally set to rest and adjudicated upon (after more than 20 years) by the Hon'ble Supreme Court in its said judgement dated 13.01.2004 in the matter of Jamshed Hormusji Wadia Vs. The Board of Trustees of the Port of Mumbai, (2004) 3 SCC 214 (viz. "Wadia's Case"); wherein, the Hon'ble Supreme Court has inter alia upheld with (downward revision in rent and interest) MbPT's own "Compromise Proposals", further holding that the said "Compromise Proposals" would be applicable to all the lessees of MbPT even if they were not parties to the proceedings. As such, MbPT is therefore obligated under the law declared by the Hon'ble Supreme Court in Wadia's Case (supra) to strictly adhere to the ratios, principles and directions set out therein and settle the cases and grant lease for a period of 30 years w.e.f. 1.04.1994 with annual 4% increases on rents as set out in the Compromise Proposals even beyond 2012 right upto 31.03.2024. What is shocking to say the least is that the said judgement of the Hon'ble Supreme Court in Wadia's Case (supra) (& its ratios, principles and directions) has not been referred to in its true interpretation, purport and effect nor followed by the MbPT in the Proposal under reply. 2. ii. Under the said judgement, the Hon'ble Supreme Court whilst examining the question (@ para 13 thereof), viz. "What is the status of BPT as landlord? Is it free to charge any rent from its lessees as it pleases in view of its having been exempted from the operation of rent control law or is it only to act in a fair and reasonable manner in the matter of dealing with its lessees and charging rent from them? " - has in express terms, and whilst upholding a catena of earlier judgments; categorically held that the position of law is well settled, viz. that State and its authorities including instrumentalities of State (such as MbPT) have to be just, fair and reasonable in all their activities, including those in the field of contract. Even whilst playing the role of landlord and tenant, the State and its authorities continue to remain so and cannot be heard or even seen causing displeasure or discomfort to Article 14 of the Constitution of India. It may be noted that the Hon Supreme Court, has further and in express terms at para 18 thereof, held that:- "18……The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent, so as to compensate themselves against the loss cost by inflationary tendencies. They can - and rather must – also save themselves from negative balances caused by the cost of maintenance, payment of taxes and cost of administration…………However, the State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical and unreasonable evictions or bargains." The aforestated ratio in the	respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. In case of Sasson Dock (RR zone 1/6A), the valuer in his valuation report had recommended to consider 80 % of land rate of Ready Reckoner (i.e. 20% reduction on the Ready Reckoner rate) in view of the Sassoon Dock is reserved for Fishing Industries in the Development Plan. LAC had considered the valuers recommendation and recommended only 80% land rate of Ready Reckoner rate and same was approved by Board. The letting rates under the Compromise Proposal had been fixed taking into account the market values of the land rates prevailing in the year 1980. Apart from the fact that the Port Trust tenancies have never been covered by the Rent Control Legislation that all the entities that have now been exempted under Section 3(1)(b)of the Maharashtra Rent Control Act 1999 would otherwise have been covered by and enjoyed the protection of the Rent Control Legislation then in force ,even if the quondam Rent Act had applied to the Port Trust tenancies . The important factor to be considered is that the tenants of the Port Trust who have been exempted from the Maharashtra Rent Control Act are legislatively mandated, inter alia, not to have any statutory or other limitations or constraints in the fixation of payment of rents . It is further submitted that to continue to insist on levy of letting rates frozen on the basis of land values of 1980 in the year 2006-2007 or such exempted persons despite the fact such persons do not any longer enjoy even the protection of the Rent Act would be extremely unfair to the Port Trust and would be in effect be contrary to the principle laid down by the Supreme Court in the Wadia Judgement. (b) Even though the Maharashtra Rent Control Act (and the old Bombay Rent Act) would not and does not apply to the lettings by the Port Trust, the fact that such entities have lost the protection of the Rent Act and are now legislatively mandated to face the open market in land and rentals ,such revise the letting rates for such categories of tenants. (a) Jamshedji Wadia judgement is the Hon'ble Supreme Court Judgement dated 13.01.2004 by which Hon'ble Supreme

	Hon'ble Supreme Courts' Judgment in Wadia's case circumscribes the principles for fixation of rent in respect of MbPT propertieswhich has not only clearly been lost sight of, but has clearly been ignored and transgressed. 2. iii. It is pertinent that MbPT themselves by their own T. R. No. 31 dated 10th March 2004 ("T.R. 31 of 2004") had inter alia resolved to implement the aforesaid judgment of the Hon'ble Supreme Court in Wadia's case (supra); and had expressly accepted therein that the rates fixed under their own Compromise Proposals as upheld in Wadia's case; would be applicable to their landed estates from 1.04.1994 upto 31st March 2024, with 4% annual increases "thereby extending the application of the proposals to 2024". By not settling cases in terms thereof, and by seeking approval of the above referred Proposal under reply, it seems that MbPT is attempting to circumvent the directions and ratios of the Hon'ble Supreme Court in Wadia's Case (supra), and is also going back on its promises for settlement of matters under its own said "Compromise Proposals". These were the very proposals propounded by MbPT before the Hon'ble Bombay High Court, and thereafter, before the Hon'ble Supreme Court, under several sworn Affidavits of its own officers. 2. iv. Further, it is also shocking that even MbPT's own T.R. No. 31 of 2004 has not been mentioned by MbPT under the captioned Proposal. 2. v. TAMP may kindly examine (in letter and spirit);- the content, purport and the true effect of the said judgement of the Hon'ble Supreme Court in Wadia's case (supra), MbPT's said T.R. 31 of 2004, as also all of the sworn Affidavits of the MbPT's officers before the Hon'ble Supreme Court and the Hon'ble Bombay High Court – filed in the matter of its General Rent Revision litigation. 2. vi. Pertinently, under the MbPT's own T. R. 105 of 2018; it has been recorded that the Shipping Ministry vide its letter dated 18.02.2014 (bearing reference No. PD11020/34/2013.MbPT), had:- "conveyed the opinion of the Ministry of Legal Affairs that the order of the Hon'ble Supreme Court dated 13.01.2004 should be implemented in letter and spirit and also clarified that the matter being an important public issue, any interpretational issue arising out of the Apex Court judgement the Administrative Department should seek clarification from Supreme Court to avoid any legal complications"; and that "The Shipping Ministry has further directed that Mumbai Port Trust to initiate necessary steps for immediate implementation of the order of the Hon'ble Supreme Court dated 13.01.2004 without any further delay."; and further that "the Port should also seek clarification from the Hon'ble Supreme Court in respect of any	Court upheld the Board compromise policy rates which were valid for 20 years w.e.f. 01.10.1992 to 30.09.2012. Though the SC concluded the dispute with regard to rates only for the period upto 31.03.2000, the Board decided to continue the said rate for the period upto 30.09.2012. Further the said facts have been confirmed by Attorney General's of India (AG) Shri Mukul Rohatgi by opinion dated 29.07.2016 wherein AG stated that MbPT is legally empowered to fix revised rates w.e.f. 01.10.2012 and also as per guidelines issued by MoPS&W, GoI, and rates are to be approved by TAMP. The TAMP is authorised to approve the SoR retrospectively w.e.f. 01.10.2012, subject to withdrawal of Writ Petition 1153 of 2000 filed by MbPT against TAMP, which is withdrawn on 08.08.2019. These facts were rightly pointed out in para 3 of proposal for SoR 2012-17. Thus there is no violation of S. C. Judgement dt. 13.01.2004 and MbPT is legally within its rights and empowered to revise the rates w.e.f. 01.10.2012 onwards. There is no provision of compromise proposal in PGLM 2015 issued by MoPS&W, GoI. The validity of rates under S.C. judgement was upto 30.09.2012 and therafterf MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoPS&W, GoI. TAMP is given power for framing the rate/ rectify the rates. As per PGLM's guidelines of 2014, MbPT has adopted highest value among the 5 factors. The MoS Letter dated 18.02.2014 bearing no. PD/11020/34/2013 MbPT, directing MbPT to seek clarification in respect of interpretational issues such as refixing letting rates after 30.09.2012, the matter was referred to respective MbPT advocate dealing in the matter in the Supreme Court for opinion and accordingly, letter dated 15.04.2014 addressed to MoS, GoI requesting them to forward copy of opinion from Ministry of Legal Affairs. Opinion from PT Advocate and AG (Mr. Mukul Rohatgi) was obtained by MbPT on applicability of Wadia Judgment Rates (SCJ) post 30.09.2012 and MbPT's rights to revise the rentals w.e.f 01.10.2012 onwards. The opinion received from PT Advocate and AG, GoI confirming the Port Trust's rights to revise rentals w.e.f 01.10.2012. Accordingly, then Chairman, directed to prepare SoR rates for Estate Lettings from 01.10.2012 onwards affected by SC Judgment. The letter dated 09.10.2014 was written to MoS, seeking Ministry's

	interpretational issues such as re-fixing the letting rates after 30.09.2012 arising out of the said judgement" It is submitted that despite the clear direction from the Ministry in the year 2014; MbPT appears not to have taken heed of the aforesaid directions, but has (on the contrary) now sought TAMP's approval to its Proposal under reply which are not only in the teeth of the Hon'ble Supreme Court's judgement in Wadia's case, and also in teeth of the clear directions of the Ministry of Shipping/ Ministry of Legal Affairs;- but also are patently unlawful, illegal, retrospective, steep, exorbitant, arbitrary and capricious. 2. vii. On a thorough reading of the said Proposal under reply, it is apparent that MbPT has overlooked the very directions ratios, dictates and guiding principles set out in the said judgment Wadia's Case; and has completely summersaulted on its promises made under the said "Compromise Proposals" as were upheld with modifications by the Hon'ble Supreme Court in Wadia's Case, and as admitted (and approved for implementation) in its own T.R. 31 of 2004. 2. viii. What is truly unfair and absurd is that MbPT having gone before the Hon'ble Supreme Court and Hon'ble Bombay High Court with sworn affidavits of their Officers viz. Shri A.D. Vasaigara dated 9th July 1998 and 29th June 2000, seeking approval of the Compromise Proposals to bring an end to decades of litigation; is itself acting contrary to its obligations and promises thereunder, & is thereby seeking to take advantage of its own wrong. Had the MbPT settled the matters as aforesaid there would be no necessity of seeking fixation / framing of SOR till 2024. 2. ix. Moreover, and considering that the said "Compromise Proposals" are applicable till 2024 (as stated hereinabove), and in any event; the subsequent guidelines issued by the Ministry cannot override and/ or supersede and/ or circumvent the ratios, dictates and directions of the Hon'ble Supreme Court in Wadia's Case, and in particular - qua the MbPT's own "Compromise Proposals". 2. x. The fact that the return of 6% is based on the PGLM 2015 has been accordingly applied by the MbPT's Board does not bless it with any legality so far as the law declared by the Hon'ble Supreme Court and the Hon'ble High Courts and particularly by the Judgment of the Hon'ble Supreme Court in Wadia's case is concerned – which law will prevail over any such policy/ guidelines. The SOR's therefore proposed by the MbPT are neither fair nor reasonable nor permissible in law. The Ready Reckoner rates published by the State Govt. cannot be accepted as a parameter or criteria for fixation of	direction on revision of SoR on township areas of MbPT (Estate lettings). Meanwhile, vide TR No. 123 of 2014 committee of officers was constituted (Chairman, EM and FA) by MbPT for fixation of rentals w.e.f 01.10.2012 onwards. The Ministry sought further information from MbPT on 08.10.2015 which was forwarded to Ministry on 02.12.2015 and Ministry was once again requested to give directions on fixation of SoR from 01.10.2012 and also approve the cases settled under compromise policy by the Board interms of SC Judgment, 2004. However, neither such approval for renewal of settled cases under compromise formula (61 cases) had been received from Ministry nor any directions received from Ministry till the issuance of general clarification circular No. 01 of 2018, PGLM 2015 which was extended to the township areas of MbPT covering the lettings affected by SC Judgment 2004 i.e. MT, FML, Expired leases and licenses. Accordingly, Board vide TR 122/2021 forwarded SoR proposal approved by Board vide TR 222 of 2015 based on the LAC report dated 29.12.2014 which annexed as part of proposal for revision of SoR for the period 2012-17. Pending Writ Petitions are not relevant to SoR revision. The contentions are irrational. Pending Writ Petitions are not relevant to SoR revision. The revision of rates are strictly in accordance with the provision of PGLM 2014-2015. The rates are arrived at by the Govt. approved Valuer on the basis of transactions taken place in vicinity of Port Trust land. The rates are arrived at by the Govt. approved Valuer on the basis of transactions taken place in vicinity of Port Trust land. The contention are denied and the SoR as proposed needs to be approved. The contentions are incorrect. The letting rates under the Compromise Proposal had been fixed taking into account the market values of the land rates prevailing in the year 1980. Apart from the fact that the Port Trust tenancies have never been covered by the Rent Control Legislation that all the entities that have now been exempted under Section 3(1)(b)of the Maharashtra Rent Control Act 1999 would otherwise have been covered by and enjoyed the protection of the Rent Control Legislation then in force ,even if the quondam Rent Act

	the lease rents as has been proposed by MbPT; and that too certainly not with retrospective effect. 2. xi. It may be appreciated that on account of the failure of MbPT to abide by the said judgement in Wadia's Case and by its own promises under its own said "Compromise Proposals"; no less than 41 Writ Petitions (Writ Petition No. 2085 of 2009 being the lead Petition) have been filed before the Hon'ble Bombay High Court challenging:- a) MbPT's failure to settle matters as directed by the Hon'ble Supreme Court in Wadia's Case, and b) MbPT's T.R. 127 dated 22.08.2006 ("T.R. 127 of 2006") attempting to wrongfully modify the terms of the said "Compromise Proposals", and thereby seeking to levy higher rates of rent (on sitting tenants/ lessees), based on hypothetical market values of lands, viz. the very action that the Hon'ble Supreme Court, and the Courts below prohibited MbPT from doing. 2. xii. In the abovementioned Writ Petitions, the Hon'ble Bombay High Court has been pleased to issue Notice under Order 1 Rule 8 of the Code of Civil Procedure, 1908, making the outcome of the aforesaid 41 Writ Petitions applicable to all lessees/ tenants/ occupants of MbPT, whether they were/ are before the Hon'ble Bombay High Court or not. Further, these Petitions, including the Writ Petitions filed by several obstructionists, and by lessees/ tenants not on record with the MbPT; have all been admitted by the Hon'ble High Court, and are to come up for final hearing. For this and other several reasons set out herein;- the objections (though invited only from registered lessees/ tenants), would also impact obstructionists and occupants of MbPT Lands, whose cases ought to have already been settled by MbPT under their own said "Compromise Proposals" (as upheld by the Hon'ble Supreme Court). Hence, they are also entitled to submit their comments/ objections on the said Proposal/s and be heard by TAMP. It would be highly unfair to call for objections only from registered lessees. MbPT cannot take advantage of its own wrongs. 2. xiii. It may be further appreciated that MbPT had filed its Cross-Objections before the Hon'ble Supreme Court in Civil Appeal No. 5559 of 2001 (viz. the aforesaid Wadia's Case) and the other connected Appeals before it. In the said CrossObjections, MbPT had (at the very first ground (A) thereof) sought to contend that "there is no legal bar on the Port Trust to charging rent which may be necessary even equal to market rent"; and had also sought to resile from the said "Compromise Proposals". The Hon'ble Supreme Court in its said judgement in Wadia's Case not only dismissed MbPT's said cross-objections as being "not maintainable", but also expressly held them to be "devoid of merit". Thus, as is well and clearly cemented by the Hon'ble Supreme Court;- there is	had applied to the Port Trust tenancies . The important factor to be considered is that the tenants of the Port Trust who have been exempted from the Maharashtra Rent Control Act are legislatively mandated, inter alia, not to have any statutory or other limitations or constraints in the fixation of payment of rents . It is further submitted that to continue to insist on levy of letting rates frozen on the basis of land values of 1980 in the year 2006-2007 or such exempted persons despite the fact such persons do not any longer enjoy even the protection of the Rent Act would be extremely unfair to the Port Trust and would be in effect be contrary to the principle laid down by the Supreme Court in the Wadia Judgement. (b) Even though the Maharashtra Rent Control Act (and the old Bombay Rent Act) would not and does not apply to the lettings by the Port Trust, the fact that such entities have lost the protection of the Rent Act and are now legislatively mandated to face the open market in land and rentals ,such revise the letting rates for such categories of tenants. There is no provision of compromise proposal in PGLM 2015 issued by MoSP&W, GoI. The MPA Act 2021 is yet to be notified for its implementation and hence not relevant to present proposal Mumbai Port Trust is facing great difficulty to meet overall expenditures of the organisation because of the non-paying attitude of rent / compensation of lessees and tenants by taking the undue advantage of the various legal means and making Port Trust to invest huge amounts of money in the litigation. Because of this attitude the Port Trust is in huge loss. There is no question of any profit in the scenario as contended in this para. There are about 5000 employees and 35000 pensioners to whom port trust has to pay every month, thereby MbPT has to carry responsibilities of about 40,000 families. Port Trust is providing pre-medical facility to all the family members of these families. Even Port Trust is giving concession to the Government Organisations like BEST, MGCM, Defence, Police etc. and most of the land of the MbPT is occupied by them. The SoR was due from 01.10.2012 and 30.09.2017 when there was no pandemic. Covid-19 pandemic started from March 2020 and as per present circumstances there has been substantial relaxation given by the Govt. to the trade and general public and most of the premises have been

	no question of any increase in rents by MbPT (much less retrospectively) w.e.f. 2012 and onwards based on any hypothetical and exploitative increases in market values of land, and or otherwise till 31.03.2024. 2. xiv. In fact, at least in our particular case (as is in most of the cases), there is no necessity for framing of any Proposal/s whatsoever for any SOR right up to 31st March 2024. This is because as per MbPT's own understanding of the Hon'ble Supreme Court's judgement in Wadia's case and the rents chargeable (right upto 2024) under their own T.R. 31 of 2004; had the MbPT settled cases and granted fresh lease of 30 years; then the rents chargeable by MbPT in terms of the said "Compromise Proposals" would continue right up to 2024 with 4% increases over the previous year. MbPT's failure to do so is a manifest wrong, which does not entitle them to take any advantage thereof, much less by framing proposal/s for fresh SOR retrospectively w.e.f. 2012 and beyond. In fact, as already stated hereinabove, this failure to abide by the directions of the Hon'ble Supreme Court to settle the cases has been challenged in the aforestated batch of 41 Writ Petitions. Thus, in light of the aforesaid, it is reiterated that MbPT cannot and ought not be permitted to propose any such new SORs and that too with retrospective application w.e.f. 2012. 2. xv. Moreover, it is submitted that MbPT's basis viz. its 'formula' evolved under the Proposal under reply for calculating SoR for base rate for one (1) sr. meter for FSI 1 of P.T. Structures - is fallacious and misconceived. 2. xvi. In light of the aforesaid, the Proposal under reply, therefore, warrant immediate and outright rejection by TAMP. 3. Without prejudice to our aforesaid contentions/ objections; we further wish to point out that under Section 49 of the Major Port Trust Act, 1963 ("MPT Act"), it is the TAMP who has the power to, from time to time, by notification in the Official Gazette 'frame' SORs, and a statement of conditions for any property belonging to, or in the possession or occupation of the Board or any place within the limits of the Port or the Port approaches. From a bare perusal of the Proposal under reply and its enclosures thereto, it appears that it is the LAC who has "formulated" the Proposal in terms of PGLM 2015 and has forwarded the same for MbPT's Board's "approval", who in turn have forwarded the same to TAMP for its "approval for fixation of SORs". Thus, in the present case, the statutory obligation of "framing" of SOR by TAMP, under the MPT Act, 1963, - appears not only to be hollow and illusory; but a hurried and unlawful attempt to seek	operational. Further (a) any relaxation which the Govt. of India extends under any special circumstances in the case would be applicable to the tenants/lessees, though presently there are no such directions and even in any clarification from MoPS&W, Govt. of India on giving any concession, relaxation, compensation and assistance during pandemic time. In this connection, attention is invited to Delhi High Court Judgement, Ramanad and others V/s. Dr. Girish Soni and others dated 21.05.2020 has held that the period of lockdown on account of Covid-19 does not excuse in payment of rental amounts (copy enclosed) and no concession in rental charges is admissible. b) As the parties have continued to occupy the premises and MbPT being Public body which continued to provide its services in COVID period and rendered the monthly invoices of compensation and also paid the GST on the invoice for the period there is no question of granting any relief. MbPT's expenditure on infrastructure and also liability towards salary/wages, maintenance etc. have continued even in COVID pandemic period. Since rentals from MbPT landed assets is important part of MbPT revenue which is essential for sustenance of MbPT, no such concessions are admissible on this ground in the proposed SoR w.e.f. 01.10.2012. The contents are incorrect and unacceptable as already stated in earlier para 4, MbPT is bound by PGLM 2015 issued by MoPS&W, GoI which have been scrupulously followed by MbPT while computing SoR. The comparison with the practice followed by Collector of Mumbai, State Govt. and any other PSUs is irrelevant and not applicable in this present case. The contentions are denied and the SoR as proposed needs to be approved.

	approval of TAMP under the MPT Act, 1963; knowing fully well that :- a. The MPA Act, 2021 has been passed by both Houses of Parliament, assented to by the President, and also Gazetted; b. The MPA Act, 2021 prohibits (in clear terms) any retrospective fixation of rents / SOR's, c. TAMP will cease to exist once the MPA Act, 2021 will come to effect. d. MbPT had itself (in its WP 1153 of 2000 filed before the Hon Bombay High Court);- challenged the Order issued by TAMP dated 15th March 2000 upholding its Jurisdiction to frame Scale of Rates; wherein it had decided that:- "4. In the result, and for the reason given above, based on a collective application of mind, this authority hereby decides as follows:- a. For purposes of framing Scale of Rates and Statement of Conditions, this Authority has jurisdiction over all the properties and assets, wherever located, of a Major Port Trust. b. Under section 49(1) of the Major Port Trust Act, this Authority will frame Scale of Rates and Statement of Conditions for use of the following categories of properties :- Property belonging to the Board. Property in possession of the Board. Property in occupation of the Board. Property in any place within the limits of the ort area or Port Approaches. c. For purpose of framing Scale of Rates and Statement of Conditions, all lease cases (irrespective of any time limitation) relating to all the properties of the Major Port Trust shall be seen to fall within the jurisdiction of this Authority. 5. This order shall come into force with immediate effect after notification in the Gazette of India." (Hence the very authority and jurisdiction of TAMP to frame scale of rates in respect of properties of the MbPT (wherever located) had been challenged by MbPT themselves. This Order impugned under the said W.P. came to be stayed by the Hon Bombay High Court by its Order dated 2nd May 2000, and the stay continued until recently and for reasons which are now apparent; the MbPT thought it now fit to withdraw the said W.P. – which request for withdrawal came to be allowed by the Hon Bombay High Court by its Order dated 8th August 2019.) The aforesaid decision to withdraw the said challenge and their WP 1153 of 2000, is also indicative of MbPT's undue haste & convenient positioning - in proceeding unlawfully with the said Proposal No. 2A. 4. Assuming, whilst emphatically denying, that MbPT (through LAC) may be entitled to, or frame of	

	any fresh SOR other than in consonance with the directions and within the principles and ratio of the judgment of the Hon'ble Supreme Court in Wadia's Case, and other than under the umbrella of the "Compromise Proposals" as upheld with downward modifications by the Hon'ble Supreme Court;- we are strongly opposed to the same, and place on record our further strong objections in respect to MbPT's Proposal/s under reply, as follows:- i. Any attempt, as contained in the Proposal/s under reply to frame such steep and exorbitant SORs from 2012 (retrospectively), and based on hypothetical market values of lands; would not only be unlawful, but violative of Article 14 of the Constitution of India. ii. There is no provision in the MPT Act, 1963 or the Rules thereunder, or under any delegated/ subordinate legislation thereunder; enabling the framing/ fixation of the SORs retrospectivity. iii. A perusal of MbPT's T.R. 122 of 2021 would reveal that the MbPT is well aware that TAMP would cease to function after coming into force/effect of the Major Ports Authorities Act, 2021 - on the appointed date. It is public knowledge that the MPA Act 2021 has received Presidential assent on 17.02.2021 and has been published, for general information in the official gazette on 18.02.2021. Thus, it is a matter of time before its effective date would be notified. There appears to be an undue haste even in seeking TAMP's approval of MbPT's proposals when Parliament has (under the said MPA Act, 2021); expressly inter alia provided (under the proviso to Sec. 27 thereof) that fixation and implementation of scale of rates, fees shall be in consonance with the norms as may be prescribed, and that the same shall not be with retrospective effect, and also shall not be inconsistent with the provisions of any other law for the time being in force. The legislative intent of the Parliament is thus manifest and clear in this regard; and clearly not only frowns upon but also bars any retrospective fixation and also bars any fixation contrary to Statute or settled law. iv. In the light of the aforestated, it may be appreciated that in the Land Allocation Committee Report dated 18.08.2021 in a similar Proposal No. 2 (also pertaining to P.T. Structures) it is stated (at para 4 thereof) that :- "4. However, since till date new Township Policy from Ministry of Shipping, Govt. of India and the matter of seeking approval of TAMP fo the SoR 2012-2017 and 2017-22 has remained pending and the TAMP is likely to cease to function after the notification of Major Port Authorities Act, 2021 comes into effect and it is necessary to obtain approval of TAMP to the SoR for the period 2012-2017 and 2017-22 for one sq. mtr. of land for each RR zone with FSI 1.00 as a	

	base rate ” From the above statement it is abundantly clear that the very reasoning and basis (for MbPT hurriedly and on legally unsustainable grounds); seeking approval of TAMP to the SOR for the said 2 periods - are fallacious and misconceived viz. that : a) New Township Policy is not received, and b) Matter of seeking approval of TAMP to the SOR for the two periods has remained pending, and c) TAMP is likely to cease to function after coming into effect of MPA Act, 2021. Merely because Township Policy is not received is no reason at all for the proposed action. The fact that matter of seeking approval has remained pending is also no reason at all much less to penalise the tenants / lessees for MbPT’s own wrongs. And the fact that TAMP is likely to cease to function is also no ground to make a hurried and unlawful decision in the matter, particularly when the MbPT had itself challenged the very jurisdiction and authority of TAMP to fix scale of rates by its WP 1153 0f 2000 before the Hon Bombay High Court in the aforesaid terms. v. A Division Bench of the Hon’ble Bombay High Court in Ratti Pallonji Kapadia v. State of Maharashtra & Ors., (1992 Mh. L.J. 1356) – (whilst examining the revision of lease Rent in cases of renewals of leases of Govt. Land) has held that: “22. What is worse, although the leases have expired on 1-1-1981, they were not renewed till 1986 or later and the increased rent is being charged retrospectively from 1-1-1981. This in our view is also unfair.” vi. The said judgment in Ratti Pallonji’s Case has been cited with approval by the Hon'ble Supreme Court in the said Wadia’s case (supra). The Hon’ble Supreme Court at para 17 therein specifically holds in respect thereof that: “A Division Bench of the Bombay High Court presided over by Mrs. Sujata Manohar J. (as her Lordship then was) held in Ratti Pallonji Kapadia v. State of Maharashtra that the exemption from the provisions of the rent control casts an obligation on the State and its instrumentalities and authorities to comply with public policy of ensuring a fair return of investments without charging exorbitant rates based on the prevalent market prices of land…”. vii. Further, it may be appreciated that the rationale behind enacting the Taxation Laws Amendment Act, 2021 (which has been Gazetted on 13th August 2021 after receiving Presidential assent on the same day), was also that retrospective effect given to amendments militate against the principles of tax certainty and damage India’s reputation as an attractive destination, and that the Country today stands at a juncture when quick recovery of the	

	Country after the COVID-19 pandemic is the need of the hour to promote faster economic growth and employment. Trite to say that the same principle applies vis-à-vis the said Proposal/s under reply which are also retrospective, and would have the very same effect that Parliament is now consistent in not only frowning upon, but even legislatively barring any such effects. viii. Considering that it is well settled that increase/ fixation of rents based on hypothetical market values of land, and that too retrospectively from 2012 - is itself unlawful, unsustainable in law and violative of Art. 14 of the Constitution of India; there is no question of TAMP approving the scale of rents under MbPT's Proposal under reply. It may be appreciated by TAMP that the tenants/ lessees/ occupants have neither been permitted to, nor were in a position to enjoy all the incidents of the lease. All the leases which had expired, were subject to onerous conditions thereby substantially diminishing their earning potential. Even after the express directions of the Hon'ble Supreme Court judgment in Wadia's case MbPT failed to renew the lease/s. Returns on MbPT lands can thus be nowhere near, nor be compared with other freehold / leasehold occupations enjoying all the incidents of ownership / leasehold rights, as well as security of tenure. ix. The said Proposal under Reply does not even consider the State Governments / Collectors / MCGM's Lease renewal policy/ies for expired leases which fixes much much lower rates as compared to the rates sought to be approved under the Proposal under reply - which are not only unlawful, but arbitrary, capricious, discriminatory and utterly unaffordable. x. We do not therefore accept the principles/s, the basis, the computation of SOR etc, and /or the valuation reports either considered, justified, or recommended by the LAC for approval by TAMP - as being unsustainable in law. 5. In the light of our aforestated objections/ comments, which may be kindly appreciated by TAMP in their true light, it is humbly requested that MbPT's Proposal No.2A under reply be outright rejected by TAMP; as being unlawful, arbitrary, capricious, exorbitant, unaffordable, ultra vires and unconstitutional. 6. I reserve my right to alter, amend, add, modify and/or delete any and all of our reasons, comments and/or objections. 7. I also crave leave for a personal hearing in the matter before any final decision is taken in respect of the Proposal under reply.	

	8. Nothing contained in the Proposal under reply (including the documents annexed thereto and/ or referred to therein, and/ or uploaded on the MbPT Website in connection thereto, and/or their content thereof), - shall be deemed to have been admitted by us or accepted as applicable in our case - for want of specific traverse. 9. Needless to submit that, if you do proceed to impose the above schedule of revised rates as proposed by MbPT, we shall be constrained to take legal recourse as may be advised in law which shall be entirely at your cost and consequence - which may please be noted.	

Sr. No.	**Specific comments received from J. R. Kakar The kay-cee**	**Reply of MBPT**
1	With reference to your Circular No. EM/AS(G)/F-382/ 1923 dated 06/10/2021 we state as under: - At the outset, we do not accept your demand or proposal for demand for increase in the rent communicated to us. The monthly Tenancy rate Rs. 5.50/- per sq. meter fixed by the Hon. Supreme Court up to 30/09/2012 is proposed to be enhanced substantially as well as illegally. The proposal is observed to increase rates steep high w.e.f. 01/10/2012 to 30/09/2017 and 01/10/2017 to30/09/2022 onwards. It will not be out of place to bring to your kind notice that decades ago, the LIC unilaterally increased monthly rent for Tenants. The matter was then referred to the court. The Hon. Court ruled that such high revision of rent is not justified and should be increased only marginally. LIC then agreed with Court's Judgment. Now after lapse of 09 years all of a sudden abruptly, ignoring the principles of the natural justice you propose to increase steep high Tenancy Rates with retrospective effect from 01/10/2012 onwards which is not acceptable to us. You are requested to let us know under which provisions of the Law, the said demand /proposal has been raised and under which authority to recover it with retrospective effect. Kindly also note that we are reserving all our legal rights in the matter and shall take appropriate action in the matter if necessary.	SC judgment rates were valid only for 20 years i.e from 01.10.1992 to 30.09.2012. From 01.10.2012 onwards PGLM 2010,2014-15 guidelines issued by Mos GOI are applicable to MbPT and MbPT is free to revise the rentals on the SOR based on PGLM guidelines. Present monthly rental are as per valuation report of 1980's which are no way comparable with present market rate. An average Kirloskar land values of Rs. 1406/- per sqm for FSI 1.33 has increased to Rs. 1,75,718/- per sqm for FSI 1.00 as on 2017, i.e. increase of almost 125 times of the land values of 1980's. Rentals as per Supreme Court Judgement dt. 13.01.2004 as on 01.10.2017 was on an average of Rs. 70/- per sqm per month for FSI 1.00 which will be revised to on an average of Rs. 878 per sqm per month for FSI 1.00 i.e. increase by almost 11 times. Infact, MbPT had fixed rent as 2 times of the applicable letting rates i.e. 10% return on Kirloskar land values with 4% every year from 01.10.1994 onwards in terms of Supreme Court Wadia Judgment. However, the rental returns from 01.10.2017 onwards will be just 6% of the FMV given by valuer and the depreciated cost of the port trust structure based on the age of building and type of construction in MbPT estate areas. SC judgment rates were valid only for 20 years i.,e from 01.10.1992 to 30.09.2012. From 01.10.2012 onwards PGLM 2010,2014-15 guidelines issued by MoS, GoI are applicable to MbPT and MbPT is free to revise the rentals on the SOR based on PGLM guidelines. These lessees/tenants are occupying MbPT land without any authorization from MbPT and even after expiry of the leases/termination

	You are also requested to grant us a personal hearing before any Order /decision is passed in the matter.	of tenancies/lease. Bills are sent along with footnote ”THIS BILL IS PROVISIONAL AND WITHOUT PREJUDICE TO BOARDS RIGHTS AND CONTENTION TO REVISE THE RENT/COMPENSION W.E.F 01.10.2012.” • Circular No.EM/ASG/F-361/5873 dated 28.12.2012 vide which it was informed to all the lessees, tenants and occupants that revision of compensation / rent in respect of all the expired leases, monthly tenancies and fifteen monthly tenancies and licences / tenancies excepting subsisting long term leases of Port Trust premises is due from 01.10.2012 onwards. Delay in submission of SOR proposal to TAMP was on account of the fact that PGLM 2014/15 were not applicable to Township area of Mumbai Port Trust. Vide clarification no 1 of 2018 dated 14.06.2018 issued under sec 111 of MoS, GoI extended the PGLM 2015 guidelines to the Township area. As per the said guideline SoR was to be determined as per the highest of five factors and TAMP has to notify the SoR for the Township areas. Matter was taken up with Ministry for withdrawal of notification dt. 15.03.2000. MoS, GoI vide their letter no secy(s)/visit-Mumbai/land management/2018(333915) dated 15.05.2019 directed TAMP to fix the SoR for Mumbai port Trust land w.e.f. 01.10.2012 onwards. Accordingly TAMP vide their letter dated 15.07.2019 issued a clarification that in view of PGLM 2015 guideline the TAMP notification 28.03.2000 has become infructuous so far as MbPT is concerned and it is not applicable for MbPT for period prior to 01.10.2012 and same may be treated as withdrawn by the TAMP. High Court writ petition no 1153 of 2000 filed by MbPT challenging TAMP notification was withdrawn vide HC order dated 08.08.2019. Accordingly immediately after Board approval the said proposal was submitted to TAMP on 04.08.2021. Falls under purview of TAMP’s jurisdiction.

Sr. No.	Specific comments received from SDE India.	Reply of MBPT
1	We are direct old Tenants of the Mumbai Port Trust having our office situated at Imperial Chambers, Ballard Estate, which is an old Bombay Port Trust acquired building from the erstwhile landlord, and have always been ideal tenants never having defaulted in payment of rent and charges levied by Mumbai Port Trust including the regularly	Following MbPT’s replies are Without Prejudice to The MbPT’s Rights and Contentions in the pending litigation and terminations notices served and MbPT’s rights to take legal action against breaches /violations under the applicable laws/lease/Tenancy terms and to take

	increased Yearly Rents being charged by the Port Trust-- despite the crippling time caused because of Covid 19 and a shift of business away from Mumbai. Through a Notice issued by the Estate Manager dated 06.10.2021 received by us on the 08.10.2021, it is mentioned that the Mumbai Port Trust now proposes to drastically increase the Rent being charged by them on MbPT Structures-- with a retrospective effect from 1st October 2012 which we vehemently object being most unfair, as that would apparently effectively lead to a complete closure of our occupation as a Mumbai Custom Broker as this Rent would be completely unaffordable by us. This proposal appears to being in complete opposite to the Government of India's current thinking on retrospectivity & the relative tax liability. As mentioned earlier, we may be the only old direct Custom Broker (CHA) tenants of the Mumbai Port Trust who are directly connected with the daily working of the Port and form an integral part of the Port's operations, which was also recognized by the Estimates Committee of Parliament. We are also MSME Registered who need encouragement & not this type of discouragement to survive. The Law prevents Private Landlords from exploiting their Tenants by capriciously increasing rents so that they could be evicted, which is inherently not expected to be done by the Port Trust who are not expected to behave in such a mercenary avaricious manner. The rates at which the rents are charged by Private Landlords to their old tenants as compared to the rent being proposed to be charged by the Port Trust to us as their old Tenants, in addition to the several limitations imposed by the Mumbai Port Trust to our Office occupation- by converting them into Monthly basis, alongwith imposing additional lease limitations, places us at a great disadvantage and has an adverse effect upon our operations causing us to face an unfair competition which would result in an unbearable hardship and will merely displace us from our present occupation and ruin our business rendering our staff jobless, which would consequently cause ruin to their families who are dependent on them for their livelihood. Without prejudice to what has been stated above, we would like to submit that if 2012 is taken as a benchmark, the revision in rent from 2012 to 2013 should be reasonable and cannot be arbitrary. The rent suggested in 2013 cannot be exponentially	further action as per applicable laws stipulated under PGLM Guidelines / directives issued by Ministry and as may be decided by the Board of Trustees of Port of Mumbai from time to time. The reply prepared by MbPT is based on: 1) The revision of SoR is based on the Hon'ble Supreme Court Orders in Jamshedji Wadia case and subsequent clarification and opinion received from Shri Mukul Rohatagi, the former Attorney General for India. 2) Ministry's clarification and directions to TAMP to fix the rates from 01.10.2012 3) The provisions in PGLM 2014-15 and subsequent clarifications received thereto 4) Due intimation given by Estate Manager to the tenants/lessees regarding revision from time to time. 5) The Major Port Trust Act, 1963 does not restrict the retrospective revision of any rates. 6)The revision sought by MbPT is justifiable and reasonable. The parawise comments are as follows: Covid-19 pandemic started from March 2020 and in the present circumstances most of the premises had been operational prior to 2017. i. There are no such directions from MoSP&W, Govt. of India on giving any concession, relaxation, compensation and assistance during pandemic time. In this connection, attention is invited to Delhi High Court Judgement, Ramanad and others V/s. Dr. Girish Soni and others dated 21.05.2020 which has held that the period of lockdown on account of Covid-19 does not excuse in payment of rental amounts and no concession in rental charges is admissible. ii. As the parties have continued to occupy the premises and MbPT being Public body had continued to provide its services during COVID period. MbPT had also rendered the monthly invoices of compensation and paid the GST on the invoice for this period. Thus there is no question of granting any relief. MbPT's expenditure on infrastructure and also liability for salary wages, maintenance etc. had continued even in COVID pandemic period. Since rentals from MbPT land assets is one of the important part of MbPT revenue, no such concessions are admissible on this ground in the proposed SoR w.e.f. 01.10.2017. 2. Regarding MbPT refixing letting rates retrospectively after 30.09.2012, the matter was referred to respective MbPT advocate dealing in the matter in the Supreme Court for opinion and accordingly, letter dated 15.04.2014 addressed to MoS, GoI

	higher than the Rent of 2012. Taking ready reckoner calculations leads to preposterous results. In our opinion, the basis should be the Supreme Court compromise proposal and not ready reckoner rates/ ad-hoc market valuations. It would also not be out of place to mention that the Rates proposed by the Port Trust for Ballard Estate are seemingly unreal to the actual ground reality, as most business have moved away from the Ballard Estate to newer locations closer to residences of their staff towards North Mumbai. With more & more Offices opening in North Mumbai and adjacent areas to be closer to employee's residential places, Ballard Estate no longer dominates as the prime Office area which ill justifies such quantum rent increases. This is a very old building of more than 90 years. Consequently, even though the structural repairs and maintenance required to be done to the ceilings, flooring, walls and waterproofing etc are agreed to be undertaken by the Port Administration, as this is a very old building it becomes even more necessary that we have to spend considerably more money on the internal maintenance, leakages, upkeep and repairs of our premises. We request the Port Trust hold meetings to workout Compromise Proposals as has been done successfully earlier in the 1994. TAMP is requested to please fix up workable rates through participatory process. A win-win situation in the form of compromise proposal by and between the Port Trust as the Landlord on the one hand, and the Tenants on the other hand being the only way going forward and a second compromise formula can be arrived at taking the Supreme Court's formula of 2004 as a benchmark and guiding force. In view of all that has been stated, we have to once again respectfully request that the Port Trust be restrained to so disproportionately increase the rent over and above the increased yearly rent being charged as it would cause undue hardship, and that we be allowed peaceful tenancy of the premises occupied by us without the Port Trust Administration causing any disruptive activity which would put us to any harm or loss whatsoever by creating impediments of any sorts, and that we may carry out our business without any interference or trouble, and that no coercive steps be taken based on new proposed rates in the interest of equity, justice and fair play.	requesting them to forward copy of opinion from Ministry of Legal Affairs. Opinion from PT Advocate and AG (Mr. Mukul Rohatgi) was obtained by MbPT on applicability of Wadia Judgment Rates (SCJ) post 30.09.2012 and MbPT's rights to revise the rentals w.e.f 01.10.2012 onwards. The opinion received from PT Advocate and AG, GoI confirming the Port Trust's rights to revise rentals w.e.f 01.10.2012. Accordingly, then Chairman, directed to prepare SoR rates for Estate Lettings from 01.10.2012 onwards affected by SC Judgment. The letter dated 09.10.2014 was written to MoS, seeking Ministry's direction on revision of SoR on township areas of MbPT (Estate lettings). Meanwhile, vide TR No. 123 of 2014 committee of officers was constituted (Chairman, EM and FA) by MbPT for fixation of rentals w.e.f 01.10.2012 onwards. The Ministry sought further information from MbPT on 08.10.2015 which was forwarded to Ministry on 02.12.2015 and Ministry was once again requested to give directions on fixation of SoR from 01.10.2012 and also approve the cases settled under compromise policy by the Board interms of SC Judgment, 2004. However, neither such approval for renewal of settled cases under compromise formula (61 cases) had been received from Ministry nor any directions received from Ministry till the issuance of general clarification circular No. 01 of 2018, PGLM 2015 which was extended to the township areas of MbPT covering the lettings affected by SC Judgment 2004 i.e. MT, FML, Expired leases and licenses. Accordingly, Board vide TR 122/2021 forwarded SoR proposal approved by Board vide TR 222 of 2015 based on the LAC report dated 29.12.2014 which annexed as part of proposal for revision of SoR for the period 2012-17. 3. i. The present rentals are billed as compensation as per S. C. Judgement 2004 (Wadia Judgement) rate which was based on valuation report of MbPT land by Kirloskar Consultants in 1980s which were 41 years back and hence no way comparable with present real estate market condition and present land value in Mumbai city which are almost 36 times in comparison with 1980's land values. ii. The land values as of 1980's as considered by the Kirloskar consultant in their valuation report and approved by the Board vis-à-vis land values as on 2017, which shows that on an average Kirloskar land values of Rs. 1406/- per sqm for FSI 1.33 has increased to Rs. 1,75,718/- per

		sqm for FSI 1.00 as on 2017, i.e. increase of almost 125 times of the land values of 1980's. Whereas in the comparison of rentals as per Supreme Court Judgement dt. 13.01.2004 as on 01.10.2017 was on an average of Rs. 70/- per sqm per month for FSI 1.00 which will be revised to on an average of Rs. 878 per sqm per month for FSI 1.00 i.e. increase by almost 11 times. It may be seen that the land values have increased by 125 times but MbPT rental have increased only by 11 times over the SC Judgments (1980 values). Infact, MbPT had fixed rent as 10% return on Kirloskar land values with 4% every year from 01.10.1994 onwards in terms of Supreme Court Wadia Judgment. However, the rental returns from 01.10.2017 onwards will be just 6% of the FMV given by valuer in MbPT estate areas. The RR values of MbPT are less as compared to abutting non-MbPT lands. Thus, it may be seen that the SoR proposed by MbPT is infact lesser than the prevailing market value. Therefore, the SoR rates are fair and reasonable and justifiable. iii. While computation of SoR 2017-2022 MbPT had engaged Govt. approved Valuers on panel and entrusted the work of valuation of MbPT land as per the jurisdiction of RR zones (36 nos.). MbPT is constituted under Major Port Act, 1963 and under supervision and control of MoSP&W. PGLM, 2015 are the statutory direction under Section 111 of Major Port Act. Hence MbPT is bound by such statutory direction for implementation of PGLM, 2015 and accordingly scrupulously followed guidelines issued by Ministry of Shipping and Waterways (MoSP&W), Government of India (GoI) for fixation of current SoR which is approved by Board of Trustees and submitted to the TAMP being statutory authority constituted under section 47 A of Major Port Act for fixation of SoR under section 49 of the said act. The para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 %

		compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. iv. The land values in the Ready Reckoner Zones of MbPT lands are varying from Rs. 19,400 to Rs. 2,80,000 and average value works out to Rs. 1,50,000, whereas land rates of Ready Reckoner Zones outside MbPT lands varies between Rs. 19,400 to Rs. 3,77,200 and average value works out to Rs. 1,98,000. Considering the mean value (RR 2017) of is Rs. 1,74,000 for lands in MbPT area and outside MbPT area. The MbPT valuers have recommended FMV which are average of Rs. 1,75,718 for lands which ranges between Rs. 53,820 to Rs. 31,31,600. v. It is further submitted that periodical revision every five years as mandated under PGLM 2014-15 is to ensure that concerned lessees/tenants do not evade payment of rentals. The Port Trust being a public body should not be deprived of its legitimate return from let out land of the Port. These revisions of SoR will be made applicable to MT, FML, Expired lese and Licenses whose period of occupation is over and lessee/tenants are continued to occupy the premises unauthorisedly beyond the leases period. In fact, the Port Trust is not seeking to charge market rents from such lessee/ tenants but only seeking to charge a revised reasonable rent in accordance with the balance propounded by the Supreme Court in the Wadia Judgement fixed on the basis of the market value of land which is nearly 4 decades old and merely because MbPT as a landlord, is an instrumentality of the State. vi. Existing Ready Reckoner rate of 2017 and table showing RR rates in the MbPT land beside its adjoining land and also the land value (FMV) recommended by the Valuer as on 2017 in PPT. vii. It is therefore, submitted that in cases of subletting, assignment etc., by the tenants of the Port Trust ought not to be allowed to profiteer at the cost of the public exchequer and any tenant who has sublet or assigned his premises does not in any event, deserve

		any sympathy from this Honourable Authority. Thus there is no violation of SC Judgement 2004 by effecting the revision as per SOR w.e.f. 01.10.2017 as per applicability of PGLM 2014-2015 issued by Ministry time to time which obligatory directives under Section 111 of MPT act and is bound by the said directives for implementation. Therefore, contentions raised are incorrect. The MbPT has not arbitrarily imposed such high schedule of rates. 4. There is no provision of compromise proposal in PGLM 2015 issued by MoSP&W, GoI. The validity of rates under S.C. judgement was up to 30.09.2012 and thereof MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoSP&W, GoI. The renewal of lease shall be granted as per the procedure laid down in Para 11, 12 and 13 of PGLM 2015 guidelines. 5. TAMP is requested not to accede to the request of the applicant as it is contrary to PGLM, 2015

Sr. No.	Specific comments received from Bhailal G. Shah.	Reply of MBPT
1	In this respect we have to state that your proposal for revision retrospectively for the past 10 years is not acceptable as that will put us into enormous losses. Nobody can do business with such retrospective correction in rent and that too of such magnitude. Same applies to the revision for 2017 to 2022. Here we suggest that it will be prudent to raise rates prospectively by about 3-4% every year. We may bring to your notice that such an exorbitant increase in property tax by Mumbai Municipal Corporation was stayed by Mumbai High Court. This matter is still undecided for more than 11 years. Your proposal will unnecessarily force all the tenants to sek legal remedies and may go on for many years. You may recall the earlier rate revision by MBPT where litigation went up to the Supreme Court and was decided in favour of tenants after 24 years. Therefore we request your goodself to be practical and raise the rent at 3-4% prospectively from next year and save us from unnecessary litigation.	Following MbPT's replies are Without Prejudice to The MbPT's Rights and Contentions in the pending litigation and terminations notices served and MbPT's rights to take legal action against breaches /violations under the applicable laws/lease/Tenancy terms and to take further action as per applicable laws stipulated under PGLM Guidelines / directives issued by Ministry and as may be decided by the Board of Trustees of Port of Mumbai from time to time. The reply prepared by MbPT is based on: 1) The revision of SoR is based on the Hon'ble Supreme Court Orders in Jamshedji Wadia case and subsequent clarification and opinion received from Shri Mukul Rohatagi, the former Attorney General for India. 2) Ministry's clarification and directions to TAMP to fix the rates from 01.10.2012 3) The provisions in PGLM 2014-15 and subsequent clarifications received thereto 4) Due intimation given by Estate Manager to the tenants/lessees regarding revision from time to time. 5) The Major Port Trust Act, 1963 does not restrict the retrospective revision of any rates. 6)The revision sought by MbPT is justifiable and reasonable. Following is the reply to issue raised: Regarding MbPT refixing letting rates retrospectively after 30.09.2012, the matter was referred to respective MbPT advocate

		dealing in the matter in the Supreme Court for opinion and accordingly, letter dated 15.04.2014 addressed to MoS, GoI requesting them to forward copy of opinion from Ministry of Legal Affairs. Opinion from PT Advocate and AG (Mr. Mukul Rohatgi) was obtained by MbPT on applicability of Wadia Judgment Rates (SCJ) post 30.09.2012 and MbPT's rights to revise the rentals w.e.f 01.10.2012 onwards. The opinion received from PT Advocate and AG, GoI confirming the Port Trust's rights to revise rentals w.e.f 01.10.2012. Accordingly, then Chairman, directed to prepare SoR rates for Estate Lettings from 01.10.2012 onwards affected by SC Judgment. The letter dated 09.10.2014 was written to MoS, seeking Ministry's direction on revision of SoR on township areas of MbPT (Estate lettings). Meanwhile, vide TR No. 123 of 2014 committee of officers was constituted (Chairman, EM and FA) by MbPT for fixation of rentals w.e.f 01.10.2012 onwards. The Ministry sought further information from MbPT on 08.10.2015 which was forwarded to Ministry on 02.12.2015 and Ministry was once again requested to give directions on fixation of SoR from 01.10.2012 and also approve the cases settled under compromise policy by the Board interms of SC Judgment, 2004. However, neither such approval for renewal of settled cases under compromise formula (61 cases) had been received from Ministry nor any directions received from Ministry till the issuance of general clarification circular No. 01 of 2018, PGLM 2015 which was extended to the township areas of MbPT covering the lettings affected by SC Judgment 2004 i.e. MT, FML, Expired leases and licenses. Accordingly, Board vide TR 122/2021 forwarded SoR proposal approved by Board vide TR 222 of 2015 based on the LAC report dated 29.12.2014 which annexed as part of proposal for revision of SoR for the period 2012-17. iii. While computation of SoR 2017-2022 MbPT had engaged Govt. approved Valuers on panel and entrusted the work of valuation of MbPT land as per the jurisdiction of RR zones (36 nos.). MbPT is constituted under Major Port Act, 1963 and under supervision and control of MoSP&W. PGLM, 2015 are the statutory direction under Section 111 of Major Port Act. Hence MbPT is bound by such statutory direction for implementation of PGLM, 2015 and accordingly scrupulously followed guidelines issued by Ministry of Shipping and Waterways (MoSP&W), Government of

		India (GoI) for fixation of current SoR which is approved by Board of Trustees and submitted to the TAMP being statutory authority constituted under section 47 A of Major Port Act for fixation of SoR under section 49 of the said act. The para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. Hence the contentions are incorrect.
Sr. No.	**Specific comments received from Shri. Mustafa H Mala**	**Reply of MBPT**
1	The increment of rent, proposed is exorbitantly very high then what we are paying as of today, please consider increasing the rent, in today's time it's very difficult to make both ends meet, and in these time with the increment in rent as per your proposal would make our lives haywire, please requesting you to consider your proposal.	MbPT is constituted under Major Port Act, 1963 and under supervision and control of MoSP&W. PGLM, 2015 are the statutory direction under Section 111 of Major Port Act. Hence MbPT is bound by such statutory direction for implementation of PGLM, 2015 and accordingly scrupulously followed guidelines issued by Ministry of Shipping and Waterways (MoSP&W), Government of India (GoI) for fixation of current SoR which is approved by Board of Trustees and submitted to the TAMP being statutory authority constituted under section 47 A of Major Port Act for fixation of SoR under section 49 of the said act. The para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate

		arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones.

Sr. No.	Specific comments received from Shri. Sameer Shaikh	Reply of MBPT
1	The rates are ver high. I dont agree with the same	MbPT is constituted under Major Port Act, 1963 and under supervision and control of MoSP&W. PGLM, 2015 are the statutory direction under Section 111 of Major Port Act. Hence MbPT is bound by such statutory direction for implementation of PGLM, 2015 and accordingly scrupulously followed guidelines issued by Ministry of Shipping and Waterways (MoSP&W), Government of India (GoI) for fixation of current SoR which is approved by Board of Trustees and submitted to the TAMP being statutory authority constituted under section 47 A of Major Port Act for fixation of SoR under section 49 of the said act. The para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined

		by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones.

Sr. No.	Specific comments received from Shri. Murtaza F Shakir	Reply of MBPT
	I Murtaza F Shakir , Code No: 20801530 would like to make a comment on your proposal 2 dated 06.10..2021 of increment of rent, which you have proposed is exorbitantly very high then what we are paying as of today, would like to request to please consider your proposal on increasing the rent, in today's time it's very difficult to make both ends meet, and in these time with the increment in rent as per your proposal would make our lives haywire, please requesting you to consider your proposal.	MbPT is constituted under Major Port Act, 1963 and under supervision and control of MoSP&W. PGLM, 2015 are the statutory direction under Section 111 of Major Port Act. Hence MbPT is bound by such statutory direction for implementation of PGLM, 2015 and accordingly scrupulously followed guidelines issued by Ministry of Shipping and Waterways (MoSP&W), Government of India (GoI) for fixation of current SoR which is approved by Board of Trustees and submitted to the TAMP being statutory authority constituted under section 47 A of Major Port Act for fixation of SoR under section 49 of the said act. The para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones.

Sr. No.	Specific comments received from Shri. Abdul Kadar Sopariwala	Reply of MBPT
1.	WE wish to state that the rates for land per sq.mtr. proposed to be revised are quite steep and exorbitant and do not reflect the current market conditions. The proposed rates should be moderate and reasonable and not act as a burden on the lessees.	Present monthly rental are as per valuation report of 1980's which are no way comparable with present market rate. An average Kirloskar land values of Rs. 1406/- per sqm for FSI 1.33 has increased to Rs. 1,75,718/- per sqm for FSI 1.00 as on 2017, i.e. increase of almost 125 times of the land values of 1980's. Rentals as per Supreme Court Judgement dt. 13.01.2004 as on 01.10.2017 was on an average of Rs. 70/- per sqm per month for FSI 1.00 which will be revised to on an average of Rs. 878 per sqm per month for FSI 1.00 i.e. increase by almost 11 times. Infact, MbPT had fixed rent as 2 times of the applicable letting rates i.e. 10% return on Kirloskar land values with 4% every year from 01.10.1994 onwards in terms of Supreme Court Wadia Judgment. However, the rental returns from 01.10.2017 onwards will be just 6% of the FMV given by valuer and the depreciated cost of the port trust structure based on the age of building and type of construction in MbPT estate areas. SoR 2017-2022 MbPT had engaged Govt. approved Valuers on panel and entrusted the work of valuation of MbPT land as per the jurisdiction of RR zones. The para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. Thus, revision of SoR is fair and justifiable.
2.	The proposed rates cannot be retrospective in effect but should be prospective and hence the revision should not be for the periods gone by but only for future periods.	
3.	In addition to the lease rent paid to MbPT, we are also paying Municipal Corporation of Greater Mumbai a sum of Rs. 26,000/- (Twenty Six Thousand) approx. towards annual taxes for which no services, for example, sewerage, water, etc., are provided by them and the same is recovered by MbPT in their bill for month of April every year. This should also be considered by MbPT while revising the schedule of rates.	
4.	We, therefore, feel that the land rates proposed to be revised by you are unjustifiable and too steep.	
5.	We have, therefore, to request you to kindly consider the above revision of rates.	

Sr. No.	Specific comments received from Shri. Naresh Agarwal	Reply of MBPT
	I, Suman Naresh Agarwal the only legal heir to Premchand Babulal Halwai and Premnarayan Devidayal Halwai, the Jt. tenant occupying Shop No-8, BPT Building, Malet Bunder Road, New Ferry Wharff, Mumbai-400009, allotted by the Board of Trustees of the Port of Mumbai to Premchand Babulal Halwai and Premnarayan Devidayal Halwai in their name. I have perused the notice bearing nos. EM/AS(G)/F-382/2078 dated 20/10/2021,EM/AS(G)/F-382/1923 dated 6th October, 2021, Proposal No.2:P.T. Structures Occupations, published by you in the website of the Mumbai Port Trust ('MbPT'), i.e. www.mumbaiport.gov.in, seeking the comments from the stakeholders, (i.e. registered MbPT lessees of expired lease, fifteen monthly lease, monthly tenants and licensees in Non-Home occupations falling under Unit 1 to Unit 15 of MbPT let out land)on the proposal for revision of Schedule of Rent ('SOR') for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022, as per the Ready Reckoner Zones. After perusing the said noticeswe say and submit as follows:	The Proposal no 1 to 4 were uploaded on MbPT website on 06.08.2021. 15 days' time granted after uploading the proposal on MbPT website i.e, upto 20.10.2021 as per directions of the TAMP Notices to intimation of uploading the proposal and also dates of hearing were send to all the registered lessees and tenants whom proposal is applicable. No extension recommended and it will delay the process
	I say and submit that the Policy Guidelines for Land Management for Major Ports (PGLM), 2015 has not been uploaded on the website of MbPT although it has been referred to repeatedly in the documents uploaded. In fact, the Clarification 1 of 2018, Clarification 1 of 19-20 and Clarification 2 of 19-20 also could not be seen on the website. You are requested to upload these documents so as to facilitate comments. Further, at the very outset, considering the complexities involved and in face of a recent corrigendum issued, the time of 12 days for inviting comments seems to be very short and unreasonable. You are requested to kindly upload all the documents and thereafter, provide a time of at least 3 months to make comments. Please appreciate that in the absence of such documents being uploaded it would not be possible to properly deal with the matter and make comments. For the purpose of assimilating inputs from our legal advisors/ consultants, it would also be advisable to hold physical meetings to understand the problems involved and the difficulties. Facts: I say that I am the sole legal heirs of Premchand Babulal Halwai and Premnarayan Devidayal Halwai and continuous possession, use and occupation of the premises being Shop No-8, BPT Bldg, lying and being Area of 34 SQM, and Unit No.14 , Mallet Bunder Road, Mumbai (the "said Premises") since past several years under and pursuant to the lease granted by the Board of Trustees of the Port of Mumbai to the original	PGLM 2015 with its clarifications uploaded on MbPT website https://www.mumbaiport.gov.in (a) Mere occupation and continuous possession of the premises do not constitute legal rights of the parties unless there is a lease agreement entered with party by MbPT by extending the expired leases / extension of tenancy rights by agreement clearly stating that the total period lease granted. As pointed out by MbPT in the proposal and PPT, the proposal for revision of SoR is only limited MT, FML , Expired Leases and valid running leases which are yet to expired are kept out of proposed SoR revisions. MbPT, it is to place on record that , the MbPT has been sending the invoices to all MT, FML, Expired leases and licenses as a compensation for wrongful use of the premises, without prejudice to MbPT rights to take legal action against breaches and also without prejudice to revised SoR for compensation w.e.f 01.10.2012 onwards as per applicable polices. All the payments made by the parties are accepted by the MbPT as compensation for wrongful use of the premises by parties with provisional acknowledgement. Thus , there is no written commitment of MbPT for

	Lessee. We have been duly and regularly paying all the rent, charges and taxes to the MbPT who are accepting the same without any protest and that there are no outstanding or pending TTC in dues. We say that you are issuing Bills/Invoices to us under the Code No. 41412108. Instead of following the orders of the Hon'ble Supreme Court and settling the matters as directed, you have approved a resolution (TR. 127 of 2006) which are contrary to the directions of the Hon'ble Supreme Court. The said TR 127 of 2006 was challenged by JamshedHormusjiWadia by way of Writ Petition No. 2085 of 2009 before the Hon'ble Bombay High Court. The record shows that the said Writ Petition is pending for hearing. The proposed revision of SOR, as per Ready Reckoner value is not acceptable to me. The charges as calculated based on the SOR proposed by you would be unreasonable and horrendously high. The schedule of rates is based on arbitrary calculations unsubstantiated by any material and are even higher than the "market rates" i.e. the current ready reckoner values. The SOR for 2017-22 goes on an ad-hoc valuation which isn't even substantiated by any material. This is without prejudice to the fact that such market valuation reports cannot be made the basis of the rent fixed. Further, the SOR 2012-17 takes rent on the basis of higher percent return on market value. When worked at using this factor, the rates would be exponentially higher than the amounts the tenants were paying under the original contract. Financial condition due to COVID-19 pandemic : I say and submit that due to the COVID-19 pandemic and the lockdowns, my business is gradually decreased. Hence, I will not be in a position to make payment of the proposed revision of SOR, as the same is higher than the current rent which we are paying pursuant to the Supreme Court Judgment. It is further stated that the Schedule of rent/lease charges has to be decided in accordance with the Compromise Proposal sanctioned by The Hon'ble Supreme Court in case of Jamshed Hormusji Wadia vs. The Board of Trustees of the Port of Bombay 2004 (3) SCC 214 and based on the principles of the said judgement, the rates need to be decided now by working out a fresh compromise proposal by and between the tenants/ lessees on the one hand and the Port Trust on the other. As of recently, you are increasing 4% of the rent in every year, which is reasonable. The Port Trust ought to be conscious of the fact that there are tenants who are occupying properties since 50-60 years and there are complete eco systems and markets thriving on	extending the leases or protecting and allowing the occupations of defaulters of FML / MT/ Expired Leases / licences. Since, the revision of SoR is pending MbPT has not raised / sending demand notices for differential arrears which is due from 01.10.2012 onwards. (b) Analysis of the RR rates 2012 is given in the said analysis in PPT would show that the RR Rates for 2012 which is the basis of the SoR (letting rates) are amongst the lowest rates (in comparison with adjoining RR zones to MbPT lands). It is further submitted that a rate of return of 6% is a very reasonable rate. TR 127/2006 is challenged by 47 Writ petitions and matter is still subjudice in High Court, Not relevant to the present proposal While computation of SoR 2017-2022 MbPT had engaged Govt. approved Valuers on panel and entrusted the work of valuation of MbPT land as per the jurisdiction of RR zones (36 nos.). MbPT is constituted under Major Port Act, 1963 and under supervision and control of MoSP&W. PGLM, 2015 are the statutory direction under Section 111 of Major Port Act. Hence MbPT is bound by such statutory direction for implementation of PGLM, 2015 and accordingly scrupulously followed guidelines issued by Ministry of Shipping and Waterways (MoSP&W), Government of India (GoI) for fixation of current SoR which is approved by Board of Trustees and submitted to the TAMP being statutory authority constituted under section 47 A of Major Port Act for fixation of SoR under section 49 of the said act. The para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment

	such properties. Rack renting would totally finish and eradicate running eco – systems which is against the public policy and is neither desirable nor possible. We are providing employment to lot of peoples. We are also adding to the tax exchequer. Therefore, we are not just directly but also indirectly contributing to the nation in the form of taxes and revenue and employment As stated herein above, MbPT cannot enhance the SOR from 2012-2017 retrospectively, as the same is opposed to the constitutional scheme. The legal opinions obtained by the Port Trust which have been referred to in the proposals are not shared on the website and hence in the interest of transparency, equity and fair play, the Port Trust is requested to put up all the relevant material on the official website of the Port Trust. It is not legally possible for the port trust to enhance rates and levy them retrospectively. The aspects of issuance of valid commercial invoices shall also have to be examined and the liability of MbPT as regards Goods and Service Tax (GST) etc. also has to be worked out. All this is only possible through physical meetings in a participatory manner by inviting representatives of stakeholder groups to sit and negotiate with the authorities of the Port Trust and the Shipping Ministry. In order to decide the further road map, we request the Port Trust to hold meetings so as to workout Compromise Proposals as has been done successfully earlier in the 1994. TAMP is requested to kindly fix up workable rates through participatory process. A win-win situation in the form of compromise proposal by and between the Port trust on the one hand and the Tenants on the other hand is the only way going forward and a second compromise formula can be arrived at taking the Supreme Court's formula of 2004 as a benchmark and guiding force. In the circumstances stated hereinabove, it is requested to kindly upload the relevant material on the website of the Port Trust and work out the Schedule of rates based on the rents paid in 2012 and not based on ready reckoner values and then seek proposals from the Tenants. Without prejudice to the above, it is also requested that pending the negotiation and decision making process, no coercive steps be taken based on new proposed rates in the interest of equity, justice and fair play. We request a physical meeting with the officers of the TAMP, the Shipping Ministry and the Port Trust so as to try to arrive at a win- win situation. For the purpose of records, the Schedule of Rates proposed for 2012-17 and 2017-22 are not	Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. The SoR was due from 01.10.2012 and 30.09.2017 when there was no pandemic. Covid-19 pandemic started from March 2020 and as per present circumstances there has been substantial relaxation given by the Govt. to the trade and general public and most of the premises have been operational. Further (a) any relaxation which the Govt. of India extends under any special circumstances in the case would be applicable to the tenants/lessees, though presently there are no such directions and even in any clarification from MoPS&W, Govt. of India on giving any concession, relaxation, compensation and assistance during pandemic time. In this connection, attention is invited to Delhi High Court Judgement, Ramanad and others V/s. Dr. Girish Soni and others dated 21.05.2020 has held that the period of lockdown on account of Covid-19 does not excuse in payment of rental amounts and no concession in rental charges is admissible. b) As the parties have continued to occupy the premises and MbPT being Public body which continued to provide its services in COVID period and rendered the monthly invoices of compensation and also paid the GST on the invoice for the period there is no question of granting any relief. MbPT's expenditure on infrastructure and also liability towards salary/wages, maintainance etc. have continued even in COVID pandemic period. Since rentals from MbPT landed assets is important part of MbPT revenue which is essential for sustenance of MbPT, no such concessions are admissible on this ground in the proposed SoR w.e.f. 01.10.2012. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment

	acceptable to us for the reasons stated hereinabove and for other reasons that we shall argue in person or through our counsel if a personal hearing is provided by TAMP. In view of what is stated hereinabove, we plead as follows: Not to implement the revision of Schedule of Rates for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 of MbPT Estate Land in term of your notice no. EM/AS(G)/F-382/2078 DATED 20/10/2021,EM/AS(G)/F-382/1923 dated 6th October, 2021, Proposal No.2:P.T. Structures Occupations, as they being unacceptable, arbitrary and without any substantial basis. Not to implement/issue any TR on the basis of the revisions of Schedule of Rates, as proposed in your notices nos EM/AS(G)/F-382/2078 DATED 20/10/2021,EM/AS(G)/F-382/1923 dated 6th October, 2021, Proposal No.2:P.T. Structures Occupations, as the same is not acceptable being capricious, arbitrary and without any basis; Implement the Schedule of Rates, as directed by the Hon'ble Supreme Court in the matter of Jamshed Hormusji Wadia vs. The Board of Trustees of the Port of Bombay 2004 (3) SCC 214; Implement the directions passed by the Hon'ble Supreme Court in the letter and spirit and in the interest of all affected parties. This draft comments are without prejudice to any and all the rights and remedies that We have in law and equity and nothing stated herein should be construed or interpreted as a waiver of such rights. we have with limited resources, material information and have tried our best to submit the information that was required and called for, with a shorter notice, if, however, you were to seek further information on my status as tenant/lessee I would urge you to peruse your digital records being my Code no. 41412102. Needless to say, should the port trust seek to arbitrarily impose the schedule of rates suggested without paying heed to any of the inputs received from tenant groups, leading to horrendously high unreasonable rents, we shall be left with no other option but to seek judicial recourse at the sole risks, costs and consequences of the Port Trust which please note.	Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. Present monthly rental are as per valuation report of 1980's which are no way comparable with present market rate. An average Kirloskar land values of Rs. 1406/- per sqm for FSI 1.33 has increased to Rs. 1,75,718/- per sqm for FSI 1.00 as on 2017, i.e. increase of almost 125 times of the land values of 1980's. Rentals as per Supreme Court Judgement dt. 13.01.2004 as on 01.10.2017 was on an average of Rs. 70/- per sqm per month for FSI 1.00 which will be revised to on an average of Rs. 878 per sqm per month for FSI 1.00 i.e. increase by almost 11 times. Infact, MbPT had fixed rent as 2 times of the applicable letting rates i.e. 10% return on Kirloskar land values with 4% every year from 01.10.1994 onwards in terms of Supreme Court Wadia Judgment. However, the rental returns from 01.10.2017 onwards will be just 6% of the FMV given by valuer and the depreciated cost of the port trust structure based on the age of building and type of construction in MbPT estate areas. SoR 2017-2022 MbPT had engaged Govt. approved Valuers on panel and entrusted the work of valuation of MbPT land as per the jurisdiction of RR zonesThe para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and

	we would anticipate your favourable response in view of the long term relationship enjoyed between me and MbPT and accept rents on a periodical basis without any dispute, demur or protest.	vacant plots (for fresh allotment) falling in the respective RR Zones. The compromise formula modified under Wadia Judgement/Supreme Court Order dated 13.01.2004, was valid for the period of 20 years, i.e. from 1992 to 30.09.2012. It is observed from the inspection that the market real estate sale transactions are at very high rate as compared to current rent charged by MbPT based on compromise formula upheld by SC judgement, 2004. The erstwhile lessee/tenant who are unauthorizedly holding over the plots even after the expiry of the lease without valid lease agreement or extending their period of occupation beyond the permitted period in the agreement still want to enjoy meagre/ concessional rates based on the compromise formula of 1982. It is estimated that 80% of MT, FML, expired leases have unauthorisedly and unlawfully subletted the premises and transferred the premises to third party which is a violation of tenancy, lease agreement even after the expiry of lease. Therefore, all such parties who are illegally and unauthorisedly holding the premises are liable to pay compensation for unlawful use of premises at prevailing SoR rates. These parties have failed to surrender the premises after termination of lease / tenancy terms and continue to hold over the MbPT land without any valid agreement and failed to give vacant possession to MbPT. As these Monthly tenancies, FML, expired leases and licensees are not having any running contract with MbPT. MbPT had correctly and rightfully worked out the SoR for MT, FML, expired leases and licensees based on PGLM guidelines by adopting the highest of 5 factors as furnished by Govt. approved Valuers who are empanelled by MbPT and the SoR rates are worked out @ 6% return on the prevailing market rates and also concessions and rebates have been given by the valuers taking into consideration the present infrastructure and lack of benefits. The contents are incorrect and unacceptable as already stated in earlier para, MbPT is bound by PGLM 2015 issued by MoSP&W, GoI which have been scrupulously followed by MbPT while computing SoR. The comparison with the practice followed by Collector of Mumbai, State Govt. and any other PSUs is irrelevant and not applicable in this present case. The Hon'ble Supreme Court order dated 13.01.2004, Board's compromise

		formula was only valid upto 30.09.2012 (only for 20 years i.e. 01.10.1992 to 30.09.2012) and such there is no violation of S. C. and no permission of S. C. Judgement is necessary for revision of rate from 2012. The Para 13 of PGLM, 2015 has stated the methodology of calculation of latest market value of port land and accordingly as stated in para 4 above, MbPT fixed SoR 2017-22. The entire proposal submitted to TAMP along with all the DA of the Proposal such as (i) supporting TRs (ii) LAC reports and (iii) statements of SOR were uploaded on MbPT website. There is no provision of compromise proposal in PGLM 2015 issued by MoPS&W, GoI. The suggestions are not acceptable and contentions are denied. There is not provision of compromise proposal in the PGLM 2015 and its clarifications issued by MoPS&W and MbPT is bound to implement PGLM 2015 Guidelines issued by MoPS&W, GoI which are mandatory directions to MbPT under section (III) of MPA Act 1963. Rates under SCJ 2004, is no more valid and applicable to MbPT and MbPT is well within the rights to revise SoR from w.e.f 01.10.2012 (i.e.) post validity of SCJ rates. MbPT is bound by TAMPs final order in the matter and directives given under PGLM 2015 issued by MoPS&W The present proposal before TAMP is for fixation of SOR in terms PGLM with effect from 1/10/2012 on wards when the validity of Supreme Court rates is over. TAMP is not concerned with any administrative and legal issues pertaining to specific plot

The MbPT while furnished reply to the comments received from various users/tenents/ lessees/ has stated that the MbPT's Rights and Contentions in the pending litigation and termination notices served and MbPT's rights to take legal action against breaches /violations under the applicable laws/lease/Tenancy terms and to take further action as per applicable laws stipulated under PGLM Guidelines / directives issued by Ministry and as may be decided by the Board of Trustees of Port of Mumbai from time to time.

The MBPT has further stated that the reply is prepared considering the following issues:

1) The revision of SoR is based on the Hon'ble Supreme Court Orders in Jamshedji Wadia case and subsequent clarification and opinion received from Shri Mukul Rohatagi, the former Attorney General for India.

2) Ministry's clarification and directions to TAMP to fix the rates from 01.10.2012

3) The provisions in PGLM 2014-15 and subsequent clarifications received thereto

4) Due intimation given by Estate Manager to the tenants/lessees regarding revision from time to time.

5) The Major Port Trust Act, 1963 does not restrict the retrospective revision of any rates.

6) The revision sought by MbPT is justifiable and reasonable.

7). TAMP is not concerned with any administrative and legal issues pertaining to specific plot.

Specific comments received from Abhijit Jitendra Mehta, after finalization of the case.

a) In my case (as is in most cases) there can be no question of framing of any SOR's (retrospectively or otherwise) right up to 31st March 2024; since, MbPT themselves (under their own T.R. 31 of 2004) had inter alia resolved to (and were duty bound and obligated) to implement the said judgment of the Hon'ble Supreme Court in Wadia's Case, and had also expressly accepted therein that the rates fixed under their own "Compromise Proposals" as upheld (with downward revision in rent and interest) in Wadia's Case would be applicable to their landed estates from 1.04.1994 up to 31.03.2024, with 4% annual increases "thereby extending the application of the proposals to 2024".

b) MbPT appears to not have taken any heed to the directions of the Ministry of Shipping (issued under their letter dated 18.02.2014), viz. that MbPT should initiate necessary steps for immediate implementation of the judgment/ order of the Hon'ble Supreme Court dated 13.01.2004 (viz. in Wadia's Case) without any further delay; and that MbPT should seek clarification from the Hon'ble Supreme Court in respect of any interpretational issues arising out of the said judgment such as re-fixing of the letting rates after 30.09.2012.

c) There is no provision under the MPT Act, 1963 or the Rules framed thereunder, and / or under any delegated / subordinate legislation enabling the framing / fixation of the SORs retrospectively.

d) Any attempt to frame such steep and exorbitant SOR's based on hypothetical market values of land and that too retrospectively from 2012, would not only be unlawful, but also violative of Article 14 of the Constitution of India

At the further outset, it is pertinent to point out that whilst the aforementioned two meetings scheduled on 03.09.2021 (one hour for each of MbPT's Proposal/s) were supposed to be primarily for hearing the comments, response, suggestions and objections of the lessees/ tenants on MbPT's Proposal/s which were already in the lap of TAMP; it was most unfortunate and disturbing to see how unfairly the meetings were conducted. For the first 45 to 50 minutes (of the one hour time slot) it was only MbPT who was given a full opportunity to speak its position and exhibit its slide show Presentation/s, and to put forth all its comments and its standard reply; leaving a meagre 10 minutes for more than 400 attendees out of more than 800 lessees / tenants / occupants who had filed their objections - to voice their comments, suggestions, and respond effectively and meaningfully.

The common comments and the standard reply of MbPT under their said Presentation/s seeking to defend and justify the said SOR Proposal/s are false, unsustainable in law and exhibit a clear intention to circumvent the dictates and directions of the Hon'ble Supreme Court under its said judgment in Wadia's Case. MbPT's common comments and standard reply appear to be an unlawful attempt to seek fixation / framing of unfair, unreasonable, & arbitrary rates of rent and that too retrospectively from 2012 hurriedly before coming into effect of the Major Port Authorities Act, 2021 - which has already received Presidential assent and has been Gazetted, and which does not permit retrospective fixation or framing of rates of rent.

It is shocking to peruse the insensitive reply and position taken by the MbPT with regards to the effect of the on-going pandemic of COVID-19 on its lessees/ tenants/ occupants. MbPT's contention viz. that "SOR allegedly being due from 1.10.2012 to 30.09.2017 which was prior to pandemic" - is a baseless, incorrect and a misplaced argument. By no stretch of imagination, can retrospective fixation / framing of steep, unlawful and arbitrary rates rents be justifiable under the present circumstances of the on-going pandemic of COVID-19. In any event, it is denied that SOR was due from 1.10.2012. It is reiterated that the rates under the "Compromise Proposals" as approved by the Hon'ble Supreme Court under Wadia's Case are applicable till 31st March 2024, and this is the stated and admitted position of MbPT themselves under their own T.R. 31 of 2004 - which seems to have been supressed before TAMP.

Moreover, in order to justify the unlawful fixation / framing of their exorbitant SOR in the times of the on-going pandemic; MbPT has wrongly relied upon a judgment of the Hon'ble Delhi High Court dated 21st May 2020, passed in the matter of Ramanand & Ors. V/s. Dr. Girish Soni & Anr. The said judgment has no applicability in the present case and is clearly distinguishable. The said judgment relates to a dispute for 'suspension of rent' between 'private parties' in the times of the current pandemic; and has got nothing to do with a public authority seeking to fix/frame exorbitant rates of rent, and that too retrospectively. It is well settled that MbPT being an instrumentality of State (within the meaning of Article 12 of the Constitution of India) has to be just, fair and reasonable in all their activities; and that all their actions must be for public purpose and public good; and must not violate Article 14 of the Constitution. In this context, the real question which falls for TAMP's consideration is, what is the real effect of the COVID-19 pandemic on the economy, on the businesses of MbPT's Tenants/ Lessees/ Occupants, on their ability to absorb the proposed heavy, unlawful, onerous and unreasonable rentals; and that whether in such circumstances or otherwise, should MbPT's Proposal/s be accepted by TAMP?

Whilst seeking to reply to the objections, and justify its steep, arbitrary, unlawful and retrospective fixation/ framing of rents; the contention of the MbPT, viz. that the occupations are without any authorization from MbPT even after expiry or termination of lease/ tenancy;- is a case of the pot calling the kettle black. Such a contention is entirely misplaced in the context of any fixation/framing of SOR and that too retrospectively. The authority of any tenant/ lessee/ occupant (such as me/ us) to continue the occupations of their respective premises, stems from the MbPT's own "Compromise Proposals" which have been approved by the Hon'ble Supreme Court (with modifications) under its said judgment in Wadia's Case. Under the said judgment, the Hon'ble Supreme Court has directed MbPT to settle the cases of the Tenants/Lessees/Occupants despite breaches alleged to have been committed by them; - by executing leases in their favour in terms of the said "Compromise Proposals". Specific premiums fixed in accordance with the "Compromise Proposals" upheld by the Hon'ble Supreme Court, in many cases have not only been levied but have also been already collected by the MbPT. Under the said judgment it has also been expressly stated that even if the leases in terms of the said "Compromise Proposals" are not executed, the terms of the said "Compromise Proposals" would be binding. MbPT, is therefore, obligated under law declared by the Hon'ble Apex Court to settle the cases and grant a Thirty (30) years lease w.e.f. 1.04.1994 with 4% annual increases on the rents set out in the Compromise Proposals even beyond 2012 right up till 2024. It is reiterated that this position has been expressly admitted by MbPT in their own T.R. 31 of 2004 - which accepts for implementation - the Hon'ble Supreme Court's judgment in Wadia's case; and which T.R. seems to have been supressed by MbPT in their said SOR Proposal/s. It is the MbPT who has failed and neglected to abide by the express dictates and directions of the Hon'ble Supreme Court in Wadia's Case, and who has failed to settle the cases and renew the leases in terms thereof; and cannot now be permitted to cast a shadow of illegality and unauthorised-ness upon the tenants/ lessees /occupants - by taking advantage of their own wrong.

Whilst it is true that the Hon'ble Supreme Court's said judgment is not a license in perpetuity allowing lessees/ tenants to go on committing breaches indefinitely, it is wrong and misleading on the part of MbPT to contend that lessees / tenants/ occupants who have committed breaches are taking shelter under the judgment in Wadia's Case. The "Compromise Proposals" were framed by the MbPT and were blessed by the Hon'ble Bombay High Court and the Hon'ble Supreme Court because they were the solution formulated by MbPT themselves to all these issues, including the issue of alleged breaches which affected a majority of lessees / tenants/ occupants who were before the Honble Supreme Court. MbPT themselves have failed to abide by the dictates and directions of the Hon'ble Supreme Court in Wadia's Case and have also failed to implement their own Compromise Proposals by not settling the matters of their tenants/ lessees/ occupants. What is truly unfair and absurd is that MbPT having gone before the Hon'ble Supreme Court and Hon'ble Bombay High Court with sworn affidavits of their Officers seeking approval of the Compromise Proposals to bring an end to decades of litigation; is itself acting contrary to its obligations and promises thereunder, & is thereby seeking to take advantage of its own wrong. Had the MbPT settled the matters as aforesaid there would be no necessity of seeking fixation / framing of SOR till 2024, at least in my / our case.

As a result of this failure on the part of MbPT to settle the cases and grant (thirty) 30 year leases right up to 2024; no less than 41 Writ Petitions have been filed before the Hon'ble Bombay High

Court, have been admitted and are pending for final hearing. In the lead Petition of 2085 of 2009, Notice under Order 1 Rule 8 of the CPC, 1908, has been directed to be published, and accordingly has been issued - making the outcome of these Petitions applicable to all the lessees / tenants of the MbPT; irrespective of whether they had approached the Court or not. In these Writ Petitions, the action of the MbPT in passing their T.R. 127 of 2006 has also been challenged as being contrary to the Compromise Proposals upheld by the Hon'ble Supreme Court. By the said T.R. No. 127 of 2006, MbPT has attempted to wrongfully modify the terms of the said "Compromise Proposals" by seeking to levy higher rates of rents based on hypothetical market values of lands, viz. the very action the Hon'ble Supreme Court, and the Courts below have earlier prohibited MbPT / other Public Authorities from doing. Hence, there is no question of any fresh Scale of Rates (SORs) being framed or sought to be thrust upon me / us, & that too retrospectively. It is once again requested that MbPT be called upon to produce its said T.R. 31 of 2004 before TAMP comes to any conclusion in respect of the said Proposals. MbPT may also be called upon to produce (before TAMP) the sworn affidavits of its officers filed before the Hon'ble Supreme Court and the Hon'ble Bombay High Court in the matter of its General Rent Revision litigation; and also the several Writ Petitions (lead Writ Petition No. 2085 of 2009) filed before the Hon'ble Bombay High Court which are admitted, and in which Notice Order 1 Rule 8 of CPC has been issued.

It is pertinent that by the said Judgment in Wadia's case, the Hon'ble Supreme Court has dismissed MbPT's Cross-Objections as not only being not-maintainable, but also being devoid of any merit. By these Cross-Objections, the MbPT had sought to resile from their "Compromise Proposals" and had sought to assert their right to charge rents based on market rates. The Hon'ble Supreme Court in terms rejected such an attempt. Hence, the question of the MbPT / TAMP attempting to fix/ frame any SORs based on hypothetical land valuations / market rates does not arise. This has been repeatedly frowned upon and rejected by the Hon'ble Supreme Court and the Hon'ble High Courts in a catena of judgments.

For the reasons set out herein, MbPT is wrong in seeking to brush aside all the contentions raised by me/ us with respect to the 41 Writ Petitions pending before the Hon'ble Bombay High Court – as not being relevant to the present proposals.

Further, the fact that MbPT had informed its lessees / tenants / occupants by their Circular dated 28.12.2012 that revision of compensation / rent was due from 1.10.2012 onwards; and/or that the fact that MbPT had issued bills/ invoices with a footnote that the bill is provisional and without prejudice to the Board's right and contentions to revise rent/ compensation w.e.f. 1.10.2012; - does not in any manner whatsoever confer any legality on an otherwise illegal, unfair, unreasonable and retrospective framing / fixation of rates, which the law frowns upon and does not permit.

Considering the well settled position of law that increase / fixation of rents based on hypothetical market values of land is itself unlawful and unsustainable in law; there is no question of permitting the MbPT to justify its actions with a flavour of illusory reasonableness by seeking to increase the rent __ times compared to the rents in Wadia's judgment, and as compared to land values having increased 37 times. It may be appreciated that the tenants/ lessees/ occupants (such as me/us) have neither been permitted to, nor were in a position to enjoy all the incidents of the lease. All the leases which had expired, were subject to onerous conditions thereby substantially diminishing their earning potential. Returns on MbPT lands can be nowhere near, nor be compared with other freehold / leasehold occupations enjoying all the incidents of ownership / leasehold rights and security of tenure. It appears that by these presentations, you are creating a huge untenable liability for the tenants thereby attempting to show them as defaulting tenants.

MbPT's contentions, viz. that:

a) "SC judgment rates were valid only for 20 yrs. from 01.10.1992 to 30.09.2012"; and that

b) "From 01.10.2012 onwards PGLM, 2010, 2014-15 guidelines issued by Mos GOI are applicable to MbPT and MbPT is free to revise the rentals on the SOR based on PGLM guidelines"; are false and unsustainable both in fact and law.

It is reiterated that MbPT themselves under their own T.R. 31 of 2004 had inter alia resolved to implement the said judgment of the Hon'ble Supreme Court in Wadia's Case, and had also expressly accepted therein that the rates fixed under their own "Compromise Proposals" as upheld (with downward revision in rent and interest) in Wadia's Case would be applicable to their landed estates from 1.04.1994 upto 31.03.2024, with 4% annual increases "thereby extending the application of the proposals to 2024". Therefore, there is no question of MbPT being free to fix/frame its SOR w.e.f. 1.10.2012 in terms of the said PGLM or otherwise. Moreover, and considering that the said "Compromise Proposals" are applicable till 2024 (as stated hereinabove), and in any event; the subsequent guidelines issued by the Ministry cannot override and/ or supersede and/ or circumvent the ratios, dictates and directions of the Hon'ble Supreme Court in Wadia's Case, and in particular - qua the MbPT's own "Compromise Proposals".

21. The fact that the return of 6% is based on the PGLM 2015 has been accordingly applied by the MbPT's Board does not bless it with any legality so far as the law declared by the Hon'ble Supreme Court and the Honble High Courts and particularly by the Judgment of the Honble Supreme Court in Wadia's case is concerned – which law will prevail over any such policy / guidelines. The SOR's therefore proposed by the MbPT are neither fair nor reasonable nor permissible in law.

22. Further, the contentions of MbPT vis-à-vis lessees profiteering, rack-renting and exploiting its lands by unauthorised subletting, unauthorised constructions, unauthorised change of user, unauthorised transfers;- were all raised by the MBPT before the Hon'ble Supreme Court in its General Rent Revision Litigation, and stand concluded by the judgment of the Hon'ble Supreme Court in Wadia's Case.

With respect to the standard reply of MbPT vis-à-vis retrospective fixation / framing of rent; I reiterate all that is stated in our comments/ objection as well as what is stated herein viz. that MbPT attempt to retrospectively fix / frame SOR's - is unsustainable and not maintainable in law. No amount of reasoning vis-à-vis delay in submission of the said Proposal/s can confer any validity and/ or legality to the said Proposal/s. Further, though the Major Ports Authorities Act, 2021 has not come into force; TAMP may not ignore the clear intention of the legislature in barring retrospective fixation / framing of rents. The undue haste which is clearly visible on the part of MbPT seeking approval of its SOR Proposal/s, makes it clear that MbPT is acting unreasonably, and in a manner so as to defeat the legislative intent of the Parliament.

The contention that the Maharashtra Rent Control Act, 1999 does not apply to MbPT is incorrect. MbPT does not fall under the exempted category of "local authority" – defined under Section 7(6) of the Maharashtra Rent Control Act, 1999.

The proposed revised Schedule of Rates for the period 1-10-2012 to 30-09-2017 and 2017 to 30-08-2021 of MbPT Estate lands, needs to be rolled back and amicably discussed with all concerned for way forward for all stakeholders. Physical meeting is required to ensure that all voices are heard.

The tenants invite Tamp Directors to personally and independently visit Darukhana to visually assess and gauge for themselves the actual infrastructure, environment and working conditions of the tenants-occupants in the area, before making any assessment. MbPT SOR proposal may be examined in all aspectshistorically, legally and ethically.

In light of what stated hereinabove, TAMP may kindly appreciated that MbPT's common comments and standard Reply under their Presentation/s propounding and/or seeking to defend and justify the said Proposal/s - are erroneous and unsustainable in law; and it is requested that MbPT's Proposal/s be rejected outright by TAMP.

28. Without prejudice to what is stated herein above, in order for me to take a well informed decision in consultations with my advisors, I request you first of all to give me a reasonable opportunity/personal hearing to be heard meaningfully and constructively and to provide me with the following information:

a) Whether you have received my email dated 26th August 2021 providing my comments/observations/suggestions on the proposed revision of SOR; and

b) Further whether you have considered the comments forwarded in the said email, prior to the meeting held on 3rd September 2021; and

c) Kindly provide Minutes of the meeting held on 3rd September 2021; and

d) Please grant me sufficient time to study your presentations and “Standard Replies” enabling me to provide my response for your consideration prior to any further movement in the matter.

Please justify, that despite the historic Supreme Court verdict of 2004, you have failed to regularize the tenancies as per the Compromise formula and allowed time to lapse. Not only MbPT has failed to implement the SC order in true spirit and action but Controversy appears between its resolutions TR 31 of 2004 and TR 127 of 2006. Tamp may take cognisance as to why MbPT after 106 months, wants to recover fantastic astronomical proposed rents, retrospectively, for no fault of omission or commission of the tenants and has delayed implementation of the historic Supreme Court verdict.

I say that the proposed hike in rent would increase 2.2 times the present basic rent for 2012-2017 (equivalent to 8 odd years rent amount) and for 1-10-2017 to 30-08- 2021, the proposed rent hike would be 21 times the present basic rent (equivalent to 76 years rent amount). It appears that by these presentations, you are creating a huge untenable liability for the tenants thereby attempting to show them as defaulting tenants.

The Darukhana area in Mazgaon has plots held by rent paying tenant families for several generations, while conducting port-related trade and have struggled to inhabit the plots, holding on dexterously in tough conditions, with poor infrastructure, temporary tin shed structures, dilapidated roads, lack of water, sanitation facilities, public conveyance and unchecked encroachments. In effect, the honourable tenants and occupants have been beneficial to MbPT by protecting and preventing the tenanted land being usurped by slums and anti-social elements thereby going outside MbPT control and official authority.

The occupation and use of the plots is not wrongful, nor unauthorised as stated in your rent bills, but follows the terms and conditions of the SC verdict. MbPT cannot declare the same arbitrarily for all tenants

You may also note that MbPT has not allowed/given any incentive to the long standing tenants to upgrade their facilities/businesses, nor given any rent relief in Covid and Lockdown times. MbPT has not improved the infrastructure / conditions in Darukhana, to demand an additional increase of rents beyond the applicable yearly 4% increment.

Further, in complete disregard of the tenants organisations being operational and actively working for their livelihood and providing employment and trade, MbPT has prepared a Master plan for the Darukhana area, for non-Port operation related activities and even issued a tender titled ‘Planning and Design of Redevelopment of Darukhana Mazgaon Mumbai’ due on 30th Sept, 2021.

Needless to mention, this letter is addressed without prejudice to the rights, contentions and remedies in law and equity and nothing in this the letter should be construed or interpreted as a waiver of such rights.

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