(Published in Part – III Section 4 of the Gazette of India, Extraordinary)

Tariff Authority for Major Ports

G. No. 264 **New Delhi,** **9 September 2014**

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act**,** 1963 (38 of 1963)**,** the Tariff Authority for Major Ports hereby disposes of the proposal received from the New Mangalore Port Trust for fixation of the wharfage rate for Jetty No. 10 for the period from 01 April 2009 to 15 October 2009 and for Jetty No. 11 for the period from 01 April 2009 to 31 March 2011 as in the Order appended hereto.

(**T.S. Balasubramanian**)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/57/2012 - NMPT

New Mangalore Port Trust … Applicant

QUORUM:

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

O R D E R

(Passed on this 4th day of August 2014)

This case relates to the proposal received from New Mangalore Port Trust for fixation of the wharfage rate for Jetty No. 10 for the period from 01 April 2009 to 15 October 2009 and for Jetty No. 11 for the period from 01 April 2009 to 31 March 2011.

2. Before bringing out the main points of the proposal in reference, a brief background relevant to the current case is brought out in the following paragraphs.

3.1. Memorandum of Understanding:

(i). The New Mangalore Port Trust (NMPT) and Mangalore Refinery and Petrochemicals Limited (MRPL) had signed a Memorandum of Understanding (MOU) on 20 January 1995 for construction of jetty no. 10 and another MOU was signed on 9 February 2000 between them for construction of jetty no. 11.

(ii). Both the MOUs for Jetty no. 10 and 11 contain a specific provision (Clause 4 of the MOU) that computation of a wharfage rate will be based on actual operation and maintenance cost, sharing of administrative and general overheads, depreciation, interest on loan and some percentage of capital employed to be fixed by the Government. The wharfage charge is subject to yearly review and consequent adjustment depending on tonnage involved.

Clause 4 of the MOU in its concluding para also states that once the Funds have been repaid, NMPT agrees to charge MRPL the normal wharfage charges. The actual amount of such wharfage charges will be mutually agreed to between the parties and subject to the approval of Government of India. In case of any lack of agreement, the decision of the Govt. of India, in the Ministry of Surface Transport shall be final and binding on both NMPT and MRPL.

3.2. Guiding principles:

(i). Both the NMPT and the MRPL had disagreements on various issues concerning computation of wharfage rate for Jetty No.10. This Authority vide its earlier Orders dated 27 October 1998, 19 July 2000 and 18 November 2004 has set the guiding principles to be followed for fixation of wharfage rate for Jetty No.10.

(ii). In the order dated 9 August 2001 relating to general revision of tariff of NMPT, it was also clarified that the instalment of loan repayment must be considered in computation of wharfage rate only to the extent it is in excess of depreciation reckoned in the calculation.

3.3. Both MRPL and NMPT filed Writ Petitions in the High Court of Karnataka challenging some of the principles enumerated by this Authority in its Order dated 19 July 2000. The Writ Petitions filed by both NMPT and MRPL challenging some of the guidelines issued by this Authority and on the wharfage rate fixed by this Authority for the years 1996-97 to 1999-2000 have been dismissed by the Single Judge of the Hon'ble High Court of Karnataka vide order dated 27 October 2005. The Writ Appeal filed by the MRPL challenging the Order of Hon'ble Single Judge has also been dismissed by the Division Bench of the Hon'ble High Court of Karnataka in their Order dated 20 April 2010. Hence, there is no order as such restraining this Authority to take up the matter for fixing wharfage rate for Jetty No.10.

4.1. The NMPT had earlier filed its proposal dated 31 August 2012 undercover of which the port had forwarded a copy of its letter dated 14 October 2011 addressed to MRPL along with the calculation of wharfage rate for Jetty no. 11 for the year 2010-11. The NMPT in its said letter mentioned that as there is no communication from the MRPL confirming the calculation relating to the proposed rate of ₹41.67 per tonne for Jetty No.11 for the year 2010-11.

4.2. Since the NMPT in its proposal dated 31 August 2012 stated that the MRPL has not communicated confirmation on wharfage rate calculation forwarded by the NMPT, which is the practice followed by this Authority in their case and also since the proposal did not cover fixation of wharfage rate for both the jetties for the year 2009-10 and for Jetty No. 10 for the year 2010-11, the NMPT was requested vide our letter dated 19 October 2012 to file a complete proposal for fixation of wharfage rate for Jetty Nos. 10 & 11 for the years 2009-10 and 2010-11 at the earliest after verification of figures by the MRPL and along with the views of MRPL and comments of NMPT thereon.

5. Subsequently, the NMPT vide its letter dated 10 June 2013 with a copy endorsed to MRPL has filed a proposal for fixation of wharfage rate for Jetty no. 10 for the period from 1.4.2009 to 15.10.2009 and for Jetty no. 11 for the period 2009-10 and 2010-11. The main points made by the NMPT in the said proposal are summarized below:

(i). The computation of wharfage rate has been verified by MRPL and further documents as required by MRPL are also given to them and this matter was discussed by the NMPT with the MRPL.

(ii). As per the calculation sheet furnished, the wharfage rate proposed by the NMPT in the said proposal is as under:

Jetty No.10		**Jetty No. 11**	
From 1.4.2009 to 15.10.2009	₹ 53.55 per tonne	2009-10	₹ 40.90 per tonne
		2010-11	₹ 41.67 per tonne

(iii). The NMPT has also furnished its views/remarks on the representation dated 23 April 2013 filed by the MRPL on the concluding para 11.2 of order dated 1 April 2013. As stated earlier, that matter is being dealt with separately and hence not brought out here.

(iv). Filing the proposal dated 10 June 2013, the port has requested to fix the wharfage for Jetty No.10 for the period from 1.4.2009 to 15.10.2009 and Jetty No.11 from 1.4.2009 to 31.3.2011.

6.1. As NMPT had endorsed its proposal dated 10 June 2013 to MRPL, the MRPL has in its letter dated 14 June 2013 addressed to NMPT with a copy endorsed to us disputed various items considered by NMPT in the wharfage calculation of NMPT and has requested the port to modify the computation of wharfage charges after considering its observations. Subsequently, the NMPT in its letter dated 21 June 2013 addressed to MRPL with a copy endorsed to us, has furnished its views on the comments of MRPL and requested MRPL to confirm the wharfage rate arrived at by the NMPT. The summary of the main points made by MRPL and the comments of NMPT thereon are tabulated below:

Sl. No.	**MRPL observations dated 14 June 2013**	**NMPT comments dated 21 June 2013**
A		
1.	As per CAG observation, fixed assets include ₹3.00 Crores paid to Government of Karnataka towards land at Devanhalli Business park and Long Term Investments include ₹29.65 Crore towards amount invested in equity of SPVs for road and rail connectivity projects. This, being new projects totally unconnected with the present port operations, should be excluded from computation of ROI	(i). As regards Fixed Assets of ₹3 crores paid to Govt. of Karnataka towards land at Devanahalli Business Park, it is clarified that this item is clubbed under land cost in the NMPT Asset Schedule. As this land is for construction and connected with the port operations, the total land cost of NMPT has been adopted for the purpose of calculation of capital employed. It is not correct to delete this item from the calculation as it will amount to deviation of calculation

<table>
<tr><td></td><td>(common assets).</td><td>procedure approved by the TAMP while approving the rates for earlier years.

(ii). As regard the investment of ₹29.65 crores towards equity of SPVs for road and rail connectivity, it is clarified that this is part of cash investments during that year i.e. w.e.f 2004-05 and 2008-09 onwards and is considered for calculating the working capital for rate fixation as per the principle adopted for calculation of working capital.</td></tr>
<tr><td>2.</td><td>(i). Assets capitalized in 2009-10 for ₹66.87 Crores and in 2010-11 for ₹14.87 Crores as per Balance Sheet.

The details of such asset additions need to be informed by the Port as this will have consequential impact on Depreciation & ROI for the purpose of wharfage computation.

(ii). It is also noticed that the Wharf Length ratio is unchanged with respect to the earlier years, meaning that no new Jetty has come into operation. As per the information, the last Jetty commissioned was Coal Berth, which was commissioned on 14/06/2006. If the additional capitalization pertains to this Jetty, Port may kindly provide us the details and confirm the methodology of capitalization after 3 years of its commissioning. Alternatively, this must be eliminated from the ROI & Depreciation computation.
In case any new Berth has been commissioned, corresponding effect needs to be given on Wharf Length Ratio.</td><td>(i). It is clarified that the asset capitalization statement were made available to the MRPL at the time of verification of the documents by the MRPL. If required, the same will be made again available for verification.

(ii). The coal berth referred by MRPL in the observation was constructed on BOT basis. Hence, the question of including in the wharf length ratio does not arise. Further, the cost of this project is not inbuilt in the capitalization as well as depreciation and ROI computation in the rate calculation. Hence, the claim of MRPL to exclude the above item from the calculation is not correct.</td></tr>
<tr><td>3.</td><td>The Traffic Dept. expenses-Direct (HoA 231) pertaining to J10 for post MOU period (167 days) has been allocated to Jetty No. 11.

The total expenditure of ₹61,54,346.00 should have been first allocated equally between J-10 & J-11 and out of this allocation only, proportionate period expenses for 198 days should have been considered for. The calculation is shown hereunder :-

<table>
<tr><th>HoA-231</th><th>Total</th><th>Jetty-10</th><th>Jetty-11</th></tr>
<tr><td>50:50 sharing</td><td>61,54,346.00</td><td>30,77,173.00</td><td>30,77,173.00</td></tr>
<tr><td>Proportionate for 198 days on J-10</td><td>47,46,434.00</td><td>16,69,261.00</td><td>30,77,173.00</td></tr>
<tr><td>Charged by NMPT</td><td>61,54,346.00</td><td>21,64,406.00</td><td>39,89,940.00</td></tr>
<tr><td>Excess charged</td><td>14,07,912.00</td><td>4,95,145.00</td><td>9,12,767.00</td></tr>
</table>
Excess charged to J-10 & 11, to the extent of ₹14,07,912.00 may be reversed and computation may be revised.</td><td>(i). It is clarified that the total direct expenses of Traffic dept. after the expiry of MOU period has been calculated correctly taking into account the relative cost of Jetty No.10 also.

(ii). The total Direct Expenditure of Traffic dept. for the full year comes to ₹39,89,940/- for each of jetties. Hence, it is clarified that the allocation of expenditure has been taken in full for jetty no. 11 and 198 days proportionately to Jetty No.10. It is further stated that ₹61,54,346/- is the total expenditure apprortionable for both the jetties as explained above.</td></tr>
<tr><td>4.</td><td>While computing Return on Capital employed on common assets for calculation of net block of J-11, proportionate post MOU period portion of J-10 Net Block is allocated to J-11 to the</td><td>It is clarified that the capital employed on common assets for calculation of net block of jetty no.11 has been correctly computed by taking jetty no.10 as common assets for the post MOU period.</td></tr>
</table>

	extent of ₹71,84,15,912.00. This is not proper considering the fact that no income pertaining to Jetty 10 corresponding to post MOU periods have been allocated to Jetty 11 and further wharfage computation for post MOU period should be governed by a separate set of calculations considering the operating expenses + ROI for corresponding period.	
5.	Depreciation MGA Preliminary study Rs.88.11 Lakh for 2009-10 and ₹47.90 Lakh For 2010-11, as per ledger which is further allocated on wharf length ratio to wharfage computation. Nature of corresponding capital expenditures to be informed by Port.	It may be recalled that the issue raised has been discussed in the TAMP hearing held while fixing the rates for the years 2002-03 to 2008-09. Hence, raising the issue again does not seem to be correct.
B	<u>Other issues</u>:	
	Other issues which were raised before NMPT as well TAMP for the periods 2002-03 to 2008-09, also need to be reconsidered as we are of the view that the stand of NMPT is against the MOU conditions as well as not in the interest of users, who have facilitated huge investment in infrastructure development:-	The issues referred in para 1 to 4 have already been addressed by TAMP and after hearing MRPL, TAMP has notified the rates for the period from 2002-03 to 2008-09 vide order dated 1.4.2013. Therefore, NMPT has no further remarks to offer. As regards the computation of wharfage based on the MOU methodology for the remaining period i.e. from 1.4.2009 to 15.10.2009 and 31.3.2011 for jetty no.11 computing wharfage based on the MOU formula after that period does not arise. As MRPL is aware that after the expiry of MOU, only normal wharfage charges is applicable and this has been clearly brought by the port while submitting the proposals for the general revision of scale of rates which was notified by TAMP in its Order dated 21.02.2012 and while notifying the rate from the period from 2002-03 to 2008-09 in its order dated 1.4.2013. For the aforesaid reasons, MRPL is requested to confirm the wharfage rate arrived at during the MOU period from 1.4.2009 to 15.10.2009 for jetty no.10 and from 1.4.2009 to 31.3.2011 for jetty no.11 so that the rates can be notified by the TAMP. In respect of the post MOU period the matter has been referred to Ministry of Shipping and order of the Ministry is awaited. Pending orders of the Ministry, MRPL is requested to pay the wharfage as per the scale of rates for the post MOU period so as to avoid accumulation of dues and service tax thereon.
1.	The capital dredging cost and cost of diaphragm wall, which are common to both Berth No. 11 & 12 has been considered as investment cost under Berth No. 11 only. Accordingly, the Return on investment and loan repayment is being considered higher than what they should be. It is reiterated that as the both assets are common to Berth No 11 & 12, only 50% of the investment cost should be considered in the computation of Return on Capital employed included in the wharfage computation.	
2.	Loan agreement of Jetty No. 11 with State Bank of India may be referred. As per repayment clause of the agreement, the repayment installment is to be considered as 1/10th of the actual amount drawn. However, the repayment debited in the wharfage computation is 10% of the sanctioned loan amount, instead of loan drawn. As already brought to your notice as well as submitted before TAMP, we object to this excess debit resulting in pre-closure of loan and NMPT's claim of completion of MOU terms	
3.	It is observed from the Net Block calculation of Common Assets, HPCL, ASIDE Schemes and Cranes & Vehicles are also considered. As these do not have any relationship with MRPL or any usage by MRPL, the same need to be reduced from Net Block Value.	
4.	The Port has revised the methodology for computation of Working Capital, impacting ROI claim @ 3% on Jetty assets. Port has included short term investments and fixed	

	deposits without giving credit for corresponding interest earned on such current assets/investments. Suitable corrections need to be made in this regard	
5.	Moreover, MRPL has not received the computation of wharfage on MOU methodology for the period 16/10/2009 to 31/03/2013 for jetty No. 10 and for the period 01/04/2011 to 31/03/2013 for Jetty No. 11. NMPT is requested to provide such computation as per TAMP Notification No. TAMP/22/2012-NMPT dated 12/04/2013.	

6.2. Subsequently, the MRPL vide its letter dated 2 July 2013 has made further submissions and the NMPT vide its letter dated 12 July 2013 has furnished its reply on the submissions of MRPL. The MRPL has made further comments vide its letter dated 1 August 2013 on the comments furnished by the NMPT dated 12 July 2013. The main comments of MRPL, views of NMPT thereon and further comments of the MRPL thereon to the extent relevant to this case are tabulated below:

Sl. No.	**Comments of MRPL** dated 2 July 2013	**Comments of NMPT** dated 12 July 2013	**Comments of MRPL** dated 1 August 2013
(i).	Though MRPL contributes close to 60% of total NMPT traffic, no special treatment is being extended and MRPL is considered at par with other users.	NMPT has no remarks. NMPT is only charging wharfage as per the rates notified by TAMP.	---
(ii).	The issue regarding pre-closure of SBI loan is a clear deviation of Rupee Loan Agreement by NMPT/SBI. Article 8.2 of Rupee Loan Agreement states that if for any reason, the amount finally disbursed by SBI out of the loan is less than the amount of the loan, the repayment schedules shall be revised accordingly by SBI on pro-rata basis. The amount sanctioned was ₹160 crores whereas the amount drawn was ₹129.78 crores. MRPL first representation with regard to this issue with NMPT was on 29.11.2004 and subsequent several correspondence. MRPL has taken up this with SBI also vide letter dated 18.02.2005. TAMP vide its order mentioned that "In any case, this Authority is not the appropriate forum to	The issue of pre-closure of loan has been dealt by TAMP vide para NO. 10(v) of the TAMP order dated 1 April 2013 while fixing the wharfage rate for the period from 2002-03 to 2008-09 during the MOU period. As regards the dispute in fixing the wharfage after the MOU period the same has been referred to Ministry for orders vide this office letter dated 23.10.2012. Orders from Ministry is awaited. As and when any order is received the same will be informed to TAMP. It is submitted that, after hearing MRPL only, TAMP has reduced the tariff for POL cargo from the rate of ₹70/- per M.T. to ₹51.80 per MT and also reduced the wharfage rate of all other commodities by 26% during the General Revision of Scale of Rates. Despite reduction in tariff by TAMP, MRPL is not honouring the TAMP order and not paying the notified wharfage rate of	Regarding pre-closure of MOU period, even though MRPL has made detailed submissions to TAMP vide our letter dated July 5, 2012 during the finalization of wharfage rates for the years 2002-03 to 2008-09, TAMP has not considered our views for these years. However, as this has major impact during the ensuing years, the Authority is requested to re-consider MRPL's plea on merits. It is not correct to state that there is no disputes in preclosure of loan while, MRPL being a party to the tripartite Rupee loan agreement had raised strong objections to the pre-closure. MRPL may be permitted to restate what has been stated earlier. The loan repayment at higher amount was not consented by MRPL. Also, TAMP has not really gone

	adjudicate on the dispute arising between the parties in terms of MOU of the Rupee Term Loan agreement as the case may be". It is felt that there is dispute between MRPL and NMPT over repayment of loan and hence should be considered in its correct perspective by TAMP, when NMPT unilaterally pre closes the loan with a sole intention of reducing period of MOU and MRPL look forward to TAMP to set right the wrong doing and reinstate the righteous thing.	₹51.80 per MT after 1.4.2012 onwards and continued to pay adhoc rate of ₹33/- per MT. which has no basis for the post MOU period and not indicated anywhere in the TAMP orders.	into this issue which can be seen from the recordings in the order. Hence, the clarifications given by NMPT are incorrect and do not give full background of the issues. It is therefore requested to TAMP to consider the facts as above while issuing the subject clarification.

7.1. Thus, it is seen that though the NMPT in its proposal dated 10 June 2013, which is brought out in para 6 above, has submitted that the computation of wharfage rate for Jetty no.10 and 11 has been verified by the MRPL and that further relevant documents are submitted to MRPL for verification, it is seen that the MRPL in its letter dated 14 June 2013 and subsequent letters dated 2 July 2013 brought out in para 6.1 and 6.2 above, addressed to NMPT with a copy endorsed to us has disputed various items in the wharfage calculation furnished in the NMPT's proposal dated 10 June 2013.

7.2. It is relevant here to state that this Authority in its various orders relating to determination of wharfage rate for Jetty Nos.10 and 11 dedicated to the MRPL and in particular the last Order No.TAMP/22/2012-NMPT dated 1 April 2013, has advised that the NMPT and MRPL should sit together and finalize the wharfage rate for these jetties and submit the proposal to TAMP for the period 2009-10 onwards.

7.3. Based on series of correspondences exchanged between the NMPT and MRPL, it appeared that the wharfage calculation furnished by the port in its letter dated 10 June 2013 is not a final wharfage rate duly verified and confirmed by the MRPL. In view of that, the NMPT was advised vide our letter dated 23 July 2013 that both NMPT and MRPL should sit together and finalize the wharfage rate for these jetties and submit a proposal to TAMP for fixation of final wharfage rate for these jetties in line with the decision of this Authority in the Order dated 1 April 2013.

8. Subsequently, the submissions made by the NMPT vide its letter no. NMPT/FIN/REV/J.10-11/2009 dated 25 July 2013 which are found relevant for the present proposal, are summarized below:

(i). The wharfage rate calculations for the MOU period forwarded to MRPL vide its letters dated 10 October 2011 and 14 October 2011 were verified by the MRPL and MRPL has made certain observations on the calculations of wharfage in its letter dated 14 June 2013.

(ii). The views of MRPL to reconsider a few issues viz., cost of capital dredging and diaphragm wall, Loan drawn from SBI, Net block calculations of common assets and consideration of short term investment under working capital, were already settled while finalizing the wharfage rates for period from 2002-03 to 2008-09 by the Authority.

(iii). The MRPL has stated that they have not received wharfage calculations for the period from 16-10-2009 to 31-03-2013 for jetty no.10 and for the period from 01-04-2011 to 31-03-2013 for jetty no.11. MRPL is interpreting the advice of the TAMP to sit together and finalize the wharfage rates on MOU methodology referring to this period (post MOU period).

The request of MRPL for following the MOU methodology for the post MOU period is not acceptable to the port. Therefore, the question of sitting together and finalizing the wharfage based on MOU methodology up to 31-03-2013 and getting confirmation from MRPL does not arise.

(iv). The NMPT has already vide its letter dated 21 June 2013 furnished its comments on the points made by MRPL in its letter dated 14 June 2013. Further, submissions will be made by NMPT during the joint hearing while finalizing the wharfage rates for the balance period of MOU.

(v). The NMPT has, therefore, requested that the proposal should be taken up for finalizing the wharfage rates for the period from 01-04-2009 to 15-10-2009 for jetty no.10 and from 01-04-2009 to 31-03-2011 for jetty no.11 and that necessary direction may be issued to MRPL to clarify that the period from 2009-10 onwards refer only to the remaining period of MOU and not after the expiry of MOU.

9.1. Based on the above position brought out by the NMPT in its letter dated 25 July 2013, the NMPT proposal dated 10 June 2013 for fixation of the wharfage rate for Jetty No.10 for the period from 1.4.2009 to 15.10.2009 and Jetty No.11 from 1.4.2009 to 31.3.2011 was taken on record and a copy of NMPT proposal dated 10 June 2013 along with a copy each of NMPT letter dated 21 June 2013 furnishing comments on MRPL letter dated 14 June 2013, was forwarded to MRPL undercover of our letter dated 12 August 2013 for its comments in accordance with consultation procedure prescribed.

9.2. The MRPL vide its letter dated 1 August 2013 and subsequent letter dated 27 August 2013 has furnished its comments on the NMPT proposal dated 10 June 2013. The NMPT vide its letter dated 18 September 2013 has furnished its comments thereon. The comments of MRPL and NMPT comments thereon are tabulated below:

Sl. No.	**Comments of MRPL dtd. 1 August 2013 on the comments of NMPT vide its letter dated 21 June 2013**	**Comments of NMPT dated 18 September 2013**
A		
1.	<u>Inclusion ₹3 crores paid to Govt. of Karnataka and ₹29.65 crores towards SPV</u>: The amount referred in these points have been invested in new projects taken-up by the port. Funding of such projects, the revenue model etc. would be independent of the existing jetty operations. It is not logical and justifiable for the port to include these amount for computation of ROI dedicated jetties governed by separate MOUs. In this context, clause no. 10 (iv-c) of TAMP order dated 19.07.2000 with respect to return on investment may be referred. It is mentioned in the order that the NMPT should not include any other assets which are directly relevant to some other revenue earning activities. In view of the above and TAMP order, as the above assets are not related to MRPL jetty operations and are directly relevant to some other revenue generating activities, this amount may please be excluded for calculation of ROI. It may be seen that the chargeable common assets of the port for the purpose of computation of ROI of 18% have gone up from ₹122 crore in the year 2002-03, when jetty no.11 was	As already replied in NMPT earlier letter dated 21 June 2013, it is reiterated that the inclusion of the said assets are in line with the procedure approved by the TAMP for calculation of wharfage rates. Regarding ₹3 crores paid to the Govt. of Karnataka towards land at Devanahalli, Business Park, it is informed that this has been included under Fixed Assets during 2008-09 and TAMP has considered this for fixation of wharfage for the year 2008-09. As regards the common assets, the Port charged for the computation of ROI, the net common assets of ₹186.81 crores is already approved by the Authority for computation of wharfage rates for the year 2008-09 and the net additions made to the common assets for the year 2009-10 is only ₹50.81 crores.

	commissioned to ₹237.69 crores in the year 2009-10. Such additions to the common assets for computation of ROI on common assets is also not in line with TAMP guidelines in this regard as mentioned above and need to be backed-out from the wharfage computation.	
2.	<u>Inclusion of addition to Fixed Assets – ₹66.87 crores in 2009-10 and ₹14.87 crore in 2010-11:</u> It is reiterated that the details of assets capitalized amounting to ₹66.87 crore ad ₹14.87 crore have not been furnished to MRPL. Without knowing the nature of such assets capitalized, MRPL will not be in position to conclude this point. Port may kindly arrange to furnish the same.	It is clarified that the asset capitalization statements were made available to MRPL at the time of verification of documents by the MRPL. If required the same will be made available of verification.
3.	<u>Allocation of common expenditure of Jetty</u> <u>No. 10 to Jetty No. 11 post MOU period:</u> Expenditure allocable to jetty no. 10 for the period beyond MOU period cannot be allocated to either jetty no. 10 or jetty no.11 while arriving at wharfage for the MOU period. If port insists for the same, then necessary credit for proportionate income earned by jetty no. 10 for such period beyond MOU shall also be given for computation of wharfage during the MOU period.	The expenditure of ₹61.54 lakhs includes full expenditure of ₹39.90 lakhs incurred for Jetty no. 11 and ₹21.64 lakhs being the proportionate expenditure for 198 days for jetty no. 10. Hence, it is clarified that the allocation of expenditure is correct.
4.	Port's stand that the Capital employed on common assets for calculation of net block of Jetty no. 11 has been correctly computed by taking Jetty no.10 as common assets post MOUs is not correct for the same analogy explained in 3 above.	The reply already given in NMPT letter dated 21 June 2013 continues to hold good.
5.	Port has not provided complete details of the items included under the head Depreciation – MGA & Preliminary study. However, considering the stand taken by TAMP earlier and in-order to simplify the process of finalization of wharfage. MRPL would not like to pursue this point further.	NMPT has not responded here.
B.	Even though, these points have already been referred to TAMP while finalizing wharfage rate for the year 2002-03 to 2008-09, since they have bearing on wharfage computation for the years under consideration, it is reiterated:	Port has no remarks to offer as the issues were already dealt by TAMP while fixing the wharfage for the years 2002-2003 to 2008-2009 vide order dated 1 April 2013.
1.	<u>Sharing of capital expenditure on dredging and diaphragm wall</u> : One of the NMPT's contention against sharing of common expenditure is that since the drafts at berth no. 12 is lesser than that in berth no.11, the berth no. 12 cannot handle vessels meant for berth no.11. If it was not envisaged that jetty no. 12 cannot handle vessels meant for jetty no. 11, why at all dredging was carried-out on the area on which berth	

	no. 12 was constructed subsequently. Besides, few MRPL vessels have been berthed at berth no. 12 as well due to pre-occupation of berth no. 10 & 11 and NMPT has been charging notified rate of wharfage to MRPL for the berth no. 11 without any special consideration, Besides it has been argued before TAMP that since the berth no. 11 cost has been approved by the concerned Ministry and MRPL has not raised any objection to it, this cannot be shared with berth no. 12 for the purpose of wharfage computation. It may be noted that the cost of the project envisaged in the MOU is purely based on estimates of the port and for wharfage computation, the actual cost incurred by the port has been factored. The construction of berth no.11 which is governed by MOU methodology has resulted in significant reduction in cost of berth no.12 for which notified tariff rate is charged, thereby unduly benefiting the port.	
2.	<u>Pre-closure of loan for berth no.11</u>: It has reiterated that the NMPT has prepaid the loan by recovering the funds from MRPL in the form of wharfage and deprived the user of its rightful entitlements under the MOU by pre-closing the MOU forcefully without allowing it to complete the originally envisaged tenure. This is against the spirit of the MOU and principles of natural justice & equity. MRPL strongly object to Port's unilateral stand on this issue and request the port to re-consider this issue and give necessary adjustment to at least interest and loan repayments which are recovered in the wharfage charged. NMPT has mentioned that as these issues have already been addressed by TAMP and after hearing MRPL, TAMP has notified the rates for the period 2002-03 to 2008-09, NMPT has no further remarks to offer. We draw your attention that we have further taken up this matter with TAMP vide our letter dated 2 July 2013, with a request to consider this in its correct perspective when NMPT unilaterally pre closes the loan with a sole intention of reducing the period. It is again requested that the wharfage charges are to be finalized only after taking the above points into consideration.	
3.	<u>Inclusion of HPCL and ASIDE schemes under common assets</u>: MRPL has been repeatedly contesting	

	that since these assets do not have any relationship with MRPL or any usage by MRPL, the same need to be reduced from the Net Block value. TAMP Order dated. 19 July 2000, as mentioned in para A (1) of this letter vindicates our stand.	
4.	Method of computation of working capital: While furnishing reply to our comments for earlier years, NMPT informed that the change in methodology is necessitated due to regrouping of account heads on account of recommendations made by consultants M/s Billimoria. Besides, TAMP while passing the order for 2002-03 to 2008-09 made an observation that MRPL had not raised any objections during the years from 1996-97 to 2001-02. While regrouping of accounts has been effected from the year 2005-06, NMPT has changed the method of computation of working capital from 2002-03 itself and such method is different from what was followed up to the year 2001-02. As such, we had raised our objections to the revised method for the first time while finalizing wharfage for the years 2002-03 to 2008-09. As NMPT has followed the revised method for the years under consideration our objections to the same will hold good. Method of computation of working capital also is prescribed by TAMP vide its order dated 19 July 2000, in page no.7, as "The working capital is to be considered in the conventional manner, i.e. Current Asset minus Current Liabilities and while computing current assets, cash balances of specific funds are to be excluded. Likewise, interest accrued on specific fund shall also be excluded from current liabilities".	
	Comments of MRPL dated 27 August 2013	
(i).	The statements showing computation of wharfage charges for the subject period as furnished by NMPT vide its letters dated 10 October 2011 and dated 14 October 2011 have been verified by MRPL. MRPL has furnished its observations vide its letter dated 14 June 2013, to which the NMPT vide its letter dated 21 June 2013, has not given consideration to the issues genuinely by MRPL. MRPL again replied to NMPT vide its letter dated 01 August 2013 which NMPT has preferred to ignore. (The submission made by MRPL vide its letters dated 14 June 2013 and NMPT's response dated 21 June 2013 and further comments of MRPL vide its letter dated 1 August 2013 has already been	No comments furnished.

	brought out in the preceding paragraphs no.7.2, 7.3 and 7.4.)	
(ii).	TAMP while finalizing the wharfage rates pertaining to the years 2002-03 to 2008-09 vide order no. TAMP/22/2012-NMPT dated 1 April 2013, had directed NMPT and MRPL to sit together and finalize the wharfage rates for these jetties and submit the proposal to TAMP for the years 2008-09 onwards. MRPL had made a detailed submission on the applicability of MOU period for jetty no.11 and also the MOU method of calculations beyond the expiry of MOU vide letter dated 23 April 2013 to which NMPT has replied vide its letter dated 10 June 2013.	No comments furnished
(iii).	Besides the issues pertaining to MOU period and applicability of MOU method of charging wharfage was also discussed in the joint meeting held on 21 June.2013 at NMPT. Subsequently, MRPL has made a written submission to TAMP vide letter dated 02 July 2013 and NMPT had replied vide letter dated 12 July 2013.	No comments furnished
(iv).	As both MRPL and NMPT have put forward their respective view points on the subject and there are no additional points for submission pertaining to the aforesaid years, TAMP is requested to take-up the matter for their consideration and pass a considered order.	No comments furnished.

10.1. A joint hearing in this case was held on 14 February 2014 at the New Mangalore Port Trust (NMPT) premises. The NMPT made a power point presentation of its proposal. At the joint hearing, NMPT and the MRPL have made the following submissions:

New Mangalore Port Trust

(i). Estimated Project cost of Jetty No.10 is ₹231.39 crores. For Jetty No.11 estimated project cost was ₹180 crores.

(ii). For Jetty No.10, actual loan availed from financial institutions is ₹182.69 crores and ₹30 crores was invested by MRPL. For Jetty No.11, MRPL investment was ₹20 crores and loan of ₹123.47 crores was availed by NMPT.

(iii). Entire loan for the Jetty No. 10 and 11 have been repaid by the NMPT. For Jetty No.10 loan was repaid on 15.10.2009 and for Jetty No. 11 entire loan was repaid in March 2011.

(iv). Loan has been repaid as per amortization schedule of loan of the bank.

(v). After the repayment of loan, MOU expires and hence concessional wharfage is not applicable. Only normal wharfage is applicable.

(vi). Provisional wharfage @ ₹33/- per tonne was collected for 2009-10 and 2010-11 for Jetty Nos.10 and 11.

(vii). We have proposed wharfage rate of ₹53.55 per tonne for Jetty No.10 for the year 2009-10 (up to 15.10.2009). For Jetty No.11, we propose wharfage rate of ₹40.90 per tonne and ₹41.67 per tonne for the years 2009-10 and 2010-11 respectively.

(viii). Wharfage calculations have been made as per the guiding principles given by TAMP in its Orders dated 27.10.1998, 18.07.2000, 09.08.2001 and 01.04.2013 for fixation of final rates for the years 1998-97 to 2008-09.

(ix). The current proposal is for fixation of wharfage rate for Jetty No.10 from 1.4.2009 to 15.10.2009 and for Jetty No.11 from 1.4.2009 to 31.03.2011.

(x). Fixed assets of ₹3 crores paid to the Government of Karnataka for land for Devanahalli Business Park relates to port operations.

(xi). ₹29.65 crores paid towards SPVs for Road & Rail Connectivity is a long Term Investment as part of Cash Investments of the Port.

(xii). We have furnished details of fixed assets capitalized in 2009-10 (₹66.87 crores) and in 2010-11 (₹14.87 crores) to MRPL for verification.

[Member (Economic), TAMP – NMPT to furnish details of fixed assets capitalized by NMPT in 2009-10 and 2010-11. NMPT to ensure common assets not relevant to MRPL is not included in the computation]

(xiii). Capital cost of coal berth operated by BOT operator, its depreciation and ROCE is not inbuilt in the computation.

(xiv). Traffic department expenses directly related to MRPL has been correctly allocated. The said expenditure is considered in full for Jetty No.11 and proportionately for Jetty No.10.

(xv). Common assets of Jetty no. 10 for the post MOU period i.e. after 15.10.2009 has been allocated correctly.

[Member (Economic), TAMP – The NMPT to furnish net value of total common assets of the port for the years 2009-10 and 2010-11 and the net asset value of common assets apportioned to Jetty No. 10 and Jetty No.11 for the period covered under this proposal and its basis thereof]

(xvi). Other issues raised by the MRPL pertaining to the period prior to 2009-10 are mere reiteration of their earlier submissions. We have already furnished our views earlier. The TAMP has already settled these issues in the April 2013 Order.

Mangalore Refinery and Petrochemicals Limited

(i). The project cost of Jetty No.10 is ₹231.39 crores. By adding working capital to capital employed, NMPT is claiming ROCE on ₹320 crores.

(ii). NMPT has changed the method of computation of working capital.
[NMPT: The issue of computation of working capital came in 2003. The matter is already settled by TAMP.]

(iii). Loan is repaid by NMPT. But, Bank has not released the corporate guarantee given by MRPL. NMPT should return the corporate guarantee given by MRPL.

(iv). TAMP may reconsider our submissions made earlier on pre-closure of SBI loan relating to Jetty No. 11.

(v). We confirm having received details of fixed assets addition for the years 2009-10 and 2010-11. Details of fixed assets additions of ₹66.87 crores in the year 2009-10 obtained from NMPT show it relates to wharfs, road, school building, cranes, vehicles, water sprinkles, etc. Most of these are not common assets related to MRPL.

[Member (Finance), TAMP: How the wharfage rate for 2009-10 has gone up for Jetty No.10 from the last approved rate of ₹27.61 per tonne for the year 2008-09?

NMPT: Wharfage computation is done based on actuals as per MOU and guiding principles of TAMP. When traffic of 2009-10 is considered for concluding part of MOU i.e. 5 ½ months, the rate goes up.

MRPL: Loan repayment in the year 2009-10 is ₹1.5 crores and traffic considered is for concluding MOU period of 5 ½ months for Jetty No.10. This leads to higher rate for this year]

(vi). ₹3 crores paid to Government of Karnataka for land for Devanahalli Business Park considered in the fixed assets additions is not related to MRPL activity. Do not consider assets which is in no way related to MRPL.

(vii). MRPL Jetty Nos.10 and 11 is a liquid terminal. Pipelines are used for transfer of cargo. Investments in SPV of ₹29.65 crores towards road and railway connectivity is not related to MRPL. This should be excluded in wharfage computation.

[NMPT: This was included in the year 2008-09. Hence, considered now.
Member (Economic), TAMP: Do not consider common assets not related to the MRPL at all.]

(viii). Dispute on allocation of expenses of Traffic Department Jetty Nos.10 and 11 for the year 2009-10 is dropped now.

(ix). MOU of Jetty No.10 is over in mid-October 2009. The NMPT has proportionately added the assets of Jetty No.10 to the tune of ₹71.84 crores to Jetty No.11 for the subsequent period. It is not a common asset. Approach followed by NMPT is not correct.

(x). Dispute on allocation of depreciation, MGA and preliminary study is already dropped.

(xi). We reiterate the earlier point of dispute about NMPT allocating the entire capital cost on diaphragm wall and dredging which is common to Jetty Nos.11 and 12 to Jetty No.11.

[NMPT: The diaphragm wall was constructed mainly for safety of Jetty No.11. Jetty No.12 was designed for smaller vessels and already had the required draft. Capital dredging was done to mainly facilitate larger vessels to call Jetty No.11]

10.2. As agreed at the joint hearing, the NMPT was requested vide our letter dated 18 February 2014 to take action / furnish additional information / clarification on following points:

(i). Furnish total net asset value of item wise common assets of the port for the years 2009-10 and 2010-11 and the net asset value of item wise common assets apportioned to Jetty No. 10 and Jetty No.11 for the period covered under this proposal and its basis thereof.

(ii). Provide all the necessary details relating to additions to the fixed assets in the year 2009-10 and 2010-11 to the MRPL

(iii). Revisit the points disputed by MRPL in the computation of the wharfage rate mainly relating to:

(a). inclusion of ₹3 crores paid to the Government of Karnataka and ₹29.65 crores towards SPV;

(b). inclusion of additions to fixed assets to the tune of ₹66.87 crores in the year 2009-10 and ₹14.87 crores in the year 2010-11; and

(c). allocation of common assets of Jetty No.10 to Jetty No.11 for the period beyond 15.10.2009.

10.3. As agreed at the joint hearing, both the NMPT and the MRPL were requested vide our letter dated 18 February 2014 to sit together and explore the possibility to arrive at an agreed position on the points of dispute and file a revised proposal by 24 February 2014.

11.1. The NMPT vide its letter dated 25 February 2014 has furnished its reply on the points of action decided at the joint hearing. Information / action sought from the NMPT and reply furnished by the NMPT thereon are tabulated below:

Sl. No.	Information/Action points sought from NMPT	Reply of the NMPT
(i)	Furnish total net asset value (item wise) of common assets of the port for the years 2009-10 and 2010-11 and the net asset value of item wise common assets apportioned to J. No. 10 and J. No. 11 for the period covered under this proposal and its basis thereof.	Details are furnished separately in the statement enclosed. The basis adopted for apportionment of common asset is as per the stand taken for earlier years. However, in view of the closure of MoU for J. 10, the prorata cost of the same is taken to J. 11 i.e. cost for 2009-10 and full cost of J. 10 to J. 11 for 2010-11.
(ii).	Provide all the necessary details relating to additions to the fixed assets in the years 2009-10 and 2010-11 to the MRPL.	MRPL officials have visited the Port on 21.2.2014 and have verified the figures as supplied to them by NMPT. No queries have been issued by them. It is understood that a separate communication would be sent by them to TAMP directly.
(iii).	Revisit the points disputed by MRPL in the computation of wharfage rate mainly relating to:	
(a).	Inclusion of ₹3 Crores paid to Govt. of Karnataka and ₹29.65 Crores to SPV.	It was clarified to MRPL that ₹3 Crores paid to Govt. of Karnataka is on account of allotment of 1 acre land at Devanahalli Business Park and the cost is included in the Net Block of NMPT as followed for inclusion of cost of land in the past. Hence, this cannot be treated as 'Non-Port Land'. It was clarified to MRPL that ₹29.65 Crores was invested in HMRDC (₹10 Crs.) & NHAI (₹19.65 Crs.) & exhibited under long term investments in the Annual Accounts (Schedule IV of Annual Accounts)
(b).	Inclusion of additions to fixed assets to the tune of ₹66.87 Crs. in the year 2009-10 and ₹14.87 Crores in the year 2010-11.	As remarked under para (ii) above the details have been provided to MRPL officials for their scrutiny.
(c).	Allocation of common assets of Jetty No. 10 to Jetty No. 11 for the period beyond 15.10.2009.	It was clarified to MRPL that consequent on closure of MoU on Jetty No. 10 w.e.f. 16.10.2009, the entire jetty cost was catagorised as NMPT common assets. Accordingly, for ROI calculation of common assets the prorate cost of J.10 got merged in the total common Net Block of NMPT for 2009-10 (viz., 167/365 of 157.02 Crs = ₹71.08 Crores) In the year 2010-11 since Jetty 10 was out of MoU for the entire year, the total cost (₹152.53 Crores) was taken as NMPT common asset for calculation of ROI for J. 11.
		All the figures shown above are adopted from the Audited Annual Accounts for NMPT. No further queries have been received from MRPL after their verification on 21.2.2014. It is therefore requested that the wharfage rate as per the calculation sent earlier may be approved as the computation do not

		undergo any change due to the verification held by MRPL with NMPT on 21.2.2014.

11.2. On examining the reply furnished by the Port, it was brought out to the attention of NMPT vide our letter dated 7 March 2014 that though port had agreed in the joint hearing to revisit the points disputed by MRPL in the computation of wharfage rate, the NMPT has maintained its stand and has not considered to make any modification in the computation of its wharfage rate. Further, despite request the port had not furnished item-wise Net Common Assets Value of the port for the year 2009-10 and 2010-11 and net asset value apportioned to Jetty Nos. 10 and 11. The NMPT was therefore, a requested to furnish the information in the format drawn in our letter dated 7 March 2014.

11.3. The NMPT in response has furnished requisite details giving item-wise net fixed asset of common asset of the port for the year 2009-10 and 2010-11 and net asset value of common assets apportioned to Jetty Nos. 10 and 11, vide its letter dated 14 March 2014 as given below:

FOR YEAR 2009-10

(**₹ in crores**)

Sr. No.	Particulars	Explain the relevance of each of these assets to MRPL which are treated as 'common assets' by the NMPT for calculation of wharfage rate for Jetty 10 & Jetty 11	Net fixed assets value as on 31.3.2010 & 31.3.2011 as per Annual Accounts (in crores)	Jetty No. 10 Net fixed assets value apportioned to J-10 by NMPT (1.4.2009 to 15.09.2009) (in crores)	Jetty No. 11 Net fixed assets value apportioned to J-11 (in crores)
(i). (a).	₹3.00 crores paid to Govt. of Karnataka towards land purchase	In the earlier years of calculation applied by TAMP (upto 2008-09), the cost of land is included in Net Block of NMPT. Since this addition of Rs. 3 Crores is also cost of land purchased by NMPT for port usage, the same is included in Net Block for computing Capital Employed	3.00	3.00 (at Jetty Length Ratio & Period Ratio)	3.00(at Jetty Length Ratio & Period Ratio)
(b).	₹29.65 crores towards amount invested in equity of SPVs	It is Cash Investment of NMPT. Hence it is included in computation of Capital Employed. (As included in earlier years by TAMP)	-	-	-
(ii).	Additional assets capitalized by NMPT for ₹66.87 crores (2009-10) and ₹14.86 crores for (2010-11) **(Reference Annex-II of MRPL letter dated 24 February 2014 for these items)**	These are the additional assets capitalized by NMPT as per Plan Works. This method is followed in all the previous year's wharfage calculation	**<u>2009-10 (At Cost)</u>** 1 Blds/Sheds- 1.77 2 Wharves, Roads &Boundaries- 34.02 3Premlim Study/works- 0.76 4 Floating Crafts- 23.96 5 Railway- 2.29 6 Docks/sea walls, Piers- 0.75 7 Cranes/ vehicles- 0.44 8 Plant & Machinery – 1.87 9 Instl Water/elec/telecom/ FF – 1.01 Total- ₹.66.87 crores	**<u>2009-10 (At Cost)</u>** 1 Blds/Sheds- NIL 2 Wharves, Roads &Boundaries- 34.02 3 Prelim Study/works- 0.76 4 Floating Crafts- 23.96 5 Railway- NIL 6 Docks/sea walls, Piers- 0.75 7 Cranes/ vehicles- 0.44 8 Plant & Machinery – NIL 9 Instl water/elec/telecom/ FF – 1.01 Total- ₹.60.94 crores allocated to	**<u>2009-10 (At Cost)</u>** 1 Blds/Sheds- NIL 2 Wharves, Roads &Boundaries- 34.02 3 Prelim Study/works- 0.76 4 Floating Crafts- 23.96 5 Railway- NIL 6 Docks/sea walls, Piers- 0.75 7 Cranes/ vehicles- 0.44 8 Plant & Machinery – NIL 9 Instl water/elec/telecom/ FF – 1.01 Total- ₹.60.94 crores allocated to

				Jetty No.10 [at Jetty Length Ratio & Period Ratio]	Jetty No.11 [at Jetty Length Ratio & Period Ratio]
(a).	**<u>Building / Shed & Other Structures</u>**: Renovated toilets for English medium school, renovations of V Qtrs, construction of comp wall, kitchen room, tile rood replacement, G/H modification, water proofing etc. vehicle parking behind shed, replacement of AC sheet roof, ceramic, flooring to SC/ST union office, construction of toilet blocks, raising of compound wall	Not included in computation of Capital Employed	32.76	NIL	NIL
(b).	**<u>Railway Rolling Stock</u>**: Construction of WBM platform surface on the southern side of Railway	Not included in computation of Capital Employed	18.90	NIL	NIL
(c).	**<u>Plant and Machinery</u>**: Various purchases like electronic items, water sprinkler, printers, orbit bike, Xerox m/c, supply of ERP software, digital camera, etc., upgradation of Weigh bridge etc.	Not included in computation of Capital Employed	6.30	NIL	NIL
(d).	**<u>Wharfs, Road and Boundaries</u>**: PQC to JN at approach road to ore berth, strengthening the roads, pavement concreting, construction of stock yard, interlocking of pavements, etc.	This item is taken into account and approved by this Authority in its earlier sanctions for calculation of Capital Employed.	104.43	Net Block at applicable Jetty Length Ratio and Period Ratio	Net Block at applicable Jetty Length Ratio and Period Ratio
(e).	**<u>Preliminary Study Works</u>**: Various preliminary study works like techno economic feasibility study for BORT projects, dust depression, iron ore handling system, setting up of container terminal		NIL NIL	NIL	NIL
(f).	**<u>Floating Crafts</u>**: Procurement of 1 no. 32 Bollard Pull tug – Eshwari)	This item is taken into account and approved by this Authority in its earlier sanctions for calculation of Capital Employed	65.92	Net Block at applicable Jetty Length Ratio and Period Ratio	Net Block at applicable Jetty Length Ratio and Period Ratio
(g).	**<u>Docks, Sea Walls, Piles, Navigation Aids & Jetties etc.</u>**: (Replacement of fenders etc., development of outer harbor etc.	This item is taken into account and approved by this Authority in its earlier sanctions for calculation of Capital Employed	122.57	Net Block at applicable Jetty Length Ratio and Period Ratio	Net Block at applicable Jetty Length Ratio and Period Ratio
(h).	**<u>Cranes & Vehicles</u>**: Procurement of forklift, vehicles etc.	This item is taken into account and approved by this Authority in its	3.54	Net Block at applicable	Net Block at applicable

		earlier sanctions for calculation of Capital Employed		Jetty Length Ratio and Period Ratio	Jetty Length Ratio and Period Ratio
(i).	**Installation of Water & Electricity System**: Supply and installation of electricity and electronics items like AC, WC, HT Cables, 30 mtrs. High Mast)	This item is taken into account and approved by TAMP in its earlier sanctions for calculation of Capital Employed	29.05	Net Block at applicable Jetty Length Ratio and Period Ratio	Net Block at applicable Jetty Length Ratio and Period Ratio
	Sub-total of (iii)		**383.47**		

FOR YEAR 2010-11 **(₹ in crores)**

Sr. No.	Particulars	Explain the relevance of each of these assets to MRPL which are treated as 'common assets' by the NMPT for calculation of wharfage rate for Jetty 10 & Jetty 11	Net fixed assets value as on 31.3.2011 as per Annual Accounts (in crores)	Jetty No. 11 Net fixed assets value apportioned to J-11 (in crores)
(i).	Additional assets capitalized by NMPT for ₹66.87 crores (2009-10) and ₹14.86 crores for (2010-11) **(Reference Annex-II of MRPL letter dated 24 February 2014 for these items)**	These are the additional assets capitalized by NMPT as per Plan Works. This method is followed in all the previous year's wharfage calculation	**2010-11 (At Cost)** 1 Blds/Sheds- 1.45 2 Wharves, Roads &Boundaries- 10.23 3 Premlim Study/works- 0.48 4 Railway- 1.21 5 Docks/sea walls, Piers- 0.22 6 Plant & Machinery – 0.81 7 Instl Water / elec / telecom/ FF – 0.46 Total- ₹.14.86 crores	**2010-11 (At Cost)** 1 Blds/Sheds- NIL 2 Wharves, Roads &Boundaries- 10.23 3 Premlim Study/ works- 0.48 4 Railway- NIL 5 Docks/sea walls, Piers- 0.22 6 Plant & Machinery – NIL 7 Instl Water / elec / telecom / FF – 0.46 Total- ₹.11.39 crores allocated on Jetty Length Ratio
(a).	**Building / Shed & Other Structures**: Renovated toilets for English medium school, renovations of V Qtrs, construction of comp wall, kitchen room, tile rood replacement, G/H modification, water proofing etc. vehicle parking behind shed, replacement of AC sheet roof, ceramic, flooring to SC/ST union office, construction of toilet blocks, raising of compound wall	Not included in computation of Capital Employed	33.28	NIL
(b).	**Railway Rolling Stock**: Construction of WBM platform surface on the southern side of Railway	Not included in computation of Capital Employed	19.76	NIL
(c).	**Plant and Machinery**: Various purchases like electronic items, water sprinkler, printers, orbit bike, Xerox m/c, supply of ERP software, digital camera, etc., upgradation of Weigh bridge etc.	Not included in computation of Capital Employed	6.17	NIL
(d).	**Wharfs, Road and Boundaries**: PQC to JN at approach road to ore berth, strengthening the roads, pavement concreting, construction of stock yard, interlocking of pavements, etc.	This item is taken into account and approved by this Authority in its earlier sanctions for calculation of Capital Employed	111.71	Net Block in applicable Jetty Length Ratio and Period Ratio
(e).	**Preliminary Study Works**: Various preliminary study works like techno economic		NIL NIL	NIL

	feasibility study for BORT projects, dust depression, iron ore handling system, setting up of container terminal			
(f).	**<u>Floating Crafts</u>**: Procurement of 1 no. 32 Bollard Pull tug – Eshwari)	This item is taken into account and approved by this Authority in its earlier sanctions for calculation of Capital Employed	59.74	Net Block in applicable Jetty Length Ratio and Period Ratio
(g).	**<u>Docks, Sea Walls, Piles, Navigation Aids & Jetties etc</u>**.: (Replacement of fenders etc., development of outer harbor etc.	This item is taken into account and approved by this Authority in its earlier sanctions for calculation of Capital Employed	119.99	Net Block in applicable Jetty Length Ratio and Period Ratio
(h).	**<u>Cranes & Vehicles</u>**: Procurement of forklift, vehicles etc.	This item is taken into account and approved by this Authority in its earlier sanctions for calculation of Capital Employed	2.73	Net Block in applicable Jetty Length Ratio and Period Ratio
(i).	**<u>Installation of Water & Electricity System</u>**: Supply and installation of electricity and electronics items like AC, WC, HT Cables, 30 mtrs. High Mast)	This item is taken into account and approved by this Authority in its earlier sanctions for calculation of Capital Employed	26.25	Net Block in applicable Jetty Length Ratio and Period Ratio
	Sub-total of (iii)		**379.63**	

12.1. In the meantime, the MRPL vide its letter dated 24 February 2014 has informed that as directed by this Authority, the MRPL had a meeting with NMPT to ascertain nature of various allied assets considered for computation of ROI for the years 2009-10 and 2010-11. The MRPL has further stated that NMPT is unwilling to consider any changes in the submissions made. The MRPL in the concluding para while furnishing its comments on certain points of dispute has requested this Authority to direct NMPT to submit the revised calculations for the period 2002-03 to 2008-09 along with revised calculations for the period 2009-10 to 2010-11 onwards:

12.2. A copy of MRPL letter dated 24 February 2014 was forwarded to the NMPT undercover of our letter dated 7 March 2014 requesting therein to examine the points made by the MRPL and furnish its comments thereon. The NMPT vide its letter dated 14 March 2014 has furnished its reply on the points raised by MRPL. The Further submission made by the MRPL vide its letter dated 24 February 2014 on the points disputed by it and the reply of the NMPT vide its letter dated 14 March 2014 are tabulated below:

Sl. No.	Points disputed by the MRPL	Reply of the NMPT
(i).	(a).<u>₹3 crore paid to Govt. of Karnataka towards land purchase</u>:	
	It is learnt that this is an advance paid to Govt. of Karnataka towards purchase of land at Devanahalli Business Park. NMPT has clubbed this amount under land cost in the Asset Schedule and this has been considered for the purpose of calculation of Capital employed. It is understood that the registration of this land is not taken place and hence this should be considered as CWIP in nature; accordingly to be excluded from computation of Capital employed. Also, clause no. 10 (iv-c) of TAMP order passed on 19.07.2000 may be referred, wherein it is mentioned that NMPT should not include any other assets which are directly relevant to some other revenue generating activities. As land purchase at Devanhalli does not in any way relate to MRPL, this is not be included	Initially MRPL disputed for inclusion of this captilized asset in the Capital Employed. Now the objection is that the above transaction be taken as CWIP (Capital work in Progress) so as to avoid this transaction from capital employed. This analogy is not correct as the transaction cannot be re-arranged nor can be reversed at this stage. Further it is stated that NMPT had taken the full cost of land so far booked in the Asset Register into the capital employed for the purpose of working out ROI on common assets which has been approved by TAMP while sanctioning the final rate for the years 1995-96 to 2008-09.

	for calculation of ROI on Allied assets.	
	(b). ₹29.65 crores towards amount invested in equity of SPVs:	
	₹29.65 crores has been shown as Cash Investments under Current Assets head and NMPT considered this for the purpose of Working Capital for RoI calculations. This is an investment of NMPT for port connectivity of Road, which is totally an unrelated activity with respect to MRPL Jetty Operations. Also, this is not in the nature of Current Asset which will result in reduction in claim of RoI on capital employed. A separate para is mentioned about methodology of determination of Working Capital at point no. 4 below.	This is an investment made under cash and shown accordingly in the accounts, as hither to done, the cash investment is taken for the purpose of arriving at the working capital. The same procedure has been followed while arriving at the final rate of wharfage for the year upto 2008-09. This procedure may please be continued and therefore do not require any modification.
(ii).	Additional assets capitalized for ₹66.87 crores (2009-10) & ₹14.87 crores (2010-11):	
	It is observed from records that for the year 2009-10, out of ₹66.87 crores additional assets capitalized, NMPT has excluded only ₹5.94 for computation of capital employed/RoI. Likewise, for the year 2010-11, out of ₹14.87 crores, ₹3.46 crores has been excluded. Additional amount considered for capital employed is ₹60.93 crores for 2009-10 and ₹11.41 crores for the year 2010-11 (totaling to ₹72.34 crores), the nature of which are as below:-	It is clarified that during all the preceding years, additional assets barring 3 items namely :- (i) Building sheds and other structures; (ii) Railway rolling stock (iii) Plant & Machinary, are considered for arriving at Common Net Block Assets. Additions of all the items are invariably added to the net block. MRPL have raised objection that some of the assets do not relate to MRPL activities and therefore require to be excluded from the calculations. This claim is in deviation to the system already adopted right from the approval of final wharfage rates from the year 1996-97 till date. It is further submitted that though common assets are not defined nor explained in the MoU, the procedure followed as above has been agreed by TAMP while sanctioning the rate upto the year 2008-09. It is therefore felt that no change in the method is considered necessary. This may also please be linked with information furnished in Annexure separately enclosed. As regards steep rise in Additions to assets from 2004-05 to 2009-10, it may be clarified that the value of Net Block has gone up linking with various projects taken up under Five Year Plan Works and other Miscellaneous Capital Works under Non-Plan. In view of the above, rise in addition to capital block is unavoidable.
(a).	₹44.25 crores: Strengthening of roads, pavement concreting, construction of Stock Yard, interlocking of pavements, development work as a backup requirement of DDMB etc. These items are classified under the head Wharfs, Roads and Boundaries in the Asset Schedule and this has been considered for the purpose of calculation of capital employed/RoI.	
	(b). ₹1.24 crores: Preliminary Study Works viz. Techno Economic feasibility study for BORT operation, dust depression, iron ore handling system, setting up of container terminal etc.	
	(c).₹23.96 crores: Procurement of 1 no 32 Bollard Pull Tug Easwari	
	(d).₹0.972 crore: Replacement of fenders, development of outer harbor etc.	
	(e).₹0.45 crore: Purchase of Forklifts, Mahindra Bolero Jeeps tec.	
	(f). ₹1.47 crores: Installation of Water & Electricity system, HT/LT cables, High Mast etc. As the above items do not relate to MRPL activities of liquid cargo movement, as such the same is required to be excluded for the purpose of calculation of Return on Investment @ 18% on Capital Employed. Accordingly, it is requested to TAMP to direct NMPT to exclude these items from	

	calculation of RoI @ 18% on the proportion value of such assets. Also, we draw your kind attention that MRPL has funded for Tugs as a part of project cost. Hence new Tug is not to be considered under other assets for RoI computation. As regards inclusion of NMPT Assets (Common Assets) for computation of RoI, it is observed that there is a steep increase in the Assets additions form 2004-05 to 2005-06 and 2007-08 to 2009-10, as can be seen in the Annexure-III. As seen in the table, the Asset value has gone up double from 2002-03 to 2010-11 (from ₹140.27 crores to ₹286.09 crores) this has a major impact of RoI on common assets, as being charged by NMPT @ 18% on proportionate cost.	
(iii).	Allocation of common assets of Jetty-10 to Jetty-11 for the period beyond 15/10/2009:	
	While computing Return on capital employed on common assets for calculation of Net Block, proportionate post MoU period portion of Jetty-10 is allocated to Jetty-11 to the extent of :- ₹71.84 crores – 2009-10 ₹152.54 crores – 2010-11 This is not appropriate considering the fact that no income pertaining to Jetty-10 corresponding to the post MoU periods have been allocated to Jetty-11 and further wharfage computation for post MoU period should be governed by a separate set of calculations considering the operating expense. Berth No. 10 cannot be considered as common asset required for using Berth No. 11 Hence, it is requested to TAMP to direct NMPT to exclude these items from the computation of RoI on allied assets.	It is clarified that, the cost of Jetty 10 w.e.f. 16.10.2009 (at period ratio) has been considered as common assets since no distinction of Jetty 10 could be made in comparison to other Jetty/Berths not covered by any contract/MoU. NMPT is justified in taking the cost of Jetty 10 for post MoU period as common assets for calculation of ROI. The stand taken by NMPT as above may please be agreed.
(iv).	Observation on Working Capital computation:	
	As already brought to the notice of TAMP as well as to NMPT regarding methodology of determination of Working Capital by NMPT, it is re-iterated that NMPT has adopted a different methodology for computation of Working capital considering even the cash investments as Current Assets. As regards to ₹29.65 crores invested in equity of SPVs for road and rail connectivity projects, this amount is considered under the head Current Assets and working capital requirement is calculated on this amount also. NMPT had earlier suggested that both the organizations may consider the figures as per Books of Accounts. Accordingly, MRPL has generated a revised computation of Working Capital for the years 2009-10 & 2010-11, as seen in the Annexure-IV & V. Therefore, it is requested to TAMP to look into the methodology of computing Working Capital in the RoI computation, since NMPT	This objection raised by MRPL has undergone scrutiny by TAMP in the hearing held on 3.7.2012 for the purpose of approval of final rates for the years 2002-03 to 2008-09. The comments made by MRPL on the points are nothing but elaboration of the points already discussed and finalized by TAMP. The re-workings made as per Annexures IV, V, VI, VII & VIII and the impact on wharfage rate worked out are mere hypothetical. If this is considered at this stage it will have repercussions on the earlier calculations where a decision has already been taken by TAMP for the years 2002-03 to 2008-09. **Clarifications on Annexures furnished by MRPL vide its letter dated 24 February 2014:** **Annexure –I:** This is a tabulated statement of issues raised by MRPL, NMPT's reply and MRPL's comments - No comments are

<table>
<tr>
<td></td>
<td>collet the wharfage charges even before the expenditure are incurred. Hence there may not be really a Working Capital requirement.

NMPT is considering more than ₹200 crores as Cash investments and short term deposits under the head Current Assets, without giving the benefit of income generated out of this investments by way of interest etc. This will have a substantial impact on determination of RoI.
Taking into consideration of above points viz. 1(a), 2, 3 & 4 MRPL has re-worked the wharfage computation statement for Jetty-10 (01.04.2009 to 15.10.2009) and for Jetty-11 (2009-10 & 2010-11), as per Annexure No. VI, VII & VIII. Impact on wharfage rate, per ton, is given below:-
<table>
<tr><th>Year</th><th>Jetty No.</th><th>Amt (₹)</th></tr>
<tr><td>2009-10</td><td>Jetty No. 10</td><td>(-) 4.24</td></tr>
<tr><td>2009-10</td><td>Jetty No. 11</td><td>(-) 6.48</td></tr>
<tr><td>2010-11</td><td>Jetty No. 11</td><td>(-) 7.80</td></tr>
</table>

NMPT may be directed to revise the wharfage computation suitably for the years 2009-10 & 2010-11.

It is again submitted that the following points pertaining to 2002-03 to 2008-09, for recommendation by TAMP, even though these were submitted earlier to TAMP as well to NMPT, but were not considered. These have substantial impact on determination of RoI and thereby the wharfage rate:-</td>
<td rowspan="5">offered.
Annexure II: Details of additional assets (2009-10 & 2010-11) - Elaborate remarks with details is furnished. [This has been tabulated in the preceding paragraphs]
Annexure III: Computation of ROI – No comments are offered.
Annexure IV to VIII relate to Working Capital Computation and ROCE Computation by MRPL. Necessary remarks have been offered brought in preceding para, which may please be referred.
Annexure IX: Points disputed by MRPL for the period from 2002-03 to 2008-09. All the points of disputes and observations made are those which have already been discussed in TAMP's hearing held on 3.7.2012 at Mumbai before the final approval of rates for the years stated above. No further remarks are offered as this has been taken as decided case.</td>
</tr>
<tr>
<td>(a).</td>
<td>Appointment of capital cost of diaphragm wall and capital dredging cost which are common to Jetty No. 11& 12. This was discussed during the Joint Hearing held on 14 February 2014 and TAMP was king enough to direct NMPT to re-visit this case and suitable ratio, based on the tariff handled by these Jetties, to be arrived for apportionment.
(Impact of wharfage rate per ton: approx. ₹1.00)</td>
</tr>
<tr>
<td>(b).</td>
<td>Pre-payment of loan taken from SBI for construction of Jetty-11 which are lead to pre-closure of MoU by 31/03/2011 as against its validity upto 30/09/2014. Accordingly, MoU methodology of computation of wharfage to be extended upto 30/09/2014.
(Impact of wharfage rate per ton: approx. ₹3.00. Detailed calculation were submitted to TAMP as well to NMPT during July 2012)</td>
</tr>
<tr>
<td>(c).</td>
<td>Adoption of different methodology for computing working capital and there by effecting claim of RoI on MRPL Assets (3%) and Common Asset (18%).
(Impact of wharfage rate per ton: already reflected in the Annexure-VI, VII & VIII).</td>
</tr>
<tr>
<td>(d).</td>
<td>Inclusion of HPCL/ASIDE scheme etc in Net Block calculations</td>
</tr>
</table>

	(Impact on wharfage rate per ton: approx ₹0.30). Details of the above points are attached, as per Annexure-IX.	

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

(i). The proposal of the New Mangalore Port Trust (NMPT) is to fix wharfage rate for the cargo handled at Jetty No.10 for the period from 01.04.2009 to 15.10.2009 and Jetty No.11 for the period from 01.04.2009 to 31.03.2011, both these Jetties having been dedicated to Mangalore Refinery and Petrochemicals Limited (MRPL) based on the respective Memorandum of Understanding (MOU) entered between NMPT and MRPL.

(ii). Jetty No.10 is covered by a MoU dated 20 January 1995 and Jetty No.11 by a MOU of 9 February 2000. Both the MOU(s) make a special reference to the method of computation of wharfage rate payable by MRPL to the NMPT. Since there were few points of disagreements between the NMPT and MRPL in regard to calculation of wharfage rate, this Authority by its earlier Orders dated 27 October 1998, 19 July 2000 and 18 November 2004 has set the guiding principles to be followed for fixation of wharfage rate for Jetty No.10.

As far as Jetty No.11 is concerned, the NMPT had for the first time filed a proposal for fixation of wharfage rate in the year 2012. Since the conditions of MOU for Jetty No.11 are found to be similar to Jetty No.10, wharfage rate for Jetty No.11 was prescribed by this Authority vide its Order dated 1 April 2013 adopting the guiding principles set by this Authority for fixation of wharfage at Jetty No.10. Incidentally, even the NMPT had also adopted the same guiding principles for fixation of wharfage rate for both jetties during the last fixation of wharfage rate for Jetty No.11 in April 2013. In the current proposal as well, the NMPT has adopted the guiding principles set by this Authority for fixation of wharfage at Jetty No.10 for determining the wharfage rate for Jetty No.11 in line with the fixation done in the tariff Order of 1 April 2013.

(iii). This Authority has already fixed wharfage rate for Jetty No.10 and 11 for the period upto 2008-09. Before proceeding ahead with the analysis of this case, it is relevant to mention that the exercise before this Authority in the current proposal is limited to fixation of wharfage rate for Jetty Nos.10 and 11 for the MOU period i.e. from 1 April 2009 upto 15 October 2009 for Jetty No.10 and for Jetty No.11 for the years 2009-10 and 2010-11 i.e. upto 31 March 2011.

(iv). This Authority while approving the wharfage rate for Jetty No. 10 and 11 for the years 2002-03 to 2008-09 vide its order dated 1 April 2013 has advised NMPT and MRPL to sit together and finalize the wharfage rate for the period from 2009-10 onwards and submit a proposal within 3 months' time from the date of notification of the Order in the Gazette of India. With reference to the said order dated 1 April 2013, the MRPL vide its letter dated 23 April 2013 has sought clarification whether the advice applies to the computation of wharfage for the balance period of MOUs upto 2014-15 of both Jetty no.10 and 11. The said reference from the MRPL mainly relates to the wharfage rate for the post MOU period.

It is further relevant here to state that during the proceedings of the current proposal, the MRPL in various submissions/ comments has also included its reference made by it vide its letter dated 23 April 2013 seeking clarification on the 1 April 2013 Order regarding the tariff arrangement for the post MOU period. The NMPT has also responded thereon.

With respect to the methodology to be followed for fixation of wharfage rate of Jetty Nos.10 and 11 for the period beyond MOU, it is relevant to mention that the NMPT has referred the matter to the Ministry of Shipping (MOS). The decision of the MOS in the matter is awaited. It is reiterated here that the decision awaited from the MOS is for the post MOU period. Since the current proposal for fixation of wharfage rate for Jetty Nos.10 and 11 is within the MOU period, and since the joint hearing fixed for the subject proposal relates to fixation of wharfage rate for the MOU period 1 April 2009 to 15 October 2009 for Jetty No.10 and 1 April 2009 to 31 March 2011 for Jetty No.11, comments/ views of both NMPT and MRPL relevant to this proposal are only considered and the case is proceeded to dispose of the proposal of the NMPT.

(v). The proposal is formulated by NMPT based on the guiding principles prescribed by this Authority in its earlier orders in this regard. MRPL has reportedly verified the figures/ calculations furnished by NMPT. Both parties have exchanged a lot of correspondence between them and sorted out differences except on a few issues. Relying on the position reported by both the parties, the detailed examination of the methodology adopted and arithmetical accuracy of the proposal filed by NMPT have not been gone into. The exercise on hand is limited to analyse the unresolved issues between NMPT and MRPL raised in the current proposal and, if necessary, make adjustment in the tariff proposed by NMPT, to the extent required.

The MRPL had originally disputed five items in the computation of wharfage rate by the NMPT. Of the five items originally disputed by the MRPL in the computation of wharfage rate, the MRPL had dropped two items - one relating to allocation of depreciation, Management and General Administration overheads and the expenses relating to Preliminary Study aggregating to ₹88.11 lakhs for 2009-10 and ₹47.90 lakhs for 2010-11 in the wharfage computation to simplify the process of finalization of wharfage, and the second relating to allocation of traffic department expenses to Jetty No. 11. Hence, the remaining three issues remaining unresolved between NMPT and MRPL in the fixation of wharfage rate are discussed in the following paragraphs.

(vi). With reference to the observation at the joint hearing not to consider common assets not related to the MRPL and the NMPT to ensure that common assets not relevant to MRPL is not included in the computation, it is relevant to recall that this Authority in its Order No.MF/NMPT/56/97-TAMP dated 28 August 2000 on the matter relating to MRPL's contention that return on investment on other assets unrelated to MRPL should not be included, held that:

"The argument of MRPL negating the claim of NMPT for a return on investment on assets not related to MRPL jetty is also not tenable. It is a well-accepted practice ***that all revenue earning activities contribute towards common assets created which are not directly earning revenue.*** *Thus, apportionment of return on investment on assets not directly related to the oil jetty, is logical. However, while doing so, the NMPT should not include any other asset which are directly relevant to some other revenue earning activities."*

The above decision of this Authority has been one of the guiding principles for fixation of wharfage rate for these two jetties amongst other guiding principles prescribed by this Authority. The said guiding principle has been followed by NMPT as well as MRPL during the fixation of wharfage rate for Jetty Nos.10 and 11 without any dispute for the period from 1996-97 to 2008-09. Hence, the guiding principle set by this Authority and followed in the fixation of wharfage rate for the past period, therefore, needs to be followed in the current exercise as well.

Now, the three issues remaining unresolved between NMPT and MRPL in the current proposal for fixation of wharfage rate for Jetty No.10 for the period 01.04.2009 to 15.10.2009 and for Jetty No.11 for the period 01.04.2009 to 31.03.2011 are discussed in the following paragraphs.

(vii). **Inclusion of (a). ₹3 crores paid to Govt. of Karnataka towards land purchase and (b). ₹29.65 crores invested in equity of SPVs**.

(a). The MRPL has stated that net fixed assets of NMPT for the years 2009-10 and 2010-11 include ₹3.00 crores paid to Government of Karnataka towards land at Devanahalli Business park. Further, working capital computation includes ₹29.65 crores towards cash investments made in equity of SPVs for road and rail connectivity projects. The MRPL has disputed return on these two items included (i.e. apportioned based on the wharf length ratio) in computation of the wharfage rate for Jetty Nos.10 and 11 as they find the approach adopted by the NMPT is not logical and justifiable. The MRPL has contended that purchase of land at Devanahalli does not relate to MRPL. Moreover, registration of land purchase has not taken place hence it is in nature of capital work-in-progress. As regards ₹29.65 crores, MRPL has sought to argue that this investment is for port connectivity of road and not related to port operations. Moreover, it is also not in the nature of current asset. Citing that funding of the above mentioned items, the revenue model, etc., would be independent of the existing jetty operation and that the above assets are not related to MRPL jetty operations and are directly relevant to some other revenue generating activities and quoting the decision of this Authority in the Order dated 19.07.2000, the MRPL has requested to exclude ROI on these amount for computation of wharfage rate for Jetty Nos.10 and 11.

(b). As regards ₹3 crores, the NMPT has stated that payment of ₹3 crores to Govt. of Karnataka towards land at Devanahalli Business Park is included in net fixed assets of the port. The port has argued that as this land is for construction and is connected with the port operations, its inclusion is justified. It has further argued that this item was included under fixed assets during the year 2008-09 and this Authority had considered for fixation of wharfage for 2008-09.

As regards (b), the NMPT has clarified that ₹29.65 Crores pertains to cash investments towards equity of SPVs for road and rail connectivity in HMRDC & NHAI. Since this cash investment was considered in the working capital calculation while fixing the wharfage rate for Jetty Nos.10 and 11 in the year 2008-09, the NMPT argued that the same need to be considered in the current exercise as well.

Analysis:

(i). The amount of ₹3 crores paid by NMPT to the Govt. of Karnataka is for allotment of one acre of land at Devanahalli Business Park at Bangalore. It is understood from Govt. of Karnataka Order No.IDD 26 DIA 200 dated 14.05.2008 that the said allotment to the NMPT is for setting up of Trade promotion centre at Devanahalli Business Park. Since this asset is not a revenue generating asset by itself it will form one of the items of common asset of the port as rightly stated by the NMPT. The MRPL had not disputed over this item in the last fixation done in April 2013. As per the decision of this Authority in the tariff Order of 19 July 2000 all revenue earning activities should contribute towards common assets created by the port which are not directly earning revenue. Hence, the approach followed by the NMPT in inclusion of this item is found to be in line with the guiding principle decided by this Authority and hence does not warrant any modification.

(ii). With regard to the point made by the MRPL that the land is not registered and hence should be treated as capital work in progress, the port has confirmed that the net fixed asset schedule reported in its Annual Accounts include the land cost. This Authority will, therefore, relies on the Audited Accounts of the port and rejects the submission made by the MRPL to treat it as Capital work in progress.

(iii). The amount of ₹29.65 crores pertains to cash investments made by the port towards equity of Special Purpose Vehicles (SPVs) of HMRDC & NHAI for road and rail connectivity. Since the said investment made by the port is in the nature of long term investments in equity of SPV, it cannot form part of the working capital of the port. Further, it is an investment and does not form part of net fixed assets of the port. It is noteworthy that in fixation/ revision of tariff of Major Port Trusts/ Private Terminals thereat return is allowed on Written Down Value of the fixed assets. Investments made by them is not considered for allowing return as tariff guidelines of 2005 do not permit it. Hence, the argument of the MRPL to exclude this item from the working capital computation merits consideration. The point made by the NMPT that just because this item was allowed in the earlier tariff fixation and hence should be considered in the current exercise is not tenable. Since MRPL had not disputed this point earlier, no adjustment was warranted in the wharfage fixation done in the past period. Hence, the amount of, ₹29.65 crores has been excluded from the working capital for both the years 2009-10 and 2010-11 and the modified working capital is considered in the computation of the wharfage rate.

(iv). Incidentally, the Net Fixed Assets of the NMPT for the year 2009-10 has been considered at ₹283.10 crores by the NMPT instead of ₹282.10 crores reported in the Annual Accounts for the year 2009-10. This appears to be an arithmetical error which has not been pointed out by the MRPL. The net fixed assets of the NMPT for the year 2009-10 is considered at ₹282.10 crores as reported in the Annual Accounts of the port.

(viii). **Assets capitalized in 2009-10 for ₹66.87 crores and in 2010-11 for ₹14.87 crores computation**

(a). The MRPL had earlier stated that the details of asset capitalization statements were not made available to them. It has, however, subsequently confirmed having received the relevant details of additions to the fixed assets for the years 2009-10 and 2010-11 from the NMPT for verification.

(b). The MRPL has contended that the additions to the gross block to the tune of ₹66.87 crores in the year 2009-10 and ₹14.87 crores in the year 2010-11 related to wharfs, road, school building, cranes, vehicles, water sprinkles, etc. Since most of these are not common assets related to MRPL, MRPL contends that they should not be apportioned to the MRPL for computation of wharfage rate for Jetty Nos.10 and 11 for the period under consideration.

(c). The NMPT has clarified that additions to gross block of the NMPT assets [except additions to three items viz. (i) Building sheds and other structures; (ii) Railway rolling stock (iii) Plant & Machinery and additions to assets, if any, to the other revenue earning activities] invariably form common asset of the NMPT and hence apportioned to Jetty Nos.10 and 11 for computation of ROCE on common assets. The NMPT has contended that this approach is in line with the approach adopted in fixation of final wharfage rates from the year 1996-97 till 2008-09 and hence is in order. The point disputed by MRPL that additions to assets do not relate to MRPL activities and therefore require to be excluded from the calculations is in deviation from the guiding principles set by this Authority for fixation of wharfage rate, as contended by NMPT.

Analysis:

(a). The NMPT has furnished break up of the assets capitalized by the port at ₹66.87 crores and ₹14.87 crores during the years 2009-10 and 2010-11 respectively under the various heads as tabulated below duly matching with the Annual Accounts of the respective years. Additions to the gross block pertaining to building/ shed and other structures, Railway rolling stock and Plant and Machinery aggregating to ₹5.93 crores in the year 2009-10 and ₹3.46 crores in the years 2010-11 has been excluded by the port from the total additions to the gross block during each of the years. A summary of additions to gross block of assets for the years 2009-10 and 2010-11 as furnished by the NMPT, and additions to the gross block considered for fixation of wharfage rate is tabulated below:

(**Amount in Lakhs**)

Sr. No.	Account Head / Description	Addition to Gross Block in 2009-10 as per Annual Accounts	Addition to Gross Block in 2010-11 as per Annual Accounts	Remarks
A	**BUILDING/ SHED & OTHER STRUCTURES**	177.58	144.77	Excluded by NMPT for wharfage computation
B	**RAILWAY ROLLING STOCK**	228.92	121.00	Excluded by NMPT for wharfage computation
C	**PLANT & MACHINERY**	187.37	80.77	Excluded by NMPT for wharfage computation
D	**WHARFS, ROAD AND BOUNDRARIES** (PQC to JN at approach road to ore berth, strengthening the roads, pavement concreting, const of stock yard, interlocking of pavements etc.)	3401.75	1023.2	-
E	**PRELIMINARY STUDY WORKS** (various preliminary study works like techno economic feasibility study for BOT projects, dust depression, iron ore handling system, setting up of container terminal)	75.84	47.9	-
F	**FLOATING CRAFTS** (Procurement of 1 no 32 Bollard Pull Tug Eashwari)	2395.61	0	-
G	**DOCKS, SEA WALLS, PILES, NAVIGATION AIDS & JETTIES ETC.** (Replacement of fenders etc., development of outer harbor etc.)	74.84	22.58	-
H	**CRANES & VEHICLES** (procurement of Forklift, vehicles etc.)	44.58	0	-
I	**INSTALLATION OF WATER & ELECTRICITY SYS** (Supply & Inst of Elect & Electronics items like AC, WC, HT cables, 30 mtrs High Mast)	101.07	46.52	-
J	**Total addition to Gross Block**	**6687.34**	**1486.74**	-
K	Less: Excluded by NMPT in the wharfage computation (Sr. No A to C)	(593.87)	(346.54)	-
L	Addition to Gross Block considered by NMPT (J-K)	6093.47	1140.20	-
M	Less: Additions shown under	(75.84)	(47.90)	-

	preliminary study is fully depreciated by NMPT in the same year as per its Annual Accounts hence shown as deduction here			
N	**Net Additions to the gross block considered for apportioning to Jetty 10 &11**	**6017.63**	**1092.30**	-
	Apportioned to Jetty No.10 (on Wharfage Length Ratio after adjusting the period factor of 198 days = 0.0534)	* 321.34	--	-
	Apportioned to Jetty No.11 (on Wharfage Length Ratio - 0.0984)	* 592.13	* 107.48	-

[* These figures are shown as gross value in the above table. However, the NMPT has in its computation rightly considered net fixed asset value.]

(b). The guiding principle as regards return on common assets of the port has been decided by this Authority in its Order dated 19 July 2000 as brought out earlier. In fact, till now the MRPL had never disputed common net fixed assets of the NMPT and the additions to the gross block treated as common assets of the port and apportioned to the Jetty Nos.10 and 11 for computation of wharfage rate during the years 1996-97 to 2008-09.

(c). It is seen that the above additions to the gross block reportedly form part of common asset of the port as they are not directly earning revenue. Hence, all revenue earning activities including MRPL have to contribute towards common assets created which are not directly earning revenue. Thus, apportionment of return on investment on the above additions to the gross block computed by the NMPT is found to be in line with the guiding principles and the approach followed in fixation of wharfage rate for the past years till 2008-09. Hence, no adjustment is felt necessary except for the adjustment with reference to the expenses under the head Preliminary Study/ works, as brought out below.

It is seen that though the Annual Accounts of the port report additions to the gross block to the tune of ₹75.81 lakhs in 2009-10 and ₹47.9 lakhs in the year 2010-11 under Preliminary Study/ works, these additions to gross block are fully depreciated in the same year. This means that the net fixed assets considered by the NMPT do not include these values at all. ₹75.81 lakhs and ₹47.90 lakhs would hence be captured in the depreciation for the years 2009-10 and 2010-11 respectively. The nature of the expense reported by the NMPT towards preliminary study/ works show that this expense is towards feasibility study undertaken for some BOT project. The guiding principle prescribed by this Authority is clear that whilst return on the common asset of the port which are not directly earning revenue is allowed in the computation of wharfage rate, the NMPT should take care that it does not include any other asset which are directly relevant to some other revenue earning activities. The expense is towards Feasibility Study of some BOT project. It is not made known by the port whether the project for which the feasibility study was undertaken has materialised or not. If the project had materialised or is likely to materialize in future, then for the purpose of tariff fixation it will be appropriate to treat it as the preliminary expense of the concerned revenue earning project. In view of the above position, the sum of ₹75.81 lakhs in the year 2009-10 and the sum of ₹47.9 lakhs in the year 2010-11 need to be excluded from the computation of wharfage rate. It is seen from the detailed working furnished by the NMPT that the port has captured this item as depreciation under the management and general overheads and apportioned to the Jetty No.10 for the year 2009-10 (for the period from 1 April 2009 to 15 October 2009) and Jetty No.11 for the two years 2009-10 and 2010-11. Hence, the management and general overheads considered by the NMPT for the years 2009-10 and 2010-11 in computation of wharfage rate is moderated to the extent of the depreciation on these items apportioned to Jetty no. 10 and 11 in the wharfage computation.

(d). The MRPL has pointed out that the Wharf Length ratio which is considered as one of the basis for apportionment of return on common assets and some of expenses has unchanged with respect to the earlier years despite commissioning of coal Jetty in the year 2006. In this regard, the NMPT has clarified that the coal berth was constructed on BOT basis and that the cost of coal project is not inbuilt in the capitalization, depreciation or ROI computation in the wharfage rate calculation. Hence, the question of including coal berth in the wharf length ratio does not arise. The point made by the NMPT seems to be logical and reasonable and hence is accepted.

(ix). **Allocation of net fixed assets of Jetty No-10 to Jetty No-11 for the period beyond 15.10.2009**

The wharfage computation furnished by NMPT shows that net fixed assets of Jetty No.10 for the period beyond the MOU i.e. ₹7,184.15 lakhs (proportionately for 167 days) in the year 2009-10 and ₹15,253.23 lakhs in the year 2010-11 is treated as common net fixed assets of port for computation of return. The MRPL has disputed apportionment of net fixed assets of Jetty No.10 allocated to Jetty No.11 for the period beyond MOU i.e. beyond 15.10.2009. It has sought to argue that whilst net fixed assets of Jetty No.10 is apportioned to Jetty No.11 after the MOU period of Jetty No.11, no income pertaining to Jetty No.10 corresponding to post MOU periods has been allocated to Jetty No.11. The MRPL contends that if port insists for the same, then necessary credit for proportionate income earned by jetty no. 10 for such period beyond MOU should also be captured in the computation of wharfage during the MOU period. It has further argued that wharfage computation for post MOU period of Jetty No 10 should be governed by a separate set of calculations considering the operating expenses + ROI for corresponding period.

The NMPT has clarified that the capital employed on common assets for calculation of net block of Jetty No.11 has been correctly computed by taking Jetty No.10 as common asset for the post MOU period.

Analysis:

(a). It is relevant here to mention that the Jetty No.10 was governed by the MOU for the period upto 15 October 2009. Once the MOU is over, the assets related to the Jetty No.10 will form part of common assets of the port like any other existing berths and facilities. The treatment for return on the common assets is already decided by this Authority. The NMPT has apportioned the common net fixed assets to Jetty No.11 only to the extent of wharf length ratio for computation of return on investment in line with the approach followed in the fixation of wharfage rate for past years as well. For the year 2009-10, the net fixed assets of Jetty No.10 is treated as common assets for proportionate period i.e. 167 days for the period after subsidence of MOU of Jetty No.10. The treatment given by the NMPT is found to be in line with the guiding principle decided by this Authority and hence does not warrant any modification.

(b). The MRPL has contended that if proportionate assets of Jetty No.10 is allocated to Jetty No.11 then proportionate share of income of Jetty No.10 should also be captured. For reasons explained in the preceding para, the assets of Jetty No.10 for the post MOU period is treated as common assets of the port like the treatment given to any other jetties/ berths of the port. This is done for the purpose of computation of return on common assets of NMPT. When the proportionate income of other common assets are not considered, the argument of MRPL to give such a treatment only in respect of Jetty No.10 is not tenable and also not in line with the guiding principles set by this Authority. Hence, the point made by the MRPL to include proportionate income of Jetty No.10 is not accepted.

(c). As regards the point made by the MRPL about the computation of wharfage rate for Jetty No.10 for the post MOU period, the NMPT has referred the matter to the Ministry of Shipping (MOS) and the decision of the MOS is awaited.

(x). Apart from the above points disputed in the wharfage calculation, the MRPL has reiterated its earlier submissions on the following points disputed by it earlier during the proceedings relating to fixation of wharfage rate for Jetty Nos.10 and 11 for the years 2002-03 to 2008-09 with a request to reconsider the calculations:

(a). Apportionment of certain capital expenses (i.e. capital dredging cost and cost of diaphragm wall) to Jetty No.12
(b). Pre-closure of Loan with SBI
(c). Inclusion of HPCL and ASIDE assets under common assets
(d). Inclusion of short term deposits in working capital/ observation on the methodology of working capital computation by MRPL.

As rightly pointed by the NMPT, the submissions made by MRPL on each of the above points are mere reiteration of their earlier submissions made during fixation of wharfage rate for Jetty Nos. 10 and 11 for the period 2002-03 to 2008-09. This Authority during the proceedings of that case had obtained comments of NMPT on MRPL's views and views of MRPL thereon. Based on the information collected during the processing of the case, each of these issues was examined by this Authority and a reasoned speaking Order No. TAMP/22/2012-NMPT dated 1 April 2013 was passed setting all these issues in para 10 (iv) to (vii) while fixing the wharfage rate for Jetty Nos.10 and 11 for the period 2002-03 to 2008-09. Since these issues raised by MRPL are mere reiteration of their earlier submission which are already dealt with elaborately in the said Order, this Authority does not find it necessary to deal with them again. Further, the MRPL has not pointed out any error apparent on the face of records considered in the relevant proceedings of the tariff orders covering the period 2002-03 to 2008-09. Clause 3.3.1 of the tariff guidelines of March 2005 does not permit entertaining an application for review of any tariff order which has not pointed out any error apparent on the face of records considered in the relevant proceedings. Therefore, the question of revisiting the calculation for the earlier period 2002-03 to 2008-09 does not arise.

(xi). Subject to the above discussions, the cost statements furnished by NMPT for fixation of wharfage rate for cargo handled at Jetty No.10 for the period 01-04-2009 to 15-10-2009 and Jetty No.11 for the years 2009-11 are modified. The modified cost statements are attached as **Annex - I (a) and (b)** for Jetty No.10 and Jetty No.11 respectively.

(xii). The wharfage rate for Jetty No.10 and Jetty No.11 proposed by the NMPT vis-à-vis modified rates based on the above discussion are furnished in the table given below:

Jetty No.10 for the period 01.04.2009 to 15.10.2009 (₹ per tonne)		Jetty No.11 (₹ per tonne)		
Proposed by NMPT	**Modified by TAMP**	**Year**	**Proposed by NMPT**	**Modified by TAMP**
53.55	53.12	2009-10	40.90	40.40
		2010-11	41.67	41.22

As clarified by NMPT, the unit rate for Jetty No.10 in the year 2009-10 is higher in comparison to the past fixation due to lower traffic handled at Jetty No.10 i.e. 50.87 lakh tonnes for 1 April 2009 to 15 October 2009, as against 107.04 lakh tonnes reportedly handled in the year 2008-09, which if prorated for 6 and half months would be 58.06 lakh tonnes as against 50.87 lakh tonnes. The impact of reduction in traffic is ₹6.58 per tonne.

(xiii). During the processing of the case the MRPL has pointed out that though the loan is repaid by NMPT, the Bank has not released the corporate guarantee given by the MRPL. In view of this issue pointed out by the MRPL, the NMPT is advised to initiate necessary action and address the point raised by MRPL in this regard.

(xiv). The proposal of NMPT is to fix the wharfage rate for the years 2009-10 to 2010-11 which is a retrospective approval of rates. As per the tariff guidelines, this Authority is mandated to fix tariff prospectively. In this case, the tariff is fixed based on apportionment of certain income and expenses at actuals and therefore calls for retrospective tariff fixation. In view of the above, it is clarified to NMPT that this Authority will not be responsible for issues / dispute, if any, on account of retrospective implementation of the tariff approved in this case.

16. In the result, and for the reasons stated above and based on a collective application of mind, this Authority approves the wharfage rate for cargo handled at NMPT Jetty No.10 for the period from 01-04-2009 to 15-10-2009 and for Jetty No.11 during the years 2009-10 and 2010-11 as given below:

Jetty No.10 for the period 01.04.2009 to 15.10.2009 (₹ per tonne)	**Jetty No.11**	
	Year	**(₹ per tonne)**
53.12	2009-10	40.40
	2010-11	41.22

(**T.S. Balasubramanian**)
Member (Finance)

ANNEX-I(a)

Computation of Wharfage rate payable by Mangalore Refinery and Petrochemicals Limited (MRPL) to New Mangalore Port Trust (NMPT) for cargo handled at Jetty No.10 for the period 01-04-2009 to 15-10-2009

(₹. in lakhs)

Sl. No.	Particulars	As given by NMPT for the period 1.4.2009 to 15.10.2009	As modified by TAMP for the period 1.4.2009 to 15.10.2009
A	**EXPENDITURE**		
(i).	Cargo handling & Storage	222.36	222.36
(ii).	Port & Dock charges	989.44	989.44
(iii).	Estate Rentals	2.01	2.01
(iv).	General Management & Admn. Expenses	254.92	250.87
(v).	Finance & Miscellaneous Expenses	181.59	181.59
	Total Expenditure (i) to (v)	**1650.32**	**1646.27**
B	**INCOME**		
(i).	Port Dues	146.54	146.54
(ii).	Berth Hire charges	465.78	465.78
(iii).	Pilotage	141.26	141.26
(iv).	Interest on Escrow A/c	105.37	105.37
	Total Income (i) to (iv)	**858.95**	**858.95**
C	**Net Expenditure (A) - (B)**	**791.37**	**787.32**
D	**Return on Assets**		
(i).	Return on Jetty No.10 Assets (@ 3% p.a.)	310.94	306.21
(ii).	Return on other common assets (@ 18% p.a.)	365.08	351.97
(iii).	Loan Repayment	1500.00	1500.00
	Sub total (i) to (iii)	2176.02	2158.18
E	**Less: Depreciation**	243.48	243.48
F	**Net Return on Assets (D) - (E)**	**1932.54**	**1914.70**
G	**Net Expenditure + Return on Assets (C) + (F)**	**2723.91**	**2702.02**
H	**Traffic handled at Jetty No.10 (in lakh tonnes)**	50.87	50.87
I	**Wharfage per tonne (in Rs.)**	**53.55**	**53.12**

ANNEX-I(b)

Computation of Wharfage rate payable by Mangalore Refinery and Petrochemicals Limited (MRPL) to New Mangalore Port Trust (NMPT) for cargo handled at Jetty No.11 during the years 2009-10 and 2010-11 (₹ Lakhs)					
Sl. No.	**Particulars**	**As furnished by NMPT**		**As modified by TAMP**	
		2009-10	**2010-11**	**2009-10**	**2010-11**
A	**EXPENDITURE**				
(i).	Cargo handling & Storage	379.34	389.30	379.34	389.30
(ii).	Port & Dock charges	1845.33	2526.77	1845.33	2526.77
(iii).	Estate Rentals	8.87	8.87	8.87	8.87
(iv).	General Management & Admn. Expenses	489.09	508.58	481.64	503.87
(v).	Finance & Miscellaneous Expenses	441.54	408.23	441.54	408.23
	Total Expenditure (i) to (v)	**3164.17**	**3841.75**	**3156.72**	**3837.04**
B	**INCOME**				
(i).	Port Dues	281.00	312.25	281.00	312.25
(ii).	Berth Hire charges	862.52	920.32	862.52	920.32
(iii).	Pilotage	278.88	305.34	278.88	305.34
(iv).	Interest on Escrow A/c	161.53	207.26	161.53	207.26
	Total Income (i) to (iv)	**1583.93**	**1745.17**	**1583.93**	**1745.17**
C	**Net Expenditure (A) - (B)**	**1580.24**	**2096.58**	**1572.79**	**2091.87**
D	**Return on Assets**				
(i).	Return on Jetty No.11 Assets (@ 3% p.a.)	393.38	390.15	384.66	381.43
(ii).	Return on other common assets (@ 18% p.a.)	876.37	1151.13	845.73	1115.49
(iii).	Loan Repayment	1361.36	1333.34	1361.36	1333.34
	Sub total (i) to (iii)	2631.11	2874.62	2591.75	2830.26
E	**Less: Depreciation**	413.46	413.46	413.46	413.46
F	**Net Return on Assets (D) - (E)**	**2217.65**	**2461.16**	**2178.29**	**2416.80**
G	**Net Expenditure + Return on Assets (C) + (F)**	**3797.89**	**4557.74**	**3751.08**	**4508.67**
H	**Traffic handled at Jetty No.11 (in lakh tonnes)**	92.86	109.37	92.86	109.37
I	**Wharfage per tonne (in Rs.)**	**40.90**	**41.67**	**40.40**	**41.22**