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Tariff Authority for Major Ports

G. No.20 **New Delhi,** **19 January 2015**

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Mumbai Port Trust (MBPT) for approval of schedule of rent for land at four locations of MBPT, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/62/2013-MBPT

Mumbai Port Trust - - - **Applicant**

QUORUM:

(i). Shri. T. S. Balasubramanian, Member (Finance)
(ii). Shri. C. B. Singh, Member (Economic)

O R D E R

(Passed on this 2nd day of January, 2015)

This case relates to the proposal received from Mumbai Port Trust (MBPT) for approval of schedule of rent for land at four locations of MBPT.

2.1. The MBPT vide its letter dated 28 November 2014 has submitted its proposal based on the provisions of 2014 Land Policy Guidelines.

2.2. The main points made by the MBPT in its proposal dated 28 November 2014 are summarized below:

(i). MBPT Board vide TR No. 224 dated 07.03.2014 accorded sanction to the constitution of the Land Allotment Committee (LAC) comprising of Dy. Chairman, FA&CAO, Traffic Manager and Estate Manager, as per guidelines of Land Policy 2014.

(ii). As recommended by Land Allotment Committee (LAC), the Board of Trustees of Mumbai Port Trust vide Resolution No. 157 dated 15.11.2014 has accorded sanction for fixation of Schedule of Rates and Reserve price for four projects.

(iii). The proposed schedule of Rates and Reserve price has been arrived as per the Land Policy for Major Ports 2014.

(iv). In accordance to Land Policy 2014, TAMP's approval is requested to the rates and Reserve Price of 4 projects, as recommended by Land Allotment Committee and approved by the Board as given below:

Sr. No.	Project Name	Area in sq. Mtrs.	Lease Period	Market Value as per LAC (₹ in lakhs)	Minimum up-front fee (Reserve Price) ₹ in Crores
1.	Cement Terminal	25,000	30 Years	4,200.00	42.81
2.	Edible Oil Terminal	5,730	30 Years	1,283.52	13.08
3.	Base Oil Terminal	5,000	30 Years	1,120.00	11.42
4.	Storage of liquid bulk (Ambapada)	23,500	30 Years	3,572.00	36.41

2.3. The MBPT has furnished a copy of recommendations of LAC. As seen from the Report of the LAC, the Market Value for the seven projects worked out and recommended by the LAC is given below:

Sr No.	Project Name	Location	Type of Area	Approx Area in sq. Mtrs.	Unit rate per sq.m in ₹	Market Value as per LAC (₹ in lakhs)
1.	Cement Terminal	Petroleum Godown, Sewree	Land	25000	16800/-	4200/-
2.	Marina	P & V Dock Wall	Land	8000	34000/-	2720/-
			Water	84000	17000/-	14280/-

3.	Floatel	Anchorage Charlie – 2, Colaba	Land	10000	71500/-	7150/-
		Ferry Wharf no. 2, Mazgaon	Land	635	22400/-	142.24
		Mazgaon Workshop, Mazgaon	Land	200	22400/-	44.80
4.	Storage of Liquid Bulk	Ambapada	Land	23500	15200/-	3572/-
5.	Floating Restaurant	Off Girgaon Chopatty bay, Girgaon	Water	2000	89400/-	1788/-
		Off Gateway of India, Colaba	Water	2000	71250/-	1425/-
		Off Ferry Wharf Region, Princess Dock	Water	2000	17000/-	340/-
6.	Edible Oil Terminal	COS – DY – Plot at Mazgaon	Land	5730	22400/-	1283.52
7.	Base Oil Terminal	Hay Bunder Plot at Reay Road	Land	5000	22400/-	1120/-

2.4. Considering the rate of return @ 6% of the market value of land and the annual escalation of 4% and the discount factor as prescribed at Sr. no. 16.2(d) of the Land Policy 2014, the LAC has worked out and finalized the Reserve price as given below:

(i). Group 1: The rentals for the entire lease period to be collected in advance as minimum upfront fees and nominal lease rent at the rate of ₹.1/- per sq.m. per annum.

Sr No.	**Project Name**	**Lease Period**	**Market Value as per LAC (in lakhs)**	**Minimum up-front fee (Reserve Price) in Crores**
1.	Cement Terminal	30 Years	4,200.00	42.81
2.	Edible Oil Terminal	30 Years	1,283.52	13.08
3.	Base Oil Terminal	30 Years	1,120.00	11.42
4.	Storage of liquid bulk (Ambapada)	30 Years	3,572.00	36.41

(ii). Group 2: The rentals to be collected every year as annual lease rent and a minimum one time premium to be payable as Upfront fee.

Sr No.	**Project Name**	**Type of Area**	**Approx Area in sq. Mtrs.**	**Rate of Rent (per sq.m per annum in ₹)**	**Annual Rental (Reserve price) ₹ in lakhs**	**Total Annual Rental (Reserve price) ₹ in lakhs**
1.	Marina	Land	8000	2040/-	163.20	1020.00
		Water	84000	1020/-	856.80	
2.	Floatel	Land	10000	4290/-	429.00	440.22
		Land	635	1344/-	8.53	
		Land	200	1344/-	2.69	
3.	Floating Restaurant	Water	2000	5364/-	107.28	107.28
		Water	2000	4275/-	85.50	85.50
		Water	2000	1020/-	20.40	20.40

2.5. Based on the above, the MBPT vide its letter dated 02 December 2014 has proposed the Scale of rates for Lands, as given below:

(₹ per sq.mtr)

Sr. No.	Description of Land	Types of area	Market value of land on 01.01.2014 (unit rate per sq.mtr.)	Reserve price in terms of lease rent @ 6% market value of land w.e.f. 01.01.2014 (per sq. mtr. Per annum)
1.	Petroleum Godown, at sewree	Land situated on internal road	16800	1008
2.	COS-DY-Plot at Mazgaon	Land situated on main road	22400	1344
3.	Hay Bunder Plot at Reay Road	Land situated on main road	22400	1344
4.	Ambapada	Land situated on internal road	15200	912

Note:

(i). The market value/ reserve price prescribed above will be effective from 01 January 2014 and remain valid till 31 December 2018.

(ii). The reserve price in terms of annual lease rent prescribed above shall bear an escalation factor on 4% every year.

(iii). The other conditions governing the lease rental/license fee shall be as per the Land Policy Guidelines of 2014 issued by the Ministry of Shipping, GOI.

2.6. From the above, the MBPT is seen to have submitted the proposal only with reference to the projects covered by the Group 1 of the LAC Report, as brought out earlier.

3.1. We had vide our letter dated 12 February 2014, *inter alia*, requested MBPT to examine and confirm that the proposal of the MBPT for notification of schedule of rent for allotment of land for port related projects at various locations of MBPT was not barred by the interim order dated 2 May 2000 passed by the Hon'ble Division Bench of Bombay High Court, in a Writ Petition filed by the MBPT challenging the Order dated 15 March 2000 passed by this Authority. In this connection, it is relevant here to mention that we have vide our letter no. TAMP/10/1998-Misc dated 03 February 2014 brought the above position to the notice of the Ministry of Shipping (MOS) also and had communicated that unless the matter is resolved by the MOS by impleading itself in the pending Writ Petition and by requesting the Hon'ble Court for dismissal of the case or directing MBPT to withdraw its petition alongwith the vacation of the interim order passed by the Hon'ble court, this Authority may not be in a position to entertain and process the proposal to be filed by MBPT for fixation of Rent Schedule for land to be allotted by the MBPT for port related projects at various locations of MBPT.

3.2. In this connection, from the documents furnished by MBPT, it appears that the MOS vide its letter dated 17 February 2014 had sought the comments of MBPT on the matter. In this regard, the MBPT vide its letter dated 11 April 2014 has responded to the MOS. The response of MBPT in this regard, is reproduced below:

> ***"****The land proposed for Cement terminal i.e. Petroleum Godown plot is not covered under the Writ Petition pending before the Hon'ble High Court of Bombay. With respect to plots for Base Oil Terminal and Edible Oil Terminal, the port has obtained legal opinion whether proposing these plots to TAMP for fixation of reserve price will prejudice the case before the Hon'ble High court. The Legal Advisor has opined that there is no harm to MBPT in making a proposal to TAMP for fixation of reserve price for this plot on account of the pendency of the litigation. The copy of this legal advise dated 25.11.2012 is enclosed.****"***

3.3. The copy of the legal advice so obtained by the MBPT, has been furnished by the MBPT alongwith its proposal. The concluding paragraph of the legal advice is reproduced below:

"**In view of the aforesaid, we are of the opinion that the above Writ Petition will not be prejudiced if you approach TAMP for fixation of Scale of fees in respect of the aforesaid two proposed terminals and a vegetable tank as they fall within the port limits. It is your contention in the aforesaid Writ Petition that the TAMP has no authority to fix the scale of fees in respect of properties outside the port limits/ port areas/ port approaches. Whilst making an application to the TAMP for fixing the scale of fees for the aforesaid two terminals and a vegetable tank, kindly emphasize that the application is made for fixation of scale of fees as the said two terminals and a vegetable tank farm are within the port limits and therefore the TAMP is requested to fix scale of fees under Section 49 of the said Act.**"

3.4. In this connection, while acknowledging the proposal of MBPT, we have vide our letter dated 5 December 2014 requested MBPT to clarify some points. The MBPT vide its letter dated 9 December 2014 has responded. The points raised by us and the response of the MBPT thereon are tabulated below:

Sl. No.	Points raised by us	Response of MBPT
(i).	In the concluding paragraph of the legal advise obtained by the MBPT from Motiwalla & Co., Mumbai, a copy of which has been furnished by the MBPT alongwith its proposal, it is, interalia, stated that whilst making an application to the TAMP for fixing the scale of fees for the aforesaid two terminals and a vegetable tank, kindly emphasize that the application is made for fixation of scale of fees as the said two terminals and a vegetable tank farm are within the port limits and therefore the TAMP is requested to fix scale of fees under Section 49 of the said Act. The MBPT in its proposal dated 28 November 2014 has not given any such clarification. The MBPT to furnish the requisite clarification at the earliest.	The MBPT after reproducing the concluding paragraph of the legal advice given by Motiwala & Co. (as brought out at para 4.3 above has stated the following: As per above opinion, proposal for Schedule of Market Value of land and reserve price for lands of MBPT was made to TAMP as areas Petroleum Godown, Sewree (proposed Cement Terminal) and COS-DY-Plot at Mazgaon (proposed Edible Oil Terminal) are in operational areas and within the port limits of MBPT.
	Further, it is relevant here to mention that the reference to the two terminals as referred in the above said legal opinion is that of a cement terminal and coal terminal. The vegetable tank farm perhaps appears to be related to Edible oil terminal, which may be confirmed. Thus, the legal opinion appears to have given go ahead in respect of cement terminal and edible oil terminals only. The legal position for fixation of Tariff for Base Oil Terminal and Storage of liquid bulk (Ambapada) is not clear. The MBPT is, therefore, to clarify the position at the earliest.	Regarding areas Hay Bunder plot at Reay Road (proposed Base Oil Terminal) and area Ambapada (proposed Storage of Liquid Bulk) it is also stated that they are in operational areas and within Port limits of MBPT.

4. In accordance with the consultative procedure prescribed, a copy each of the MBPT proposal dated 28 November 2014 and 2 December 2014 was forwarded to the concerned users/ user organisations / lease holders (as per the list furnished by MBPT) seeking their comments. The comments received from the users / user organisations / lease holders were forwarded to MBPT as feedback information. The MBPT has not responded to the comments of the users/ user organisations / lease holders, till the case was taken up for finalization.

5.1. A joint hearing on the case in reference was held on 22 December 2014 at the office of this Authority in Mumbai. The MBPT explained the highlights of the proposal. At the joint hearing, MBPT and users/ user organisations have made their submissions.

5.2. During the joint hearing, the All India Importers and Exporters Association (AIIEA) has furnished its written submission, which was forwarded to MBPT as feedback information. The MBPT vide its letter dated 29 December 2014 has responded.

6. The summary of valuation of land as considered by MBPT under various option is given below:

Sl. No.	Plot Description	State Govt. Ready Reckoner 2014	Rate as per Actual Transaction	Highest Accepted Tender-Cum-Auction Rate	Adopted Rate by Valuer	Rate as per Estate Department
(i).	Petroleum Godown at Sewree	16,800/-	There is no similar transaction in past three years for any of the plot	As per search, there is no Similar Recent Transaction where a parcel of such large size has been tendered / auctioned.	16,600/-	There has been no Leave and License Transaction of such big size in recent past.
(ii).	Ambapada	15,200/-			14,100/-	
(iii).	COS-DY-Plot at Mazgaon	22,400/-			21,950/-	
(iv).	Hay Bunder Plot at Reay Road	22,400/-			21,500/-	

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

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

(i). The Mumbai Port Trust (MBPT) is in the process of leasing out some areas of its landed estate on competitive bidding basis. In this connection, the MBPT is in need of having Schedule of Rate and Reserve price in respect of four of its areas viz., Petroleum Godown at Sewree, COS-DY Plot at Mazgaon, Hay Bunder Plot at Reay Road and area at Ambapada. Thus, it is for the said areas of land that the MBPT has filed the proposal under reference for fixation of the Schedule of Rate and Reserve price.

(ii). Before we proceed to deal with the case in reference, it is relevant to draw a reference about a Writ Petition pending before the Hon'ble High court of Bombay. This Authority had passed an Order on 15 March 2000 setting out the legal position about this Authority's jurisdiction in respect of framing Scale of Rates and Statement of Conditions for use of port properties. Vide the said Order, it was decided that this Authority would have jurisdiction to frame the Scale of Rates and the Statement of conditionalities over all the properties and assets belonging to/ in possession of/ in occupation of/ in any place within the limits of the port area and port approaches. It was also decided in the said Order that all lease cases (irrespective of any time limitation) relating to all properties of a major port trust shall also fall within the jurisdiction of this Authority. This Order was challenged by the MBPT in the Bombay High Court, *inter alia*, praying that this Authority has no power to fix rates of those premises belonging to the MBPT and situated outside the port limits. The Hon'ble Division Bench of the Bombay High Court passed an interim Order on 02 May 2000 restraining this Authority from giving effect to the Order of 15 March 2000 to the extent that the decision taken therein does not apply to any property or place not within the limits of the port or port approaches. The Hon'ble High Court also restrained this Authority from giving effect to the position that all lease cases (irrespective of any time limitation) relating to all properties of a major port trust shall also fall within the jurisdiction of this Authority. The matter is still pending in the High Court of Bombay and the interim stay granted in May 2000 is in force. So far as the proposal of MBPT in reference, the MBPT is of the view that the fixation of the Schedule of Rate and Reserve price for the four land areas as proposed by it are in operational areas and within the port limits of MBPT and hence would not be prejudicial to the Order of the Hon'ble High Court of Bombay. The position of MBPT in this regard is relied upon and hence the proposal of MBPT has been considered for approval.

(iii). (a). As per Clause 8 of the tariff guidelines of March 2005, this Authority is mandated to follow the Land Policy Guidelines issued by the Government from time to time for the purpose of determining lease rentals for the lands belonging to the Port Trusts. The Ministry of Shipping in the Government of India has announced Land Policy Guidelines for Major Ports, 2014 in January 2014 which has come into effect from 2 January 2014. The MBPT has, thus, come up with its proposal under reference, based on the provisions of the Land Policy Guidelines for Major Port Trusts, 2014.

(b). Para 18 of the Land Policy Guidelines for Major Ports, 2014, provides for five factors for determination of Market value of port land. The methodology for determination of market value of the port land based on the five factors prescribed in para 18(a) of the Land Policy guidelines of 2014, is similar to the provisions contained in the previous Land Policy Guidelines of 2010. The 2014 guidelines, however, clearly recommends consideration of the highest of the five factors for determination of the latest market valuation of land, in the normal course. However, if the latest market value of land is not chosen based on highest of five factors, then the reasons for the same are to be recorded. Clause 18(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 18(a) and that the percentage should not be less than 6% which is to be fixed by the Port Trust Board. Further, Clause 18(c) of the Land Policy Guidelines for Major Ports 2014 requires the concerned Major Port trust to file a proposal to this Authority for fixing the market value of the land and this Authority is required to notify the market value of land. Thus, as per stipulation contained in Clause 18(c) of the Land Policy Guidelines of 2014, this Authority is required to notify the market value of the port lands.

(c). In this regard, it is noteworthy that as per Section 49 (1) of the Major Port Trusts (MPT) Act, 1963, the mandate given to this Authority is to frame Scale of Rates (SOR) and prescribe statement of conditions for use of port land and properties belonging to the Major Port Trust. The earlier Land Policy guidelines of 2004 as well as Land Policy guidelines of 2010 clearly mandated this Authority to determine the Scale of Rates of the lands of the Major Port Trust, and not the market value of land. Bringing out the position in the statute, the Ministry of Shipping (MOS) has been requested vide our letter No.TAMP/8/2014-Gen dated 18 March 2014 to consider suitable amendments in the Land Policy Guidelines of 2014 in line with the statute position. Response of the Ministry of Shipping is awaited.

(d). The draft Scale of Rates furnished by the MBPT proposes notification of the Market Value of land as well as the Reserve Price for the four areas of land. If a reference is drawn to the Clause 18 (b) of 2014 Land Policy Guidelines, the term "Reserve Price" connotes meaning of Annual Lease Rent (SOR). Further, para 16.2(d) of the Land Policy Guidelines (though it relates to lease of land through tender-cum-auction methodology in a competitive bidding process) stipulates that the reserve price shall be worked out by the Land Allotment Committee (LAC) of the port, approved by the Board Trust and by this Authority. Thus, from a harmonious reading of the clauses 18(b), 18(c) and 16(d) of the land policy guidelines of 2014, it is seen that this Authority is mandated to notify reserve price equated to annual lease rent as well as the market value. It is thus seen that the MBPT has sought approval of this Authority to notify both the Market value of land as well as the Reserve Price (SOR) for the four areas of land. The mandate to notify the reserve price is of course possible subject to the condition that the percentage to be applied on the market value of land (which should not be less than 6%) is approved by the Port Trust Board as per the stipulation in clause 18(b) of the Land Policy guidelines of 2014.

(e). As far as the proposal of the MBPT is concerned, it is seen from the copy of minutes of the Board meeting of the MBPT forwarded by the port, that the Board of Trustees of MBPT has approved the market value of land. The Board has also approved the reserve price in terms of annual lease rent applying 6% on the market value of land. That being so, as per the provisions of the Land Policy guidelines of 2014, the proposal of the MBPT to notify both proposed market value of land and the Reserve Price in terms of annual lease rent is proceeded with.

(iv). As per clause 18(a) read with clause 16.2(e) of the Land Policy Guidelines 2014, a Land Allotment Committee constituted by the Port Trust Board consisting of Deputy Chairman of the Port and Heads of Departments of Finance, Estate and Traffic shall determine the market value of land as per the methodology prescribed in clause 18(a). Accordingly, the MBPT has reported that Land Allotment Committee (LAC) headed by the Dy. Chairman of the Port and the Heads of Departments of Finance, Estate and Traffic as other members was constituted. A land valuer was also engaged by MBPT for determining the market value of the MBPT land areas as per Clause 18 (a)(iv) of Land Policy Guidelines of 2014. The LAC after going through the Report of the approved valuer and after considering the parameters provided under Clause 18(a)(i) to (v) of Land Policy Guidelines, 2014, has given its recommendations. Further, the Board of Trustees of MBPT have given a go ahead to send the proposal to this Authority for fixation of SOR as recommended by the LAC. Thus, the proposal filed by the MBPT is taken up for disposal.

(v). (a). As stated earlier, para 18 (a) of the Land policy guidelines of January 2014 prescribes the methodology for determination of market value of the land based on the five factors as prescribed therein. In terms of the said para of the Land policy guidelines of 2014 the Land Allotment Committee may normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for similar classification/ activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity with an appropriate annual escalation rate to be approved the Port Trust Board, (iii). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (iv). Rate arrived at by an approved valuer appointed for the purpose by the Port and (v). Any other relevant factor as is identified by the Port. The Land Policy guidelines of 2014 also stipulate that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded.

(b). From the Recommendation of the LAC, it is seen that the Valuer in his Report has not stated the value of the MBPT land areas based on three factors i.e. Rate of actual relevant transactions registered in the last three years, Highest accepted tender-cum-auction rate of port land and the Rate as per the Estate Department on account of non-availability of values in the Port or in their search and has thus taken into account the rates as per the Stamp Duty Ready Reckoner of 2014 for the MBPT land areas as base. Thereafter, the valuer has reportedly reduced the Stamp

Duty Ready Reckoner rates in view of the local conditions of the plots viz., lower developed area, restricted usage, CR Zone and areas in the vicinity. The reduction in the value of MBPT lands so effected is reported to be insignificant.

(c). Since Clause 18(a) of the Land Policy Guidelines of 2014 stipulates consideration of the value of land based on highest of the factors, the LAC has recommended to consider the rates based on Stamp Duty Ready Reckoner, as it is the highest among the balance two factors viz., rate as per Stamp Duty Ready Reckoner and rate as per the Valuer.

(d). Land being a valuable resource, a port must strive to ensure the maximum income from its landed estates. Though the MBPT has reported to have adopted the highest market value among the two factors, determining the market value of land based only on a single approach may not always reflect the correct position. Nevertheless, taking into account the position that the recommendation of the LAC has the approval of its Board of Trustees and also taking into account that there is no pointed objection from any of the users/ user organisations consulted in this case with regard to the approach adopted by the MBPT, this Authority relies upon the approach adopted by the MBPT in this regard.

(e). The All India Importers and Exporters Association (AIIEA) has expressed its reservations on having a common value for land which are intended to be put for use for different purposes. In this regard, it is to be noted that even the Stamp Duty Ready Reckoner prescribes almost a common value for land which are intended to be put for use for cement storage and restaurant. Incidentally, the MBPT's proposal is not for fixation of rates for land for use by Restaurants.

(vi). As already stated earlier, the proposal of the MBPT seeks approval of the market value of land and the reserve price. Clause 18 (b) of the land policy guidelines stipulates that the percentage to be applied on the market value of land subject to minimum cap of 6% is to be fixed by the Port Trust Board. As stated earlier, the Board of Trustees of the MBPT has approved the market value of land as well as the reserve price in terms of annual lease rent applying 6% on the market value of land. Since the proposal of the MBPT complies with the said provision stipulated in clause 18(b) of the land policy guidelines, this Authority approves the market value of land and reserve price in terms of annual lease rent of the MBPT as proposed by the MBPT.

(vii). The BPCL has objected to the reserve price in terms of annual lease rent as proposed by the port. The BPCL is of the view that such exorbitant rentals would adversely affect its financial strength as their pricing is controlled by the Central Government and that such exorbitant rentals cannot be passed on by it to the end users. In this connection, it is relevant here to mention that the MBPT has framed the proposal following the Land Policy Guidelines and therefore, prescription of the reserve price in terms of annual lease rent as proposed by the port is inevitable.

(viii). As per clause 18(c) of the Land policy guidelines of 2014, the Port Trust Board will fix a rate of annual escalation which should not be less that 2%. In the instant case, the MBPT has proposed a note under the proposed schedule stating that the reserve price in terms of annual lease rent shall bear an escalation factor of 4% every year. The AIIEA has stated that an escalation factor of 4% every year would make the project for which the parcels of land in reference are intended unviable and that the escalation factor should be 5% every three years. In this regard, it is relevant here to mention that Clause 18(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 has proposed 4% annual escalation.

Since the annual escalation rate of 4% is approved by the MBPT Board of Trustees and is as per the provision of the Land Policy guidelines of 2014, this Authority is not in position to brush aside the proposal of the MBPT to prescribe annual escalation at 4%. Therefore, the proposed rate of 4% annual escalation is approved.

(ix). The Land Policy Guidelines of 2014 does not stipulate any provision relating to periodicity of revision of the lease rent of the Port Trusts lands. It is relevant here to mention that clause 6.3.(1)(d) of the Land Policy of the 2010, as well as clause 5.3(I)(d) of Land Policy guidelines of 2004 stipulates that the SOR will be revised every five years. It has to be recognised that the market value of port lands under the various options prescribed under clause 18(a) of the Land Policy Guidelines of 2014 may undergo a change. In order to ensure that the lease rental/ license fee to be collected by Major Port Trusts under Land Policy guidelines of 2014 reflect the updated market value every five years, the MOS has been requested vide our letter dated 18 March 2014 to incorporate a provision prescribing revision of the Scale of Rates of port lands every five years in line with the prescription available in the Land Policy of 2004 as well as Land Policy Guidelines of 2010. Response of the MOS is awaited. The proposal of MBPT is for prescription of rates for five years. Further, the MBPT in its proposed draft Scale of Rates has proposed a note stating that the market value/ reserve price will be effective from 1 January 2014 and remain valid till 31 December 2018. Though the MBPT has sought retrospective approval for the market value/ reserve price with effect from 01 January 2014, it has not furnished any reason for seeking retrospective approval. In this connection, it is relevant to mention here that the question to accord retrospective approval to the lease rentals arises in a scenario when the validity of the lease rentals approved in an earlier Order has expired on a particular date and the new lease rentals have to be made effective from the immediate next day after initial expiry so as to avoid leaving any time gap. However, in the case of MBPT, the rentals for the four land areas are being fixed for the first time. Moreover, the MBPT intends to lease out said four land areas on competitive bidding basis in future. Therefore, there does not appear to be any need to have retrospective approval for the market value/ reserve price with effect from 01 January 2014, as proposed by the port. Facilities for handling and storage of bulk cement is one of the projects of MBPT in the Shelf of Projects for award in the year 2014-15. One of the land area out of the four land areas is intended to be allotted for handling and storage of bulk cement. Since the rate would only be adopted by MBPT to allot the plots ofland in future, the rates would come into effect from the date of notification of the Order passed in the Gazette of India and may remain in force for a period of five years. Accordingly, the note proposed by the MBPT is suitably modified.

10.1. In the result, and for the reasons given above, and based on a collection application of mind, this Authority approves the schedule of Market Value and Reserve Price in terms of lease rent for four land areas belonging to the MBPT, which is attached as **Annex**.

10.2. The schedule of rate structure approved will come into effect from the date of notification of the Order passed in the Gazette of India and shall remain in force for a period of five years. The approval accorded shall automatically lapse thereafter unless specifically extended by this Authority.

(T.S. Balasubramanian)
Member (Finance)

<u>Annex</u>

Schedule of Market Value of land and reserve price for four areas of lands of Mumbai Port Trust

(₹ per Sq.Mtr)

Sr. No	**Description of Land**	**Types of area**	**Market Value of land (Unit rate per sq.mtr.)**	**Reserve price in terms of lease rent (Per sq.mtr. per annum)**
1	Petroleum Godown, at Sewree	Land situated on Internal Road	16800	1008
2	COS-DY-Plot at Mazgaon	Land situated on Main Raod	22400	1344
3	Hay Bunder Plot at Reay Road	Land situated on Main Road	22400	1344
4	Ambapada	Land situated on Internal Road	15200	912

NOTE :

(I) The market value / reserve price prescribed above will be effective from the date of notification of the Order passed in the Gazette of India and would may remain in force for a period of five years.

(II) The reserve price in terms of annual lease rent prescribed above shall bear an escalation factor on 4 % every year.

(III) The other conditions governing the lease rental / license fee shall be as per the Land Policy Guidelines of 2014 issued by the Ministry of Shipping, Government of India.

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SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

TAMP/62/2013-MBPT	**:**	**Proposal received from the Mumbai Port Trust (MBPT) for approval of schedule of rent for land at four locations of MBPT**

The Summary of the comments received from the users / user organisation are given below:

1. **M/s. Bharat Petroleum Corporation Limited**

(i). Availability of land at economically/ commercially feasible rentals to be levied by the Port Trusts and esteemed TAMP is our legitimate expectation in order to fulfill the nation's commitment to its citizens. Any adverse or exorbitant levy or imposition of rentals would adversely affect the financial strength of our Corporation significantly because our pricing is controlled by the Central Govt. in respect of products such as petrol, high speed diesel oil, liquefied petroleum gas etc. Hence, to cope up with the increase in land rentals by the port authorities or the TAMP such exorbitant additional burden cannot be surmounted by BPCL by means of fixing/ levying higher prices from the consuming public.

(ii). Our Corporation is undertaking and carrying our duties and responsibilities towards serving the common good. Our survival is largely dependent upon due tariff and rental consideration fixed by esteemed like TAMP/ Port Trust. In view of the status of our organization, it is our legitimate expectation that imposition of exorbitant rental as is contained in the various MBPT letters would be rightfully reviewed by your good self and accordingly it will be called back. We register are protest against such exorbitant levy of rentals.

2. **M/s. Indian Merchants' Chamber**

(i). We are of the opinion that the said proposal appears to be fair and just. However, when the land is allotted by the MBPT it must be ensured that the same must have appropriate and well maintained roads and other infrastructure facilities available at the site, so that additional costs are not burdened on the bidders and the trade.

2. A joint hearing on the case in reference was held on 22 December 2014 at the office of the Authority in Mumbai. The MBPT explained the highlights of the proposal. At the joint hearing, MBPT and users/ user organisations have made the following submissions:

Mumbai Port Trust (MBPT)

(i). To increase private participation, we are looking to go ahead with 4 projects related to port purposes viz., Cement terminal, Edible oil terminal, Base oil terminal and Storage of liquid bulk (Ambapada).

(ii). In these projects, land is proposed to be given following land lease model for a period upto 30 years, where land would be given on lease to the bidders and we expect the bidders to provide facilities to commensurate smooth handling of cargo.

(iii). As per Land Policy Guidelines of 2014, we have appointed a Valuer. The Valuer has stated that market value of land based on three factors viz., past transactions, highest accepted tender and rate as per Estate department are not available. The Valuer has taken the Stamp Duty Ready Reckoner as base and reduced it in view of local conditions of plots of land viz., lower developed area, restricted usage, CR Zone and area in the vicinity.

(iv). As per Land Policy Guidelines of 2014, since the market value based on the highest factor is to be considered, the Land Allotment Committee has recommended to consider market value based on Stamp Duty Ready Reckoner.

(v). Lease Rentals have been determined based on 6% of the Market value of land. Board has approved 6%.

(vi). The lease rentals are proposed to be escalated by 4% per annum and would be valid for a period upto 31.12.2018.

(vii). Two options for payment of rentals is envisaged. Option 1 is to recover the lease rentals on per month/ per annum basis with 4% escalation per year. Option 2 is to recover the lease rentals for a period of 30 years upfront for which a 4% escalation per year (upto 30 years) has been considered and a discounting factor of 8.69% as per RBI to arrive at the NPV of the rentals for the period of 30 years.

(viii). The projects envisaged by the Port is based on the need of the city and would be for the benefit of Mumbai at large.

(ix). It is not the intention of the Government to stop the operations of the port. Government has not given any direction to close down MBPT.

[MBPT: It is Government policy to collect lease rent upfront as per Land Policy. There is no exit policy as of today. If Government comes up mid-term review, it may be applicable to this project also.]

(x). 6% refers to annual return on the market value of land. 4% is the annual escalation factor adopted on the rental so determined. 8.69% is the discounting factor adopted to arrive at the NPV of the rentals for the period of 30 years, incase of allotment of land on upfront basis.

(xi). All the projects are subject to requisite statutory clearances. If the statutory clearances are not received, then the upfront rentals collected from them would be returned without any interest.

(xii). The bids will be invited following open tender only.

(xiii). Only cargo brought to MBPT will be allowed to be handled at the said projects.

(xiv). The proposal is to be seen in its totality. It is meant for costal movement of cement from Gujarat.

(xv). The Proposal is based on highest value. There is no much difference between ready reckoner value and own proposal. We request the Authority to approve the rates early.

<u>All India Importers and Exporters Association</u>

(i). We hand over our written submissions.

(ii). Why should the port insist to recover the rentals for a period of 30 years upfront?

[MBPT: This will depend on the market response. If it is felt that such an arrangement would be burdening, then we will look into the payment option on monthly/ yearly basis.]

(iii). If you seek rentals for a period of 30 years upfront, then one becomes bound to the project and will not be in a position to explore other options.

(iv). What if tomorrow, the said projects are not found viable? There is uncertainty about MBPT. It there exit policy?

Aegis

(i). We are happy with just and fair open tendering process. But, it should be ensured that the land is utilized for the port related activity only. It is implied from the proposal. But, it should be made explicit.

(ii). If for any matter, tomorrow, the bidders do not get the necessary clearances, it should be easy for the bidder to call it quits.

(iii). MBPT made a mention about adopting some percentages like 6%, 4% and 8.69%. What are their significance?

Bharat Petroleum Corporation Limited (BPCL)

(i). We have encountered security threats in the past due to operation carried out at our adjoining premises, which now would be given to a cement terminal. We request that adequate security measures be taken by the port.

[MBPT: We are an ISPS compliant port. We will ensure safety and security.]

All India Importers and Exporters Association

(i). Instead of fixing the rentals alone, the port should have taken up the proposal in toto where the users are aware of the handling rates also.

[MBPT: Wharfage on the cargo is regulated by TAMP. The rates are fixed by TAMP after carrying out various checks by them. The projects are ours too. We will not seek steep increase in wharfage, as that would drive away cargo from MBPT.]

3. During the joint hearing, the All India Importers and Exporters Association (AIIEA) has furnished its written submission which was forwarded to MBPT as feedback information. The MBPT vide its letter dated 29 December 2014 has responded. A summary of the comments of AIIEA and the comments of MBPT thereon are tabulated below:

<table>
<tr><th>Sl. No.</th><th>Comments of AIIEA</th><th>Comments of MBPT</th></tr>
<tr><td>(i).</td><td><u>Valuation of Property</u></td><td rowspan="8">(i). The Proposal of MBPT is for fixation of SOR on identified lands. The fixation of SOR is sought as per Land Policy 2014. The proposal is in compliance with the Land Policy 2014 and hence may be upheld, approved and notified.

(ii). The proposal has considered highest rates of the various parameters under Land Policy 2014. This has been considered by the Land Allotment committee and has been approved by the Board of Trustees. Hence, due application of mind has already taken on the proposal.

(iii). Many of the points raised by All India Importer's and Exporter's Association are felt not relevant in the context of fixation of SOR and are primarily addressing</td></tr>
<tr><td></td><td>(a). Stamp Duty Reckoner Value which is adopted for all the estates of the state/ centre which are being served, maintained by the BMC as of date at a rate.</td></tr>
<tr><td></td><td>(b). The estates owned MBPT are partly serviced by the MBPT at exorbitant rates and partly by BMC.</td></tr>
<tr><td></td><td>(c). For example, the electricity rates and tax rates are different for MBPT properties. This factor should either be discounted in the price or the new projects should not be serviced at all by the MBPT estate departments.</td></tr>
<tr><td></td><td>(d). The very basis of consideration of a common valuation policy for Cement terminal (essential goods) and a restaurant itself defies the logic beyond comprehension.</td></tr>
<tr><td>(ii).</td><td><u>Escalation</u></td></tr>
<tr><td></td><td>(a). Annual Escalation of 4% on compounding basis would make the project unviable very soon.</td></tr>
<tr><td></td><td>(b). The method of escalating the price should be based on the following factors
(i). Growth in Logistics costs in Cement Industry</td></tr>
</table>

	(ii). Growth in Warehousing costs in and around Mumbai (iii). Change in SDRR value for industrial land. (iv). Minimum 5% increase every 3 years,	business concerns and policy matters. The Port will be getting market response on its proposals in a transparent way. Hence, is in order.
(iii).	<u>Collecting the lease rent in advance</u>	
	(a). If the fees for the total period are to be collected at the start up, then the discounting rules of the cash flow should be allowed to take the entire lease rent in advance.	
	(b). Again basis the above calculation of taking the entire advance + escalation of 4% every years, it adds up to more than 100 crore instead of 42.81 crore for the first project titled Cement Terminal.	
	(c). Nowhere in the entire paper, the calculation of the minimum reserve price tallies as per the formula stated. Thus a proper calculation sheet should be put up.	
(iv).	<u>Our suggestions</u>	
	(a). Each Project should be looked at distinctly and the pricing of upfront fee, rental and escalation should be based on the potential of the commodity to bear it.	
	(b). For the purpose of correct assessment, the project report of the bidders should be studied.	
	(c). Review of the respective association and the credibility of the project and the bidder should be assessed independently.	
	(d). The progress chart of last 20 years in India and internationally of such projects should be compared.	
	(e). Thus the decisions should be taken based on broad, reasonable and factual parameters taking into account the limitations of the port trust, legislation and performance.	
	(f). Also the protection from Union issue and services etc. should be taken into account to ensure the continuity of the shipping revenues and volumes for which these projects are being sanctioned. The rates and terms of the project should be independently verified and finalized on a balanced equation worked out from the limitations of port costs and project potential.	
	(g). Thus, each project should be valued by an independent valuation expert. This is how the international ports approve the tariff for each project and are thus sustainable on long terms basis.	

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