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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 464

New Delhi,

17 December 2019

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963, (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Paradip Port Trust for fixation of Scale of Rates for allotment of Port Land (expanded industrial zone) on lease basis for port related activities outside the custom bond area, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/43/2019-PPT

Paradip Port Trust

QUORUM

Applicant

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Rajat Sachar, Member (Economic)

ORDER

(Passed on this 29th day of November 2019)

This case relates to the proposal received from Paradip Port Trust (PPT) for fixation of Scale of Rates (SOR) for allotment of Port Land (expanded industrial zone) on lease basis for port related activities outside the custom bond area.

2.1. Based on a proposal filed by the PPT, this Authority vide its Order no. TAMP/36/2017-PPT dated 21 July 2017 has approved SOR for allotment of Port Land on lease basis for port related activities outside the custom bond area. This Order was notified in the Gazette of India on 17 August 2017 vide Gazette No. 323 and had come into effect from 27 April 2017 and is valid for a period of five years. However, the said Order does not cover the SOR for Township Zone and Sector-21 to be used for industrial purpose. Therefore, the PPT has come up with a proposal in reference.

2.2. The main submissions made by PPT vide its letter No. AD-EST-MISC-III-02/2017/3246 dated 14 August 2019 are summarized below:

- (i). As part of the Sagarmala initiative, the Ministry of Shipping (MOS) has announced a plan to develop Paradip as a world class, globally competitive, Smart Industrial Port City (SIPC).
- (ii). Smart City at Paradip is envisioned to be built on a PPP basis with a Multi-modal Logistics Park (MMLP), Industrial Park(s), Residential and Commercial area(s), water management system(s), waste recycling center(s), and creek development programme for tourism.
- (iii). In the SIPC Plan, some patches of Sector 21 and Township zone have been earmarked for the industrial purpose.
- (iv). The proposal for fixing of SOR in Sector-21 and Township (expanded area) was placed before the Board of Trustees of PPT, on recommendation of the LAC.
- (v). As per Clause 13(a) of the Policy Guidelines for Land Management, 2014, the Market value of land has been arrived as under:
“Highest accepted tender-cum-auction rate of Port land for similar transaction, updated on the basis of the annual escalation rate approved by the Port Trust Board.”
- (vi). The highest accepted tender-cum-auction rate of Port land for similar transactions for allotment of land in PPT had been done in the year 2018, where the H-1 accepted rate/bid was ₹.180460/- per acre/annum. Accordingly, the market value comes to ₹. 30,07,666/- and rounded off to ₹. 30,08,000/- [1,80,460 * 100 / 6].

2.3. In this backdrop, the PPT has requested this Authority to approve Rates for Township zone and Sector-21 Zone to be used for Industrial purposes on lease basis for port related activities outside the custom bond area which is as follows:

(₹. per acre)

Sr. no.	Zone	Proposed SOR	
		Market value of the Port land	Reserve price in terms of annual lease rent

1.	Township zone to be used for industrial purposes	3008000/-	180460/-
2.	Sector-21 zone to be used for industrial purposes	3008000/-	180460/-

The above rates will be escalated @ 2% per annum.

3. The proposal in reference has the approval of the Board of PPT vide its resolution no. 06/2019-20 dated 27.05.2019 alongwith the recommendation of the Land Allotment Committee.

4. In accordance with consultative procedure prescribed, a copy of the PPT proposal dated 14 August 2019 was forwarded to the concerned users / user organizations as suggested by PPT and also to the users / user organization as per our approved list, vide our letter dated 26 August 2019, seeking their comments. However, no comments have been received from any of the users/ user organizations, till the case was finalized.

5. A joint hearing on the case in reference was held on 16 October 2019 at the PPT premises. The PPT has made its submissions during the joint hearing.

6. Based on a preliminary scrutiny of the PPT proposal, following additional information/ clarification were sought from PPT, vide our letter dated 07 October 2019. The PPT has responded vide its letter dated 29 October 2019. The information/ clarification sought by us and reply of PPT thereon are as follows:

Sr. no.	Additional information/ Clarification	Summary of Reply of PPT
(i).	The PPT is seen to have determined the lease rent based on only one of the factors as listed out in Clause 13 of the Land Policy Guidelines. The PPT has given reasons for not considering other factors except valuation by the valuer. The PPT to explain the reason for not determining the market value of the land outside the custom bond area to be allotted for port related activities, by appointing an approved valuer.	As per the Land Policy Guidelines of Para 13(a): (i). There is no State Government ready reckoner for similar classification. (ii). There is no relevant transaction registered during last three years within the vicinity of the port. (iii). For deriving the market value of the port land, as the highest accepted tender-cum-auction of the port land for similar transaction is already available with port, the LAC had recommended the same and also been approved by the Board. (iv). Since the exercise to derive SOR for port related activities in the Industrial zone had been done by BCG in the year 2017 i.e at the time of TAMP notification, appointment of Valuer to derive market value had not been done.
(ii).	The PPT to confirm that the highest accepted tender cum auction rate of the land as considered by PPT, is representative enough to be taken as base, to determine the lease rent in the subject proposal.	As per the Land Policy Guidelines 13-a, It is mentioned that in case the LAC not choosing the highest factor, the reasons for the same have to be recorded in writing. While deriving the SOR, the highest accepted tender-cum-auction rate of Port land for similar transaction has been considered. The details already explained in the foregoing para.
(iii).	As seen from the LAC Report, the LAC is seen to have recommended the lease rent of ₹. 180460/- per acre for the Township Zone as well as for the Sector – 21 Zone to be used for industrial purposes. The Board of Trustees of PPT is also	The reserve price for annual lease rent, which the Board and LAC had approved and recommended is ₹. 180460/- per acre for Township as well as Sector-21 zone to be used for industrial purpose. The Sl. No. 3.1 of Page no. 23 of the said proposal may be read as follows: (₹. per acre)

seen to have approved the recommendation of the LAC. However, in the proposed draft Scale of Rates, the PPT is seen to have proposed the lease rent of ₹.49410/- per acre for the Township Zone as well as for the Sector – 21 Zone to be used for industrial purposes. The PPT to clarify the position.	Sr. no.	Zone	Proposed SOR	
			Market value of the Port land	Reserved price in terms of annual lease rent 6% of market value of the land
	1.	Township zone to be used for industrial purposes	3008000/-	180460/-
	2.	Sector-21 zone to be used for industrial purposes	3008000/-	180460/-
The above rates will be escalated @ 2% per annum.				

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

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

- (i). The land estate of Paradip Port Trust can be generally categorized into four Zones viz., Township Zone, Industrial Zone, Sector 21 Zone and Haridaspur Zone. Based on the proposal of PPT, this Authority vide its Order no. TAMP/53/2014-PPT dated 15 May 2015 has approved Scale of Rates for allotment of port land on lease basis for non-port related activities outside the custom bond area, in respect of all the above mentioned Zones. Subsequently, on the ground that the Paradip is being developed as a Smart Industrial Port City (SIPC), which includes development of industrial parks and Multi Modal Logistics Park (MMLP), this Authority vide its Order no. TAMP/36/2017-PPT dated 21 July 2017 has approved SOR for allotment of Port Land on lease basis for port related activities outside the custom bond area in the Industrial Zone based on the proposal of PPT. However, this Order does not cover the rates for Township Zone and Sector – 21. Therefore, since some patches of Sector 21 and Township zone have been earmarked for the industrial purposes as part of SIPC, the PPT has come up with a proposal for fixing SOR for Township zone and Sector-21 Zone to be used for Industrial purposes on lease basis for port related activities outside the custom bond area. The proposal of the port has the recommendation of Land Allotment Committee and approval of its Board of Trustees.
- (ii). The PPT has filed its proposal in August 2019. The PPT has furnished the additional information/ clarification sought by us in October 2019. The proposal of PPT alongwith the information/ clarification furnished by the PPT during the processing of the case, is being considered in this analysis.
- (iii). This Authority is mandated to follow the Land Policy Guidelines issued by the Government from time to time for the purpose of determining lease rentals for the lands belonging to the Port Trusts. The Ministry of Shipping in the Government of India has announced Land Policy Guidelines for Major Ports, 2014 in January 2014 which has come into effect from 2 January 2014. Subsequently, the Ministry of Shipping has issued amended Land Policy Guidelines, 2014 under Section of the MPT Act, 1963 for implementation with effect from 17 July 2015. The PPT has, thus, come up with the subject proposal, based on the provisions of the Land Policy Guidelines for Major Port Trusts, 2014, as amended in July 2015.

- (iv). As per clause 13(a) read with clause 11.2(e) of the Land Policy Guidelines 2014, a Land Allotment Committee (LAC) constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic shall determine the market value of land as per the methodology prescribed in clause 13(a). In the case of PPT, a LAC has been constituted under the Chairmanship of Chairman of PPT and consisting of Secretary, F.A. & C.A.O. and Traffic Manager as Members of the Committee.
- (v). Para 13(a) of the Land policy guidelines of July 2015 prescribes the methodology for determination of market value of the land based on the five factors as prescribed therein. In terms of the said para of the amended Land policy guidelines of 2014, the Land Allotment Committee may normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for similar classification/ activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity with an appropriate annual escalation rate to be approved the Port Trust Board, (iii). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (iv). Rate arrived at by an approved valuer appointed for the purpose by the Port and (v). Any other relevant factor as may be identified by the Port. The amended Land Policy guidelines of 2014 also stipulates that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded.
- (vi). From the proposal of the port, it is seen that the Ready Reckoner of the State Government does not contain the valuation for industrial/ port related use. No transactions are reported to have taken place during the last 3 years within the port's vicinity. Since the exercise to derive SOR for port related activities in the Industrial zone was carried out by a Consultant in the year 2017, no Valuer is reported to have been again appointed by the Port to derive the market value of the land. Thus, the LAC is seen to have determined the lease rent based on one of the factors as listed out in Clause 13 of the Land Policy Guidelines i.e. highest accepted tender cum auction. The LAC in its Report has considered the highest accepted tender cum auction rate of port land for similar transaction pertaining to the year 2018 at ₹ 1,80,460/- per acre per annum. The said same rate has been proposed to be adopted as the reserve price in terms of annual lease rent by the PPT for the patches of land in the Township Zone and Sector – 21 Zone, which have been identified to be used for industrial purposes.
- (vii). Based on the above position, the LAC has recommended to fix the market value for the patches of land in the Township Zone and Sector – 21 Zone, which have been identified to be used for industrial purposes at ₹ 30.08 lakhs per acre. The Board of Trustees of PPT has approved the market value at the same amount of ₹ 30.08 lakhs per acre and the reserve price in terms of annual lease rent at ₹ 180460/- per acre per annum as also recommended by the LAC.

Clause 13(b) of the guidelines stipulates that Reserve Price in terms of annual rent would be arrived, as a percentage of latest market value of land determined based on the five factors listed under para 13 (a) of the Land Policy Guidelines and the percentage should not be less than 6% which is to be fixed by the Port Trust Board. On the other hand, the recommended lease rent of ₹ 180460/- happens to be the highest accepted tender-cum-auction rate. Therefore, the market value of ₹ 30.08 lakhs per acre is a figure derived from the highest accepted tender figure of lease rent. Be that as it may.

Since the lease rent as recommended by the LAC has the approval of the Board of Trustees of PPT, this Authority is inclined to prescribe the reserve price in terms of annual lease rent for the land at ₹ 180460/- per acre per annum for the patches of land in the township zone and sector – 21 zone to be used for industrial purposes. Incidentally, this proposed rate is higher than the lease rent of ₹ 155400/- per acre per annum approved for industrial zone in July 2017 vide Order dated 21 July 2017.

Since Clause 13(c) of the amended Land Policy Guidelines issued in July 2015 requires this Authority only to notify the Scale of Rates, the market value is not notified.

- (viii). The PPT is seen to have proposed various definitions/ conditions/ notes in the proposed draft Scale of Rates. The said definitions/ conditions/ notes are seen to be similar to the definitions/ conditions/ notes approved in the SOR for allotment of Port land outside the custom bond area on lease basis for non-port related activities at PPT vide Order no. TAMP/53/2014-PPT dated 15 May 2015 and Order no. TAMP/36/2017-PPT dated 21 July 2017. That being so, the proposed definitions/ conditions/ notes are approved.
- (ix). The PPT has proposed in the Scale of Rates a note to the effect that the reserve price in terms of annual lease rent shall bear an escalation factor of 2% every year. In this regard, it is relevant here to mention that Clause 18(c) of the Land Policy Guidelines of 2014 gives flexibility to the ports to fix annual escalation which would not be less than 2%. The PPT has proposed 2% annual escalation. Since the annual escalation rate of 2% is approved by the PPT Board of Trustees and is as per the provision of the Land Policy guidelines of 2014, the proposed rate of 2% annual escalation is approved.
- (x). Clause 13 (C) of the amended Land Policy Guidelines, 2014 stipulates that the rates will be revised once in every five years by this Authority. Accordingly, the port in the Rent Schedule, has proposed a note to the effect that the reserve price in terms of annual lease rent will be effective after expiry of 30 days from the date of notification of the Order in the Gazette of India and shall remain in force for a period of five years, which is approved.

9.1. In the result, and for the reasons given above, and based on collective application of mind, the Scale of Rates for allotment of Port land (expanded industrial zone) on lease basis for port related activities outside the custom bond area, in the Township Zone and Sector 21 Zone attached as **Annex**, is approved.

9.2. The Scale of Rates approved shall come into effect after expiry of 30 days from the date of notification of the Order in the Gazette of India and shall remain in force for a period of five years. The approval accorded shall automatically lapse thereafter unless specifically extended by this Authority.

(T.S. Balasubramanian)
Member (Finance)

PARADIP PORT TRUST

**SCALE OF RATES (SOR) FOR ALLOTMENT OF PORT LAND (EXPANDED INDUSTRIAL ZONE)
ON LEASE BASIS FOR PORT RELATED ACTIVITIES OUTSIDE THE CUSTOM BOND AREA.**

1. SHORT TITLE, COMMENCEMENT AND APPLICATION

- a) This may be called” Scale of Rates (SoR) for allotment of Port land (expanded industrial zone) on lease basis for Port related activities outside the custom bond area.
- b) The same shall come into force on such date as approved by TAMP.
- c) It applies to the areas located outside the custom bond area (expanded industrial zone) in Township zone and Sector 21 Zone for a period of five years from the date it comes into effect.

2. DEFINITION

- a) **“Board”**, in relation to a Port means the Board of Trustees constituted under Major Port Trust Act, 1963 for the Port.
- b) **“TAMP”**, means the Tariff Authority for Major Ports constituted under section 47-A of Major Port Trust Act, 1963.
- c) **“Chairman”**, means the Chairman of the Board and includes the person appointed to act in his place under section 14 of Major Port Trust Act, 1963.
- d) **“Land”**, shall have the meaning assigned to it as in Section 2 (k) of Major Port Trust Act, 1963.
- e) **“Lease”**, shall have the meaning assigned to it as in Section 105 of the Transfer or Property Act, 1982 i.e., “transfer of a right to enjoy immovable property, made for a certain time, expressly provided for, in consideration of a price paid or promised, or of money to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms”.
- f) **“License”**, shall have the same meaning assigned to it as in Section 52 of the Indian Easements Act, 1882 i.e., “a right granted to another person by the grantor, to do or continue to do upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property.
- g) **“Upfront basis”**, means allotment of land on lease basis on payment of one time upfront payment for the entire lease period and the nominal lease rent approved by the Boar from time to time.
- h) **“Premium basis”**, means allotment of land on annual lease basis on payment of annual lease rent with escalation approved by the Board from time to time.
- i) **“Registration charges”**, means the charges to be borne by the lessee/licensee towards the costs of preparing, stamping and registering the lease/license agreement and also the cost of a counterpart or a copy if required.
- j) **“Document preparation charges”**, means one time charges to be paid by the lessee/ licensee to the Board for preparation of lease/license agreement.
- k) **“Security Deposit”**, means refundable amount to be kept with the Board by the lessee/ licensee for the entire lease/license period subject to fulfilling all the agreed terms and conditions.
- l) **“GST”** means a statutory tax levied by the Government for goods and services but actually borne by the customers. It is categorised under Indirect Tax and came into existence under the GST Act.
- m) **“Penalty”**, means the charges levied by the Board for violation of terms and conditions of allotment and wrongful use and occupation of allotted premises.

3. SCALE OF RATES (SoR) FOR ALLOTMENT OF PORT LAND.

- 3.1.** Scale of Rates for allotment of Port land (expanded industrial zone) on lease basis for Port related activities outside the custom bond area.

Zone	(amount in ₹ 'per acre')
	SOR
	Reserve price in terms of annual lease rent
Township Zone	1,80,460/-
Sector 21	1,80,460/-

The annual lease rent will be escalated @ 2% per annum.

4. Terms and Conditions

4.1. Due date Payment

The charges to be remitted within a period of one month from the date of issue of demand note.

4.2. Mode of Payment

The payment should be made through RTGS/NEFT/DD in favour of F.A.& C.A.O., PPT.

4.3. Interest on delayed payment

Any arrears of rent or other money accruing to or in favour of the Paradip Port Trust or from the lessee shall be recoverable as a public demand with interest @ 12% per annum without prejudice to any action that may be taken by the Port to recover by a suit in the court having jurisdiction over the area.

4.4. Counting date of allotment

The allotment will be counted from the date of taking possession of site/premises by signing in the Possession Register.

4.5. Non-utilisation of allotted land

If the allotted land is not utilized for the purpose for which it has allotted within a period of 18 (eighteen) months from the date of possession, the allotted land will be cancelled and all the payments made for such allotment will be forfeited.

4.6. Penalty

- If the lessee breaches / violates any provisions of lease agreement, the Board would reserve the right to impose the appropriate penalty or cancel the lease depending upon the nature and magnitude of such violation. In case of cancellation, no refund will be made.
- If the lessee/licensee continues unauthorisedly beyond the approved period, will be liable to pay compensation for wrongful use and occupation at three times of the Scale of Rates in force till the vacant possession is obtained.

4.7. Observation of rules and regulations of Paradip Port Trust

The lessee /licensee shall observe all provisions of laws, rules, bye-laws, regulations, orders and notification relating to the Port issued by the Central Government, Board, Chairman or any other Competent Authority from time to time and shall pay the rates approved by the Board from time to time.

4.8. Refund of proportionate value in case of resumption of the allotted premises before expiry of lease in Port interest

The lessee/licensee is eligible to get refund on prorata basis for the left out period of lease/license without interest if the land is resumed before the expiry of allotment period for Port purpose. In case of rehabilitation in other location at the discretion of the Port, the lessee/licensee has to pay differential amount on prorata basis for the left out period as per the prevailing SoR.

4.9. All the allotments of Port land and buildings are governed by Paradip Port Trust Immovable Properties (Lands and Houses) Leasing and Licensing Regulations, 1975 and Land Policy Guidelines issued by the Ministry of Shipping, Govt. of India from time

to time. Any provisions of the above which has not been specifically spelt out in the above terms and conditions are deemed to be covered.

- 4.10.** The reserve price in terms of annual lease rent prescribed above shall bear an escalation factor of 2% every year.
- 4.11.** The reserve price in terms of annual lease rent prescribed above shall remain in force for a period of five years.
- 4.12.** In case of any inconsistency in the definitions/ conditions/ notes in the Scale of Rates vis-à-vis the amended Policy Guidelines for Land Management, 2014, the provisions contained in the amended Policy Guidelines for Land Management, 2014 would prevail.

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

F. No. TAMP/43/2019-PPT	Proposal received from Paradip Port Trust for revision of Scale of Rates for allotment of Port Land (expanded industrial zone) on lease basis for port related activities outside the custom bond area.
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A joint hearing in the case in reference was held on 16 October 2019 at the PPT premises. The PPT has made a brief power point presentation of its proposal. At the joint hearing, the PPT has made the following submissions:

PPT

- (i). As part of the Sagarmala initiative, the Ministry of Shipping (MOS) has initiated setting up of Smart Industrial Port City (SIPC) at all Major Port Trusts including PPT. In the SIPC Plan, some patches of Sector 21 and Township zone have been earmarked for the industrial purpose. However, no rentals are available for the land earmarked for industrial purpose in these zones. Hence, the proposal has been filed before TAMP.
- (ii). Amongst the five factors as listed in the Land Policy Guidelines, the highest accepted tender-cum-auction rate of Port land for similar transaction for allotment of land in PPT done in the year 2018 has been taken as base. The H-1 accepted rate/ bid was ₹ 180460/- per acre/ annum. The same is proposed to be taken as the reserve price for the land earmarked for industrial purpose in some patches of Sector 21 and Township zone.
