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TARIFF AUTHORITY FOR MAJOR PORTS

G No.99 **New Delhi, 24 April 2012**

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal from the Indira Container Terminal Private Limited for general revision of its Scale of Rates, as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/41/2011–ICTPL

Indira Container Terminal Private Limited - - - Applicant

O R D E R
(Passed on this 9th day of April 2012)

This case relates to a proposal received from the Indira Container Terminal Private Limited (ICTPL) for general revision of Scale of Rates for its operations at the Ballard Pier Station (BPS) Container Terminal in Mumbai Port Trust (MbPT).

2. The existing Scale of Rates (SoR) of the ICTPL approved vide Order No.TAMP/9/2009-ICTPL dated 30 December 2009 is valid till 31 March 2012. As per para 5 (i) (a) of the Order No.TAMP/23/2003-WS dated 30 September 2008 passed by this Authority clarifying certain areas of the existing approach / practice followed in tariff setting exercise, the major port trusts and private terminals have to file their proposals by 30 June 2011 of the financial year in which the tariff revision falls due along with the actuals upto the previous financial year. Since the revision of SoR in respect of ICTPL fell due in the year 2011-12 and no proposal was received from ICTPL in this regard by 30 June 2011. ICTPL was advised vide our letter No.TAMP/39/2005-Misc. dated 15 July 2011 to file its proposal immediately in the format prescribed for fixation/ revision of the tariff.

3.1. The ICTPL on 3 August 2011 submitted a proposal for revision of licence (Storage) fee on containers only. The above proposal filed by ICTPL did not contain projections for the next three years and proposed SoR. The ICTPL was, therefore, advised on 12 August 2012 to file a comprehensive proposal with projections for three years for review of its existing tariff.

3.2. In response, the ICTPL vide its letter dated 19 August 2011 filed a fresh proposal seeking a 25% increase over the existing rates. The proposal dated 19 August 2011 filed by the ICTPL was found incomplete for the following reasons:

(i). The proposal did not contain Forms 6 to 8 of the cost statement formats.

(ii). The annual revenue implications of proposed tariff increase were not furnished in Form-1.

(iii). The cost statement formats prescribed by this Authority for private terminals require the operator to furnish the income and expenditure estimates for the future period both at the existing tariff as well as at the proposed tariff. The ICTPL furnished only one set of estimates for the years 2011-12 and 2012-13 and has not mentioned whether such estimates are at the existing level of tariff or at the proposed level of tariff. Therefore, the tariff increase sought by ICTPL could not be linked to the deficit position reflected in the cost statement.

3.3 The ICTPL was, therefore, once again requested to file its proposal complete in all respects with estimates for future period at existing tariff as well as at the proposed tariff level.

3.4. The ICTPL in September 2011 has filed revised proposal with projections at the existing as well as proposed level of tariff, for revision of its SoR for BPS operations. The revised proposal of ICTPL was registered as a tariff case.

4. The main points made by the ICTPL in its revised proposal are summarized below:

(i). The existing tariff at ICTPL is valid till 31 March 2012. However, the ICTPL has sought revision from 1 October 2011, i.e. six months ahead of the scheduled date of revision stating that there is quite substantial shortfall in the Return on Investment (ROI).

(ii). The proposal contained estimates only for the year 2012-13 on the ground that as per License Agreement (LA) entered with MbPT, the BPS operations would cease from 2

December 2012. It has stated that the present tariff proposal is only for BPS operations and hence no projection beyond March 2013 is envisaged.

(iii). The year wise actual and estimated traffic of ICTPL along with Minimum Guaranteed Traffic (MGT) are tabulated below:

Year	Traffic in TEUs	MGT in TEUs
2009-10 (Actual)	39002	138610
2010-11 (Actual)	51593	150000
2011-12 (Estimate)	54240	150000
2012-13 (Estimate)	58238	150000

(iv). The assessed capacity of the terminal is reported at 80,000 TEUs for all the years.

(v). The operating income of the terminal for the years 2011-12 and 2012-13 is estimated by ICTPL at ₹900.99 lakhs and ₹946.04 lakhs at the existing level of tariff.

(vi). The operating expenses are estimated for the years 2011-12 and 2012-13 adopting different percentages of escalation for different items of expenses. The escalation considered by ICTPL in the total direct operating cost for the years 2011-12 and 2012-13 is at the level of 27% and 8% respectively over the actual / estimates of respective previous years.

(vii). It has proposed additions to the gross block to the tune of ₹173.30 lakhs in the year 2011-12. However, it has not furnished the details of proposed conditions to the gross block.

(viii). The estimated financial / cost position for the years 2011-12 and 2012-13 at the existing level of tariff as shown in the consolidated income and cost statement furnished by the ICTPL is tabulated below:

Sl. No.	Particulars	Estimates	
		2011-12	2012-13
1.	Traffic (in TEUs)	54,240	58,238
2.	Operating income (₹ in lakhs)	900.99	946.04
3.	Net surplus / (deficit) after return (₹ in lakhs)	(479.81)	(519.56)
4.	Net deficit as a percentage of operating income	-53%	-55%
5.	Average net deficit as a percentage of operating income	-54%	

(ix). The ICTPL has sought a flat increase of 25% in the existing tariff including storage charges.

(x). The ICTPL has proposed to increase the free days from the existing one day for all containers to two days and three days for the import and export containers respectively. It has also proposed to allow 13 days free period for the transshipment containers.

5. In accordance with the consultative procedure prescribed, the revised proposal of ICTPL was forwarded to the MbPT and concerned users/ user organisations for their comments. The comments received from MbPT and users/ user organisations were forwarded to ICTPL as feedback information. The ICTPL has also responded to the comments of the MbPT and user organisations.

6.1 Based on a preliminary scrutiny of the proposal, the ICTPL was requested to furnish additional information / clarifications on various issues. The ICTPL has furnished its response. The queries raised by us and reply furnished by ICTPL are summarised below:

Sl. No.	Queries raised by TAMP	Reply furnished by ICTPL
(A).	**General:**	
(i).	As per the tariff guidelines of 2005, the tariff once fixed shall be in force for three years. The existing tariff at ICTPL approved by this Authority vide tariff Order dated 30 December 2009 is valid upto 31 March 2012. Accordingly, the next tariff cycle in respect of ICTPL for which revision is due may cover the three years period from 1 April 2012 to 31 March 2015. However, the ICTPL has filed its proposal for revision of tariff for the period upto 31 March 2013 (for one year only) stating that the BPS operations will continue only till December 2012 as per the LA provisions and also taking into account the provisional extension of time of 21 months granted by MbPT. In this connection, the ICTPL to confirm that no extension of tariff beyond December 2012 will be sought and the operations will migrate to the new terminal.	ICTPL agree that the tariff cycle for BPS should be for a period of 3 years w.e.f. 01.04.12 to 31.03.15. But, clause 2.2 of the Licence Agreement entered by ICTPL states as follows: "2.2 The License is hereby granted for the following: (i) BPS Project for a period of 5 (five) years commencing from the Date of Award of Licence; or 2 years from the commissioning of OCT Project, whichever is earlier; and (ii) OCT Project for a period of 30 (thirty) years commencing from Date of Award of License during which the Licensee is authorised to implement the Project in accordance with the provisions of this Agreement." Further clause 2.4 reads as follows: "In the event of the license being extended by the licensor beyond the defined period of 5 years at BPS and 30 years at OCT in accordance with the provisions of this Agreement, the license period shall include the period by which the license is so extended." Therefore, confirming that the Scale of Rates will not be extended beyond December 2012 will be very difficult as we are yet to get the formal extension of COD by MbPT. But as of now, as per the Licence Agreement, the operation is to be discontinued beyond December 2012. ICTPL assured that much before December 2012, it would make a request to the Authority for extension of tariff required, if any.
(ii).	ICTPL has stated that its pricing strategy is cost based. ICTPL to bring out the impact of the anticipated improvement in performance on the cost of rendering the service.	As brought out in the proposal the performance of the Quay Crane has considerably improved over the years and as of now, we have achieved 19/20 mover per hour, which was never the case, when it was being operated by MbPT. Even though the cranes have outlived its life, ICTPL has spent considerable amount for refurbishing of the cranes and put in place the best operational practices and thereby the performance has improved. ICTPL will maintain the turnaround time for trucks calling ICT averaging 35 minutes.
(iii).	The ICTPL to furnish the current performance and targeted objective for productivity as required under Sl.No.6 of Form-1.	ICTPL has furnished information in Form-1. The current performance is 19.78 gross moves per hour per quay crane for the Calendar Year 2011. To maintain this, ICTPL has carried out preventive maintenance regularly, technical audits and regular enhancement of skilled training for the operators and other staff.

(iv).	The ICTPL to furnish actuals for the period from April 2011 to January 2012, duly certified by a Chartered Accountant. The estimates for the remaining two months in the year 2011-12 and the estimates for the future years to be revised, based on the actuals from April 2011 to January 2012, if necessary. While updating the cost statements for the year 2011-12, the actuals for the 10 months upto January 2012 and estimates for the remaining two months to be indicated separately.	The actual figures from April – September 2011 have been duly scrutinised by our Statutory Auditors during the limited review and the same are incorporated in the Cost Statements (Copy attached). Further the actual figures beyond September 2011 have also been given to our promoters for putting in SEBI Report which are incorporated in the Cost Statements. Certifying the figures by a Chartered Accountant will take some time and ICTPL will try to send it to the Authority in due course. As advised, the Cost Statements are prepared accordingly. (The ICTPL has furnished audited interim condensed accounts for the half year from April 2011 to September 2011).
(v).	ICTPL to confirm that in the cost statements submitted, it has not included any expenditure or capital investment pertaining to the construction of the Off Shore Container Terminal.	The ICTPL has confirmed that no expenditure/capital investment pertaining to the construction of OCT is included in the cost statements.
(B).	**<u>Comparison of actuals vis-à-vis estimates provided earlier</u>:**	
(i).	The ICTPL to furnish the comparison of actuals vis-à-vis estimates for the year 2011-12 also as per Form-7 based on actual figures up to January 2012 and estimates for the remaining two months.	The ICTPL has furnished Form-7 for the year 2011-12. (However, the ICTPL has compared the estimated furnished by it earlier vis-à-vis the revised estimates furnished by it now for the year 2011-12. It has not furnished comparison of estimates relied upon at the time of fixation of tariff vis-à-vis actuals / estimates for the year 2011-12.)
(ii).	In Form-7, the income estimate for the years 2009-10 to 2011-12 may be updated suitably in line with the reduction of 10% effected in the tariff Order dated 30 December 2009.	The ICTPL has stated that it has updated the estimate in line with the reduction of 10% effected in the tariff order dated 30 December, 2009. (However, it has not updated the cost statements).
(iii).	The ICTPL to furnish a Reconciliation statement to reconcile the Surplus before Interest and tax as given in its cost statements and the Loss before tax as reflected in the audited / certified Annual Accounts for the years 2009-10, 2010-11 and 2011-12 (upto January 2012).	The ICTPL has furnished a statement giving break-up of actual / estimated income and expenses for the years 2009-10 to 2012-13. (It has subsequently furnished reconciliation statement).
(iv).	(a). The ICTPL to furnish a detailed income computation for the years 2009-10 to 2011-12 at the existing tariff level for the actual traffic handled / services provided by ICTPL, duly reconciled with the income reported in the audited / certified financials for the respective year. The computation should also provide reference to the tariff items prescribed in the existing approved SoR for various operations / various types of containers.	The ICTPL has drawn reference to Form 2B. It has not furnished the income computation.
	(b). The ICTPL to furnish the amount of tariff rebates / discounts, if any allowed to the customers during the years 2009-10 to 2011-12.	No traffic rebates/discounts are offered to any customer. Only in case of one customer, additional free period was given in line with MbPT Scale of Rates.
	(c). The ICTPL has reported Finance & Miscellaneous Income (FMI) of ₹23.73 lakhs and ₹12.09 lakhs for the years 2009-10 and 2010-11 respectively in the cost statement. On scrutiny of audited financials for the respective years, it is seen that the entire FMI of ₹23.73 lakhs of 2009-	ICTPL has modified the cost statements.

	10 and ₹11.41 lakhs out of ₹12.09 lakhs reported for the year 2011-12 are interest income. As per the Return on Capital Employed (ROCE) approach envisaged in the tariff guidelines of 2005, the interest element of both income and expenses is not considered in the tariff revision exercise. The ICTPL may, therefore, exclude the interest income from the cost statements.	
	(d). The ICTPL to clarify the nature of other income to the tune of ₹67,700/- reported in the audited annual accounts of 2010-11.	It is clarified that the nature of other income to the tune of ₹67,700/- is towards sale of scrap generated in the Terminal.
(v).	The individual items of operating expenses furnished in the cost statement for the years 2009-10 and 2010-11 is seen to be different from the individual items of expenses and their groupings reported in the audited annual accounts, leading to difficulty in reconciliation of the figures reported in the cost statement with the audited financials for the respective years. The ICTPL to furnish break-up for each item of operating expenses, management & administration overheads and general overheads reported in the cost statement for the years 2009-10 to 2011-12 linking it with the item-wise expenses reported in the audited annual accounts / certified actuals for the respective years.	The ICTPL has furnished a statement giving break-up of actual / estimated income and expenses for the years 2009-10 to 2012-13.
(vi).	(a). As per the prescribed cost statement formats, the equipment running cost and the equipment hire charges are to be reported separately. The ICTPL to furnish the actual equipment running cost and equipment hire charges separately for the years 2009-10 to 2011-12 and also for the future years.	There are no equipment hire charges. Actual running cost has been updated in Form 3A. Please refer to the Cost Statement Form 3B
	(b). In the cost statement (Form 3A), the actual equipment running cost is reported at ₹144.14 lakhs and ₹156.14 lakhs for the years 2009-10 and 2010-11 respectively. However, as per the details of expenditure furnished in Form 3B, the total equipment running cost is reported at ₹132 and ₹164 respectively for the years 2009-10 and 2010-11. It appears that there is some error in the equipment running cost reported in the Form-3B, which needs to be rectified. Further, the individual items of equipment running cost, viz. power, fuel and repairs and maintenance expenses reported in Form 3B do not tally with the expenses reported in the audited annual accounts for the respective items. The ICTPL to revise the Form 3B in this regard, duly reconciling with the relevant expenses reported in the audited annual accounts for the years 2009-10 and 2010-11 and to be reported in the certified accounts for the year 2011-12 (upto January 2012).	In Form 3A, the total expenditure of equipment running cost is mentioned. However in Form 3B, the equipment running cost are indicated per TEU and the figures which are indicated in Form 3A are duly audited by the Statutory Auditors and reflected in the Cost Statements. There is no necessity for revising the 3A Cost Statement. Figures are reflected in the Cost Statements based on the nomenclature in the format. (The details furnished by Form 3B towards equipment running costs are reportedly per TEU cost. Subsequently, the ICTPL vide its letter dated 22 March 2012 furnished the break-up of equipment running cost as per Form 3B).
	(c). The actual power consumption per TEU during the year 2009-10 is reported at 6 KWH and it has gone up to 7 KWH during the year 2010-11. ICTPL to furnish the reasons for	The reason for the increase is the age of the crane and the volume handled.

	increase in the unit power consumption during the year 2010-11.	
	(d). ICTPL to furnish the documentary proof in support of the actual unit electricity cost of ₹7/- per KWH and ₹18/- per KWH reported for the years 2009-10 and 2010-11 respectively along with the reason for the steep hike in the actual unit power cost for the year 2010-11. The power expenses shown in Form 3B not being reconciled with the actual power expenses reported in audited accounts, it appears that there may be an error in the unit power cost reported in the cost statement (Form 3B). The ICTPL to review the unit power cost reported in Form 3B and revise the same, if necessary.	The electricity cost of ₹6/- has been calculated by us taking into account Tata Power bill to MbPT plus 7.5% towards overhead. However, MbPT is raising the bill which is in the region of Rs.11-12 per unit (and in some cases Rs.16-18 per unit) and the same is under dispute with MbPT. The ICTPL has furnished the calculations which show a unit electricity cost of ₹5.59. The electricity cost calculated by us is ₹6/- per unit and for which necessary corrections have been made in the Cost Statement. Further, it is mentioned that in the year 2010-11, 2011-12 and 2012-13, the actual unit cost paid to MbPT have been incorporated. (Subsequently, the ICTPL vide its letter dated 22 March 2012 furnished revised Form 3B further modifying the unit cost of power).
	(e). The actual fuel consumption per TEU for the year 2009-10 is reported at 2.50 litres whereas for the next year 2010-11 the actual fuel consumption is reported at 0.97 litres per TEU. The total fuel expenses shown in Form 3B not being reconciled with the actual fuel expenses reported in audited accounts, it appears that there may be an error in the unit fuel consumption reported in the cost statement (Form 3B). The ICTPL to review the unit fuel consumption reported in Form 3B and revise the same, if required.	The inputs furnished in the cost statement were inadvertently taken as monthly average figures. However, the same has been corrected in the cost Statement taking into account the yearly average consumption.
	(f). In the cost statement (Form 3B), the ICTPL has reported the actual repairs and maintenance expenses for the years 2009-10 and 2010-11 as 'Nil'. However, the audited annual accounts for the said two years show the repairs and maintenance expenses at ₹29.39 lakhs and ₹24.44 lakhs respectively. The ICTPL to revise the cost statement (Form 3B) accordingly.	ICTPL has stated that necessary corrections have been made in the cost Statement.
(vii).	The ICTPL has reported the Equipment Hire charges as 'Nil' for the years 2009-10 and 2010-11. In the absence of equipment hire charges separately reported in the audited accounts, the position reported in the cost statement could not be verified with reference to accounts. In any case, as already mentioned at B (vi) (a) above, ICTPL to furnish the actual equipment hire charges, if any incurred during the years 2009-10 and 2011-12, duly reconciled with such expenses reported in the audited / certified accounts of the respective years.	ICTPL has stated that there is no equipment hired by ICTPL for its operation. (Subsequently, the ICTPL vide its letter dated 22 March 2012 furnished the revised Form-B, reporting the equipment hire charges towards hire of tractor trailers for transportation of containers).
(viii)	ICTPL to confirm that the actual lease rental reported for the years 2009-10 to 2011-12 and estimated lease rentals for the future years do not include the lease rentals payable in respect of OCT project area. It may also be confirmed that the actual lease rentals paid / estimated lease rentals payable are in accordance with the LA provisions.	It is confirmed that the lease rental has been booked in the cost statement pertaining to BPS only. The lease rental for OCT is not included.

(ix).	(a). The actual insurance cost reported in the cost statement for the years 2009-10 and 2010-11 is ₹18.00 lakhs and ₹10.88 lakhs respectively whereas the insurance expenses reported in the audited annual accounts of the corresponding years is at ₹12.72 lakhs and ₹9.73 lakhs respectively. ICTPL to reconcile the position.	In the accounts, the insurance cost is shown separately for the Port Package Policy and the insurance premium for others are considered as personnel cost since this pertains to personal accident plan and mediclaim policies. But in TAMP proposal, the entire insurance cost is shown under the insurance cost.
	(b). ICTPL to confirm that the actual insurance premium reported for the years 2009-10 to 2011-12 and estimated insurance premium for the future years do not include the insurance premium, if any, in respect of OCT project assets.	It is confirmed that no premium pertaining to OCT assets is included in the cost statement for the future years.
	(c). A copy of the insurance policy / ies relevant for the year 2011-12 to be furnished in support of the updated insurance cost.	ICTPL has furnished a copy of the insurance policy for the period from 20/6/2011 to 19/06/2012. The total insurance premium indicated in the policy is ₹2,49,830/-.
(x).	ICTPL to list out the items of expenses considered under 'Management & Administration Overheads' and 'General Overheads' separately for the years 2009-10 to 2011-12 duly reconciling the same with the item-wise expenses reported in the audited/ certified financials of respective years.	The ICTPL has furnished a statement giving break-up of actual / estimated management and administration overheads for the years 2009-10 to 2012-13.
(xi).	The audited annual accounts for the year 2010-11 shows 'Provision for doubtful debts' of ₹1.84 lakhs under Schedule 14 - 'Operating Expenses'. ICTPL to note that this item is in the nature of provision and not actual expenditure and hence, it is not an admissible item of cost.	The ICTPL has excluded the provision for doubtful debts in the revised cost statement.
(xii).	The ICTPL to clarify the nature of following items of expenses reported in the audited annual accounts for the years 2009-10 and 2010-11.	
	(a). Fees to shareholders amounting to ₹13.63 lakhs shown under 'Schedule 15 –Establishment Expenses' in the year 2009-10.	This expenditure is booked as per the Shareholders Agreement between the promoters and advised by the Statutory Auditors.
	(b). Miscellaneous expenses shown under 'Schedule 15 – Establishment expenses' amounting to ₹2.58 lakhs and ₹2.19 lakhs during the years 2009-10 and 2010-11 respectively.	These amounts represent other administrative miscellaneous expenses.
	(c). Other financial charges amounting to ₹10.51 lakhs and ₹42.49 lakhs for the years 2009-10 and 2010-11 respectively shown under 'Schedule 16 – Financial expenses'.	Interest charges paid to the Lenders which do not pertain to OCT project.
(xiii).	The audited accounts for the year 2009-10 shows an expenditure of ₹25.90 lakhs towards share issue expenses written off which is also reflected in the cost statement. ICTPL to confirm that the relevant share issue pertains to capital involved in BPS terminal. If it is an item of preliminary expenses, it may have to be amortized over the whole license period in equal annual instalments instead of writing off in one year.	As per the Companies Act, preliminary expenses have been charged for in the year but as per Income Tax Act, they allow 20% every year. Therefore, the entire amount has been charged in 2009-10.
(xiv).	With reference to the additions to the gross block to the tune of ₹173.30 lakhs envisaged by ICTPL during the year 2011-12, the following points to be clarified.	
	(a). The details of the assets envisaged to be	In Form 4B – Funds for disclosure of additions of

	acquired under each category, viz. Plant & Machinery, Information Technology and Others may be furnished as per Form-4B of the cost statement formats prescribed by this Authority.	gross block exceeding ₹1 crore – Since components of this addition of ₹1.73 crores do not exceed more than ₹1 crore individually, the same is not reflected in the Form 4B.
	(b). The ICTPL to confirm that the additions to the gross block envisaged during the year 2011-12 are in accordance with the LA.	It is confirmed that the additions to the gross block are envisaged with a view to have greater efficiency in operation and administration which is part of the Licence Agreement.
	(c). The ICTPL to also confirm whether the additions have already materialized. If so, the details of the same along with documentary proof for actual cost of completion to be furnished. If not, the present status of capital works envisaged and the documentary proof for the estimated cost and expected date of completion to be furnished. The rate of depreciation applicable for each item of proposed additions to the gross block also to be furnished.	Some additions have already materialised and some will happen in the coming months. (The ICTPL has not furnished the requisite details).
(xv).	(a). The ICTPL has considered a uniform amount of ₹689,139/- as the value of other inventory reportedly as per norms for all the years 2009-10 to 2012-13 in the computation of actual / estimated working capital. As per norms prescribed in the tariff guidelines of 2005, the limit on other items of inventory will be six months' average consumption of stores excluding fuel. The ICTPL to furnish workings as per norms in support of the value of inventory considered by it for the years 2009-10 to 2012-13.	ICTPL has rectified the inventory value reportedly based on the norms framed by TAMP.
	(b). The ICTPL has reported the actual / estimated cash balance at ₹13.86 lakhs, ₹0.14 lakhs, ₹9.70 lakhs and ₹13.00 lakhs for the years 2009-10 to 2012-13 respectively reportedly as per norms. As per norms prescribed in the tariff guidelines of 2005, the limit on cash balance will be one month's cash expenses. Further, the cash balance reported for the year 2010-11 at ₹0.14 lakhs in the cost statement is seen to be odd compared to the amount reported for the other years which is in the range of ₹9 to ₹14 lakhs. It appears that there is an error in the cash balance reported for the year 2010-11. The ICTPL to furnish workings as per norms in support of the cash balance considered by it for the years 2009-10 to 2012-13 rectifying the error, if any.	In the cost statement, the cash expenses were taken as net of income which has been rectified and the cost statements are submitted.
	(c). The current liability reported in the cost statement for the year 2010-11 shows a negative figure to the tune of ₹65.32 lakhs as against the actual current liabilities reported in the audited annual accounts amounting to ₹2510.78 lakhs. ICTPL to clarify and reconcile the position.	ICTPL has furnished a statement giving details of current liabilities considered by it in the cost statements. (ICTPL has considered the net current liability, i.e. current asset (loans and advances) minus current liabilities as the value of current liability in the cost statement).
	(d). The basis for estimation of current liability for the years 2011-12 and 2012-13 to be furnished.	Reply furnished under Sl. No. (c) above.
(xvi).	While arriving at the capital employed, it appears that ICTPL has reduced the net fixed assets by the negative working capital. In case the working capital shows a negative figure, it can be treated as zero and no adjustment to the net fixed assets	ICTPL has rectified the error.

	needs to be carried out on this account.	
(C).	**Financial / Cost Statement**:	
(1).	**Capacity & Traffic**:	
(i).	In Form 2A, the ICTPL has shown the assessed capacity of the terminal at 80,000 TEUs per annum for all the years 2009-10 to 2012-13. In this regard,	
	(a). The ICTPL to furnish workings for the assessed capacity of the terminal considered by it in the cost statements.	ICTPL has furnished workings for the assessed capacity of the terminal. (It has furnished workings for the yard capacity of the terminal and not for the berth capacity of the terminal).
	(b). The assessed capacity furnished by ICPTL at 80,000 TEUs per annum may be justified in the light of the Minimum Guaranteed Throughput (MGT) of 1,50,000 TEUs per annum stipulated in the LA .	The assessed capacity has been arrived at 80,000 taking into account the design of the berth, draught available along the berth, draught in the approach channel, equipments in the wharf and number of ground slots (641 slots including the possible slots in additional 2 ha available as per LA) available in the yard - the assessed capacity has been reworked and kept at 80,000 against the MGT of 150,000. The MGT was fixed during the tender only without any analysis of the same.
(ii).	With reference to the traffic projection for the year 2012-13, please furnish the following:	
	(a). The details of the actual container volume handled during the period of 10 months from April 2011 to January 2012 and also the container mix.	ICTPL has furnished details of the actual container volume handled in the revised cost statement (Form 2A). [Total TEUs handled during the period is reported at 25,922 TEUs.]
	(b). The basis for estimated of traffic and also the basis for container mix of the respective category of containers in the projected container throughput.	The estimated provision is based on the experience for the past 4 years and accordingly the projections have been made for the remaining years and future years. (The ICTPL has revised the estimated traffic for the year 2012-13 from 58,238 TEUs to 38,097 TEUs).
	(c). As per the container mix pattern in the actual traffic reported for the year 2010-11, the share of foreign containers, transhipment containers and coastal containers work out to 14.97%, 28.92% and 55.71% respectively. However, the container mix in the estimated traffic for the years 2011-12 and 2012-13 are in the range of 24%, 14% and 61% respectively for foreign containers, transhipment containers and coastal containers, which shows significant variation in the share of foreign containers and transhipment containers compared to the actual position reported for the year 2010-11. In this context, the ICTPL to: (i). furnish the reasons for change in the container mix considered in the traffic estimates for the years 2011-12 and 2012-13 and (ii). update the mix of various types of containers in the estimated traffic for the year 2012-13 based on the actual container mix obtained for the year 2011-12 (upto January 2012).	(i). The mainline vessels not calling our Terminal due to lack of adequate draught alongside the berth, approach channel, high cost of vessel and cargo related charges of MbPT and lack of established logistics centres in MbPT, etc. The above-mentioned limitation on infrastructure and high cost makes the call of foreign vessel unviable. Due to lack of infrastructure, the foreign vessels which were calling ICT have also started an additional call in Gujarat resulting in reduction in throughput handled by them in ICT. Further, the barge traffic which was also calling in ICT has drastically been reduced due to non-allotment of berth at JNPT private terminals and also encouraging movement of these containers by road by them. (ii).ICTPL has reworked the container mix and furnished a statement giving details.
(2).	**Operating Income:**	
	(i). The ICTPL to provide a detailed computation	ICTPL has drawn reference to Form 2A for the

	of income for the year 2012-13 with reference to estimated traffic at existing SoR and proposed SoR, as per note 3 below Form–2B of the cost statement formats prescribed by this Authority. As already mentioned at Sl. No.B (iv) (a), ICTPL to provide references to the tariff items prescribed in the existing approved SoR for various operations / various types of containers in the workings.	details required. (Form 2A gives traffic details. However, ICTPL has furnished a statement giving workings for the actual / estimated income for the years 2011-12 and 2012-13).
	(ii). The ICTPL to furnish a dwell time analysis of containers for the years 2009-10 to 2011-12 and justify the container storage / demurrage charges estimated for the year 2012-13 based on such analysis.	No such report is available. However, this will be explained at the time of the hearing. (The ICTPL has not furnished any explanation in this regard at the joint hearing).
	(iii). Exchange rate considered by ICTPL for determining income from dollar denominated tariff to be furnished.	The exchange rate has been considered based on the guidelines issued by TAMP and as per the approved SOR. (It has not mentioned the exchange rate considered by it in the estimated income for the future years).
	(iv). The estimated income from Restows is considered around ₹0.15 lakhs for each of the years 2011-12 and 2012-13 as against the actual income of ₹5.28 lakhs and ₹1.74 lakhs reported under this head for the years 2009-10 and 2010-11 respectively. ICTPL to clarify the reasons for substantial drop in estimated income under this head.	In the previous year, there was only Restow containers handled against one vessel call only. During the current year, there is no Restow activity. Therefore, there is substantial drop in income.
	(v). During the last revision of tariff at ICTPL in the year 2009, the ICTPL reported an actual income of ₹18.06 lakhs towards demurrage / storage charges from MbPT vessels handled at ICTPL terminal. In the current proposal, the ICTPL has reported an actual income of ₹64.75 lakhs and ₹68.32 lakhs for the years 2009-10 and 2010-11 respectively and also considered an estimated income of ₹70 lakhs for each of the years 2011-12 and 2012-13 towards demurrage / storage charges under cargo handling income. In this connection, the ICTPL to:	
	(a). confirm whether the actual / estimated income for the years 2009-10 to 2012-13 as stated above is towards demurrage / storage charges from MbPT vessels handled at ICTPL terminal. If not, the nature of such actual / estimated income may be furnished.	This income is towards 25% share received/ receivable from MbPT towards wharfage on bulk cargo during the time when the terminal remains vacant.
	(b). furnish the basis for estimating this income at ₹70 lakhs each for the years 2011-12 and 2012-13 supported with workings.	Due to less activity in our container terminal, MbPT's bulk cargo is expected to be handled in the similar region and, therefore, the same has been considered.
(3).	**Operating Cost**:	
(i).	With regard to the escalation factor to be applied for estimation of operating costs, ICTPL to note that as already communicated by us vide our letter No.TAMP/27/2005-Misc. dated 11 July 2011, an escalation factor of 6% per annum will be considered for the expenditure projections in the cost statement	Our projections are based on 10% escalation. We request the Authority to consider the same taking into account the present inflationary market.
(ii).	**Operating & Direct Labour**: The ICTPL has considered an increase of 67.40% in the average annual salary per	 Necessary corrections are effected in the cost statements and it is at par with the previous year.

	employee for the year 2011-12 (₹5.69 lakhs) over the actual average annual employee cost reported for the year 2010-11 (₹3.40 lakhs). Further, the average employee cost estimated for the year 2011-12 is escalated by 8.61% for the purpose of estimation of operating and direct labour cost for the year 2012-13. The ICTPL to justify the average employee cost considered for the year 2011-12 and the higher escalation factor considered for the estimates in respect of the year 2012-13.	
(iii).	**Maintenance Labour**: The ICTPL has considered an increase of 13.81% in the average annual salary per employee for the year 2011-12 (₹3.78 lakhs) over the actual average annual employee cost reported for the year 2010-11 (₹3.32 lakhs). The average employee cost estimated for the year 2011-12 is escalated by 10% for the purpose of estimation of maintenance labour cost for the year 2012-13. The ICTPL to justify the average employee cost considered for the year 2011-12 and the higher escalation factor considered for the estimates in respect of the year 2012-13.	This increase is due to cost escalation by the Agency. Therefore, the increase has been proposed in the proposal. (The documentary evidence furnished by ICTPL does not reflect this position).
(iv).	**Equipment running cost**:	
	(a). **Power & Fuel Cost**: In view of the clarification required in the actual power & fuel consumption per TEU and in the unit power cost and unit fuel cost reported for the years 2009-10 and 2010-11 as mentioned at Sl. No.B (vi) (b) to (e) above, the consumption and unit cost estimates of power & fuel furnished by ICTPL for the years 2011-12 and 2012-13 could not be verified. The ICTPL to:	
	(i). update the estimated power & fuel consumption of 7 KWH and 0.97 litres per TEU respectively for the year 2011-12 based on actuals for the period upto January 2012.	ICTPL has updated the cost statements. The unit power consumption is maintained at 7 KWH per TEU. The unit fuel consumption is revised to 1.06 litres per TEU.
	(ii). review the estimated power & fuel consumption considered for the year 2012-13 based on the actual / estimated position for the year 2011-12 and revise the cost statements accordingly.	ICTPL has updated the cost statements. The unit power and fuel consumption for the year 2012-13 is maintained at 7 KWH per TEU and 1.06 litres per TEU respectively at par with 2011-12 consumption figures.
	(iii). update the unit power cost of ₹17.51 per KWH considered for the year 2011-12 based on actuals upto January 2012 supported with documentary proof. The estimated unit cost for the year 2012-13 also to be revised based on the updated actual / estimated unit cost for the year 2011-12.	ICTPL has updated the cost statements. The unit power cost is revised to ₹6 per unit for the years 2011-12 and 2012-13. [Subsequently, the ICTPL vide its letter dated 22 March 2012 furnished revised Form-3B indicating the variable and fixed power cost. The actual / estimated unit cost of power has been revised upwards for all the years. Further, even with the revised unit cost and unit consumption, the total variable power cost for the actual / estimated throughput is not matching with the variable power cost reported in Form 3B for all the years, except for the year 2011-12 (upto Jan'12)].
	(iv). similarly, update the unit fuel cost of ₹45.28 per litre considered for the year 2011-12 based on actuals upto January 2012 and review the unit fuel cost of ₹46/- per litre	ICTPL has updated the cost statements. The unit fuel cost is revised to ₹ 48/- per litre and ₹51/- per litre for the years 2011-12 and 2012-13 respectively.

	estimated for the year 2012-13.	(Subsequently, the ICTPL vide its letter dated 22 March 2012 furnished revised Form-3B indicating the variable and fixed fuel cost. The actual / estimated unit cost of fuel has been revised upwards for all the years from 2010-11 onwards. Further, even with the revised unit cost and unit consumption, the total variable fuel cost for the actual / estimated throughput is not matching with the variable fuel cost reported in Form 3B for all the years).
	(b). **Repairs & Maintenance Cost**: The ICTPL has not estimated any repairs and maintenance expenses for the years 2011-12 and 2012-13. ICTPL to review the position based on the actual repairs and maintenance expenses, if any, incurred during first 10 months of the year 2011-12 (upto January 2012).	ICTPL has estimated the repairs & maintenance expenses in the revised cost statements. (The ICTPL indicated only per TEU repairs & maintenance cost in Form 3B. However, Subsequently, vide its letter dated 22 March 2012 furnished revised Form 3B, giving break-up for the total equipment running cost mentioned in Form 3A).
(v).	**Equipment Hire Charges**:	
	(a). As already mentioned at Sl. No. B (vi) (a) above, the estimated equipment hire charges if included under equipment running costs for the years 2011-12 and 2012-13, to be furnished separately in the cost statement, duly updated with reference to the actuals for the first 10 months of the year 2011-12.	No hiring charges have been paid for hiring of equipment. (Subsequently in the revised Form 3A & 3B furnished vide letter dated 22 March 2012, hire charges towards hiring of tractor trailers have been reported under the head equipment hire charges).
	(b). If the equipment hire is an outsourced activity, ICTPL to furnish the equipment wise details of hire charges paid / payable for the years 2011-12 and 2012-13 supported with copies of relevant contracts.	This is not applicable to ICT. (Subsequently the ICTPL vide its letter dated 22 March 2012, furnished documentary evidence towards hiring of tractor trailers).
(vi).	**Insurance**:	
	(a). The ICTPL has estimated the insurance premium at ₹7.06 lakhs for each of the years 2011-12 and 2012-13 as against the actual insurance premium reported for the year 2010-11 at ₹10.88 lakhs. ICTPL to clarify the reasons for reduction in the estimated insurance premium for the years 2011-12 and 2012-13.	The insurance policy was finalised based on very good competition amongst the insurance companies.
	(b). The ICTPL to also justify its estimate for the year 2012-13 with reference to actual for the previous year 2011-12.	The estimation is based on current insurance cover.
	(c). The ICTPL to confirm that the additions to the gross block envisaged during the year 2011-12 have also been considered for the purpose of estimation of insurance premium for the years 2011-12 and 2012-13.	There will be addition in the gross block during the next few months and, therefore, it has been proposed in the cost statement.
	(d). The ICTPL to confirm that insurance cover for the assets is taken as per the LA provisions.	ICTPL has confirmed that the Insurance Cover has been made as per the Licence Agreement.
(vii).	**Depreciation**:	
	(a). ICTPL to confirm that depreciation for all the years under consideration has been computed in accordance with clause 2.7.1 of the tariff guidelines of 2005.	ICTPL has confirmed that the depreciation has been computed in accordance with Clause 2.7.1 of the Tariff Guidelines 2005.
	(b). ICTPL to furnish workings for the estimated depreciation furnished in the cost statements for the years 2011-12 and 2012-13.	ICTPL has drawn reference to Form 4A. It has, however, not furnished workings for computation of depreciation.
	(c). The estimated depreciation for the year 2011-12 to be updated based on the actual	ICTPL has updated the depreciation for the year 2011-12 in the revised cost statements.

	additions to the gross block for the period upto January 2012 and the estimated depreciation for the year 2012-13 also to be revised, if necessary.	
(viii).	**Overheads**:	
	(a). ICTPL to list out the items of expenditure considered with value under the estimates of management and administration overheads and general overheads separately.	The ICTPL has furnished a statement giving break-up of actual / estimated management and administration overheads and general overheads for the years 2009-10 to 2012-13.
	(b). The actual management and administration overheads reported for the year 2010-11 is ₹11.82 lakhs. As against this, the ICTPL has estimated management and administration overheads for the year 2011-12 at ₹25.66 lakhs, which is 117% more than the actuals of 2010-11. The ICTPL to clarify the reasons for considering such a steep increase in the management and administration overheads estimated for the year 2011-12.	The ICTPL has modified the management and administration overheads in the revised cost statement. (In the revised cost statement, the ICTPL has mentioned the general overheads for the years 2011-12 and 2012-13 at ₹11.86 lakhs and ₹13.03 lakhs respectively.)
	(c). The ICTPL has estimated the general overheads for the years 2011-12 and 2012-13 at ₹98.00 lakhs and ₹107.80 lakhs respectively as against the actual of ₹101.14 lakhs reported for the year 2010-11. While there is a drop in the estimated general overheads for the year 2011-12 compared to the actuals of 2010-11, the estimates for the next year 2012-13 are seen to be escalated by 10% over the estimates of 2011-12. ICTPL to clarify the reasons for considering a higher escalation factor for the year 2012-13 in the estimation of general overheads.	ICTPL has revised the cost statements. (In the revised cost statement, the ICTPL has mentioned the general overheads for the years 2011-12 and 2012-13 at ₹152.83 lakhs and ₹56.35 lakhs respectively.)
(ix).	**Finance & Miscellaneous Income (FMI) and Finance & Miscellaneous Expenses (FME)**:	
	(a). The ICTPL has considered an estimated FMI of ₹3.22 lakhs and ₹3.50 lakhs for the years 2011-12 and 2012-13 respectively in the cost statements. ICTPL to furnish the details thereof.	The estimate was towards Interest on Short Term Deposit which is not considered in the revised cost statements as observed by TAMP.
	(b). The ICTPL has estimated the FME, which reportedly represent contribution to provident fund, at ₹25.21 lakhs and ₹27.74 lakhs respectively for the years 2011-12 and 2012-13. When compared with the actual FME of 2010-11 reported at ₹14.78 lakhs, the estimate for the year 2011-12 shows an increase of 70.64%. Further, the estimate for the next year 2012-13 shows an increase of 10% over the estimate for the year 2011-12. The ICTPL to clarify the reasons for considering a higher escalation factor for the years 2011-12 and 2012-13.	Taking into account the current market inflation, 10% increase has been proposed in the proposal. In addition, a similar increase has been carried out in the similar industry at present. Therefore, taking into account the interest of the organisation and the employees, increase has been suggested.
(4).	**Capital employed**:	
(i).	**Fixed Assets**: ICTPL to note that completed and commissioned assets alone will be counted for capital employed and work-in-progress should be excluded. A confirmation in this regard to be furnished.	It is confirmed that no work in progress is included in the commissioned assets.
(ii).	**Working Capital**: The ICTPL to review the estimated working capital for the years 2011-12 and 2012-13 based on the queries raised at Sl. No.B (xv) (a) to (d) above.	It has been reworked and furnished.

(D).	**Scale of Rates (SoR)**:	
(i).	The ICTPL has formulated its proposed SoR considering an increase of 25% over the existing tariff at ICTPL. ICTPL to list out the benefit of productivity improvements accruing to users justifying this hike.	Reply already furnished at Sl. No. (A) (ii) and (iii) above and Sr. No.6 of Form 1.
(ii).	The penal interest rate of 13.75% prescribed in clause (iv) (a), Section 1.2 (General Terms & Conditions) of the existing SoR (SoR) to be updated based on the prevailing market rate.	The ICTPL has revised the interest rate in the revised proposed SoR.
(iii).	Note (v) of Notes to Sections 1 & 2 of Chapter-II of the existing SoR prescribes the extra charges for providing lashing and unlashing service by ICTPL at ₹27, ₹41 and ₹54 for 20', 40' and above 40' containers respectively. The ICTPL has not proposed any increase in the above rates in the proposed SoR. ICTPL to clarify.	ICTPL has updated the position.
(iv).	The ICTPL has proposed to increase the free days from the existing one day to two days for import containers and from one day to three days for export containers by amending the existing clauses (a) and (b) under Section 5 Licence (Storage) Fee on containers in the existing SoR. However, as per Notes (1) and (4) below the same Section, the free period is maintained at the existing level of one day for import and export containers. ICTPL to clarify the position and modify the Notes (1) and (4), if required.	ICTPL has updated the position.
(v).	Note (6) of Notes under Section 5 – Licence (Storage) Fee of the existing SoR prescribes the storage charges for containers stuffed in the terminal premises / containers received duly stuffed in the areas other than terminal premises and removed to town at US$ 2.25, US$ 4.50 and US$ 6.75 (Coastal ₹97.92, ₹195.84 and ₹293.76) for 20', 40' and above 40' containers respectively. The ICTPL has not proposed any increase in the above rates in the proposed SoR. ICTPL to clarify.	ICTPL has updated the position.

6.2. While furnishing replies to our queries, the ICTPL has updated the cost statements and SoR. The estimated financial / cost position for the years 2011-12 and 2012-13 at the existing level of tariff as shown in the updated consolidated income and cost statement and estimates furnished earlier in September 2011 by the ICTPL are tabulated below:

Sl. No.	Particulars	Estimates furnished earlier in Sep 2011		Revised estimates furnished in Feb 2012	
		2011-12	**2012-13**	**2011-12**	**2012-13**
1.	Traffic (in TEUs)	54,240	58,238	30,281	38,097
2.	Operating income (₹ in lakhs)	900.99	946.04	534.43	695.44
3.	Net surplus / (deficit) after return (₹ in lakhs)	(479.81)	(519.56)	(701.67)	(522.55)
4.	Net deficit as a percentage of operating income	-53%	-55%	-131%	-75%
5.	Average net deficit as a percentage of operating income	-54%		-99.54%	

6.3. The ICTPL has maintained the 25% increase sought by it in its original proposal of September 2011.

7. The MbPT was also requested to furnish its specific comments on a few points. The MbPT has furnished its response. A summary of the queries raised by us and reply furnished by MbPT are summarised below:

<table>
<tr><th>Sl. No.</th><th>Queries raised by TAMP</th><th>Reply furnished by MbPT</th></tr>
<tr><td>(i).</td><td>The ICTPL has filed its proposal for revision of tariff only for one year period, i.e. upto 31 March 2013. The ICTPL has stated in this regard that the proposal filed by it is for BPS operations and the BPS operations will continue only till December 2012. The MbPT to confirm that BPS operations by ICTPL may not continue beyond December 2012.</td><td>As per License Agreement between Mumbai Port Trust and M/s.ICTPL, articles 2.2, 2.3 and 2.4 relate to license period, which are reproduced below:

Article 2.2 (i): The License is hereby granted for the BPS project for a period of 5 (five) years commencing from the Date of award of license, (i.e. 3.12.2007) or 2 years from the commissioning of OCT project, whichever is earlier; (i.e. upto 2.12.2012).

Article 2.3: Provided in the event of any delay attributable to the licensor in handing over possession of the licensor’s assets to the licensee as provided in article 5.1 and as per project schedule specified in Appendix 5, the license period shall get extended by that period of delay in handing over the licensor’s assets by licensor.

Article 2.4: In the event of license being extended by the Licensor beyond the defined period of 5 years at BPS and 30 years at OCT in accordance with the provisions of this Agreement, the License period shall include the period by which the license is so extended.

It is confirmed that M/s.ICTPL is allowed to operate at BPS terminal upto 2.12.2012 as per License Agreement. There is no proposal so far for extending the license period for BPS.</td></tr>
<tr><td>(ii).</td><td>The ICTPL has shown the assessed capacity of the terminal at 80,000 TEUs per annum for all the years 2009-10 to 2012-13 as against the Minimum Guaranteed Throughput (MGT) of 1,50,000 TEUs per annum prescribed in the LA entered by ICTPL with MbPT. The MbPT to offer its specific comments on the capacity assessed by ICTPL.</td><td>As per Appendix 24 of License Agreement, MGT for BPS is fixed as follows:

<table><tr><th>Period</th><th>MGT in TEUs</th></tr><tr><td>1^{st} year of operation</td><td>1,00,000</td></tr><tr><td>2^{nd} year of operation</td><td>1,50,000</td></tr><tr><td>3^{rd} year of operation</td><td>1,50,000</td></tr><tr><td>4^{th} year of operation</td><td>1,50,000</td></tr><tr><td>5^{th} year of operation</td><td>1,50,000</td></tr></table>
The obligation of the Licensee is to achieve the MGT failing which they shall compensate for the shortfall as per License Agreement.

In a daily vessel list, group wise norm for gearless container vessels has been indicated as 280 containers. Considering 360 working days, it translates to 1,00,800 containers. Applying TEUs factor of 1.35, it gets converted to 1,36,080 TEUs per annum. These norms are for 20 hrs. of working. Hence, considering 24 hours working by M/s.ICTPL, pro-rata calculation gives 1,63,296 TEUs. Hence MGT shown for BPS berth of 1,50,000 TEUs can be considered realistic.

MGT has been accepted by ICTPL at the time of agreement. Hence also, the capacity asked is minimum 150000 TEUs. However, considering the performance, the actual achievement is lower.</td></tr>
</table>

<table>
<tr><td>(iii).</td><td>The MbPT to furnish comments on the additions to the Gross Block of assets estimated by ICTPL to the tune of ₹138.00 lakhs, ₹29.30 lakhs and ₹6.00 lakhs towards Plant & Machinery, Information Technology and Other assets respectively during the year 2011-12. The MbPT to also confirm that the above additions to the gross block envisaged by the ICTPL are in line with the LA provisions.</td><td>After repeated requests, ICTPL has furnished the details of addition to gross block on 29 February 2012. Article 2 [2.1(ii)] of the License Agreement states as follows:

"In consideration of the licensee agreeing to pay an upfront payment, revenue share, license fee and other payments under this agreement as set out in Article 11 and subject to the provisions of this Agreement, the licensor hereby grants to the licensee and the licensee hereby accepts at the costs, charges, and expenses of the licensee an exclusive license for operating and managing BPS with necessary development, modification, augmentation of project facilities and services for BPS during the license period as specified in Article 2.2"

Considering the traffic handled by ICTPL, the additions carried out appear to be in line with Article 2 [2.1(ii)] of the License Agreement.</td></tr>
<tr><td>(iv).</td><td>Actual traffic of ICTPL during the year 2010-11 and from April 2011 to January 2012 with container mix pattern.</td><td>Actual traffic of ICTPL during the period 2010-11 and from April 2011 to January 2012 with container mixed pattern is shown below:
<table>
<tr><th rowspan="2">Particulars</th><th colspan="2">Import</th><th colspan="2">Export</th><th colspan="2">Total</th><th rowspan="2">Total containers</th><th rowspan="2">Total TEUs</th></tr>
<tr><th>20'</th><th>40'</th><th>20'</th><th>40'</th><th>20'</th><th>40'</th></tr>
<tr><td>April 2010 to March 2011</td><td>16724</td><td>11547</td><td>7270</td><td>2068</td><td>23994</td><td>13615</td><td>37609</td><td>51224</td></tr>
<tr><td>April 2011 to January 2012</td><td>8132</td><td>5830</td><td>2935</td><td>1143</td><td>11067</td><td>6973</td><td>18040</td><td>25013</td></tr>
</table></td></tr>
<tr><td>(v).</td><td>The traffic forecast of ICTPL BPS terminal for the years 2012-13 to 2014-15 as per the port's business plan / annual plan / five year plan.</td><td>Refer reply to point no.(ii) above. (MbPT has not furnished the requisite details).</td></tr>
<tr><td>(vi).</td><td>A confirmation that the estimation of lease rentals made by ICTPL for the years 2011-12 and 2012-13 are as per the provisions of the LA.</td><td>The areas licensed out and lease rentals for BPS terminal are furnished. The details furnished by MbPT are summarized below:
<table>
<tr><th rowspan="2">Sl. No.</th><th rowspan="2">Particulars</th><th rowspan="2">License area</th><th colspan="2">Lease rent (in ₹)</th></tr>
<tr><th>3.12.2010 to 2.12.2011</th><th>3.12.2011 to 2.12.2012</th></tr>
<tr><td>A.</td><td>Paid by ICTPL</td><td></td><td></td><td></td></tr>
<tr><td>1.</td><td>BPS Office Space</td><td>152.03 sq. mtrs.</td><td>301019.40</td><td>301019.40</td></tr>
<tr><td>2.</td><td>BPS Yard & Wharf Area</td><td>24734.88 sq. mtrs.</td><td>17180105.60</td><td>18041448.29</td></tr>
<tr><td></td><td></td><td></td><td>17481125.00</td><td>18342467.69</td></tr>
<tr><td></td><td></td><td></td><td>23.5.2010 to 22.5.2011</td><td>23.5.2011 to 22.5.2012</td></tr>
<tr><td>B.</td><td>Not paid by ICTPL</td><td></td><td></td><td></td></tr>
<tr><td>1.</td><td>Porta Cabins</td><td>878.2 sq. mtrs. (built-up area)</td><td>1185570.00</td><td>1185570.00</td></tr>
<tr><td></td><td>Total Lease rental for BPS terminal including Porta Cabins</td><td></td><td>18666695.00</td><td>19528037.69</td></tr>
</table>
As per the details furnished by MbPT, the ICTPL has not paid the lease rental for porta cabins in 878.2 sq. m. (built area) amounting to ₹11,85,570/- per annum.</td></tr>
</table>

8.1. A joint hearing in this case was held on 14 February 2012 at the Office of the Authority. At the joint hearing, the ICTPL, MbPT and the concerned users/ organisation bodies have made their submissions.

8.2. At the joint hearing, the ICTPL and MbPT were advised to furnish, after mutual discussions, the milestones of OCT project as per the Licence Agreement and the present status and to certify that migration from BPS to OCT will take place by March 2013. In case if the migration is likely to be beyond March 2013, the ICTPL to furnish cost statements for the extended period also. Since reply to the queries furnished by ICTPL vide its letter dated 13 February 2012 also contained several gaps, the ICTPL was also advised to furnish the complete additional information / clarification/ documents, wherever required. The MbPT was also advised to furnish a detailed note on the electricity bills payable by ICTPL with copies of relevant documents and details of electricity bills actually claimed and paid by ICTPL in the last three years, i.e. 2009-10 to 2011-12 (upto December 2011).

9.1. The decisions taken at the joint hearing were communicated to ICTPL vide our letter dated 17 February 2012 along with a list of gaps noticed in the reply furnished by ICTPL in its letter dated 13 February 2012. The ICTPL responded vide its letter dated 24 February 2012. A summary of the queries raised by us seeking additional information/ clarifications and response of ICTPL thereon are tabulated below:

Sl. No.	Queries raised by us	Response of ICTPL
(i).	The ICTPL to furnish actuals for the period from April 2011 to January 2012, duly certified by a Chartered Accountant. In case, some more time is required for certification process, the ICTPL to furnish the provisional financials for the said period immediately followed by certified financials.	As regards certification by a Chartered Accountant, ICTPL has already explained the reasons in its letter dated 13 February 2012. The half- yearly accounts have been duly certified by the Statutory Auditors and were furnished to the Authority. The balance period from October – January have been reflected in the cost statement as per actual. The provisional financials for the period ended January 2012 is furnished. However, the same are not certified by the Statutory Auditors and it will be certified by them once the year is over. The same will be furnished to the Authority in due course.
(ii).	The ICTPL also to furnish Reconciliation statement to reconcile the Surplus before Interest and tax as given in its cost statements and the Loss before tax as reflected in the audited/ certified Annual Accounts for the years 2009-10, 2010-11 and 2011-12 (upto January 2012), duly reconciling the individual items of expenses reported in the cost statement with the audited / certified accounts, as the case may be.	The reconciliation statement to reconcile the surplus before interest and tax as given in the cost statements and the loss before tax as reflected in the audited/ certified Annual Accounts is furnished.
(iii).	In Form 7 furnished for the year 2011-12, the ICTPL has furnished comparison of estimates furnished by it in its original proposal of September 2011 with the revised estimates furnished in February 2012. The ICTPL to furnish the comparison of updated actuals / estimates for the year 2011-12 vis-à-vis estimates relied upon for the respective year during last revision of tariff in 2010.	Based on the advice of TAMP, Form 7 has been revised and furnished.

<table>
<tr>
<td>(iv).</td>
<td>The ICTPL has considered total ground slots of 641 in the yard capacity workings furnished by it. The ICTPL to furnish the total stackyard area available and no. of TEUs considered per hectare of stackyard in arriving at the ground slots. The ICTPL also to furnish workings for the quay capacity of the terminal.</td>
<td>The total stackyard area available with ICT presently is 1.90 hectares wherein 516 ground slots are available. As per License Agreement additional 2 hectares will be made available if required, wherein it is estimated that 125 ground slots can be created. The detailed working is furnished.
A. Ground slots:
<table>
<tr><th rowspan="2">Particulars</th><th rowspan="2">Balance factor</th><th colspan="3">Total Ground Slots (TGS)</th></tr>
<tr><th>1.90 hectares</th><th>Addl. 2.00 hectares</th><th>Total</th></tr>
<tr><td>Import TGS</td><td>0.70</td><td>361</td><td>88</td><td>449</td></tr>
<tr><td>Export TGS</td><td>0.10</td><td>52</td><td>13</td><td>65</td></tr>
<tr><td>Transshipment</td><td>0.20</td><td>103</td><td>25</td><td>128</td></tr>
<tr><td>Total</td><td>1.00</td><td>516</td><td>126</td><td>642</td></tr>
</table>
B. Yard capacity:
<table>
<tr><th>Factor</th><th>Import</th><th>Export</th><th>TP</th><th>Total</th></tr>
<tr><td>TGS</td><td>449</td><td>65</td><td>128</td><td></td></tr>
<tr><td>Dwell Time</td><td>6</td><td>10</td><td>22</td><td></td></tr>
<tr><td>Average Stack Height</td><td>6</td><td>6</td><td>6</td><td></td></tr>
<tr><td>Stack Utilisation Ratio</td><td>0.12</td><td>0.12</td><td>0.12</td><td></td></tr>
<tr><td>Peak Factor</td><td>2.8</td><td>2.8</td><td>2.8</td><td></td></tr>
<tr><td>Separation Factor</td><td>2</td><td>2.2</td><td>2.2</td><td></td></tr>
<tr><td>TEU Ratio</td><td>2.8</td><td>2.8</td><td>2.8</td><td></td></tr>
<tr><td>Working Days in Period</td><td>365</td><td>365</td><td>365</td><td></td></tr>
<tr><td>TEU in Period</td><td>70,190</td><td>5,470</td><td>4973</td><td>80,631</td></tr>
<tr><td>Containers in Period</td><td>50,136</td><td>3,907</td><td>3,552</td><td>57,593</td></tr>
</table>
(ICTPL has not furnished workings for the quay capacity.)</td>
</tr>
<tr>
<td>(v).</td>
<td>The container mix reported by ICTPL in the revised cost statement for the years 2011-12 and 2012-13 is not found to be in line with actual container mix reported for the period from April 2011 to January 2012, though stated to be updated by ICTPL.</td>
<td>The ICTPL has furnished a statement giving the actual container mix for the period from April 2011 to Jan 2012 and proposed container mix for the balance two months in 2011-12 and for the whole year 2012-13 indicating the reasons for variance in the proposed container mix vis-à-vis actual container mix. The details furnished by ICTPL are summarized below:
(TEU mix ratio in %)
<table>
<tr><th rowspan="2">Particulars</th><th>April 2011 to January 2012</th><th>February & March 2012</th><th>April 2012 to March 2013</th><th rowspan="2">Variance</th></tr>
<tr><th>Actual</th><th>Estimate</th><th>Estimate</th></tr>
<tr><td>Foreign</td><td>21%</td><td>21%</td><td>17%</td><td>The decrease in percentage of foreign containers is due to increase in movement of coastal containers</td></tr>
<tr><td>Tranship-ment</td><td>19%</td><td>19%</td><td>6%</td><td>Decrease in the movement of TP containers</td></tr>
<tr><td>Coastal</td><td>59%</td><td>59%</td><td>76%</td><td>Expected increase in volume of coastal containers of 750-1000 TEU's per month</td></tr>
<tr><td>Others (ODC, Restow, etc.)</td><td>1%</td><td>1%</td><td>1%</td><td>-</td></tr>
<tr><td>TOTAL</td><td>100%</td><td>100%</td><td>100%</td><td></td></tr>
</table></td>
</tr>
<tr>
<td>(vi).</td>
<td>The ICTPL is once again requested to furnish a detailed income computation for the actual / estimated income</td>
<td>Detailed income computation for the actual/ estimated income reported in the cost statement was submitted in Form 2A and 2B. The income statement for containers</td>
</tr>
</table>

	reported in the cost statement for the years 2009-10 to 2012-13 at the existing tariff level, providing reference to the tariff items prescribed in the existing approved Scale of Rates for various operations / various types of containers.	handled with Quay Cranes and without Quay Cranes is also furnished. (The ICTPL has furnished a statement giving workings for actual / estimated container handling income for the years 2011-12 and 2012-13).
(vii).	Despite specific query, the ICTPL has not furnished the exchange rate considered by it in the estimation of income from dollar denominated tariff items like storage charges, etc. for the years 2011-12 and 2012-13.	The actual storage income from April 2011 to January 2012 was taken as the base for projecting the balance two months period. ICTPL has also stated that the estimated amount is meagre and hence requested to accept the same.
(viii).	The ICTPL has furnished break-up of operating expenses, management & administration overheads and general overheads reported in the cost statement for the years 2009-10 to 2012-13. However, the break-up is not linked with the item-wise expenses reported in the audited annual accounts/ certified actuals for the respective years. The ICTPL is once again requested to reconcile the individual items of expenses reported in the break-up statement with the item-wise expenses reported in the audited / certified financials.	It has furnished break-up statement with the item-wise expenses reported in the audited / provisional financials.
(ix).	The maintenance labour cost reported in the Form 3B do not match when the average employee cost is multiplied with the no. of employees for all the years 2009-10 to 2012-13. Further, from the reply furnished by ICTPL it appears that this activity is outsourced to an outside agency. If so, the ICTPL is requested to furnish the full details of contract with a copy of the contract.	ICTPL has furnished a copy of contract dated 19 August 2010 awarded to a private party for maintenance of container handling equipment and other routine maintenance of office building. The scope of contract includes supply of technicians. The contract price is indicated at ₹6.56 lakhs per month for minimum of 19 skilled technicians. The contract is valid for one year from 1 August 2010. (The contract has already expired on 31 July 2011 and ICTPL has not mentioned anything about the present position. Subsequently, the ICTPL vide its letter dated 22 March 2012 furnished copy of letter dated 17 November 2011 according to which the number of employees is indicated at 17 and the monthly payment is shown as ₹ 6.06 lakhs per month. However, the actual / estimated maintenance labour cost for the years 2011-12 and 2012-13 is not linked with reference to contract rates).
(x).	In Form 3B, the ICTPL has reported the power cost, fuel cost and repairs & maintenance expenditure on per TEU basis. The ICTPL to furnish the total expenses incurred by it for the actual / estimated throughput for the respective years. Further, the details of equipment running cost furnished in Form 3-B do not match with the total equipment running cost reported in Form-3A as well as audited / certified financials. Form 3B needs to be reviewed suitably.	The ICTPL has stated that detailed calculations are furnished. (The statement furnished by ICTPL shows the details of electricity expenses for operation & office, Fuel & Lubricants and Repairs & Maintenance expenses. The year wise totals shown in the statement do not agree with the total equipment running cost reported in the cost statement. The ICTPL has not furnished details of equipment running cost, viz. power, fuel and repairs & maintenance expenses as required in Form 3B.)
(xi).	The ICTPL has reported an actual insurance premium of ₹685,889/- for the period upto January 2012 in the year	The ICTPL has furnished a statement giving details of insurance premium paid and year-wise break-up along with a copy of insurance policy from one of the

	2011-12. However, it is seen from the copy of the insurance policy furnished by it, the insurance premium is indicated at ₹2,49,830/-.	insurance companies for the period from June 2011 to June 2012. The statement gives the break-up for ₹685,889/-.
(xii).	The ICTPL is once again requested to furnish details sought for in paragraph B (xiv) (c) of our letter dated 3 January 2012 in respect of additions to the gross block to the tune of ₹173.30 lakhs proposed during the two months period February to March 2012.	ICTPL has stated that it has already furnished explanation in its letter dated 13.02.2012 and requested the Authority to consider the same. (The ICTPL has not furnished the requisite details).
(xiii).	The ICTPL is once again requested to furnish workings for the inventory value and cash balance considered by it as per norms in the cost statements for all the relevant years.	ICTPL has furnished the workings for cash balance as per norms reported in the cost statement. It has further stated that the average consumption or inventory for the six month period has been considered as inventory value as per norms. (However ICTPL has not furnished workings for inventory value as per norms).
(xiv).	The current liabilities for the year 2010-11 furnished by ICTPL vide Annex-V of its letter dated 13 February 2012 do not reconcile with the audited accounts for the said year.	The ICTPL furnished reconciliation for current liabilities as per audited financials vis-à-vis cost statement for the year 2010-11.

9.2. In the meantime, the ICTPL vide its letter dated 17 February 2012 has made the following submissions with reference to the joint hearing:

(i). The projections were submitted upto March 2013 with a view that the operations for the BPS Terminal will be ceased in December 2012. It was explained that in the event, the licence period is extended based on the recommendation of the Independent Engineer and the delay on the part of Licensor, ICTPL as an operator may have to take a decision to continue the BPS operation, as it does not fetch adequate revenue to meet expenditure.

(ii). During the joint hearing it was explained before the Authority that MbPT was supposed to comply to certain obligations on their part, under Appendix-5 in the License Agreement. As per the provisions, the critical assets like Completion of Capital dredging for the berth pockets and handing over to licensee for operation should have been within 15 months from the signing of the Agreement. Till now, the dredging has not been completed.

(iii). Further, the other two critical assets like Filling of Victoria Dock and Prince's Dock and handing over to the Licensee should have been within 24 months from the date of signing of the agreement (i.e. 3.12.2007). Unless the filling of the two docks are completed and dredging of the berth pockets are not completed, it is very difficult to place an order with the equipment manufacturers for supply of the RMQC and RTGCs. It is also very critical that since the final COD has not been granted to us (provisional COD was granted by MbPT for 21 months, upto 11.9.2012), the Lenders have expressed their reluctance to fund for the project. This will directly affect the progress of the project as more than INR 400 crores is spent in the project and there is substantial visible development in the site. ICTPL is in touch with MbPT on this issue and the response of port is awaited.

(iv). The present status of the obligations by Licensor and Licensee as mentioned at Appendix-5 of the License Agreement is as below:

Sr. No.	Activity (Licensee's part of work)	Cumulative completion period from date of signing Agreement	Present Status
1.	Signing of the License agreement	Start	Complied

2.	Financial Close	6 months	Complied
3.	Commencement of construction at site	8 months	Complied
4.	Completion of civil works & commissioning of two berths at the OCT	36 months	Dependent on obligation by Licensor as mentioned below
Sr. No.	**Activity (Licensor's part of work)**	**Completion of works and handing over the Assets (wherever applicable) to the Licensee-from the date of signing License Agreement**	**Present Status**
1.	Handing over of Site for trestle	Immediate	Complied
2.	Already developed land at Princes and Victoria Dock of the Licensed premises for OCT.	Immediate	Pending
3.	Completion of Capital dredging for the berth pocket and handing over to the Licensee for construction	15 months	Pending
4.	Filling of Victoria Dock and handing over to Licensee.	24 months	Pending
5.	Filling of Prince's Dock and handing over to Licensee.	24 months	Pending
6.	Completion of Capital dredging for Approach Channel and Turning Circle.	34 months	Pending
7.	Laying of Railway Tracks for RCD	34 months	Pending
8.	Road improvement works as per article 7.7.(x) of the License Agreement	34 months	On going

(v). During the discussions at the joint hearing, it was also explained that the throughput in the Terminal is not adequate enough to take care of meeting our expenditure and as a result, every year ICTPL is incurring losses which can be seen from the table given below. The losses as per the Audited Accounts are even more after considering the revenue share payable to MbPT and penalty for non-achievement of MGT. As a result, the developers lose interest in the business.

Year	Throughput	Loss (in ₹)	Losses as per Audited Accounts
2008-09	31386	60,396,677	69,374,450
2009-10	39002	40,305,454	59,580,129
2010-11	51593	22,328,671	69,700,929
2011-12 (projections upto March 2012 including actuals upto January 2012)	30281	39,169,247	Yet to be ascertained

The reasons for such reduction in the throughput are attributed mainly for two reasons:

(a). Wharfage and demurrage collection by MbPT on ICT containers. Such collection of charges is not there in any of the neighbouring terminals and also in any other ports in the country. This is an additional burden on the trade and for which the port users find the operation in our terminal as uneconomical and therefore are not calling on BPS Terminal and (b). The marine related charges, i.e. VRC which constitutes port dues, pilotage and berth hire charges are extremely on the higher side when compared to JNPT. This also adds to the burden on the customers. In addition, recently, MbPT has been given by TAMP, an increase of 30% on their Scale of Rates. Due to this, the operation at BPS has become further unviable for the port users and thereby the throughput in BPS terminal is getting reduced.

(vi). When ICTPL represented for non-collection of wharfage and demurrage charges by MbPT on ICT containers, the Authority had given MbPT, time period of 6 months upto 10.01.2012 to submit a detailed proposal on cargo management charges. Now since, MbPT has not been able to submit their proposal, the Authority has given further extension of time upto 10.04.2012. Unless this anomaly is sorted out, the operation in BPS Terminal will be totally unviable. Therefore, continuation of operation in BPS Terminal will only entail us in suffering further losses.

When ICTPL had filed tariff application, MbPT had raised concerns over collection of wharfage being included in the tariff citing that this will burden the trade and thus should not be applied. Going by the same scale ICTPL also raise concerns as to how is MbPT allowed to collect such wharfage if ICTPL was debarred from the same and thus request exemption of the same for containers being handled by ICTPL whether at their berth or in the CFS which are basically the extended arms of the container yard of the port to do away with congestion in the port as per norms in the country.

10. The MbPT was also requested to furnish information/ clarifications/ documents, as decided at the joint hearing. The MbPT vide its letter dated 5 March 2012 has furnished its response along with its response to the additional information / clarification sought from it on a few points. The decisions taken at the joint hearing and response of MbPT are summarised below:

<table>
<tr><th>Sl. No.</th><th>Decisions taken at the joint hearing</th><th>Reply furnished by MbPT</th></tr>
<tr><td>(i).</td><td>The milestones of OCT project, after mutual discussions with the ICTPL, as per the Licence Agreement and the present status and to certify that migration from BPS to OCT will take place by March 2013.</td><td>Appendix V of the License Agreement provides for the obligation for completion of work of both MbPT and ICTPL. However, the committed dates could not be adhered to. The revised schedule is given below:
<table>
<tr><th>Activity (Licensor's part of work)</th><th>Revised date of completion</th></tr>
<tr><td>Handing over of site for trestle</td><td>Completed</td></tr>
<tr><td>Already developed land at P&V Dock of the licensed premises for OCT</td><td>Handed over as and when the structures are demolished by MbPT</td></tr>
<tr><td>Completion of capital dredging for the berth pocket and handing over to the licensee for construction</td><td>28.2.2012 (The area for both construction has been handed over to ICTPL and therefore there is no direct delay)</td></tr>
<tr><td>Filling of 1Victoria Dock and handing over to the licensee</td><td>31.5.2012</td></tr>
<tr><td>Filling of Prince's Dock and handing over to the licensee</td><td>30.4.2012</td></tr>
<tr><td>Completion of capital dredging for approach channel and turning circle</td><td>31.12.2012</td></tr>
<tr><td>Laying of railway tracks for RCD</td><td>March 2013</td></tr>
<tr><td>Road improvement works as per Article 7.7 (x) of the License Agreement</td><td>Will be completed by December 2012</td></tr>
</table>
The commissioning of terminal is expected to be by March 2013.</td></tr>
<tr><td>(ii).</td><td>(a). A detailed note with copies of relevant documents in connection</td><td>As regards electricity charges, there is dispute in respect of MbPT charging ICTPL. In this regard,</td></tr>
</table>

	with the electricity bills payable by ICTPL.	ICTPL have approached Mumbai Port for appointment of Expert for dispute resolution. It is stated that ICTPL have not paid the disputed amount till date. It is also understood from ICTPL that this disputed amount is not taken as part of the expenditure while submitting proposal to TAMP.
	(b). The details of electricity bills actually claimed and paid by ICTPL in the last 3 years, i.e. 2009-10, 2010-11 and 2011-12 (upto December 2011).	

11. The MbPT vide its letter dated 14 March 2012 has furnished additional comments/ observations with reference to proposed Scale of Rates of ICTPL, which are given below:

(i). In chapter-I pertaining to definitions, the extent of application of Scale of Rates needs to be specifically defined. It is suggested that a drawing of the terminal duly approved by the Chief Engineer, MbPT may be included as an Annexure to Scale of Rates.

(ii). ICTPL has proposed penal interest on delayed payments/ refunds @ 13.75% per annum whereas in revised Scale of Rates of MbPT, TAMP has approved penal interest on delayed payments/ refunds @ 16.25% per annum.

(iii). In chapter II of Scale of Rates there is reference to 'A', 'B' and 'C' category hazardous cargo containers. The trustees vide their Resolution dated 27.7.2010, have decided not to handle any hazardous cargo containers at the port of Mumbai and the resolution is applicable to ICTPL terminal also. Moreover, with the cessation of handling hazardous cargo by MbPT, the categories such as 'A', 'B' and 'C' does not exist now.

(iv). In the chapter-II Clause 5 pertaining to License (Storage) fees on containers, there is a reference to stuffing containers in the terminal area. The terminal should function as terminal only (similar to the one at JNPT). Stuffing/ destuffing activities should not be permitted in the terminal area.

(v). Clause-II (5) (a) and (b) and note 1 under Chapter II (5) of proposed Scale of Rates appears to be contradictory.

(vi). The container traffic projection for the years 2009-10, 2010-11 and 2011-12 does not appear to be realistic as M/s.ICTPL has handled less containers than projection. A statement detailing projected figures vis-à-vis actual figures of container traffic handled by M/s.ICTPL from 2009-10 is as under:

Year	Projected Traffic	Actual Traffic	% handled	% fall in traffic
2009-10	100510 TEUs	37951 TEUs	38%	62%
2010-11	120612 TEUs	51224 TEUs	42%	58%

12. At our request, the ICTPL vide its letter dated 22 March 2012 furnished further details to cover the gaps found in the revised cost statements furnished by it in February 2012. While doing so, it has also furnished revised cost statements (Form 3A & Form 3B). The major modifications made by ICTPL in the updated cost statements are summarized below:

(i). It has regrouped the expenses reported under the heads Maintenance labour, Power & Fuel and Repairs & Maintenance. It has also reported expenses under the heads Equipment hire charges and other expenses, which were reported as nil in the earlier cost statements.

(ii). Break-up of equipment running cost into power cost, fuel cost and repairs & maintenance expenses have been furnished as stipulated in Form 3B. The power and fuel costs have been further bifurcated into variable cost and fixed cost.

(iii). The unit cost of electricity has been modified from ₹6/- reported earlier uniformly for all the years to ₹11.10, ₹9.05 and ₹8.84 for the years 2009-10 to 2011-12 (upto Jan'12) based on actuals. The unit electricity cost for the remaining two months in

2011-12 is estimated at ₹105.50 and for the next year 2012-13 it is estimated at ₹19.07 per unit.

(iv). The unit fuel cost for the years 2010-11 to 2012-13 have been revised upwards to ₹ 42/-, ₹ 45.36 and ₹ 60/- per litre respectively.

(v). The ICTPL has proposed to adjust 50% of deficit for the years 2008-09 to 2011-12, in five instalments commencing from the year 2012-13. Accordingly, it has adjusted 1/5th of 50% of the deficit for the years 2008-09 to 2011-12 amounting to ₹ 237.09 lakhs in the year 2012-13.

(vi). The ICTPL has furnished copy of letter dated 17 November 2011 towards latest documentary evidence in support of outsourcing of maintenance labour. As per the document, the monthly payment has been reduced from ₹656,250/- to ₹636,250/- with effect from November 2011 and to ₹606,250/- with effect from December 2011 due to reduction in the number of manpower deployed.

(vii). It has also furnished a copies of letters dated 22 July 2011 and 4 November 2009 towards hire of tractor trailers for transportation of containers. As per the contract, ₹185/- per TEU is payable towards hire charges and in addition ₹39,200/- per month is payable with effect from April 2011 to compensate the cost escalation.

(viii). It has also furnished revised worksheet for income computation at the existing tariff for the years 2011-12 and 2012-13, correcting the minor discrepancies noticed in the rates prescribed in the existing SoR.

(ix). The ICTPL has claimed ROCE for all the years on pro-rata basis linking to actual / estimated capacity utilization for the relevant years as against full ROCE claimed by it earlier.

13. A statement showing the comparative position of the estimated financial/ cost position for the year 2012-13 as per the cost statements furnished by ICTPL alongwith its original proposal of September 2011, revised estimates furnished in February 2012 and updated estimates furnished in March 2012 is given below:

Sl. No.	Particulars	Estimates furnished in September 2011	Revised estimates furnished in February 2012	Updated estimates furnished in March 2012
		2012-13	2012-13	2012-13
1.	Traffic (in TEUs)	58,238	38,097	38,097
2.	Operating income (₹ in lakhs)	946.04	695.44	695.44
3.	Net surplus / (deficit) after return (₹ in lakhs)	(519.56)	(522.55)	(735.24)
4.	Net deficit as a percentage of operating income	-55%	-75%	-106%

14. 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

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

(i). The existing Scale of Rates (SOR) of ICTPL was approved in December 2009 with validity till 31 March 2012. The proposal of ICTPL dated 19 August 2011 along with revised cost statements (except 3A & 3B) furnished by it in February 2012 and updated cost statements (form 3A & 3B) furnished in March 2012 and the additional information / clarifications furnished by it during the processing of this case is considered in this analysis.

(ii). The ICTPL in its proposal has sought for ahead of schedule revision by six months, i.e. with effect from 1 October 2011. As per clause 3.1.8 of the tariff guidelines of 2005, the ports / private terminals may propose revision ahead of schedule for good and sufficient reasons. In this case, the reason putforth by ICTPL is substantial shortfall in the Return on Investment (ROI). The reason for shortfall in ROI is primarily due to underutilization of its facilities at the terminal, as can be seen from the later part of this analysis. Hence, it may not reasonable to load additional burden on the users by ahead of schedule increase in tariff proposed by ICTPL. The proposal of ICTPL seeking ahead of schedule revision of rates with effect from 1 October 2011 is, therefore, rejected.

(iii). The existing tariff fixed in December 2009 relied on the estimated financial / cost position for the years 2009-10 to 2011-12. Clause 2.13 of the tariff guidelines of March 2005 mandates this Authority to review the actual physical and financial performance of the Major Ports and Private Terminals thereat at the end of the prescribed tariff validity period with reference to the projections relied upon at the time of fixing the prevailing tariff. Therefore, the actual physical and financial performance of the Terminal during the years 2009-10 to 2011-12 are analysed in the following paragraphs.

(iii). (a). The ICTPL has submitted a statement reconciling the financial / cost position as furnished in the cost statement with the position as reported in the audited accounts for the years 2009-10 and 2010-11. The position reflected in the cost statement is considered for analysis of actual performance during the said two years, subject to some modifications which are discussed below:

(i). The general overheads reported for the years 2009-10 and 2010-11 includes ₹10.51 lakhs and ₹ 42.29 lakhs respectively towards interest charges. Since interest is not an admissible item of cost in the ‘Return on Capital Employed’ approach for fixation of tariff as per the tariff guidelines of 2005, the interest charges have been excluded from the general overheads reported by the ICTPL.

(ii). The general overheads for the year 2009-10 considered in the cost statement by ICTPL includes an amount of ₹ 25.90 lakhs towards share issue expenses written off by it in the accounts. To a query, ICTPL has stated that as per the Companies Act, the expenditure has been written off in the same year. As per the approach adopted by this Authority, the preliminary expenses are amortized over the project life. Accordingly, the share issue expenses amounting to ₹25.90 lakhs has been amortized in equal annual instalments over 29 years commencing from 2009-10.

(iii). Further, the annual accounts for the year 2009-10 shows an expense of ₹13.63 lakhs towards 'Fees for technical support services' which is included under general overheads in the cost statement. To a query in this regard, the ICTPL has confirmed that this expense is booked as per the shareholders agreement between the promoters. As per clause 2.8.2 of the tariff guidelines of 2005, fees for technical support services paid / payable by the private terminals to their promoters will not be considered as admissible item of cost for tariff purposes unless its reasonableness is not established applying the yardstick of 'arms length relationship'. Therefore, technical service fees is allowed as a cost item subject to production of documentary evidence and IT assessment orders to show that the Income tax Authorities have allowed this expenditure. That being so, the expenses of ₹13.63 lakhs reported in the year 2009-10 by ICTPL is considered subject to production of IT assessment orders during next review of its tariff, as was done in the case of other private terminals. If such evidence is not produced, this expenditure allowed now will be fully set off in the next tariff review**.**

(iv). The other income reported in the annual accounts for the year 2010-11 includes an amount of ₹67,700/- towards income from sale of scrap, which is not considered by ICTPL in the cost statements. This has been considered under Finance & Miscellaneous income for the year 2010-11 in the cost statement since it is in the nature of miscellaneous income.

(b). As far as the year 2011-12 is concerned, the ICTPL has furnished cost statement based on actuals for the first 10 months upto January 2012 and estimates for the remaining two months February 2012 and March 2012. To a specific request to ICTPL to furnish actuals for the period from April 2011 to January 2012, duly certified by a Chartered Accountant, the ICTPL has stated that the half-yearly accounts (April to September 2011) have been duly certified by the statutory auditors which has been incorporated in the cost statements along with actuals for the balance 4 months. It has furnished provisional accounts for the 10 months period ended 31 January 2012 without auditor's certificate, which is in agreement with cost statement figures for the corresponding period. It has stated that certificate of auditor will be obtained once the year is over. When some other private terminals are able to furnish the certified accounts for part of the year, it is not clear as to why it is not possible for ICTPL to furnish its certified accounts for the part of the year 2011-12. In the absence of certified accounts, the cost statement figures based on provisional accounts furnished by ICTPL for the 10 months upto January 2012 is relied upon in this analysis. The position reflected in the cost statement is considered, subject to some modifications which are discussed below:

(i). Interest payment to the extent of ₹ 86.71 lakhs shown in the provisional accounts for the period from April 2011 to January 2012 and included by ICTPL under general overheads is excluded by us from the cost statements.

(ii). Other income on account of sale of scrap to the tune of ₹1.37 lakhs reflected in the provisional accounts for the period from April 2011 to January 2012 and not considered by ICTPL in the cost statements is considered under Finance & Miscellaneous income in the cost statements.

(c). The ICTPL has furnished estimates for the last two months in the year 2011-12 separately in the cost statements and the cost position for the year 2011-12 as a whole is furnished as a sum of the actuals for 10 months and estimates for remaining two months. The estimates of two months furnished by ICTPL are found to be not in tandem with the actuals for the first 10 months upto January 2012. The position is discussed in the following paragraphs:

(i). The ICTPL has reported actual traffic for the first 10 months of the year 2011-12 at 25,922 TEUs, which on an average works out to 2,592 TEUs per month, whereas the ICTPL has estimated traffic for the remaining two months at 4,359 TEUs, i.e. at 2,179 TEUs per month. However, for the reasons explained in a subsequent paragraph, the traffic estimates of ICTPL for the two months are relied upon in this analysis.

(ii). The ICTPL has estimated the container handling income for the two months at ₹70.28 lakhs, as against the actual container handling income of ₹ 330.59 lakhs for the first 10 months. The ICTPL has furnished income computation for the actual / estimated income for 2011-12 at the existing tariff for the actual / estimated throughput. Though some of the rates considered in the income computation are not reflected in the existing SoR, the ICTPL furnished a working sheet for the rates considered in the computation linking the same with the SoR rates. In view of the above, container handling income estimated by ICTPL for the two months February and March 2012 is considered in this analysis without any modification.

The ICTPL has estimated the cargo handling income for the two months at ₹15.09 lakhs as against the actual income of ₹85.72 lakhs reported for the first 10 months period, which is comparable on pro-rata basis. This income represents 25% share received / receivable from MbPT towards wharfage on bulk cargo handled in ICTPL terminal when the terminal is vacant, as reported by ICTPL. In the absence of workings furnished by ICTPL in this regard, the estimated cargo handling income of ₹15.09 lakhs for the two months February 2012 and March 2012 is relied upon in this analysis. It is noteworthy that the MbPT has also not raised any objections in this regard.

The ICTPL has estimated the container storage income for the two months at ₹1.15 lakhs as against the actual income of ₹31.59 lakhs for the first 10 months. As per the existing SoR of ICTPL, the container storage charges are denominated in US dollars. Despite specific request, the ICTPL has not furnished any workings / computation in support of actual / estimated storage charges and also not indicated the exchange rate considered by it in the computation. It has also not furnished any dwell time analysis for the actual storage charges earned during the past years.

In the absence of requisite details and considering that the estimated storage income for the two months is understated compared to the actuals of first 10 months, the estimated storage charges for the two months is modified taking into account the average storage income per TEU realised during the last three years 2009-10 to 2011-12 (upto Jan'12) for the estimated throughput of 4,359 TEUs. Accordingly, the revised storage charges for the two months period work out to ₹5.91 lakhs instead of ₹1.15 lakhs estimated by ICTPL.

(iii). The ICTPL has considered average employee cost of ₹77,213 for two months, which works out to ₹38,065/- per month as against the average monthly employee cost of ₹26,887/- reported for the first 10 months. The increase in average monthly cost works out to 42%. While the number of employees are maintained at 70 uniformly for the whole of the year, the reasons for considering such an increase in the average monthly cost remains unexplained. That being so, the estimated operating and direct labour cost for the two months is moderated based on the actual average monthly employee cost of ₹26,887/- reported for the first 10 months.

(iv). As reported by ICTPL, the Maintenance labour is an outsourced item of expense. The ICTPL has estimated an amount of ₹15.05 lakhs for the two months as against the actual of ₹63.02 lakhs for the first 10 months. As per the documentary evidence furnished by ICTPL, the monthly payment to the contractor is indicated at ₹6,56,250/- upto October 2011, ₹6,36,250/- for November 2011 and ₹6,06,250/- from December 2011 for 19, 18 and 17 no. of employees respectively.

The ICTPL has not furnished any workings for the estimated maintenance labour cost of ₹15.05 lakhs linking it to the rates indicated in the contract copy. In view of the above, the estimated maintenance labour cost for the two months February and March 2012 is moderated based on monthly payment of ₹606,250/- indicated in the documentary evidence furnished by ICTPL, which works out to ₹12.25 lakhs.

(v). The ICTPL has considered unit cost of electricity at ₹105.50 in the estimation of variable power cost for the two months as against the actual unit cost of ₹8.84 reported for the first 10 months. The reason for the huge hike in the unit power cost for the two months is not explained by ICTPL.

Incidentally, both ICTPL and MbPT have informed about a dispute between them with regard to electricity charges payable by ICTPL to MbPT and reportedly the matter is being referred to an Expert for dispute resolution. Though the ICTPL stated that it has considered only ₹6/- per unit in the cost statements, based on the LA provisions, in the revised cost statement furnished on 22 March 2012, the ICTPL has modified the unit electricity cost substantially for all the years. The reason for the sudden change in the stand taken earlier is not understood. In any case, the unit cost reported for the years 2009-10, 2010-11 and 2011-12 (upto January 2012) is based on actual expenses. However, the increase in the unit cost from ₹8.84 (being the actual for 10 months) to ₹105.50 for the two months period is not justified by ICTPL. That being so, the estimated power cost for the two months is moderated at par with the actual unit cost of ₹8.84. As a result, the estimated variable power cost considered for the two months works out to ₹2.73 lakhs as against the estimate of ICTPL at ₹32.25 lakhs.

The fixed power cost estimated by ICTPL for the two months is also moderated on proportionate basis based on the actuals for the first 10 months reported by ICTPL.

As a matter of abundant caution, it is clarified that consideration of unit cost based on the actual expenses reported by ICTPL during the past years in the tariff revision exercise should not be construed as pre-judging the dispute between the ICTPL and MbPT. If there is a variation in the actual charges paid / payable by ICTPL based on the resolution of the dispute between the parties, the position will be reviewed at the time of next review of tariff of ICTPL.

(vi). In the revised Form 3B furnished on 22 March 2012, the ICTPL has reported variable and fixed components of fuel cost separately for all the relevant years. The ICTPL has considered unit cost of fuel at ₹45.36 per litre and unit consumption of fuel at 1.06 litres in the estimation of variable fuel cost for the two months at par with the actual unit cost and unit consumption reported for the first 10 months. As per the unit cost of fuel of ₹ 45.36 per litre and unit consumption at 1.06 litres / TEU, the variable fuel cost for the actual throughput of 25,922 TEUs in the first 10 months of 2011-12 works out to ₹12.46 lakhs as against the actual variable cost for the said 10 months reported at ₹18.09 lakhs. The reason for the difference remains unexplained. Relying on the unit cost and unit consumption of fuel reported by ICTPL, the variable fuel cost for the 10 months is restated by us at ₹12.46 lakhs, adjusting the difference in the fixed component of fuel cost to maintain the total actual variable and fixed elements of fuel cost for the first 10 months undisturbed.

The estimated variable fuel cost for the two months February 2012 and March 2012 is also moderated at the actual prevailing market rate of ₹45.28 per litre and actual consumption of 1.06 litres/TEU for the estimated throughput of 4,359 TEUs.

The fixed fuel cost estimated by ICTPL for the two months is also moderated on proportionate basis based on the adjusted actuals for the first 10 months.

(vii). The repairs and maintenance comprises of two items, viz. repairs and maintenance - operations and repairs and maintenance - equipment. The estimated repairs and maintenance expenses in respect of operations estimated by ICTPL for the two months February 2012 and March 2012 is found to be lower than the pro-rata actuals for the first 10 months. Hence, the same is considered without any modification. In respect of repairs and maintenance - equipment, the estimates of ICTPL for the said two months is found to be on the higher side compared to the pro-rata actuals of first 10 months, the reason for which remains unexplained. The estimated repairs and maintenance expenses - equipment for the two months period is, therefore, moderated on proportionate basis.

(viii). The ICTPL has estimated the equipment hire charges for the two months February 2012 and March 2012 at ₹10.69 lakhs as against the actual expenses of ₹47.79 lakhs reported for the first 10 months. The equipment hire charges represents hire charges for engaging tractor trailers for transportation of containers. As per the documentary evidence furnished by ICTPL, the rate payable is ₹185/- per TEU and an additional amount of ₹39,200/- per month is payable from April 2011 towards cost escalation. Based on the actual equipment hire charges reported for the 10 months period in 2011-12, the actual cost per TEU works out to closer to ₹185/- per TEU which shows that the payment of additional amount of ₹39,200/- per month is not reflected in the actual expenses for the 10 months. That being so, the estimated equipment hire charges for the two months considered by ICTPL is moderated taking into account the average cost of ₹185/- per TEU for the estimated throughput of 4,359 TEUs.

(ix). The lease rental estimated by ICTPL for the two months are considered by us without any modification recognising that the lease rental estimated for the whole of the year 2011-12 is found to be 5% more than the actuals of 2010-11. The escalation of 5% is seen to be as per LA provisions. The information furnished by MbPT in this regard appears to be related to lease year and not on financial year basis. However, if calculated on pro-rata basis, the figures furnished by MbPT and the estimates of ICTPL are comparable.

Incidentally, the MbPT has stated that the ICTPL has not paid lease rentals for the porta cabin amounting to ₹11.86 lakhs per annum. It appears that the ICTPL has not considered lease rental in respect of porta cabin in its proposal. It has also not reported any claim by MbPT in this regard. Recognising the position that allotment of porta cabin is not specifically covered under the LA, the lease rental in respect of porta cabin is not considered in this analysis.

(x). The insurance cost estimated by ICTPL for the two months February 2012 and March 2012 is seen to be lower than the pro-rata actuals for the first 10 months and the same is considered without any modification.

(xi). The other expenses estimated by ICTPL for the two months is moderated on proportionate basis based on the actuals for the first 10 months.

(xii). The management and administration overheads and general overheads estimated by ICTPL for the two months February 2012 and March 2012 are moderated on proportionate basis based on the adjusted actuals for the first 10 months, since the estimates of ICTPL in respect of these two items are found to be on the higher side.

(xiii). The ICTPL has proposed additions to the gross block to the tune of ₹173.30 lakhs during the two months period from February 2012 and March 2012. Despite a specific query, the ICTPL has not furnished the details of the schemes / works, present status, documentary evidence in support of the estimated cost, till the finalisation of the case. In the absence of requisite details and also recognising the position that the operations at BPS would cease from December 2012 as reported by ICTPL, the proposed additions to the gross block amounting to ₹173.30 lakhs in February and March 2012 is not considered in this analysis. The estimated depreciation for the year 2011-12 computed by ICTPL is also modified suitably.

(e). The cost statements furnished by ICTPL for the year 2011-12 as a whole is modified based on the adjusted actuals for the 10 months upto January 2012 and modified estimates for the remaining two months, as per the above discussions.

(d). Subject to the above modifications in the actual financial / cost position for the years 2009-10 to 2011-12, the actual physical and financial performance of the ICTPL for the said three years vis-à-vis estimates relied upon during the last review of tariff are discussed in the following paragraphs.

(e). The actual traffic reported by ICTPL during the years 2009-10, 2010-11 and 2011-12 (upto January'12) are 39,002 TEUs, 51,593 TEUs and 25,922 TEUs respectively, the aggregate of which works out to 116,517 TEUs. According to MbPT, the aggregate traffic for the above the said period is 114,188 TEUs. Comparing these two positions, the position reported by ICTPL is on the higher side by 2,329 TEUs. The reason for difference in traffic reported by the two parties is not known. The actual traffic reported by the ICTPL, being on the higher side, is considered in this analysis.

The cumulative actual traffic handled by ICTPL during the years 2009-10 to 2011-12 (including the estimates of Feb'12 & Mar'12) is at 120,876 TEUs as against the estimated traffic of 351,785 TEUs for the same period. The variation in physical performance is found to be (-) 65.64%.

(f). The operating income at the estimate level has been adjusted for the 10% tariff reduction approved in the last tariff Order dated 30 December 2009. The cumulative actual operating income for the years 2009-10 to 2011-12 is at ₹ 2017.70 lakhs as against the adjusted estimate of cumulative operating income of ₹5914.68 lakhs, resulting in a variation of (-)65.89%.

Incidentally, despite specific request, the ICTPL has not furnished income computation at the existing level of tariff for the years 2009-10 and 2010-11 reconciling the position with the income reflected in the audited annual accounts. However, as already stated above, it has furnished income computation for the year 2011-12. The rates prescribed in the SoR of ICTPL for handling containers with Quay Cranes and without Quay cranes are different. Further, SoR prescribes separate rates for containers moved between JNPT and ICTPL by barges. Though the ICTPL has furnished break-up of actual traffic in terms of Foreign, Coastal, Transshipment, it has not furnished the break-up of actual traffic in terms of containers handled with QC, without QC and containers handled by barges. In the absence of such details it is not found possible to verify the operating income reported by ICTPL at the existing tariff level for the actual traffic handled during the years 2009-10 and 2010-11.

In the absence of requisite information, the per TEU realization of container handling income during the year 2011-12 (upto January 2012) is taken as the basis since the handling income for the said period is supported by workings. Based on the actual traffic handled and actual operating income reported in the provisional accounts for the year 2011-12 (upto January 2012), the per TEU container handling income works out to ₹1275/-. As against this position, the per TEU income for the years 2009-10 and 2010-11 works out at a higher level of ₹1433/- and ₹1276/- respectively. The variation may be due to change in container mix. In view of the above and also recognizing the position confirmed by ICTPL that no rebates / discounts were allowed during the years 2009-10 and 2010-11, the income reported by ICTPL in the cost statements for the said two years is considered in this analysis.

(g). The cumulative actual operating expenses for the three years 2009-10 to 2011-12 is at ₹2015.50 lakhs as against the estimate of ₹3430.56 lakhs, leading to variation to the extent of (-)41.25%. The cumulative actual overheads for the said three years is at ₹231.81 lakhs as against the estimate of ₹915.41 lakhs, resulting in a variation of (-)74.68%.

(h). The variation in cumulative depreciation for the said three years between actuals and estimates works out to (-) 32.48%.

(i). The aggregate of variation in operating expenses, depreciation, overheads and net finance & miscellaneous expenses for the three years works out to (-) 44.74%.

(j). The closing net block of fixed assets reported by the ICTPL in the cost statements for the years 2009-10 to 2010-11 (upto January 2012) is in agreement with the figures reported in the audited / provisional accounts for the relevant years and hence considered without any modification. For the reasons stated earlier, the additions to the gross block to the tune of ₹173.30 lakhs in the two months February 2012 and March 2012 is not considered. Accordingly, the closing net block of fixed assets as on 31 March 2012 is moderated by excluding the additions proposed by ICTPL for arriving at the capital employed.

(k). The actual / estimated working capital considered by ICTPL for the years 2009-10 to 2012-13 are discussed below:

(i). The ICTPL has not considered sundry debtors for the years 2009-10 and 2010-11. For the next two years 2011-12 and 2012-13, it has considered an amount of ₹12.48 lakhs each towards sundry debtors. As per norms, two months' estate income and two months' terminal charges payable by Indian Railways are the limit for allowable sundry debtors. The estate income and terminal charges payable to Indian Railways are not relevant in the case of private terminal operators like ICTPL.

This Authority has passed an Order on 30 September 2008 which, inter-alia, permits the outflow on certain items arising from contractual obligations of LA to be taken as a part of sundry debtors. As far as the land lease charges is concerned, as per the provisions of LA, one year lease rent is payable by the ICTPL to the MbPT in advance. Considering this position, six months' lease rent based on the actual / estimated annual lease rent for the relevant years, is considered under 'sundry debtors' for the years 2009-10 to 2012-13.

(ii). The ICTPL has considered an amount of ₹6.89 lakhs each for the years 2009-10 and 2010-11 and ₹5.44 lakhs each for the years 2011-12 and 2012-13 as the value of inventory in the estimation of working capital, reportedly as per norms. As per norms limit on inventory for capital spares prescribed in the tariff guidelines is one year's average consumption and the limit on other items of inventory is six months' average consumption of stores excluding fuel. Despite request, the ICTPL has not furnished any basis / workings in support of the inventory value considered by it for the relevant years. The details of value of inventory consumed by ICTPL during the relevant years are also not made available. In the absence of details, the value of inventory is taken as 'nil' in the working capital for all the relevant years.

(iii). The limit on cash balance prescribed in the tariff guidelines is one month's cash expenses. The actual / estimated cash balance considered by the ICTPL for the years 2009-10 to 2012-13 is found to be as per the norms. However, the cash balance is moderated based on the moderated operating expenses and overheads as considered in this analysis.

(iv). The tariff guidelines of 2005 do not stipulate any norms for current liabilities. The audited annual accounts for the years 2009-10 and 2010-11 shows the current liabilities at ₹632.40 lakhs and ₹2510.78 lakhs respectively. The ICTPL in the cost statements has considered the current liabilities at ₹98.23 lakhs and a negative figure of ₹65.32 lakhs for the corresponding years. The workings furnished by ICTPL shows that it has adjusted the current liabilities with the loans and advances component of current assets reported in the accounts and has considered the net value as current liabilities. In short, the approach adopted by the ICTPL recognizes the loans and advances component of current asset in the computation of working capital which is not permissible as per the norms stipulated in the guidelines. Therefore, adjustment of loans and advances against current liabilities is not considered.

Further, the ICTPL has considered the current liabilities (before adjustment of loans and advances) for the year 2010-11 at ₹380.66 lakhs as against ₹2510.78 lakhs reported in the annual accounts by excluding certain items of current liabilities like Penalty for MGT and Interest accrued. Accordingly, current liabilities for the years 2009-10 and 2010-11 are considered at ₹632.40 lakhs and ₹380.66 lakhs respectively.

The current liabilities estimated by ICTPL for the next two years 2011-12 and 2012-13 are moderated by following the same approach, which works out to ₹508.05 lakhs each for the said two years.

(v). The moderated current liabilities is more than the moderated current assets for all the years 2009-10 to 2012-13 resulting in negative working capital. Hence, the working capital is considered as 'nil' for all the relevant years.

(l). The unamortized portion of share issue expenses is considered as a part of the capital employed on which return is allowed. Subject to above modifications, the capital employed for the years 2009-10 to 2011-12 works out to ₹1274.59 lakhs, ₹1064.71 lakhs and ₹853.47 lakhs respectively as against the estimated capital employed of ₹1139.02 lakhs, ₹1209.39 lakhs and ₹791.70 lakhs respectively for the corresponding years. The variation between the cumulative actual and estimated capital employed is seen to be 1.68%.

(m). The ICTPL has considered the annual capacity of the terminal at 80,000 TEUs for all the years 2009-10 to 2012-13 and has claimed ROCE on pro-rata basis linking it to actual / estimated capacity utilization during the relevant years. However, as seen from the workings furnished by it, this capacity relates to yard capacity. The ICTPL is silent about quay capacity of the terminal, despite a specific request. The MbPT has only attempted to justify the MGT of 150,000 TEUs and the response of MbPT is not categorical about the capacity of the terminal based on the existing facilities.

Clause 2.9.11 of the Tariff Guidelines specifies that investment made in accordance with the obligation under Concession Agreement will be considered for ROCE even if full capacity utilization is not achieved. As recorded in paragraph 10 (xix) of the last tariff Order dated 30 December 2009, the assets at ICTPL are taken over from MBPT under the Concession Agreement. They were repaired and refurbished to keep them in operating conditions. During the current proceedings, the MbPT has not commented anything in adverse on the capital employed figures reported by ICTPL. Therefore, capital employed of ICTPL, subject to exclusion of new capital additions proposed during the two months in 2011-12, is considered for ROCE at 16%, without linking it to the capacity utilization, in view of clause 2.9.11 of the tariff guideline of March 2005 and the approach adopted by this Authority in the last tariff Order.

(n). Subject to the above adjustments, the financial / cost position after return for the years 2009-10 to 2011-12 shows a deficit position. The net deficit after permissible return for the years 2009-10 to 2011-12 are at ₹571.46 lakhs, ₹351.36 lakhs and ₹497.55 lakhs respectively, aggregating to ₹1420.38 lakhs.

(o). As a result of analysis of the past performance of ICTPL the variations in the actual performance of ICTPL compared to the estimates, in respect of key parameters, are furnished in the table given below:

(₹ in lakhs)

Particulars	**Aggregate of 2009-10 to 2010-11**		
	Estimates	**Actuals**	**Variance**
Traffic (in TEUs)	351785	120876	**(-)65.64%**
Operating Income	5914.68	2017.70	**(-)65.89%**
Operating Expenses (including depreciation and overheads)	5139.80	2840.43	**(-)44.74%**
Capital Employed (average)	1046.70	1064.27	**(+)1.68%**
Rate of Return on Capital Employed	16%	Nil	**(-)100%**

Clause 2.13 of the tariff guidelines of March 2005 while prescribing performance variation of + or – 20% for adjustment of past surplus, stipulates review of both physical and financial performance. In this case, the both the physical performance as well as the key parameters of financial performance like operating income and operating expenses except capital employed shows a negative variation of more than 20%. The actual financial / cost position even before allowing return shows deficit for all the three years. The adverse financial / cost position of ICTPL appears to be mainly due to underutilization of facilities. Adjustment of 50% of past deficit in future tariff

particularly in the face of continued underutilisation in the year 2012-13 also, would cast an undue burden on the users. Therefore, adjustment of 50% of the past deficit in future tariff is not justified to in this case.

Since the deficit position for the year 2011-12 is partially based on estimates, the actual position for the year 2011-12 shall be subject to review during the next tariff revision exercise. If variation is found between the estimate and actual position for the year 2011-12, the financial / cost position for the years 2009-10 to 2011-12 considered above shall be reviewed and shall be dealt as per clause 2.13 of the tariff guidelines of 2005.

(iv). As per clause 3.1.8. of the tariff guidelines of 2005, the normal tariff validity cycle is for a period of three years unless a different period is prescribed by this Authority. Considering that the existing tariff of ICTPL is valid upto 31 March 2012, the next tariff cycle of ICTPL in the normal course will be the three years period from 2012-13 to 2014-15. However, in this case, the ICTPL has furnished estimates for 2012-13 only stating that the tariff to be reviewed is applicable only for BPS terminal and the operations at BPS terminal would cease by December 2012, as per the LA provisions. The MbPT, while confirming this position, has stated that at present there is no proposal for extension of BPS operations beyond 2 December 2012.

To a query when the operations at BPS terminal would migrate to the OCT terminal, the ICTPL has stated that the Licensor has not fulfilled its obligations as per the time schedule committed in the LA and hence there is delay in the completion of OCT project. The MbPT, while admitting the delay, has stated that as per the revised time schedule the commissioning of OCT terminal is expected by March 2013.

Relying on the position reported by the ICTPL and MbPT and in view of this Authority's decision of not burdening BPS operations with the proposed expenditure on OCT, the tariff validity in this case is considered for a truncated tariff cycle of one year, i.e. from April 2012 to March 2013. Accordingly, the estimates furnished by the ICTPL for the year 2012-13 are considered in this analysis.

The actual traffic handled by ICTPL in the year 2010-11 is 51,593 TEUs. For the next year 2011-12, the actual traffic (with 2 months estimated position) is 30,281 TEUs. The ICTPL in its initial proposal of August 2010 has estimated a traffic of 58,238 TEUs for the year 2012-13. In the revised cost statement furnished in February 2012, it has reduced the estimated traffic for the year 2012-13 to 38,097 TEUs based on the actual performance of 2011-12. The annual growth projected in the traffic for the year 2012-13 is around 26% over the actual traffic of previous year 2011-12. However, compared to the actual traffic of 51,593 TEUs handled in 2010-11, the estimated traffic of 2012-13 shows a reduction of 26%. The traffic estimate of ICTPL at 38,097 TEUs is found to be much lower than the MGT of 1,50,000 TEUs prescribed in the LA.

The reasons for projection of container traffic for the year 2012-13 at a reduced level as compared to the original traffic estimate are stated to be inadequate draft, high vessel related charges at MbPT, lack of established logistics centres at Mumbai. It is also stated by the operator that mainline vessels do not call on its terminal in view of the above reasons. Non-allotment of berths by the private terminal operators at JNPT for movement of containers by barges is also one of the reasons cited by ICTPL for the reduced traffic projection. This Authority does not have the benefit of the views of MbPT on the traffic projections of ICTPL. Taking into account the constraints faced by the ICTPL and keeping in view the actual performance of ICTPL in the immediate preceding year 2011-2 (upto January 2012), the traffic estimates as furnished by ICTPL for the year 2012-13 is relied upon in this analysis.

The container mix ratio adopted by ICTPL in the estimated traffic for the year 2012-13 is not found to be in tandem with the actual container mix in the actual traffic handled during the 10 months period in 2011-12. The reasons for change in the container mix are stated to be decrease in share of foreign containers due to increase in movement of coastal containers and decrease in the movement of transshipment containers. The position reported by ICTPL in this regard is relied upon and the container mix estimated by ICTPL in the estimated traffic for the year 2012-13 is considered in this analysis.

(v). (a). The ICTPL has estimated the container handling income for the year 2012-13 at ₹546.72 lakhs which is supported by income computation at the existing rates for the estimated traffic. As stated earlier, though some of the rates considered in the income computation are not reflected in the existing SoR, the ICTPL furnished a working sheet for the rates considered in the computation linking the same with the SoR rates. In view of the above, the estimated container handling income of ICTPL for the year 2012-13 is considered without any modification.

(b). The ICTPL has estimated the cargo handling income for the year 2012-13 at ₹117.00 lakhs, which shows an increase of 16% over the actual cargo handling income of the previous year 2011-12. As already stated, this income represents 25% share of wharfage on bulk cargo handled in ICTPL terminal, when the terminal is vacant, receivable from MbPT. In the absence of workings furnished by ICTPL for estimation of this income, the cargo handling income estimated by ICTPL for the year 2012-13 is relied upon, subject to verification of actuals at the next review. If any undue benefit is found to have accrued to ICTPL due to relying on its estimates now, the surplus so accrued will be fully adjusted in the next tariff review.

(c). The ICTPL has estimated the container storage income for the year 2012-13 at ₹31.71 lakhs which is found to be on the lower side compared to the actual per TEU storage income realised by the terminal in the past years 2009-10 to 2011-12 (upto January 2012). The estimated storage income for the year 2012-13 is modified taking into account the average storage income per TEU realised during the years 2009-10 to 2011-12 (upto Jan'12) for the estimated throughput of 38,097 TEUs, following the approach adopted for modification of estimated storage income for the two months February 2012 and March 2012. Accordingly, the revised storage income for the year 2012-13 works out to ₹51.64 lakhs as against ₹31.71 lakhs estimated by ICTPL.

(d). Subject to the above changes, the revised estimated operating income for the year 2012-13 works out to ₹715.36 lakhs as against the estimate of ICTPL at ₹695.44 lakhs.

(vi). Clause 2.5.1 of the tariff guidelines of 2005 requires that the expenditure projections of the major port trusts / terminal operators should be in line with traffic adjusted for price fluctuations with reference to current movement of Whole Sale Price Index (WPI) for all commodities announced by the Government of India. Accordingly, this Authority has decided to consider an escalation factor of 6% for the expenditure projections in the tariff cases to be decided during the year 2011-12, as communicated to all the major port trusts and private terminal operators including ICTPL vide letter No.TAMP/27/2005-Misc dated 11 July 2011.

(vii). (a). The ICTPL has maintained the number of operating & direct labour for the year 2012-13 at 70 employees at par with the actuals of 2011-12, which is considered. However, it has considered an escalation of 10% in the average annual employee cost over the previous year figure. The estimated average employee cost of ICTPL for the year 2012-13 is, therefore, moderated by applying 6% escalation on the average employee cost considered for the year 2011-12. The revised operating & direct labour cost works out to ₹239.40 lakhs as against the estimate of ₹266.44 lakhs.

(b). As brought out earlier, the maintenance labour is an outsourced item in the case of ICTPL. The ICTPL has estimated these expenses for the year 2012-13 applying 10% escalation over the expenses of previous year 2011-12. The documentary evidence furnished by ICTPL for outsourcing is silent on escalation. The estimate of ICTPL towards maintenance labour for the year 2012-13 is moderated based on the monthly payment of ₹6,06,250/- indicated in the documentary evidence, without allowing escalation.

(viii). The estimated Equipment running cost comprises of power cost, fuel cost and repairs & maintenance expenses, which is discussed in the following paragraphs in seriatim:

(a). In the revised Form 3B furnished on 22 March 2012, the ICTPL has reported variable and fixed components of power cost separately for all the relevant years. The ICTPL has reported an actual power consumption of 7.10 units per TEU during the year 2011-12 and has considered the same unit power consumption for the year 2012-13 also. However, it has considered the unit cost of electricity at ₹19.07 in the estimation of variable power cost for the year 2012-13 as against the actual unit cost of ₹8.84 reported for the year 2011-12 (upto January 2012). The reason for steep hike in the unit cost of power remains unexplained. The dispute between ICTPL and MbPT with regard to the electricity charges payable by ICTPL to MbPT and our position in this regard is already discussed in an earlier paragraph. The unit cost of electricity is moderated by applying 6% escalation over the actual unit cost of ₹ 8.84 pertaining to the year 2011-12 for moderation of the estimated variable power cost for the year 2012-13.

The fixed power cost estimated by ICTPL for the year 2012-13 is moderated by applying 6% escalation over the fixed power cost considered for the year 2011-12.

(b). The ICTPL has considered the unit cost of fuel at ₹60 per litre and unit consumption of fuel at 1.06 litres in the estimation of variable fuel cost for the year 2012-13. As per these unit figures, the variable fuel cost for the estimated throughput of 38,097 TEUs works out to ₹24.23 lakhs. However, the estimated variable fuel cost reported by ICTPL is at a higher level of ₹ 28.62 lakhs. The reason for the difference remains unexplained.

The unit consumption of 1.06 litres per TEU considered by ICTPL for the year 2012-13 is at par with the actual unit consumption reported for the year 2011-12 and is considered without any modification. However, the estimated unit cost of fuel of ₹60/- per litre considered by ICTPL for the year 2012-13 is seen to be 32% more than the actual unit cost of ₹ 45.36 reported for the year 2011-12 (upto January 2012). The unit cost fuel is moderated by applying 6% escalation over the prevailing market rate of ₹ 45.28 per litre. The estimated variable fuel cost for the year 2012-13 is moderated based on the unit consumption and moderated unit fuel cost.

The fixed fuel cost estimated by ICTPL for the year 2012-13 is moderated by applying 6% escalation over the fixed fuel cost considered for the year 2011-12.

(c). The repairs and maintenance expenses estimated by ICTPL for the year 2012-13 at ₹27.05 lakhs is moderated by applying 6% escalation over the repairs and maintenance expenses considered for the year 2011-12, which works out to ₹24.36 lakhs.

(ix). The ICTPL has estimated the equipment hire charges for the year 2012-13 at ₹79.09 lakhs for the estimated throughput of 38,097 TEUs, which works out to ₹207.60 per TEU, as against the actual unit cost of ₹185/- per TEU for the year 2011-12. The escalation in unit cost considered by ICTPL is seen to be around 12.60%. Further, as brought out earlier, though the contract provides for payment of ₹39,200/- per month from April 2011 towards cost escalation, as per the documentary evidence furnished by ICTPL, the actual hire charges reported for the year 2011-12 do not reflect payment of such escalation amount. That being so, the estimated equipment hire charges for the year 2012-13 considered by ICTPL is moderated taking into account the contract rate of ₹185/- per TEU for the estimated throughput of 38,097 TEUs.

(x). The lease rental estimated by ICTPL for the year 2012-13 at ₹186.86 lakhs is 5% more than actual lease rental for the previous year 2011-12, which is found to be in order as per the LA provisions. The lease rental estimate of ICTPL for the year 2012-13 is considered in this analysis without any modification.

(xi). The ICTPL has estimated the insurance premium for the year 2012-13 at ₹8.55 lakhs applying an escalation factor of 7% over the actuals of 2011-12. In the absence of documentary evidence for the estimated insurance premium for the year 2012-13, the estimate of insurance premium for the year 2012-13 is maintained at the same level of actual insurance premium relating to the year 2011-12.

(xii). The other expenses considered for the year 2011-12 is escalated by applying an escalation of 6% to moderate the estimate of ICTPL towards other expenses for the year 2012-13.

(xiii). Clause 2.7.1 of the revised tariff guidelines stipulates that in case of private terminals, depreciation has to be allowed on straight line method with life norms adopted as per the Companies Act, 1956 or based on the life norms prescribed in the Concession Agreement whichever is higher. The ICTPL has confirmed that depreciation has been calculated in accordance with clause 2.7.1 of the tariff guidelines. However, it has not furnished workings for the depreciation for the year 2012-13, despite a query in this regard. The estimated depreciation considered by ICTPL for the year 2012-13 is moderated by excluding the impact of additions to the tune of ₹173.30 lakhs to the gross block proposed by ICTPL during 2011-12 as the same is not considered.

(xiv). The ICTPL has estimated the management & administration overheads and general overheads for the year 2011-12 by applying 10% escalation factor over the actuals of 2011-12. These estimates are moderated applying 6% escalation over the management & administration and general overheads considered for the year 2011-12.

(xv). As already discussed in an earlier paragraph, the annual amortization amount of ₹0.89 lakhs considered for the years 2009-10 to 2011-12 towards amortization of share issue expense is considered for the year 2012-13 also.

(xvi). The ICTPL has not estimated any Finance & Miscellaneous income for the year 2012-13.

(xvii). The Finance & Miscellaneous Expenses estimated by ICTPL towards contribution to provident fund for the year 2012-13 is found to be escalated by 10% over the actuals of 2011-12. The escalation is restricted to 6% as applicable and the estimate is moderated accordingly.

(xviii). The ICTPL has not proposed any additions to the gross block in the year 2012-13. As brought out earlier, the moderated working capital for all the years 2009-10 to 2012-13 is 'nil'. Accordingly, no working capital is considered in the estimated capital employed for the year 2012-13. The unamortized portion of share issue expenses as on 31 March 2013 is included in the estimated capital employed for the year 2012-13 for allowing return. Subject to above modifications, the estimated capital employed for the year 2012-13 works out to ₹650.69 lakhs as against the estimate of ₹739.22 lakhs considered by ICTPL.

(xix). Considering the capacity of the terminal at 80,000 TEUs and the estimated traffic of 38,097 TEUs, the ICTPL has claimed pro-rata ROCE for the year 2012-13 linking the rate of 16% to estimated capacity utilization. It may be recalled that full return at 16% is considered in the analysis of past performance of the operator for the years 2009-10 to 2011-12, for the reasons explained earlier. Since there is no change in the position for the year 2012-13, full return at 16% on the moderated capital employed is allowed for the year 2012-13.

(xx). Subject to the above discussions, the cost statement furnished by the ICTPL for the year 2012-13 is modified. The modified Cost statement is attached as **Annex-I**. The results disclosed in the cost statement at the existing tariff level are summarized below:

(**₹ in lakhs**)

Particulars	2012-13
Estimated Operating Income	715.37
Net surplus/ (deficit) before return	(-)228.52
ROCE	104.11
Net Surplus / (deficit) after return	(-)332.63
Net Surplus / (deficit) as a percentage of Operating Income	(-)60.84%

(xxi). As may be seen from the above table, the operations at ICTPL terminal would result in an estimated deficit of 332.63 lakhs, if the existing tariff continues for the year 2012-13. The increase sought by ICTPL is at a lower level of 25%, which may have to be approved generally. However, in this case, any tariff increase to be approved is to be analysed in the light of substantial underutilization of facilities. Accordingly, an exercise is undertaken to ascertain the tariff increase that may be required, in case the terminal operates to its potential. During the past years, the best physical performance is seen in the year 2010-11 in which the ICTPL has handled 51,593 TEUs. Even if the ICTPL handles the traffic at the level of 51,593 TEUs during the year 2012-13 also, the calculation shows that financial / cost position still warrants an increase of around 23% over the existing tariff, which is closer to the 25% increase sought by ICTPL. Since the traffic of 51,593 TEUs may not be achievable in the year 2012-13 for the reasons stated by the ICTPL, the increase of 25% sought by ICTPL over the existing tariff appears to be justified. Therefore, the existing tariff at ICTPL is increased across the board by 25%. If variation is found in the actual traffic as compared to the estimate, such variation will be treated as per clause 2.13 of the tariff guidelines of 2005.

(xxii). In line with clause 2.18.2 of the tariff guidelines, the proposed note relating to penal interest for delayed payment by users/ refund by ICTPL has been modified to reflect the prevailing Prime Lending Rate of State Bank of India at 14.75% plus 2%.

(xxiii). The ICTPL has proposed to increase the number of free days from the existing one day to two days for import containers and from one day to three days for export containers. It has also proposed a free period of 13 days for transshipment containers. As per clause 4.5 of the tariff guidelines, the individual ports / private terminals can propose the number of free days. That being so, and recognising underutilisation of the facilities at ICTPL the free days proposed by ICTPL is accepted.

(xxiv). The MbPT has raised certain issues with reference to the existing Scale of Rates of ICTPL, which are discussed below:

(a). The MbPT has suggested to annex a drawing of the terminal duly approved by the Chief Engineer, MbPT to the approved Scale of Rates of ICTPL. The idea of MbPT is to have a clear definition of the area where the SoR is applicable. The area of operations are to be governed as per the Licence Agreement entered between the ICTPL and MbPT and this Authority has no role in defining the area of operations of ICTPL. The Scale of Rates will apply to the operations of ICTPL carried out as per the Licence Agreement. Hence, the suggestion of MbPT is rejected.

(b). The MbPT has proposed to do away with the existing rates in the SoR of ICTPL for handling hazardous containers citing that the port has decided not to handle any hazardous cargo containers at the port of Mumbai. Since handling of hazardous containers is related to the safety aspects of the port and the port would be in a better position to decide on this issue, the proposal of MbPT is accepted. The rates for handling hazardous containers prescribed in the existing SoR of ICTPL is deleted. Incidentally, the traffic estimates and income computation of ICTPL do not include hazardous containers.

(c). The existing SoR of ICTPL contain provisions for levy of charges for supply of labour for stuffing / destuffing of containers and for levy of storage charges on the containers stuffed in the terminal premises or containers received in the terminal duly stuffed in the areas other than terminal premises for shipment or for removal to town. On the ground that a terminal should function as terminal only, the MbPT has objected to these existing provisions. The ICTPL has argued that it has proposed to continue with such provisions in order to provide services as and when demanded for customs inspection, examination, etc. In view of the exceptional circumstances pointed out by ICTPL, the existing provisions may continue. But this activity cannot be carried out in a routine manner, unless explicitly authorised by the LA.

15.1. In the result, and for the reasons give above, and based on a collective application of mind, this Authority approves the revised Scale of Rates of the ICTPL which is attached as **Annex-II**.

15.2. Since the validity of the existing Scale of Rates will expire on 31 March 2012, the revised Scale of Rates and conditionalities of the ICTPL shall come into effect after expiry of 15 days from the date of notification in the Gazette of India and will be in force till 31 March 2013. This position was maintained in some of the recently decided cases of GTIPL, NSICT and CITPL. The approval accorded shall automatically lapse thereafter unless specifically extended by this Authority.

15.3. The validity of the existing Scale of Rates of the ICTPL is deemed to have been extended beyond 31 March 2012 till the effective date of implementation of the revised Scale of Rates.

15.4. The estimates for the year 2012-13 are relied upon. Additional surplus, if any, arising due to variation in actual performance in the said year shall be governed by the provisions of Clause 2.13 of the tariff guidelines of 2005 in the next review.

15.5. The tariff of the ICTPL has been fixed relying on the information furnished by the operator and based on assumptions made as explained in the analysis. If this Authority, at any time, during the prescribed tariff validity period, finds that the actual position varies substantially from the estimates considered or there is deviation from the assumptions accepted herein, this Authority may require ICTPL to file a proposal ahead of the schedule to review its tariff and to set-off the advantage as per the tariff guidelines of March 2005 accrued on account of such variations in the revised tariff.

15.6. In this regard, the ICTPL is required to furnish to this Authority its annual accounts and performance report within 60 days of closing of the year 2012-13. If ICTPL fails to provide such information within the stipulated time period, the MbPT may initiate appropriate action against ICTPL. In the event, this Authority may proceed suo motu to review the tariff of ICTPL. This apart, analysis of variation may also be made at the time of the next general review at the end of the tariff validity period and adjustment of additional surplus will be made in line with the tariff guidelines of March 2005 in the tariff to be fixed for the next cycle.

(Rani Jadhav)
Chairperson

Annex - I

INDIRA CONTAINER TERMINAL PRIVATE LIMITED
GENERAL REVISION OF SCALE OF RATES
Consolidated Income & Cost statement

Sr. No.	Particulars	Actuals			Estimates furnished by ICTPL	Estimates moderated by TAMP
		2009-10	2010-11	2011-12 *	2012-13	2012-13
	Traffic (in TEUs)	**39002**	**51593**	**30281**	**38097**	**38097**
I	**Total Operating Income**					
	(i) Container handling income	558.99	658.19	400.88	546.72	546.72
	(ii) Cargo handling income	64.75	68.32	100.81	117.00	117.00
	(iii) Others (container storage charges)	57.86	70.40	37.50	31.71	51.65
	Total - I	**681.60**	**796.91**	**539.19**	**695.44**	**715.37**
II	**Operating Costs (excluding depreciation)**					
	(i) Operating & Direct labour	295.47	251.41	225.85	266.44	239.40
	(ii) Maintenance labour	74.66	76.31	75.14	85.87	72.75
	(iii) Equipment Running costs	105.38	82.62	67.44	119.72	80.60
	(iv) Royalty / revenue share	0.00	0.00	0.00	0.00	0.00
	(v) Equipment hire	64.99	89.13	55.86	79.09	70.48
	(vi) Lease Rentals payable as per concession agreement	160.93	168.17	177.96	186.86	186.86
	(vii) Insurance	18.00	10.88	8.01	8.55	8.01
	(viii) Other expenses	1.58	4.37	1.36	1.47	1.44
	Total - II	**721.01**	**682.89**	**611.61**	**747.99**	**659.54**
III	Depreciation	213.01	211.41	212.10	264.58	201.89
IV	**Overheads**					
	(i) Management & Administration overheads	23.94	11.82	11.32	13.03	12.00
	(ii) General overheads	75.76	56.81	49.49	56.35	52.46
	(iii) Preliminary expenses & upfront payment write-off (share issue expenses)	0.89	0.89	0.89	0.00	0.89
	Total - IV	**100.59**	**69.52**	**61.70**	**69.38**	**65.35**
V	**Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)**	**(353.01)**	**(166.92)**	**(346.22)**	**(386.52)**	**(211.41)**
VI	Finance & Miscellaneous Income (FMI) - Sale of scrap	0.00	0.68	1.37	0.00	0.00
VII	Finance & Miscellaneous Expenses (FME) - Contribution to Provident Fund	14.52	14.78	16.14	17.75	17.11
VIII	FMI Less FME (VI) - (VII)	(14.52)	(14.10)	(14.77)	(17.75)	(17.11)
IX	**Surplus Before Interest and Tax (V) + (VIII)**	**(367.53)**	**(181.01)**	**(360.99)**	**(404.27)**	**(228.52)**
X	Capital Employed	1,274.59	1,064.71	853.47	739.22	650.69
XI	RoCE - Maximum permissible	203.93	170.35	136.56	118.28	104.11
XII	**Net Surplus / (Deficit) (IX) - (XIII)**	**(571.46)**	**(351.36)**	**(497.55)**	**(498.15)**	**(332.63)**
XIII	**Adjustment of 50% of deficit for the years 2008-09 to 2011-12 in 5 instalments**	**0.00**	**0.00**	**0.00**	**(237.09)**	**0.00**
XIV	**Net Surplus / (Deficit) after adjustment (XIV) + (XV)**	**(571.46)**	**(351.36)**	**(497.55)**	**(735.24)**	**(332.63)**
XV	**Net Surplus / (Deficit) as a % of operating income (XIV/I)**	-83.84%	-44.09%	-92.28%	-105.72%	-60.84%
XVI	**Average Net Surplus/(Deficit) as a % of operating income**	-70.40%			-105.72%	-60.84%

* Actuals for 10 months (upto Jan'12) and Estimates for remaining 2 months (Feb'12 & Mar'12).

Annex-II

INDIRA CONTAINER TERMINAL PRIVATE LTD
SCALE OF RATES

CHAPTER – I

1.1 **DEFINITIONS**

In this Scale of Rates, unless the context otherwise requires, the following definitions shall apply:

(i). ICTPL shall mean Indira Container Terminal Private Ltd.

(ii). 'Vessel' includes any thing made for the conveyance mainly by water of human being or of goods and a caisson.

(iii). 'Coastal Vessel' shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having valid coastal licence issued by the competent authority.

(iv). 'Foreign-going Vessel' shall mean any vessel other than Coastal vessel.

(v). "Reefer Container" shall mean a refrigerated container used for carriage of perishable goods with provision for electrical supply to maintain the desired temperature.

(vi). "Hazardous Container" shall mean a container containing hazardous goods as classified under IMO.

(vii). "Transhipment container" shall mean any container, which is discharged from one vessel, stored in the container yard and transported through another vessel.

(viii). "Free period" shall mean the period during which cargo/container shall be allowed storage free of demurrage charges and this period shall exclude Sunday(s), customs holidays and Port's Non-working days.

(ix). "Over dimensional container" shall mean a container carrying over dimensional cargo beyond the normal size of standard containers and needing special devices like slings, shackles, lifting beam etc. They also include damaged containers and other types which require special devices.

(x). "Shut out Container" shall mean a container which enters into the port as an export intake for a particular vessel (as indicated by the Vessel Identification Advice Number i.e. VIA No.) and is not connected to the particular vessel for reasons whatsoever.

(xi). "Demurrage" shall mean charges payable for storage of cargo within port premises beyond free period, as specified in the scale of rates.

(xii). "Full Container Load" (FCL) shall mean a container containing cargo belonging to one consignee in the vessel's manifest.

(xiii). "Less than a Container Load" (LCL) shall mean a container containing cargo belonging to more than one consignee in the vessel's manifest.

(xiv). "Month" shall be reckoned as 1st day (inclusive) of one month to the 1st day (exclusive) of the next month or from the 2nd day (inclusive) of one month to the 2nd day (exclusive) of the next month and so on. E.g. 14th of January (inclusive) to 14th of February (exclusive) (i.e. a period of 30 days).

(xv). "Day" means a calendar day i.e. the period from the midnight of a day to the midnight of the following day.

1.2. <u>General Terms and Conditions</u>

(i). The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for its classification as 'coastal' or 'foreign-going' for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.

(ii). (a). A foreign going vessel of Indian Flag having a General Trading Licence can convert to Coastal run on the basis of a Customs Conversion Order or on filing of Coastal International General Manifest in Coastal Establishment Section of Customs Department.

(b). A foreign going vessel of Foreign Flag can convert to coastal run on the basis of a Coastal Voyage Licence issued by the Director General of Shipping.

(c). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.

(d). In cases of such conversion, coastal rates shall be chargeable only till the vessel completes coastal discharging operations; immediately thereafter, foreign-going rates shall be chargeable by the discharge ports.

(e). For dedicated Indian coastal vessels having a Coastal Licence from the Director General of Shipping, no other document will be required to be entitled to Coastal rates.

(iii). (a). All dollar denominated tariff will be recovered in Indian Rupees after conversion of charges in dollar terms into its equivalent Indian Rupees at the market buying rate notified by the Reserve Bank of India, State Bank of India or its associates or any other Public Sector banks as may be specified from time to time.

(b). The day of entry of the vessel into port limits shall be reckoned as the day for such conversion. In respect of charges on containers, the day of entry of the vessel in the case of import containers and the day of arrival of containers into the port in the case of export containers shall be reckoned as the day for such conversion.

(c). A regular review of exchange rate shall be made once in 30 days from the date of arrival in the cases of vessels staying in the port for longer period. The basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.

(iv). Interest on delayed payments/refunds:

(a). The user shall pay penal interest on delayed payments and ICTPL shall pay penal interest on delayed refunds at the rate of 16.75% per annum.

(b). The delay in payments by user will be counted beyond 10 days after the date of raising the bills. This provision will not apply to the case where payment is to be made before availing of the services/use of terminal properties as stipulated in the MPT Act, 1963 and/or prescribed as a condition in the tariff.

(c) The delay in refunds by the terminal will be counted beyond 20 days from the date of completion of services or on production of all the documents required from the user, whichever is later.

(v). (a). The rates prescribed in the Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The ICTPL may, if it so desires, charge lower rates and/or allow higher rebates and discounts.

(b). The ICTPL may, if it so desires, rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling level.

(c). The ICTPL should notify the public such lower rates and/or rationalisation of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and/or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.

(vi). (a). Wherever a specific tariff for a service/cargo is not available in the notified Scale of Rates, the ICTPL can submit a suitable proposal to the TAMP.

(b). Simultaneously with the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified.

(c). The ad hoc rate to be operated in the interim period must be derived based on existing notified tariffs for comparable services/cargo; and, it must be mutually agreed upon by the ICTPL and the concerned user(s).

(d). The final rate fixed by the TAMP will ordinarily be effective only prospectively. The interim rate adopted in an ad hoc manner will be recognised as such unless it is found to be excessive requiring some moderation retrospectively.

(vii). The minimum charges recovered in any bill shall be Rupees Twenty (₹20/-) only.

(viii). All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.

(ix). In calculating the gross weight or measurement by volume or capacity of any individual item, fractions upto 0.5 shall be taken as 0.5 unit and fractions of 0.5 and above shall be treated as one unit, except where otherwise specified.

(x). (a). The cargo/container related charges for coastal cargo/containers, other than thermal coal and POL including crude oil iron ore and iron ore pellets will be 60% of the normal cargo/container related charges.

(b). In case of cargo related charges, the concessional rates shall be levied on all the relevant handling charges for ship-shore transfer and transfer from/to quay to/from storage yard including wharfage.

(c). In case of container related charges the concession is applicable on composite box rate. Where itemized charges are levied, the concession shall be on all the relevant charges for ship-shore transfer and transfer from/to quay to/from storage yard as well as wharfage on cargo and containers.

(d). The charges for coastal cargo/containers/vessels will be denominated and collected in Indian Rupees.

(xi). Users will not be required to pay charges for delays beyond a reasonable level attributable to ICTPL.

(xii). (a). Container from a foreign port which reaches an Indian Port 'A' for subsequent transshipment to Indian Port 'B' will be levied the concessional charges relevant for its coastal voyage. In other words, containers from/to Indian ports carried by vessels permitted to undertake coastal voyage will qualify for concession.

(b). A container from foreign port landing at ICTPL for subsequent transshipment to an Indian Port on a coastal voyage or vice versa would be charged at 50% of the transshipment charge prescribed for foreign-going vessel and 50% of that prescribed for the coastal category.

(xiii). In case a vessel idles due to non availability or breakdown of the shore based facilities of ICTPL or any other reasons attributable to the ICTPL, rebate equivalent to berth hire charges payable to MBPT accrued during the period of idling of vessel shall be allowed by ICTPL.

SCALE OF RATES

CHAPTER – II

1. Composite charges on Cargo containers handled with Quay Side Gantry Cranes

Description	Containers upto 20'				Containers Above 20' but upto 40'				Containers length above 40'			
	Rates for Foreign Containers (in ₹)		Rates for Coastal Containers (in ₹)		Rates for Foreign Containers (in ₹)		Rates for Coastal Containers (in ₹)		Rates for Foreign Containers (in ₹)		Rates for Coastal Containers (in ₹)	
	Loaded	Empty	Loaded	Empty	Loaded	Empty	Loaded	Empty	Loaded	Empty	Loaded	Empty
General Containers	2779	2216	1668	1330	4169	3325	2501	1995	5558	4433	3335	2660
Transhipment Containers and Same Bottom containers	3308	2858	1984	1715	4961	4286	2976	2571	6615	5715	3969	3429
Export containers brought by Barges under Shipping Bills from other ports for shipment	3341	2891	2005	1735	5013	4338	3010	2603	6683	5783	4010	3469
Containers moved by barges between ICTPL & other ports	3375	2813	2025	1688	5063	4219	3038	2531	6750	5625	4050	3375

2. Composite charges on Cargo containers Handled with cranes other than Quayside Gantry Cranes.

Description	Containers upto 20'				Containers Above 20' but upto 40'				Containers length above 40'			
	Rates for Foreign Containers (in ₹)		Rates for Coastal Containers (in ₹)		Rates for Foreign Containers (in ₹)		Rates for Coastal Containers (in ₹)		Rates for Foreign Containers (in ₹)		Rates for Coastal Containers (in ₹)	
	Loaded	Empty	Loaded	Empty	Loaded	Empty	Loaded	Empty	Loaded	Empty	Loaded	Empty
General Containers	2104	1879	1263	1128	3158	2819	1894	1691	4208	3758	2525	2255
Transhipment Containers and Same Bottom Containers	3139	2801	1884	1681	4709	4203	2825	2521	6278	5603	3766	3361
Export containers brought by Barges under Shipping Bills from other ports for shipment	3173	2835	1904	1701	4759	4253	2855	2551	6345	5670	3808	3403
Containers moved by barges between ICTPL & other ports	2700	2475	1620	1485	4050	3713	2430	2228	5400	4950	3240	2970

Notes: Sections 1& 2

(i). The above composite rates include the following charges towards onboard stevedoring and inclusion of this element in THC levied by the Shipping Lines/ Agents shall be regulated in accordance with the Order of TAMP passed in case no: TAMP/47/2000-MBPT, dated 12 June 2001:

<u>Quayside Gantry Cranes:</u>

(a)	All general Containers.	₹478.50
(b)	All Transhipment containers and all same bottom Containers.	₹957.00
(c)	All export containers brought by barges under shipping bills from JNPT for shipment through ICTPL terminal	₹839.44

<u>Non-Quayside Gantry Cranes:</u>

(a)	All general Containers.	₹797/-
(b)	All Transhipment containers and all same bottom Containers.	₹1594/-
(c)	All containers handled by barges to and fro JNPT	₹361/-
(d)	All export containers brought by barges under shipping bills from JNPT for shipment through ICTPL	₹1158/-

(ii). Cargo container means specifically designed container of uniform size for consolidating goods within compact unit.

(iii). The above charges include wharfage, on board stevedoring charges, handling at shipside, lift on of export/lift off import containers at the pre-stack area, removal of container between shipside and pre-stack.

(iv). Additional services of loading/unloading of containers on to the Agents' trailers.

(v). Lashing and unlashing containers on board the vessel shall be the responsibility of the vessel agents. If lashing and unlashing service is provided by the ICTPL, ₹34/-, ₹51/- and ₹68/- extra per 20' unit, 40' unit and above 40' unit respectively shall be leviable.

(vi). When a transshipment container is unloaded by gantry crane and loaded by Non-Gantry crane or vice versa, 50% of the Box rate for Transshipment containers prescribed at Sections 1 & 2 respectively will be applicable.

3. **With the prior permission of the ICTPL authorities, rebates shall be applicable to the port users for carrying out various container operations with their own arrangements. The rebates applicable along with the conditions are as follows:**

(i). Stevedoring Charges

(a). When Gantry crane is used

Sr. No.	Particulars	Foreign-Going (in ₹)			Coastal (in ₹)		
		20'	**40'**	**Over 40'**	**20'**	**40'**	**Over 40'**
1.	**General containers**						
	Loaded	479	479	479	287	287	287
	Empty	479	479	479	287	287	287
2.	**Transshipment and same bottom containers**						
	Loaded	957	957	957	574	574	574
	Empty	957	957	957	574	574	574
3.	**Export Containers brought by barges under shipping bills from other ports for shipment**						
	Loaded	839	839	839	504	504	504
	Empty	839	839	839	504	504	504

(b). When crane other than Gantry crane is used

Sr. No.	Particulars	Foreign-Going (in ₹)			Coastal (in ₹)		
		20'	**40'**	**Over 40'**	**20'**	**40'**	**Over 40'**
1.	**General containers**						
	Loaded	797	797	797	478	478	478
	Empty	797	797	797	478	478	478
2.	**Transshipment and same bottom containers**						
	Loaded	1594	1594	1594	955	955	955
	Empty	1594	1594	1594	955	955	955
3.	**Containers handled by barges to and fro other ports**						
	Loaded	361	361	361	217	217	217
	Empty	361	361	361	217	217	217
4.	**Export Containers brought by barges under shipping bills from other ports for shipment**						
	Loaded	1158	1158	1158	695	695	695
	Empty	1158	1158	1158	695	695	695

(ii). Transportation Charges

Sr. No.	Particulars	Foreign-Going (in ₹)			Coastal (in ₹)		
		20'	**40'**	**Over 40'**	**20'**	**40'**	**Over 40'**
1.	**General containers handled by barges to and fro other ports**						
	Loaded	777	1165	1554	466	699	932
	Empty	633	949	1265	380	569	759
2.	**Transshipment, Same bottom Containers and Export Containers brought by barges under shipping bills from other ports for shipment through ICTPL Terminal**						
	Loaded	1554	2331	3108	932	1398	1865
	Empty	1265	1898	2530	759	1139	1518

4. Charges on container handling equipment

(1) Charges will be leviable on container handling equipment per move as follows:

	Containers upto 20'		Containers Above 20' but upto 40'		Containers length above 40'	
	Foreign	Coastal	Foreign	Coastal	Foreign	Coastal
	US $	₹	US $	₹	US $	₹
(a). Quayside Gantry Crane	21.38	558	32.06	837	42.75	1116
(b).Rubber Tyred Yard Gantry Crane/ Reach Stacker/ Top Lift Truck (TLT)	5.63	147	8.44	220	11.25	294
(c).Trailer	16.31	426	24.48	639	32.63	852

(2) Composite box rate for on board shifting operations of containers.

Description	Foreign (in ₹)						Coastal (in ₹)					
	20'		40'		Above 40'		20'		40'		Above 40'	
	Loaded	Empty	Loaded	Empty	Loaded	Empty	Loaded	Empty	Loaded	Empty	Loaded	Empty
Gantry Crane	1375	1375	2358	2358	2358	2358	825	825	1415	1415	1415	1415
Ship Crane	653	653	653	653	653	653	392	392	392	392	392	392

(3) Charges for miscellaneous handling by Quayside Gantry Cranes:

(a)	For opening hatch cover / pontoon and placing it -	Foreign	Coastal
	(i) by placing it on the quay (full cycle)	US $ 85.5	₹2233
	(ii) without placing it on the quay	US $ 42.75	₹1116
(b)	For discharging/loading packages, units vehicles and / or any other material except containers individually weighing 20 Tonnes and above per operation/move.	US $ 171	₹4465
(c)	For discharging/loading packages, units vehicles and / or any other material except containers individually weighing less than 20 Tonnes per operation/move.	US $ 85.5	₹2233

5. Licence (storage) fees on containers:

Sr. No.	Place of Storage	Rate per day or Part thereof		
		Container having length upto 20'	Container having length over 20' but upto 40'	Container having length above 40'
1	Loaded/Empty container landed and stored or brought for export and stored inside the Terminal	U.S $ 2.81	U.S. $ 5.62	U.S $ 8.44
2	Empty Container stored inside the Terminal	U.S $ 0.56	U.S $ 1.13	U.S $ 1.69

(a). In case of import containers above charges are leviable two days after the date following the date of completion of vessel's import operations.

(b). In case of export containers above charges are leviable two days after the date of bringing in of fully loaded container till the date prior to the date of shipment (i.e. excluding the date of shipment, including gate in date)/the date of removal in case of Empty Container.

(c). In case of transshipment containers above charges are leviable thirteen days after the date following the of completion of vessels import operation till the date prior to the date of shipment (i.e. excluding the date of shipment).

(d). In case a container is not removed/shipped within 10 days from the date following the date of completion of import operations in case of import or from the date of receipt in case of export, the Licence (storage) Fees will be levied at double the rate prescribed at 5.1 above from 11th day.

(e). Demurrage charge on both cargo and container shall not accrue for the period when ICTPL is not in a position to deliver cargo/container when requested by the users.

(f). The storage charge shall not accrue for the period during which the ICTPL is not in a position to deliver/shift the containers when requested by the users.

Notes:

(1) Import loaded containers removed out of terminal area for destuffing shall be charged license (storage) fees 2 days after the date following the date of completion of vessel's import operations till the date of removal including the date of removal. Similarly, export loaded/empty containers received from the areas other than the terminal premises shall be charged license (storage) fees two days from the date of receipt till the day prior to the date of shipment (i.e. excluding the date of shipment).

(2) If a container has already been charged license (storage) fees on a particular day under Section 5 above, the same unit will not be charged once again on the same day even if it is moved between the areas referred to above.

(3) The charges on a container shall be levied irrespective of whether the container is stored on chassis or on ground or stacked high.

(4) License (storage) fees on Containers brought under Shipping Bill for export shall be charged in terms of provisions of Section 5 above from the date of receipt of the container in the port premises.

(5) The combined Transport Operators/Masters, Owners or Agents of vessels shall remove the containers to the respective site/yard/de-stuffing point, within a period of 4 calendar days following the date of the vessels completion of import operation. If the combined Transport Operators/Masters, Owners or Agents of vessels fail to remove such containers to the nominated areas within the prescribed period of 4 calendar days, ICTPL shall have the authority to remove such containers to the nominated areas at the risk and cost of combined Transport Operators/Masters, Owners or Agents of vessels. Removal charges as notified from time to time will be levied on such containers.

(6). Container stuffed in the terminal premises/container received in terminal duly stuffed in the areas other than terminal premises and removed for shipment through Ports / terminal other than ICTPL shall be charged License fees as per section 5 above from the day following the date of stuffing/from the date of receipt till the date of removal of container. In the case of containers stuffed in the terminal premises/containers received duly stuffed in the areas other than terminal premises and removed to town shall be charged License fees of US$ 2.81 (Coastal – ₹122.40) for a container having length up to 20 feet, US$ 5.63 (Coastal – ₹244.80) for a container having length above 20 feet but up to 40 feet and US$ 8.44 (Coastal – ₹367.20) for a container having length above 40 feet per day or part thereof from the day following the date of stuffing/from the date of receipt till the date of removal of the containers. The cargo inside the container shall be charged demurrage at the rate of ₹563/- per TEU per day or part thereof for the period of its stay in the terminal. [No separate wharfage shall be recovered either on such container or on cargo inside the container].

(7). Storage charges on abandoned FCL containers/Shipper owned containers shall be levied up to the date of receipt of intimation of abandonment in writing or 75 days from the date of landing of container whichever is earlier subject to the following conditions.

(i). The consignee can issue a letter of abandonment at any time.

(ii). If the consignee chooses not to issue such letter of abandonment, the container Agent/MLO can also issue abandonment letter subject to the condition that,

(a). the line shall resume custody of container along with cargo and either take back it or remove it from the terminal premises; and

(b). the line shall pay all terminal charges accrued on the cargo and container before resuming custody of the container.

(iii). The container Agent/MLO shall observe the necessary formalities and bear the cost of transportation and de-stuffing. In case of their failure to take such action within the stipulated period, the storage charge of container shall be continued to be levied till such time all necessary actions are taken by the shipping lines for de-stuffing the cargo.

(iv). Where the container is seized/confiscated by the Custom Authorities and the same cannot be de-stuffed within the prescribed time limit of 75 days, the storage charges will cease to apply from the day the Customs orders release of the cargo subject to lines observing the necessary formalities and bearing the cost of transportation and de-stuffing. Otherwise, seized/confiscated containers should be removed by the line/consignee from the terminal premises to the Customs bonded area and in that case the storage charge shall cease to apply from the day of such removal.

(8). The container other than 'shipper owned container' shall be removed from the regular storage area and moved to Sales Warehouse/Overflow Sheds by ICTPL at the cost and responsibility of the Main Line Operators (MLOs) and thereafter, the container can be de-stuffed before the empty containers are removed from the terminal premises by the MLOs.

6. <u>Charges payable for reefer points:</u>

(1). For every reefer plug point allotted, a charge of US$ 7.31 (coastal – ₹318/-) per container per Unit of 4 hours or part thereof will be levied.

(2). Reefer points will be allotted on per container/per point basis.

(3). The combined Transport Operators/Masters, Owners or Agents of vessels shall provide their own cables from the sources of supply (plug points provided for the purpose) to the Reefer Container and shall employ their own qualified staff to connect the reefer container to this supply and attend on it when in use.

(4). ICTPL reserves the right to supply power to reefer containers and shall not be responsible for any loss whatsoever that the combined Transport Operators/Masters, Owners or Agents of vessels may incur in the event of the:

(a). failure of electric supply due to reasons beyond the control of the ICTPL, (b). ICTPL's inability to supply power in time, and

(c). disconnect the supply without assigning any reason, should this become necessary for smooth operation in the Terminal

7. <u>Charges in respect of labour supplied for stuffing or destuffing of cargo containers</u>:

	Per Container	
	Foreign	**Coastal**
(i) container having length upto 20'	US $ 32.06	₹1395/-
(ii) container having length over 20' but upto 40'	US $ 64.13	₹2791/-
(iii) Container having length above 40'	US $ 96.18	₹4186/-

GENERAL NOTES:

(i) Mafi's and imported chassis shall be treated on par with containers of equal sizes for levy of all charges under this Section and if the same are taken back on board the vessel from which they have been discharged, no charges shall be levied.

(ii) Transshipment and same bottom containers shall be treated on par with import containers for levy of license fees for storage.

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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/41/2011-ICTPL	:	**Proposal from the Indira Container Terminal Private Limited for general revision of its Scale of Rates.**

A Summary of the comments received from the Mumbai Port Trust (MbPT) and users/ user organizations and comments of the Indira Container Terminal Private Limited (ICTPL) on the comments of users are tabulated below:

Sl. No.	Comments of MbPT and users / user organisations	Response received from ICTPL
1.	**Mumbai Port Trust (MbPT)**	
(i).	ICTPL has proposed container box rate which is less by 13.45% in comparison with containers box rates proposed by MbPT.	The Authority had approved our proposal submitted vide gazette notification dated 26 February 2010 by reducing 10% on the MbPT tariff. Now, our proposal is 25% on the reduced tariff which is 12.50% higher than the then MbPT tariff. As regards container box rates proposed by us are less by 13.45% in comparison to the Container Box Rate proposed by MbPT, we have no comments to offer in the absence of information.
(ii).	Two free days has been proposed under chapter - II (5) (a) and (b) - for recovery of license (storage) fees on containers.	Free period is offered with a view to promote business and is in line with general requirement of trade.
(iii).	Stuffing / Destuffing activities are not carried out at ICTPL terminal premises. However, ICTPL vide Note 1 under Chapter - II (5) of proposed SoR have proposed the same.	Even though ICTPL does not carry out any stuffing / destuffing activities in its terminal as general service, it is proposed to have the item to take care of special request for examination, inspection, etc. on specific occasions.
(iv).	It is understood that electric reefer points are not provided to reefer containers at ICTPL terminal premises by ICTPL. However, ICTPL have vide Chapter II clause 6 have proposed a rate in the SoR.	ICTPL have reefer points in the Terminal and accordingly the charges are proposed.
(v).	It is understood that ICTPL does not supply labour for stuffing / destuffing activity at ICTPL terminal premises. However, ICTPL vide Chapter II clause 7 have proposed a rate in the SoR.	It is only proposed to have such activities in the terminal to provide services as and when demanded for examination, inspection etc.
(vi).	Note 2 under Chapter - II (5) of proposed SoR may be amended as, "If a container has already been charged license (storage) fees on a particular day under Section 5 above, the same unit will not be charged once again on the same day even if it is moved between the areas referred to above".	We agree with the suggestion and it will be reworded as Section 5.
(vii).	Elements of composite box rate fixed by ICTPL has not been furnished or mentioned in the proposed SoR.	Element of composite box rate fixed by ICTPL are given below: • All handling activities at wharf, yard and gate. • Handling containers (empty and loaded containers with cargo) from/to ship/barges. • Transportation of containers (empty and loaded containers with cargo) to and from ICT yard and ICT wharf (quay). • Handling of containers (empty and loaded

		containers with cargo) to and from yard and the tractor placed by the customers. • Processing of gate in / gate out of (empty and loaded containers with cargo). • Container terminal planning for movement of containers in / out of terminal and within the terminal. • Relevant documentation pertaining to terminal operation for all services rendered by terminal. • The rate is composite and includes all handling charges for containers with / without cargo in it for services provided at wharf, yard and gate, etc. of ICT. No additional charge is payable by the customers for services availed at ICT for handling of containers including any cargo in it.
(viii).	Formats (a) Income under the head "others" shown in format 2B does not contain break-up of different income taken for projections.	It is income received from MbPT towards 25% of wharfage on handling of bulk cargo.
	(b). Revenue share has been considered as the operating cost in form-3B under Sr. No.A (V) (II), which is not as per clause 2.8.1 of the TAMP's guidelines.	The revenue share paid to MbPT has not been considered as part of cost while calculating ROI.
(ix).	Projected container traffic and actual figures of containers handled by ICTPL is given below. <table><tr><th>Year</th><th>Projected traffic</th><th>Actual traffic</th><th>% fall</th></tr><tr><td>2009-10</td><td>100510 TEUs</td><td>37951 TEUs</td><td>62%</td></tr><tr><td>2010-11</td><td>120612 TEUs</td><td>51224 TEUs</td><td>58%</td></tr><tr><td>2011-12</td><td>130663 TEUs</td><td>-</td><td>-</td></tr></table>	No comments.
2.	**Mumbai and Nhava-Sheva Ship-Agents Association**	
(i).	ICTPL was started for the purpose of constructing and operating the proposed Off-Shore Container Terminal. Till then, they are supposed to operate the existing Container Berth at BPS. Hence, the main service will commence only when the OFC is commissioned and operated where upon we could assess the quality of service and cost associated with it. The current handling of few containers at BPS does not warrant any rate increase as the services prevailing there is the same as what was being offered to the trade by MbPT, prior to ICTPL's entry. Further, the trade volume has not increased, and, it has only reduced since ICTPL took over the operation at BPS. As such, there is no scope for any increase in the existing tariff as the small volume of containers coming over to MbPT will not be able to sustain the same. Therefore, there is no scope for any revision of the existing tariff of ICTPL. Instead, ICTPL need to find ways to optimise the usage of BPS by letting vessels other than container ships using that berth when container ships are not being handled there.	The ICTPL is finding it difficult to attract more containers to MbPT mainly due to the high cost at MbPT (cost includes the charges of ICTPL duly approved by TAMP and wharfage and demurrage being charged by MbPT on ICTPL containers), inadequate channel depth (7.5 meters) and the problem being faced of late due to GTIPL and NSICT not permitting berthing of barges. However, contrary to the statement in the letter of MANSA, the throughput at BPS has increased since taking over of operations by ICTPL, which can be seen from the below table: <table><tr><th>Financial Year</th><th>BPS Throughput (TEUs)</th><th>Operated by</th></tr><tr><td>2004-2005</td><td>58,068</td><td>MbPT</td></tr><tr><td>2005-2006</td><td>45,235</td><td>MbPT</td></tr><tr><td>2006-2007</td><td>31,428</td><td>MbPT</td></tr><tr><td>2007-2008</td><td>14,550</td><td>MbPT</td></tr><tr><td>2008-2009</td><td>20,738</td><td>ICTPL</td></tr><tr><td>2009-2010</td><td>39,002</td><td>ICTPL</td></tr><tr><td>2010-2011</td><td>51,593</td><td>ICTPL</td></tr></table> In addition, the productivity of the terminal also has improved substantially. The Gross Moves per hour (mph) for the quay cranes has increased from about 8-9 mph to 19-20 mph. All

		the functions like planning, documentation etc. are being directly handled by ICTPL in line with the process and procedures otherwise being followed in any of the modern container terminals in India. As regards the point made by MANSA for utilization of BPS berth for other than container vessels, ICTPL permits such vessels even now, as and when such requests are received from MbPT. ICTPL is exploring the possibility of utilising the BPS berth to its maximum capacity. The proposal submitted by ICTPL is based on the cost incurred by ICTPL. Therefore, it has got full justification for increase in the tariff.
3.	**Indian Merchants' Chamber**	
(i).	There is no justification for upward revision being sought by the ICTPL. The reduction in revenue of ICTPL seems to have been on account of non execution of projects in time. Experience of other ports, which have completed projects, in time indicate that they do not have such difficulties.	We have furnished all our justification for upward revision of our present tariff. The delay in the project has not happened due to the fault of the developer as stated by IMC. The Independent Engineer has already examined this proposal and recommended for extension of the project by 21 months. This period may also undergo a change due to certain obligations not met by the Licensor.
(ii).	Appropriate measures to ensure revenue efficiency be suggested to ICTPL and rates be not revised upward.	As regards the efficiency of the terminal, the ICTPL handle around 20 moves per hour, with more than 30 years old crane, an achievement in the history of Mumbai Port. Recently, the Schedule of Rates for MbPT has been approved by TAMP with an upward revision of 30%. While the terminal started its operation, MbPT tariff was followed and subsequently, TAMP reduced ICTPL tariff by 10% w.e.f 26 February 2010. It is only proposed now to enhance 25% on the reduced tariff. Therefore, our proposal is quite justified as the hike sought is on reduced tariff and even with this hike our SoR will be very competitive when compared with nearby terminals and request the Authority to approve our proposal, taking into account the merits of the case.

2. A joint hearing in this case was held on 14 February 2012 at the Office of the Authority. At the joint hearing, the ICTPL, MbPT and the concerned users/ organisation bodies have made the following submissions:

Indira Container Terminal Private Limited (ICTPL)

(i). As per the Licence Agreement, our operations at BPS would be only upto 31 December 2012. We are not sure now whether extension of time for the existing operation would be necessary, which will depend on the MbPT completing its obligations in time.

(ii). Our traffic is not growing. As a matter of fact, it has reduced in the current year. The high wharfage and demurrage charges collected by MbPT are a deterrent to traffic growth. Further, the vessel related charges of MbPT has recently gone up by about

30%. Shipping lines do not find Mumbai Port as a favourable location to bring container volumes.

(iii). Our efforts resulted in significant increase in crane productivity which is around 20 moves per hour.

(iv). We have proposed 25% increase. Even if this increase is allowed we will not meet the revenue requirement.

(v). Even when there is congestion at JNPT, ships prefer to idle at anchorage instead of coming to Mumbai Port, because of prohibitive port cost levied by MbPT. Octroi is also a heavy burden.

(vi). There is also a dispute with MbPT on electricity charges payable. As per the agreement, it should be around ₹7 per unit. In reality, MbPT charges around ₹16 to 17 per unit.

(vii). Unless MbPT commits right now about completion of its part of OCT works, we will not be in a position to indent equipment. Lead time for procurement will be 15 to 18 months. When yard area is allotted to us by MbPT, it may need atleast one year for us to develop the yard.

(viii). We desperately seek tariff increase to meet atleast part of our expenses. Trade pays higher charges because of levy of certain charges by MbPT.

Mumbai Port Trust (MbPT)

(i). An expert committee is appointed to go into the electricity related dispute. ICTPL does not pay as per our bill but as per their calculations based on the Licence Agreement.

(ii). MbPT will complete its obligations relating to OCT by December 2012. Operation should shift to OCT by March 2013.

(iii). We have given written comments on the proposal. Please consider them.

Container Shipping Lines Association (India) [CSLA]

(i). Trade gets no new facility or service. There is no justification for the proposed tariff increase.

(ii). MbPT does not follow TAMP's orders on abandoned containers.

Shipping Corporation of India Limited (SCI)

(i). Only a tariff reduction will help ICTPL to improve capacity utilization.

Mumbai and Nhava-Sheva Ship-Agents' Association (MANSA)

(i). We are against tariff increase at this juncture.

Western India Shippers' Association (WISA)

(i). There is no case for tariff increase. If allowed, it will be a disincentive to trade to utilize ICTPL facilities.

(ii). TAMP should review the practice of denominating container tariff in dollar terms.

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