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Tariff Authority for Major Ports

G.No.260 **New Delhi,** **27 July 2015**

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), and in compliance of the directions of the Hon'ble High Court of Orissa, the Tariff Authority for Major Ports hereby fixes tariff for the use of Harbour Mobile Cranes (HMCs) at the Paradip Port Trust (PPT), as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/54/2007-PPT

QUORUM:

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

O R D E R

(Passed on this 2nd day of July 2015)

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This case relates to the fixation of tariff for the use of Harbour Mobile Cranes (HMCs) at the PPT.

2. Based on a proposal filed by the PPT in August 2009, this Authority had passed an Order dated 30 December 2009 fixing ceiling rates for the use of HMC to be applied commonly at the PPT without reference to any individual service provider.

3.1. In this connection, two of the crane operators of HMC at PPT viz., Chennai Radha Engineering Works Pvt. Ltd. (CREW) and Jindal Steel & Power Ltd. (JSPL) challenged the Order dated 30 December 2009 vide Writ Petition Nos. 2428 of 2010 and 3365 of 2010 respectively in the Hon'ble High Court of Orissa.

3.2. The Hon'ble High Court allowed the Writ Petitions and quashed the Tariff Order dated 30 December 2009 by a common Judgment dated 16 May 2012. The Court remanded the matter to this Authority for the purpose of fixation of tariff in accordance with the Guidelines after affording opportunity of hearing to the Port and Service Providers. The entire exercise of fixing tariff was directed to be completed within a period of 4 months from the date of receipt of the Order. Till then, the ad-hoc tariff as permissible and fixed by PPT under clause 2.17.2 of the Guidelines of 2005 are to be levied.

3.3. The extracts of the Para nos. 38 to 47 of the Judgment dated 16 May 2012 passed by Hon'ble High Court are reproduced below:-

> **"***38. With reference to the above said legal rival contentions, the following points would arise for our consideration.*
>
> > *(i). Whether the PPT in sending the proposal without forwarding the particulars furnished by the petitioners-licensees to the TAMP for the purpose of fixing the tariff rates in the impugned order is bad in law?*
> >
> > *(ii). Whether the impugned order fixing the tariff rates without considering proposal given by the petitioners in the format of the TAMP which was required to be furnished / transmitted by the PPT to the TAMP and in the absence of the same fixing the uniform tariff rates at ₹43.00 is fair and reasonable?*
> >
> > *(iii). Whether the petitioners are entitled for the hearing before fixing the rates in compliance with the principles of the natural justice?*
> >
> > *(iv). What orders?*
>
> *39. All the points are inter-related with each other. Hence, they are answered in seriatim in favour of the petitioners-licencees by assigning the following reasons.*
>
> *40. It is an undisputed fact that the petitioners have been permitted under Section 42(3) to provide their services by installing the HMCs, to operate their cranes by*

the users for transport of goods by importers and exporters from the ships and to the other vehicles vice versa. Therefore, they are authorized under Section 43(3) of the MPT Act to install their cranes in the harbour of the PPT by virtue of accepting the bids as they have offered to pay ₹30.00 as licence fee and ₹32.60 respectively. The PPT accepted their offer and issued work order on 25.5.2008. As per the conditions of the tender notice, the PPT offered an estimated quantity of cargo of one million tons per annum per each crane in two berths. Keeping that offer of the PPT of one million ton per annum as the base, the JSPL and CREW have worked out the cost statements for operation of cranes and offered/proposed the rates for operation of crane at ₹124.50 and ₹121.83 per ton respectively. Both the petitioners have agreed to pay licence fee at ₹30.00 and ₹32.60 per ton respectively. The same statements have not been forwarded to the TAMP by the PPT at time of the fixing tariff rates on ad hoc tariff rates, whereas it has considered the particulars furnished by ABGHIL-the intervening applicant added as opp. Party no.4. As it has offered for operation of the crane at ₹64.00 per ton including licence fee of ₹10/- per ton to the PPT, and, further, not sending the said particulars which were submitted in a format to be forwarded to the TAMP has caused prejudice to the petitioners. This fact is evident from the impugned order and the statement of counter filed by the TAMP, wherein it is specifically stated that despite number of letters and reminders to the PPT to furnish the proposals for fixation of the tariff rates to the PPT as well as the service providers-licensees as permitted under Section 42(3) to operate their HMCs in the harbour of the port there was no response. Therefore, the fact remains that the PPT has not sent the proposals to the TAMP is evident from the impugned order and the statement of counters. Therefore, the proposal furnished by the petitioners in the format before fixation of tariff rate at ₹43.00 for operation of their HMCs in the harbour of the PPT by quoting the rate for operation of the cranes ₹124.50 and 121.83 respectively with reference to the various relevant aspects were not placed before the TAMP for its consideration and fixing the uniform tariff rates to be collected by the service providers who are operating cranes in the berths provided by the PPT. Therefore, they are affected by fixing the tariff rates. For fixation of tariff by the TAMP, which is the authority as per the tender notice and under the provisions of Section 48 of the MPT Act, to take a decision to fix tariff rates in accordance with the guidelines formulated by the Government of India in exercise of powers under Section 111 of the Act and not transmitting the relevant information furnished in the format by petitioners to the PPT to the TAMP with its comments has certainly affected the rights of the petitioners in fixing the tariff rate at ₹43.00. Accordingly, the first point is answered in favour of the petitioners.

41. So far as point nos. (ii) and (ii) are concerned, it is an undisputed fact that the TAMP is a statutory authority constituted by the Central Government under Section-47-A of the MPT Act to perform its statutory duty under Section 48 of the MPT Act for the purpose of fixing tariff rates and recovery of rates at ports and also to regulate the rates for rendering services by board or by other persons. Section 48 of the Act empowers the authority to fix scales of rates for services performed by the Board and other persons in the PPT, which is a major port under the Act. The PPT has entered into agreements with the petitioners as well as ABGHIL in the year 2009 and 2007 respectively. ABGHIL installed its cranes inside the PPT, which was old one. Since the said crane was not sufficient in loading and unloading cargo unto ships from ships, the PPT taking into consideration the requirement of the users, i.e., importers and exporters decided to install two more new HMCs, and, hence invited fresh tenders for CQ and EQ berths. Accordingly, licences in favour of the petitioners were granted. The tender conditions offered by the PPT are as follows:

"(a). An estimated quantify of cargo of 1.0 million ton per annum to be handled by the petitioner.

(b). Minimum throughput per day is 10,000 MT.

The tender condition further states in the present case, as follows:
(i). The licence fee is payable to port for every ton of cargo handled through the crane.

(ii). The licence fee offered will be multiplied with projected cargo quantity to ascertain the value of such fees."

42. The tender condition also states regarding the detailed requirement of the Mobile Harbour Crane as per Annexure-II of the Tender document. As per Clause 39 of the tender document, the installer of the crane will be required to submit proposal to the port in TAMP's prescribed formats for fixation of rates for use of cranes. On request of the operators, the port can fix an ad hoc rate for the crane subject to final orders of the TAMP in this regard.

43. In the instant case, on the request of the petitioners, the PPT has fixed ₹64/- "performance Linked Tariff Rates" on ad hoc basis for the petitioners as well as other operators. As per the said resolution, the rate fixed by the PPT for JSPL is ₹64.00 per ton. Similarly, PPT has fixed ₹70.00 for CREW and ₹43.00 for ABGHIL. The TAMP for fixation of tariff rates in major ports has to follow the broad principles "Role And Overall Approach" as provided under Clause 2.2 sub-clauses (i) to (viii) of the Guidelines of March, 2005. The said principles read thus:

(i). Safeguarding the interest of shippers / consignees and other port users.

(ii). Ensuring just and fair return to ports.

(iii). The factors which will encourage competition, econormical use of resources, efficiency in performance and optimum investment.

(iv). The established costing methodologies (including cost plus approach) and pricing principles.

(v). The policy directions issued by the Central Government under Section 111 of the MPT Act.

(vi). Ensuring transparency and participative approach while discharging its functions.

(vii). Tariff leverage will be used to improve operational efficiency of the ports.

(viii). Overall long term objective will be to move to competitive pricing and to push performance of Indian Ports to internationally competitive levels.

44. Further, Clauses 2.4.1 and 2.4.2 of the Guidelines for Regulation of Tariff at Major Ports, 2004 (Annexure-1/1) vide notification dated 28th March, 2005 produced by the TAMP along with its counter are very important, which provides that the TAMP will examine the reasonableness of the costs and investments to ensure that inefficiencies, un-economic uses / practices or excesses are not passed on to users. Similarly, Clause 2.9.1 of the said Guidelines provides that the return will be allowed on capital employed (ROCE), both for Major Port Trusts and Private Terminal Operators, at the same pre-tax rate, fixed in accordance with the capital Asset Pricing Model (CAPM). Clause 2.12 says that it is established by the private operator that adopting the existing tariff of port trust will cause hardship to it in view of a higher level of investment made, then a separate cost based tariff will be allowed to him right from the commencement of commercial operations. Clause 2.17.1 states that further cast an obligation on the part of the PPT to provide its proposal in the absence of a specific tariff for a service / cargo is not available in the notified scale of rates, the port can submit a suitable proposal. Clause 2.17.2 and 2.17.3 enable the PPT simultaneously with the submission of proposal to the TAMP the proposed rate can be levied on an ad hoc basis till the rate is finally notified. The ad hoc rate to be operated in the interim period must be derived based on existing notified tariffs for comparable services / cargo; and it must be mutually agreed upon by the port / terminal and the concerned user(s). Clause 2.17.4 states that the interim rate adopted on ad hoc basis will be recognized as such unless it is found to be excessive requiring some moderation retrospectively. Clause 3.1.1 states that proposals for fixation of tariff along with conditionalities governing them for services rendered or facilities provided as well as *the charges for use of properties and assets, shall be formulated, in accordance with these guidelines as amended from time to time, in such formats with such supporting details may be prescribed by the TAMP. Clause 3.1.5 states that TAMP will not entertain representations filed by individual users, unless it involves fixation of tariff / Scales of Rates that has been done in the instant case insofar as users are concerned, which is disclosed from the impugned order. It has heard ABGHIL and the other users in the meeting held at Bhubaneswar. Clause 3.2.5 provides that as part of the consultative process, if necessary, hearing of a case or proposal will be organized, jointly with the port and users of the port, either at the office of the Authority or at the port.*

*45. The aforesaid clauses in the Guidelines would clearly show that the various relevant aspects which are required to be considered by the TAMP to have its overall approach for determination of the tariff rates and the service providers also must be heard in the matter as one of the service providers is heard in the matter, which is evident from the impugned order. Further, the aforesaid Guidelines referred to supra implies that service providers also must be heard in the matter before fixing the rates as they will be providing their shrives on the basis of relevant information for the purpose installing their cranes in the PPT and operating the same to charge from the users. The charge should be in commensurate with reference to the establishment charges, up-front amount, security deposit and the expenses to be incurred on the staff, who are required to operate the HMCs in the port. These are all relevant aspects, which are to be taken into consideration by the TAMP and the said proposal is required to be submitted to the PPT by the petitioners in the TAMP's formant, and the same is required to be forwarded by the PPT to the TAMP. Even the contentions urged on behalf of the opp. Party no.1 and on behalf of the opp. Party no.4-intervening applicant that the petitioners are not required to heard, the same is wholly untenable in law in view of the fact that fixation of rates is not commensurate with the operational charges by the service providers-the petitioners herein. Then the operation will not be efficient and the petitioners will put to losses and that is not the object of permitting service providers to render their service in cargo for transporting goods of the exporter and importers, which will have a serious civil consequence, in view the law laid down by the Supreme Court in the case of **Smt. Maneka Gandhi v. Union of India and another**, AIR 1978 SC 597, wherein, at paragraph-57 of the said judgment it is held that even in the absence of a statuary provision under the Acts the principle of natural justice shall be read with the statutory provisions.*

46. In the instant case, a careful reading of the Clause of the Guidelines, 2004 vide notification dated 28.3.2005 produced by the TAMP under Annexure-1/A would clearly show that the service providers should be heard with a view to considering their proposals on the basis of the relevant material particulars of investment and other charges to fix the tariff charges by the TAMP. That has not been done in the present case. Hence, the impugned order is passed in violation of the principles of the natural justice and the Guidelines of 2005 referred to supra. Since we have held that the fixation of tariff rates de hors the information furnished by the petitioners to the PPT in the prescribed formats as per the Guidelines, the same has not been forwarded by the PPT to the TAMP is evident from the impugned order, as it has only forwarded the particulars in relation to ABGHIL. Further, Clause 2.17.1 provides that whenever a specific tariff for a service / cargo is not available in the notified Scale of Rates, the port can submit a suitable proposal and simultaneously with the submission of proposal the proposed rate can be levied, that has not been considered by the TAMP. Non-consideration of the same does not assign any valid reason. Therefore, Clause 3.2.5 provides for hearing to the port and users. That implies that service providers must be heard before fixing tariff rates by the TAMP for availing the services of transport of goods of the customers by the service providers / licencees as they have been permitted to render their service under Section 42(2) of the Act.

47. For the aforesaid reasons, non-consideration of the materials particulars submitted in the prescribed format to the PPT, which was not transmitted by it to the TAMP, the impugned order passed by it fixing the uniform tariff rate at ₹43.00 although the petitioners have offered licence fee of ₹30.00 and ₹32.60 per ton respectively is not valid.

The remaining ₹13.00 and ₹10.40 will be towards the cost of establishment of cranes, providing staff for operation of the HMCs. to the users are totally inadequate, which will affect interest of the petitioners. Therefore, we are of the view that the impugned order suffers from arbitrariness and unreasonableness for the reasons that the licensee intervening applicant who has been operating its HMC from 2007 has agreed to pay ₹10 per ton to the PPT towards licence fee, whereas the petitioners are paying more than 200%, and, therefore, fixing the said uniform rate of licence fee to all the service providers is most unreasonable and discriminatory. Accordingly, point nos.(ii) and (iii) are also answered in the favour of the petitioners.

For the reasons stated supra, the petitions must succeed, and, accordingly allowed. Rule is issued, impugned order is quashed and the matter is remanded to the TAMP for the purpose of fixation of tariff rates in accordance with the Guidelines formulated by the Central Government under Section 111 of the MPT Act after affording opportunity of hearing to the port and the service providers. The entire exercise of fixing tariff rates shall be completed within a period of four months from the date of receipt of this order. Till then, the ad hoc tariff rate, as permissible and fixed by the PPT under Clause 2.17.2, may be levied on the service providers."

3.4. Based on the legal advice obtained from the then Additional Solicitor General, this Authority filed a Special Leave Petition in the Hon'ble Supreme Court to challenge the judgment of Orissa High Court. The Hon'ble Supreme Court vide their Order dated 4 April 2014 have dismissed the Special Leave Petition. We were advised that dismissal of the petition by the Hon'ble Supreme Court means that the judgment and Order passed by the Hon'ble High Court of Orissa in CWP no. 3365 of 2010 and CWP no. 2428 of 2010 have been upheld. Since the judgment and Order passed by the Hon'ble High Court of Orissa have been upheld, action to comply with the direction of Hon'ble High Court of Orissa was initiated.

4.1. The tariff Order quashed and remanded by the Hon'ble High Court with a direction for fixation of tariff, interalia, after affording an opportunity of hearing to the PPT and the concerned service providers, is the tariff Order dated 30 December 2009. Since the tariff Order dated 30 December 2009 covered the tariff cycle of three years from 23 January 2010 [after expiry of 15 days from 08 January 2010), (the date of notification)] to 22 January 2013, the tariff is to be fixed for the same period from 23 January 2010 to 22 January 2013 after affording an opportunity of hearing to the PPT and the service providers. The PPT proposal dated 6 August 2009 and 17 August 2009 had formed the base to arrive at the rate for HMC in the tariff Order of 30 December 2009. Accordingly, in order to give an opportunity of hearing to the PPT and the concerned service providers in compliance of the Hon'ble High Court Order, a copy each of the PPT proposal dated 6 August 2009 and 17 August 2009 was forwarded to the three HMC service providers prevailing then viz., The Chennai Radha Engineering Works Pvt. Ltd. (CREW), The Jindal Steel & Power Ltd. (JSPL) and The ABG Heavy Industries Limited (ABGHIL) inviting their comments vide our letter dated 2 June 2014. The PPT was also requested to intimate if there are any other concerned service providers who may be consulted in this case. In response, the PPT vide its letter dated 13 June 2014 suggested the party, M/s. Orissa Stevedores Limited, (OSL), in addition to CREW and JSPL. Accordingly, a copy each of the PPT proposal dated 6 August 2009 and PPT letter dated 17 August 2009 was also forwarded to OSL vide our letter dated 17 June 2014 inviting its comments.

4.2. The comments received from Service Providers viz., CREW and JSPL were forwarded to PPT as feedback information. The PPT has responded to the comments of CREW alone.

5.1. In order to give an opportunity of hearing to the PPT and the concerned service providers in compliance of the Order of the Hon'ble High Court and in terms of the consultative procedure prescribed, a joint hearing on the case in reference was held on 27 June 2014 at the premises of PPT at Bhubaneshwar. At the joint hearing, the PPT, CREW and JSPL have made their submissions.

5.2. As decided at the joint hearing, all the service providers were advised vide our letter dated 01 July 2014 to furnish their arguments in writing to this Authority and simultaneously to PPT. The PPT was also requested vide our letter dated 01 July 2014 to respond on the arguments of the service providers to be furnished by them to the port.

5.3. A copy each of the response of the CREW dated 05 July 2014, the OSL dated 05 July 2014 and the JSPL dated 07 July 2014 was forwarded to the PPT under cover of our letter dated 08 July 2014 for furnishing its comments thereon. The PPT has furnished its comments vide its e-mail dated 22 July 2014.

5.4. As decided at the joint hearing, the PPT was requested to furnish some information/ clarification on a few points vide our letter dated 23 July 2014. The PPT has responded vide its e-mail dated 28 July 2014. A summary of the information/ clarification sought by us and the response of PPT thereon is tabulated below:

<table>
<tr><th>Sl. no.</th><th>Information sought from PPT</th><th>Response of PPT</th></tr>
<tr><td>(i).</td><td>During the joint hearing, the Service Providers viz., M/s. Chennai Radha Engineering Works (CREW) and M/s. Jindal Steel and Power Limited (JSPL) had stated that the per day handling rate of 12500 tonnes in respect of the Harbour Mobile Crane (HMC) is not achievable due to various constraints being actually faced by them, from the time of arrival of vessel till completion of discharge of cargo in the import cycle and vice versa in export cycle. They had also stated that arrival of vessel is unpredictable, sometimes there is bunching of vessel and at some after time, the berth is lying idle. In this connection and as agreed by the PPT during the joint hearing, the PPT to furnish average per day handling rate achieved by each of the operators for three broad categories of cargo viz. dry bulk, break bulk and other cargo for the period covered by December 2009 Order.</td><td>The average handling rate per day of HMC in MT, for each type of cargo, as taken from the details furnished by the PPT is as follows:
<table>
<tr><th rowspan="3">Year</th><th colspan="5">DRY BULK CARGO</th></tr>
<tr><th colspan="2">CREW</th><th>JSPL</th><th colspan="2">OSL</th></tr>
<tr><th>Crane 1</th><th>Crane 2</th><th>Crane 1</th><th>Crane 1</th><th>Crane 2</th></tr>
<tr><td>2009-10</td><td>8820</td><td>-</td><td>12775</td><td>-</td><td>-</td></tr>
<tr><td>2010-11</td><td>12412</td><td>-</td><td>16507</td><td>-</td><td>-</td></tr>
<tr><td>2011-12</td><td>16896</td><td>-</td><td>18903</td><td>-</td><td>-</td></tr>
<tr><td>2012-13</td><td>13954</td><td>11537</td><td>Nil</td><td>13381</td><td>10127</td></tr>
<tr><td>2013-14</td><td>13627</td><td>11554</td><td>14431</td><td>15419</td><td>12735</td></tr>
</table>
<table>
<tr><th rowspan="3">Year</th><th colspan="5">BREAK BULK CARGO</th></tr>
<tr><th colspan="2">CREW</th><th>JSPL</th><th colspan="2">OSL</th></tr>
<tr><th>Crane 1</th><th>Crane 2</th><th>Crane 1</th><th>Crane 1</th><th>Crane 2</th></tr>
<tr><td>2009-10</td><td>712</td><td>-</td><td>Nil</td><td>-</td><td>-</td></tr>
<tr><td>2010-11</td><td>1113</td><td>-</td><td>Nil</td><td>-</td><td>-</td></tr>
<tr><td>2011-12</td><td>962</td><td>-</td><td>Nil</td><td>-</td><td>-</td></tr>
<tr><td>2012-13</td><td>870</td><td>Nil</td><td>Nil</td><td>Nil</td><td>Nil</td></tr>
<tr><td>2013-14</td><td>723</td><td>Nil</td><td>612</td><td>Nil</td><td>Nil</td></tr>
</table>
<table>
<tr><th rowspan="3">Year</th><th colspan="5">OTHER CARGO</th></tr>
<tr><th colspan="2">CREW</th><th>JSPL</th><th colspan="2">OSL</th></tr>
<tr><th>Crane 1</th><th>Crane 2</th><th>Crane 1</th><th>Crane 1</th><th>Crane 2</th></tr>
<tr><td>2009-10</td><td>Nil</td><td>-</td><td>Nil</td><td>-</td><td>-</td></tr>
<tr><td>2010-11</td><td>Nil</td><td>-</td><td>Nil</td><td>-</td><td>-</td></tr>
<tr><td>2011-12</td><td>949</td><td>-</td><td>852</td><td>-</td><td>-</td></tr>
<tr><td>2012-13</td><td>1080</td><td>Nil</td><td>Nil</td><td>Nil</td><td>Nil</td></tr>
<tr><td>2013-14</td><td>725</td><td>Nil</td><td>752</td><td>Nil</td><td>Nil</td></tr>
</table>
</td></tr>
<tr><td>(ii).</td><td>During the joint hearing, the Service Providers viz., CREW and JSPL had also stated that one of the factors for their inability to achieve the handling rate of 12500 tonnes per day is due to time involved in repair of the crane due to breakdown and the cranes remaining idle due to non-availability of cargo. In this context, the PPT to furnish details of aggregate of idle hours and breakdown hours on annual basis and operator wise basis for the period covered by December 2009 Order.</td><td>The details of the Idle hours as furnished by the PPT is as follows:
<table>
<tr><th rowspan="3">Year</th><th colspan="5">IDLE HOURS</th></tr>
<tr><th colspan="2">CREW</th><th>JSPL</th><th colspan="2">OSL</th></tr>
<tr><th>Crane 1</th><th>Crane 2</th><th>Crane 1</th><th>Crane 1</th><th>Crane 2</th></tr>
<tr><td>2009-10</td><td>3572</td><td>-</td><td>4267</td><td>-</td><td>-</td></tr>
<tr><td>2010-11</td><td>3669</td><td>-</td><td>4569</td><td>-</td><td>-</td></tr>
<tr><td>2011-12</td><td>4545</td><td>-</td><td>3253</td><td>-</td><td>-</td></tr>
<tr><td>2012-13</td><td>4948</td><td>3392</td><td>Nil</td><td>4692</td><td>6398</td></tr>
<tr><td>2013-14</td><td>5564</td><td>3930</td><td>3920</td><td>3420</td><td>5755</td></tr>
</table>
The details of the Breakdown hours as furnished by the PPT is as follows:</td></tr>
</table>

Year	IDLE HOURS				
	CREW		JSPL	OSL	
	Crane 1	Crane 2	Crane 1	Crane 1	Crane 2
2009-10	85	-	527	-	-
2010-11	1349	-	973	-	-
2011-12	755	-	2275	-	-
2012-13	348	696	8760	912	Nil
2013-14	1316	Nil	3487	768	Nil

(iii). PPT to also furnish the year wise and operator wise details of foreign cargo and coastal cargo handled by the service providers during the period covered by December 2009 Order.

The details of the quantity handled by each service provider through foreign and coastal vessel as furnished by the PPT is as follows:

(in Lakh tonnes)

Year	CREW					
	80 tonne Crane			60 tonne Crane		
	Foreign	Coastal	Total	Foreign	Coastal	Total
2009-10	16.40	0.67	17.07	-	-	-
2010-11	18.22	0.94	19.15	-	-	-
2011-12	23.64	0.49	24.13	-	-	-
2012-13	19.79	0.00093	19.79	21.87	0.59	22.46
2013-14	9.92	0.33	10.25	23.25	0	23.25

(in Lakh tonnes)

Year	JSPL		
	100 tonne Crane		
	Foreign	Coastal	Total
2009-10	17.82	-	17.82
2010-11	21.90	0.23	22.13
2011-12	25.39	0.21	2560
2012-13	-	-	-
2013-14	8.08	0.01577	8.10

(in Lakh tonnes)

Year	OSL					
	100 tonne Crane			60 tonne Crane		
	Foreign	Coastal	Total	Foreign	Coastal	Total
2009-10	-	-	-	-	-	-
2010-11	-	-	-	-	-	-
2011-12	-	-	-	-	-	-
2012-13	17.60	-	17.60	9.97	-	9.97
2013-14	29.37	-	29.37	15.94	-	15.94

6.1. As per the direction of the Hon'ble High Court of Orissa vide Order dated 12 May 2012 read with direction of the Hon'ble Supreme Court dated 4 April 2014, this Authority had to complete the entire exercise of fixing tariff rates within a period of four months from the date of receipt of the order. If the period of four months is counted from the date of passing of the Order by the Hon'ble Supreme Court i.e. 4 April 2014, this Authority had to fix tariff for the HMC at PPT by 3 August 2014.

6.2. Considering the time required to scrutinize the submissions made by the service providers, their respective tariff proposals and the information/ clarification furnished by the PPT, finalization of the case after taking into account the totality of the information collected during the processing of the case and the process involved in notification of the Order in the Gazette of India, two separate Applications seeking 3 months time have been filed in the Hon'ble High Court on 22 September 2014.

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

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

(i). In the two separate Writ Petitions filed by two of the authorized licensed crane operators of HMC at PPT viz., the Chennai Radha Engineering Works Pvt. Ltd. (CREW) and The Jindal Steel & Power Ltd. (JSPL) in the Hon'ble High Court of Orissa, challenging the Order dated 30 December 2009 passed by this Authority fixing ceiling rates for the use of HMC to be applied commonly at the PPT without reference to any individual service provider, the Hon'ble High Court allowed the Writ Petitions and quashed the Tariff Order dated 30 December 2009 and remanded the matter to this Authority for the purpose of fixation of tariff in accordance with the Guidelines after affording opportunity of hearing to the Port and Service Providers.

When this Authority filed a Special Leave Petition in the Hon'ble Supreme Court, challenging the judgment of Orissa High Court based on the legal opinion obtained in this regard, the Hon'ble Supreme Court dismissed the Special Leave Petition thereby upholding the judgment and Order passed by the Hon'ble High Court of Orissa. Thus, this exercise has been initiated to comply with the direction of Hon'ble High Court of Orissa. The operative portion of the Judgment as contained in the 2nd Para of paragraph 47 (Page No. 30) of the Judgment passed by Hon'ble High Court contains the following directions:-

(a). The impugned Order suffers from arbitrariness and unreasonableness. Fixing a uniform rate of licence fee to all the service providers is most unreasonable and discriminatory.

(b). TAMP to fix the tariff rates in accordance with the Guidelines formulated by the Central Government under Section 111 of the MPT Act after affording opportunity of hearing to the port and the service providers.

(c). The entire exercise of fixing tariff rates to be completed within a period of four months from the date of receipt of the Order.

(d). Till then, the ad hoc tariff rate, as permissible and fixed by the PPT under Clause 2.17.2, may be levied on the service providers.

(ii). As brought out in the factual position relating to this note, the tariff Order was quashed and the matter was remanded by the Hon'ble High Court with a direction for fixation of tariff, *interalia*, after affording an opportunity of hearing to the PPT and the concerned service providers, is the Order dated 30 December 2009. Since the Order dated 30 December 2009 covered the tariff cycle of three years from 23 January 2010 [after expiry of 15 days from 08 January 2010), (the date of notification)] to 22 January 2013, the current exercise is undertaken for fixing tariff for the period covered by the December 2009 Order i.e. from 23 January 2010 to 22 January 2013 after affording an opportunity of hearing to the PPT and the service providers.

(iii). During the proceedings relating to the case, it is noticed that there appears to be a little confusion in the mind of PPT as well as the service providers, over the period for which the tariff for HMC is to be fixed under the current exercise. As clarified during the joint hearing and at the cost of repetition, it is again clarified that the current exercise for fixation of tariff is undertaken to the limited extent of complying with the direction given by the Hon'ble Orissa High Court to this Authority to fix tariff as per the tariff Guidelines of 2005 after giving an opportunity of hearing to the service providers and PPT. Since the direction of the Hon'ble Court is with reference to the tariff Order dated 30 December 2009, the tariff for HMC being reviewed in the current exercise would cover the period covered by December 2009 Order only.

(iv). As brought out earlier, para 47 of the judgment of the Hon'ble Court, interalia, states that **"**……..*and, therefore, fixing the said uniform rate of licence fee to all the service providers is most unreasonable and discriminatory…………..*
*For the reasons stated supra, the petitions must succeed, and, accordingly allowed. Rule is issued, impugned order is quashed and the matter is remanded to the TAMP for the purpose of fixation of tariff rates in accordance with the Guidelines formulated by the Central Government under Section 111 of the MPT Act after affording opportunity of hearing to the port and the service providers…….***"**

(a). From the above, it is seen that the High Court has observed that fixing of a uniform rate for all service providers is most unreasonable and discriminatory.

In view of this observation of the Hon'ble High Court, the JSPL is of the view that fixing uniform tariff for the HMC is invalid as held by the Court and that, therefore, operator wise tariff should be fixed for HMC. Even during the joint hearing, a request has been made to fix operator wise tariff for the use of HMC at PPT

Section 42 (3) of the Major Port Trusts (MPT) Act, 1963, empowers the Board of a Port Trust to authorize any person to perform any of the services mentioned in Section 42(1) of the MPT Act. The authorization under Section 42(3) of the Major Port Trust Act falls under two main categories viz., "BOT (Built, Operate, Transfer), BOOT (Built, Own, Operate, Transfer) or any other privatization arrangement adopted by the Government" and "other service providers authorized under section 42 of MPT Act". In case of first category [private (terminal) operators] who provide comprehensive services at a berth or a terminal within a Major Port under a BOT/BOOT arrangement, regulation of tariff is based on their proposal with reference to their operating costs and investments. In case of second category, the "other authorized service providers" where authorisation arrangement u/s 42(3) is other than by way of a BOT concession agreement, ceiling rates are prescribed for such services to be applied commonly at the concerned ports without reference to individual service provider. For this purpose, proposals for regulating these charges are to be initiated by the concerned Major Port Trust after identifying such authorised services coming under the ambit of tariff regulation, as stipulated in Clause 7.2 of the 2005 tariff guidelines.

Since the authorisation granted to the HMC service providers at PPT was reported to be other than by way of a BOT Concession Agreement, the tariff for the HMC at PPT was fixed based on the stipulation contained in Clause 7.2 of the 2005 guidelines, whereby ceiling rates are to be prescribed for such services to be applied commonly at the concerned ports without reference to individual service provider. In this regard, it is noteworthy that not only in PPT but in other major port trusts also, such common ceiling rates have been fixed by this Authority for the use of HMC, based on the stipulation contained in Clause 7.2 of the 2005 Guidelines. Further, with regard to the request made by the JSPL to fix differential rate for the use of the HMC, the PPT during the joint hearing has stated that operator wise differential tariff is not possible. But, the High Court has held that fixing of uniform rate to all is most unreasonable and discriminatory. The High Court Order is binding on this Authority. Therefore, the case is taken up to fix operator wise tariff for the use of HMC at PPT for the period covered by the December 2009 Order to comply with the direction of the Hon'ble High Court. In this connection, it is clarified that since the judgment of the Hon'ble High Court is in relation to a specific tariff Order the consideration of the said approach should not be quoted as a precedence in the future, either by the PPT or by any of the other Major Port Trusts.

(b). Further, the Court has directed this Authority to fix the rates in accordance with the Guidelines formulated by the Central Government under Section 111 of the MPT Act (after affording opportunity of hearing to the port and the service providers.)

As stated earlier, in compliance to the direction of the Hon'ble Court, the exercise in hand is to fix operator wise tariff for the use of HMC at PPT for the period covered by the December 2009 Tariff Order. To enable prescribe operator wise rate, it is necessary to go into the operator wise cost details furnished by each of the operators viz., JSPL and CREW. In this connection, it is relevant to mention here that in the proceedings relating to the case in reference, the JSPL and CREW have drawn reference to the proposals submitted by them to PPT during the proceedings relating to the December 2009 Order and have categorically stated that the said proposals submitted by them to the PPT should be considered by this Authority in the current proceedings.

In this connection, it is relevant to mention here that during the proceedings relating to the December 2009 Order, the JSPL as well as CREW had given their respective submissions and cost details to PPT. As per the proposal submitted by JSPL, it had sought a rate of ₹124.50 per tonne for the use of HMC and as per the proposal of CREW, it had sought a rate of ₹121.83 per tonne for the use of HMC. In turn, the PPT under cover of its letter dated 07 May 2009 had forwarded the cost details of JSPL and CREW to us, after effecting some moderations in the JSPL and CREW's cost elements. Accordingly, after effecting the moderations, the PPT had proposed a rate of ₹64.22 per MT in respect of JSPL and ₹69.55 per MT in respect of CREW. However, at that relevant point of time, since the focus was on fixing a common tariff for all service providers as stipulated in clause 7.2 of the Tariff Guidelines of 2005, the information so submitted by PPT then did not form the basis for tariff fixation and the port was advised to, *interalia*, review its proposal so as to enable fixing a common tariff for all service providers. It was in this backdrop that the PPT vide its letters dated 6 August 2009 and 17 August 2009 had submitted a proposal for fixation of a common ceiling rate of ₹50/- per MT to be made applicable on all HMC operators at PPT.

Now, given that an exercise has been undertaken to fix operator wise tariff for the use of HMC at PPT, the information/ cost details submitted by CREW and JSPL to PPT are considered as proposed by CREW and JSPL along with the cost details pertaining to CREW and JSPL furnished by PPT earlier under cover of its letter dated 07 May 2009.

(c). Further, the Hon'ble Court has also directed this Authority to afford opportunity of hearing to the port and the service providers.

In this regard, it is relevant to mention here that sufficient opportunity has been afforded to the HMC operators to make their written submissions. All the HMC operators who had been operating the HMC during the period covered by the December 2009 Order viz., the Chennai Radha Engineering Works Pvt. Ltd. (CREW), the Jindal Steel & Power Ltd. (JSPL), the ABG Heavy Industries Limited (ABGHIL) and also M/s. Orissa Stevedores Limited (OSL), have been consulted, though the ABGHIL has not responded. Thereafter, a joint hearing had also been held at the port level on 27 June 2014, wherein all the HMC operators were invited to make their submissions. Even after the joint hearing, the HMC operators were given one more opportunity to make any additional submissions.

Thus, sufficient opportunity of being heard has been afforded to all the HMC operators during the current proceedings, apart from the PPT.

(v). In this connection, it is relevant to draw reference to one of the service providers viz., the ABG Heavy Industries Limited (ABGHIL). Though, the ABGHIL has operated the HMC during the period covered by the December 2009 Order and has been taken up on consultation in the current proceedings and had also been invited to participate in the joint hearing held on 27 June 2014, it has not participated in the proceedings initiated in the current matter. Incidentally, it has not challenged the tariff order of December 2009.

(vi). One of the other service providers viz., Orissa Stevedores Limited (OSL), though it has participated in the current proceedings, it had not challenged the December 2009 Order passed by this Authority. Since the Hon'ble High Court Order dated 16 May 2012 is with reference to two separate Writ Petitions filed by JSPL and CREW, the decision of the Court is taken into account for compliance with respect to these two service providers only i.e. JSPL and CREW. Accordingly, this exercise is carried out in compliance to the direction of the Hon'ble Court to fix separate rate for use of HMC at PPT for JSPL and CREW, for the period covered by the December 2009 Order.

(vii). During the proceedings relating to the case in reference, the CREW and JSPL have repeatedly made a request for prescription of rate for handling of containers by HMC. In this regard, it is relevant to mention here that the tariff Order of December 2009 had prescribed rates for handling of dry bulk cargo, break bulk cargo and other cargo with the use of HMC at PPT. Handling of containers by HMC has not been dealt with in the said Order. Since the current exercise is being undertaken to review the rate for HMC fixed vide the December 2009 Order, the question of entertaining the request of the service providers for prescription of rate for handling of containers by HMC in the current proceedings does not arise. A review route cannot be taken for prescription of rate for a new item, which has not been discussed in the original Order of December 2009 nor did it form part of the Order passed in December 2009.

In this connection, it is noteworthy that in an exercise undertaken by this Authority some time back in November 2014 for fixation of ceiling tariff for the Harbour Mobile Crane (HMC), to be applied commonly at the PPT without reference to any particular service provider for the period from January 2015 to January 2018, the PPT in addition to proposing of rates for handling Dry Bulk Cargo, Break Bulk Cargo and Other cargo, has also proposed the rate for handling of containers by HMC. However, for the reasons recorded in the Order no. TAMP/30/2014-PPT dated 28 November 2014, the PPT has been advised to file a well analysed proposal, to arrive at the rate for handling various types of containers within the normative capacity. When such a proposal is filed by PPT, the request of CREW and JSPL can be considered for prospective application.

(viii). The JSPL has maintained that it has installed a new Harbour Mobile Crane, whereas the HMC of ABG Heavy Industries Limited (ABGHIL) was a second hand crane and therefore, per tonne rate of HMC fixed at ₹43/- per MT (reported to be based on submissions/ proposal of ABGHIL) cannot be extended to JSPL.

In this regard, it is noteworthy that in the December 2009 Order, the rate for the use of HMC at PPT has been fixed on a common service provider basis without reference to any individual service provider. The cost of the HMC at ₹3007.74 lakhs was based on the budgetary quotation furnished by the PPT then and infact also included the freight and duty components as estimated by the PPT. The said capital cost of the HMC was taken as the base to arrive at some of the components of the Operating cost viz., repairs, insurance, depreciation and other expenses. Thus, the tariff for the HMC fixed in December 2009 was not under the influence of the cost details pertaining to the ABGHIL, as opined by the JSPL, but based on the details furnished by the PPT then for fixation of common tariff for the use of HMC at the PPT.

(ix). Inorder to comply with the direction of the Hon'ble High Court i.e. to fix different rates for different service providers viz., CREW and JSPL, each of the cost elements considered by the said two parties in their respective Cost statements, is analysed in the light of the observation of the Hon'ble High Court and based on the submissions made by the service providers during the current proceedings in the following paragraphs.

(x). The Hon'ble High Court has mandated this Authority to fix tariff for the use of HMC at PPT in accordance with the Guidelines formulated by the Central Government under Section 111 of the MPT Act. The Guidelines which were prevalent then and which are relevant for fixation of tariff for the use of HMC is the Tariff Guidelines of March 2005, which have been issued as a policy direction to this Authority under Section 111 of the Major Port Trusts Act, 1963. Accordingly, each of the cost elements forming part of the Cost statements furnished by the service providers to PPT is analysed with reference to the provisions contained in the 2005 Tariff Guidelines.

(xi). In the Cost statement forwarded by JSPL and CREW to PPT, each of the operators has furnished the estimates for the years 2009-10 to 2011-12. Even the PPT, while forwarding the moderated estimates of the service providers to this Authority, has furnished the cost details for the years 2009-10 to 2011-12. The exercise in hand is being carried out for fixation of tariff for the use of HMC at PPT for the period covered by the December 2009 Order, which is 23 January 2010 to 22 January 2013, covered by the years 2010-11 to 2012-13. In view of the above position, the Cost details for JSPL and CREW are analysed by excluding the estimates given by them for the year 2009-10 and instead building up the estimates for the year 2012-13, as discussed hereinafter.

(xii). Traffic:

(a). JSPL:

The JSPL, in its Cost statement forwarded to PPT has estimated the traffic to be handled by the HMC at 1001000 tonnes, 1251250 tonnes and 1564063 tonnes for the years 2009-10 to 2011-12 respectively. However, the PPT, has moderated the traffic estimates of JSPL and estimated the traffic at 2 million tonnes for each of the years 2009-10 to 2011-12. This Authority does not carry out any independent study so as to determine the cargo traffic which is likely to be handled by a HMC at a port. Based on the position that the port will be in a better position to estimate the traffic that is likely to be handled by the HMC due to its past experience, the traffic estimates as estimated by PPT for JSPL at 2 million tonnes each is taken into account for the year 2010-11 and 2011-12. For the reasons stated above, the traffic estimates for the year 2009-10 is not taken into account. From the details now furnished by the PPT in the current proceedings, it is seen that the JSPL has not handled any cargo with the use of HMC during the year 2012-13. Therefore, no cost elements are discussed with respect to JSPL pertaining to the year 2012-13.

(b). CREW:

The CREW, in its Cost statement forwarded to PPT, has estimated the traffic to be handled by the HMC at 1 miilion tonnes for each of the years 2009-10 to 2011-12 respectively. However, the PPT, has modified the traffic estimates of CREW and estimated the traffic at 1 million tonnes, 1.3 million tonnes and 1.5 million tonnes for each of the years 2009-10 to 2011-12. As stated earlier, this Authority does not carry out any independent study so as to determine the cargo traffic which is likely to be handled by a HMC at a port. Based on the position that the port will be in a better position to estimate the traffic that is likely to be handled by the

HMC due to its past experience, the traffic estimates as estimated by PPT for CREW for the years 2010-11 and 2011-12 are taken into account. For the reasons stated above, the traffic estimates for the year 2009-10 are not taken into account. From the details now furnished by the PPT in the current proceedings, it is seen that the CREW has actually handled 1.98 million tonnes of cargo with the use of HMC during the year 2012-13. The said actual traffic for the year 2012-13 is considered in our analysis.

(xiii). Capital Cost:

(a). JSPL:

The JSPL in its Cost statement furnished to PPT has considered the capital cost of the 140 tonne HMC at ₹37.53 crores. The PPT in its Cost statement has also recognized the cost of HMC as furnished by the JSPL. Hence, the same is taken into account in our analysis, relying on PPT.

(b). CREW:

The CREW in its Cost statement furnished to PPT has considered the capital cost of the 100 tonne HMC at ₹25.13 crores. The PPT in its Cost statement has also recognized the cost of HMC as furnished by the CREW. Hence, the same is taken into account in our analysis, relying on PPT.

(xiv). Labour Cost:

(a). JSPL:

The JSPL has considered the Labour cost in respect of 39 employees at an average cost of ₹5.03 lakhs per annum for the year 2010-11. The number of employees and the average cost per employee have been endorsed by PPT in its Cost statement and the same are, therefore, considered in the analysis for the year 2010-11. With regard to the year 2011-12, the number of employees is maintained at 39 as proposed by the port and the average cost per employee is escalated by 5.8% (being the escalation factor that had been considered to estimate the operating expenses in the cases disposed in the year 2009-10).

(b). CREW:

The CREW has considered the Labour cost in respect of 29 employees at an average cost of ₹3.58 lakhs per annum for the year 2010-11. The number of employees and the average cost per employee have been endorsed by PPT in its Cost statement and the same are, therefore, considered in the analysis for the year 2010-11. With regard to the years 2011-12 and 2012-13, the number of employees is maintained at 29 as proposed by the port and the average cost per employee is annually escalated by 5.8%, for the reasons stated above.

(xv). Fuel Cost:

(a). JSPL:

Based on the details furnished by the JSPL in its Cost statement to PPT, it is seen that the JSPL has estimated the fuel consumption at 0.0998 litres per tonne. In this connection, it is relevant to mention here that while fixing tariff for the use of HMC on normative basis, this Authority considers the fuel consumption of a 100 tonne HMC at 70 liters per hour. Considering the position that the productivity of a HMC to handle dry bulk cargo is considered at 744 tonnes per hour [12500 tonnes per day / (24 hours x 70%)] on normative basis, this translates to a fuel consumption of 0.094 litres per hour. Based on the position that the HMC deployed by JSPL is a higher capacity HMC, the fuel consumption of 0.0998 litres per tonne considered by JSPL and recognized by PPT, is found to be reasonable and hence considered in the analysis.

(b). CREW:

Based on the details furnished by the CREW in its Cost statement to PPT, it is seen that the CREW has estimated the fuel consumption of a 100 tonne HMC at 0.0675 litres per tonne. This consumption is found to be lower than the fuel consumption of 0.094 litres per hour arrived based on the normative basis. The fuel consumption of 0.0675 litres per tonne considered by CREW and recognized by PPT, is considered in the analysis.

(c). The cost of fuel is considered at ₹34.98 per litre as considered in the December 2009 Order for the year 2010-11, instead of the rate of ₹40 per litre, considered by both JSPL and CREW in its workings. For the subsequent years, the rate of fuel is escalated by 5.8%, for the reasons explained earlier.

(d). With regard to the fuel cost, the CREW is of the view that as against the fuel/ diesel price at ₹40/- per litre as prevailed at that time, the present escalated cost of ₹60.89 per litres is to be considered. The PPT has also endorsed the escalation of fuel/ diesel price. Further, CREW as well as JSPL have made a request to consider the cost of premium diesel in the calculation.

In this connection, as already brought out earlier, the current exercise for fixation of tariff has been undertaken to the limited extent of complying with the direction given by the Hon'ble Orissa High Court to this Authority to fix tariff as per the tariff Guidelines of 2005. Since the direction of the Hon'ble Court is with reference to the tariff Order dated 30 December 2009, the tariff for HMC being reviewed in the current exercise is for the period covered by December 2009 Order only. The fuel cost of ₹34.98 per litre as considered in the December 2009 Order was based on the fuel cost prevailing at the material point of time and hence the same is considered in the present analysis. It is clarified that the current exercise is not being carried out with the aim of updating the values of the various parameters considered then with the values prevailing now.

(xvi). Maintenance Cost:

(a). JSPL:

The JSPL in its Cost statement furnished to PPT has considered the Repairs and Maintenance cost of the HMC at ₹53.95 lakhs for the year 2010-11. In this connection, it is relevant to mention here that while fixing tariff for the use of HMC on normative basis, this Authority considers the Repairs and Maintenance cost at 5% of the cost of Equipment, which translates into ₹187.64 lakhs. In comparison, the amount of Repairs and Maintenance cost of the HMC considered by JSPL for the year 2010-11 is found to be within the normative limit and hence, taken into account. For the subsequent year 2011-12, the expenditure for the year 2010-11 is taken as base and escalated by 5.8% (being the escalation factor that had been considered to estimate the operating expenses in the cases disposed in the year 2009-10).

(b). CREW:

The CREW in its Cost statement furnished to PPT has considered the Repairs and Maintenance cost of the HMC at ₹26.43 lakhs for the year 2010-11. Whereas, the Repairs and Maintenance cost at 5% of the cost of Equipment works out to ₹125.65 lakhs. Since the amount of Repairs & Maintenance cost of the HMC considered by CREW for the year 2010-11 is found to be within the normative limit, the same is taken into account. For the subsequent years 2011-12 and 2012-13, the expenditure for the year 2010-11 is taken as base and annually escalated by 5.8%, as explained above.

(c). It may be recalled that in the December 2009 Order, the Repairs and Maintenance cost has been estimated at 5% of the capital cost of the HMC. The service providers like JSPL and CREW are of the view that due to ageing of cranes and import of spares due to their non-availability in the local markets, Repairs and Maintenance cost at 5% is not sufficient and that it should be considered at 10% of the capital cost.

In this connection, it is relevant to mention here that, the consideration of repairs and maintenance cost at 5% of the cost of HMC flows from the 2008 upfront tariff guidelines for the multipurpose berth. The repairs and maintenance cost has been considered at 5% of the cost of the HMC, not only in the case of PPT but also in other cases relating to other major port trusts where tariff for the use of HMC has been fixed in the past. In these other major ports also, the HMC has been imported. So naturally, the spares would also be imported. However, these major port trusts have not expressed inadequacy on the repairs and maintenance cost considered at 5% of the cost of HMC. Further, from the year of procurement of crane as furnished by the JSPL, it can be seen that the HMCs have been procured in the year 2009. So, when the tariff for the HMC is being fixed in December 2009 for a period of 3 years, it may not be reasonable to allow higher repairs and maintenance cost at 10% for the new HMCs deployed. Also, there is a possibility about the new HMCs being covered by the Warranty, which generally comes with deployment of new equipment.

Thus, other than the reason of ageing of the HMCs and non-availability of imported spares, the service providers have not furnished any other ground to justify consideration of repairs and maintenance cost at 10% of the cost of HMC. Nevertheless, the Repairs and Maintenance cost as estimated by the JSPL and CREW have generally been considered now in the analysis.

(d). The service providers have made a request to permit time for planned/ pervasive maintenance of HMC to ensure uninterrupted operation. In this connection, the JSPL is of the view that a minimum of 4 to 5 days is required in a month for doing preventive maintenance work of the crane, 73 days (20%) of a year is to be allowed for major/ minor breakdown works and 30 days to complete any major breakdown maintenance of the crane. Thus, on the whole, the JSPL appears to have requested to account for about 163 days in a year for maintenance of the HMC, which works out to about 3912 hours annually. In this connection, out of the total operating hours of 8760 hours (365 days x 24 hours) in a year, the HMC is presumed to be in operation for only 4000 hours (for the reasons explained in the December 2009 Order), thereby leaving a cushion of about 4760 hours, which is seen to be more than the 3912 hours of maintenance hours requested by the JSPL.

(xvii). Depreciation:

(a). JSPL:

JSPL has considered depreciation at the rate of 11.31% based on the Written Down Value (WDV) method, due to which there is a reduction in the amount of depreciation each year. The depreciation on Equipment is generally considered at the rate of 10.34%. The reason for consideration of the rate of 11.31% has not been furnished by JSPL. In view of the above position, the depreciation is considered on Straight Line Method (SLM) at 10.34% as per the Companies Act, 1956.

(b). CREW:

CREW has also considered depreciation at the rate of 11.31% based on the Straight Line Method (SLM), due to which the amount of depreciation remains constant for all the years. Since the reason for consideration of the rate of 11.31% has not been furnished by CREW, the depreciation is considered on SLM basis at 10.34% as per the Companies Act, 1956.

(xviii). Licence Fee:

Neither the JSPL and CREW nor the PPT has estimated Licence fee for the area occupied by the HMC. The service providers also do not appear to have objected to the Licence fee/ rent considered as one of the cost elements under operating costs in the December 2009 Order. Therefore, the same is taken into account as per the rates being levied by PPT then for a period of 12 months.

(xix). Other Expenses:

(a). JSPL:

The JSPL in its Cost statement furnished to PPT has considered Other Expenses at ₹25 lakhs for the year 2010-11. In this connection, it is relevant to mention here that while fixing tariff for the use of HMC on normative basis, this Authority considers the Other Expenses at 5% of the cost of Equipment, which translates into ₹187.64 lakhs. In comparison, the amount of Other Expenses considered by JSPL for the year 2010-11 is within the normative limit and hence, taken into account. For the subsequent year 2011-12, the expenditure for the year 2010-11 is taken as base and escalated by 5.8%, as discussed earlier.

(b). CREW:

The CREW in its Cost statement furnished to PPT has considered Other Expenses at ₹822.20 lakhs for the year 2010-11. Considering the position that the Other Expenses at 5% of the cost of Equipment works out to ₹125.65 lakhs, the amount of Other Expenses considered by CREW for the year 2010-11 appears to be very much on a higher side. Even when compared to the Other Expenses estimated by the JSPL for a higher capacity of 140 tonne crane, the amount of Other Expenses considered by CREW for a lower capacity of 100 tonne HMC does not appear to be justified. The CREW has neither listed out the items covered under the head Other Expenses nor has furnished any workings in support of the amount. In the cost statement pertaining to CREW as furnished by PPT, it is seen that the PPT has moderated the Other Expenses in respect of CREW for the year 2010-11 and has considered it at ₹314.43 lakhs. In view of the above position, the Other Expenses at ₹314.43 lakhs as moderated by the PPT in respect of CREW is relied upon. For the subsequent years 2011-12 and 2012-13, the expenditure for the year 2010-11 is taken as base and annually escalated by 5.8%, as explained above.

(xx). The Return on Capital Employed is considered at 16% of the Written Down Value of the HMC for the year after taking into account the depreciation pertaining to the relevant year.

(xxi). Based on the above discussion, the Cost statement as furnished by the JSPL and CREW to PPT has been modified. The modified Cost statement in respect of JSPL and CREW is attached as **Annex – I** and **Annex - II** respectively.

(xxii). Taking into account the operating costs and the Return on Capital employed, the average Annual Revenue Requirement (ARR) pertaining to the HMC at JSPL works out to ₹1312.37 lakhs. Taking into account the average traffic for the years 2010-11 and 2011-12, the rate for the HMC deployed by the JSPL works out to ₹ 65.62 per tonne.

Similarly, taking into account the operating costs and the Return on Capital employed, the average Annual Revenue Requirement (ARR) pertaining to the HMC at CREW works out to ₹1131.50 lakhs. Taking into account the average traffic for the years 2010-11 to 2012-13 at 15,92,978 tonnes, the rate for the HMC deployed by the CREW works out to ₹73.25 per tonne.

(xxiii). From the details furnished by PPT with regard to the actual traffic of cargo handled by the HMC during the years 2009-10 to 2013-14, it is seen that on an average, the Dry Bulk cargo constitutes about 99.97% of the total traffic. Since handling of Break Bulk cargo and Other cargo has been very insignificant, it is not necessary to prescribe a separate rate for Break bulk cargo and Other Cargo.

(xxiv). Clause 4.3. of the tariff guidelines of March 2005 stipulates prescription of concessional tariff for coastal cargo. The said clause further stipulates that the cargo related charges for all coastal cargo, other than thermal coal and POL including crude oil, iron ore and iron ore pellets should not exceed 60% of the normal cargo related charges. From the details furnished by PPT with regard to the actual traffic of cargo handled by the HMC, it is seen that on an average the foreign cargo has constituted about 99% of the total traffic and the coastal traffic has been only to the tune of about 1%. Since the estimated ARR is to be realized from handling of foreign and coastal cargo, the concessional rate for coastal cargo has been determined taking into consideration the share of the estimated capacity of the HMC for handling coastal cargo and suitable adjustment in the rate for handling foreign cargo.

One of the service providers viz., OSL has made a request to prescribe one rate to be made applicable for both the foreign and coastal cargo. The OSL is of the view that the operation time and the expenditure incurred by the HMC is same for a given quantity for both kind of vessels. In this regard, it is relevant to mention here that prescription of concessional coastal rates flows from a policy direction issued by the Government of India under Ministry of Shipping to all the Major Port Trusts and the same is binding on all the Major Port Trusts including PPT.

(xxv). Thus, based on the above analysis, the rate in respect of the HMC pertaining to JSPL works out to ₹65.88 per tonne and the rate in respect of CREW works out to ₹73.54 per tonne.

(xxvi). Since the said rates will be prescribed in the Scale of Rates of the PPT, the definitions and the general terms and conditions forming part of the PPT Scale of Rates are made applicable in respect of the above rates prescribed, wherever they are relevant.

9. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves to insert the following as Section 2.15(B) in lieu of the existing Section 2.15(B) prevailing in the existing Scale of Rates of PPT in Chapter – II, Cargo related charges.

"2.15 (B). Charges for use of Harbour Mobile Cranes (HMCs) installed by the private operators:

		Rate per MT
(a).	HMC installed by Jindal Steel Private Limited	₹ 65.88
(b).	HMC installed by Chennai Radha Engineering Works	₹ 73.54

(T.S Balasubramanian)
Member (Finance)

Annex - I

Fixation of Tariff for Harbour Mobile Crane deployed by M/s. Jindal Steel Private Limited (JSPL) at the Paradip Port Trust.

(Rupees in Lakhs)

Sr. No.	Particulars	As given by Jindal Steel Private Limited (JSPL)			As moderated by us		
		2009-10	2010-11	2011-12	2010-11	2011-12	Average
I	Traffic	1001000	1251250	1564063	2000000	2000000	2000000
	Annual Traffic (in Million tonnes)	1.001	1.251	1.564	2.00	2.00	2
II	**Capital costs**						
	Harbour Mobile Crane	**3752.82**	**3752.82**	**3752.82**	**3752.82**	**3364.78**	3558.80
III	**Operating Costs**						
	Labour Cost	156.81	196.01	245.01	196.01	207.38	201.69
	Fuel Cost	39.96	49.95	62.44	69.82	73.87	71.84
	(JSPL - 0.0998 litres per tonne * Rs. 40 per litre) (TAMP - 0.0998 litres per tonne * Rs. 34.98 per litre)						
	Maintenance Cost	43.16	53.95	67.44	53.95	57.08	55.51
	Depreciation	424.44	360.78	324.7	388.04	388.04	388.04
	(JSPL - 11.31% on cost of HMC) (TAMP - 10.34% on cost of HMC)						
	Licence Fee (100 sq.m * Rs. 12 per sq.m per month * 12 months)	0.00	0.00	0.00	0.14	0.15	0.15
	Other Expenses	20.00	25.00	30.63	25.00	26.45	25.73
	Total *	**678.74**	**678.65**	**721.42**	**732.97**	**752.97**	**742.97**
IV	**Annual Revenue Requirement (ARR)**						
	- Operating costs	678.74	678.65	721.42	732.97	752.97	742.97
	- Return on Capital employed	562.92	562.92	562.92	600.45	538.36	569.41
	Total	**1241.66**	**1241.57**	**1284.34**	**1333.42**	**1291.33**	**1312.37**
VI	**Per tonne Cargo Handling rates**						
	- Foreign cargo *	**124.04**	**124.04**	**124.04**	**66.94**	**64.83**	**65.88**
	- Coastal cargo *	**74.43**	**74.43**	**74.43**	**40.16**	**38.90**	**39.53**

* A calculation error has been noticed in the working furnished by JSPL.

Annex - II

Fixation of Tariff for Harbour Mobile Crane deployed by M/s. Chennai Radha Engineering Works (CREW) at the Paradip Port Trust.

(Rupees in Lakhs)

Sr. No.	Particulars	As given by Chennai Radha Engineering Works (CREW) to PPT			As moderated by us			
		2009-10	2010-11	2011-12	2010-11	2011-12	2012-13	Average
I	Traffic handled	1000000	1000000	1000000	1300000	1500000	1978934	1592978
	Annual Traffic (in Million tonnes)	1	1	1	1.300	1.500	1.979	1.593
II	**Capital costs**							
	Harbour Mobile Crane	**2512.98**	**2512.98**	**2512.98**	**2512.98**	**2253.14**	**1993.30**	**2253.14**
III	**Operating Costs**							
	Labour Cost	94.28	103.71	114.08	103.71	109.73	116.09	109.84
	Fuel Cost (CREW - 0.0675 litres per tonne * Rs.40 per litre) (TAMP - 0.0675 litres per tonne * Rs.34.98 per litre)	27.00	28.35	29.70	30.69	37.47	52.30	40.16
	Maintenance Cost	25.18	26.43	29.07	26.43	27.96	29.58	27.99
	Depreciation (CREW - 11.31% on cost of HMC) (TAMP - 10.34% on cost of HMC)	284.22	284.22	284.22	259.84	259.84	259.84	259.84
	Licence Fee (100 sq.m * Rs. 12 per sq.m per month * 12 months)	0.00	0.00	0.00	0.14	0.14	0.14	0.14
	Other Expenses	688.42	667.16	631.19	314.43	332.67	351.96	333.02
	Total *	**1115.82**	**1106.42**	**1084.47**	**735.25**	**767.82**	**809.93**	**771.00**
IV	**Annual Revenue Requirement (ARR)**							
	- Operating costs	1115.82	1106.42	1084.47	735.25	767.82	809.93	771.00
	- Return on Capital employed *	102.44	111.85	133.73	402.08	360.50	318.93	360.50
	Total	**1218.26**	**1218.27**	**1218.20**	**1137.33**	**1128.32**	**1128.85**	**1131.50**
VI	**Per tonne Cargo Handling rates**							
	- Foreign cargo	**121.83**	**121.83**	**121.83**	**87.84**	**75.52**	**57.27**	**73.54**
	- Coastal cargo	**73.10**	**73.10**	**73.10**	**52.70**	**45.31**	**34.36**	**44.13**

* A calculation error has been noticed in the working furnished by CREW.

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

F. No.TAMP/54/2007- PPT	**-**	**Fixation of tariff for the use of Harbour Mobile Crane(HMCs) at the PPT, in compliance of the directions of the Hon'ble High Court of Orissa.**

A summary of comments received from Chennai Radha Engineering Works Pvt. Ltd. (CREW) and the comments of Paradip Port Trust (PPT) on the comments of CREW thereon is tabulated below:

Sl. No.	Comments of the Service Providers	Comments of PPT
1.	**Chennai Radha Engineering Works Pvt. Ltd.**	
1	We have already submitted our proposal for fixation of Tariff for the users of HMC in the TAMP's Format C – along with cost working statement to the PPT vide our letters dated 21 January 2009 and 18 March 2009 and requested to fix the rate of ₹.121.83/- Per MT. (The CREW has furnished copies of its letters dated 21 January 2009 and 18 March 2009 addressed to PPT).	The following items of Sl. No. X(e) should not be considered for the calculation of cost as per the guidelines (a). Interest on working capital (b). Interest on term loan (c). Upfront premium
2	The Rate proposed by us of ₹121.83/- Per MT is inclusive of the License Fee payable to PPT of ₹.32.60/- Per MT (vide License No.TD/TM/GEN/56/2006, dt. 25.4.2008) for the estimated quantity of 1.0 Million Ton per annum per crane as furnished in the tender specification Clause 11.5 General Conditions of License and Price Offer for 100MT Note (d). (The CREW has furnished copy of the respective pages of tender specification No.TD/TM/GEN/56, dt. 09.01.2008.)	While the tender was floated for installation of HMC the quantity of cargo indicated as one million ton was for the purpose of evaluating the financial offer for awarding the work to the tenderer whose offer will be maximum by adding the one time upfront premium and revenue sharing for one million ton. There was no restriction to handle beyond one million metric ton. Hence, the capacity utilization should not be restricted to one million metric ton.
3.	While submitting the cost statement we have considered the fuel/ diesel price as ₹. 40/- Per Litre as prevailed at that time. But the present cost of diesel is ₹. 60.89/- Per Litre which is about 52% escalated from the price considered	PPT agrees to the escalation of fuel/ diesel price. But the exact rate may be ascertained through documentary evidence. PPT has no comments on exact % of escalation.
4.	The escalation towards the direct labour cost is around 35% for 5 years (@ 7% per annum) from the cost considered during 2009.	PPT agrees to the labour rate escalation. PPT has no comment on exact % of escalation.
5.	It is requested to consider the above escalation along with the rate of ₹.121.83/- Per MT proposed by us and the tariff may be fixed accordingly.	

[In this regard, the Cost details furnished by the CREW under cover of its letters dated 21 January 2009 and 18 March 2009 to PPT is reproduced below:]

Sr. No.	Particulars	As given by Chennai Radha Engineering Works (CREW) to PPT		
		2009-10	**2010-11**	**2011-12**
I	Traffic handled	1000000	1000000	1000000
	Annual Traffic (in Million tonnes)	1	1	1
II	**Capital costs**			
	Harbour Mobile Cranes	**2512.98**	**2512.98**	**2512.98**
III	**Operating Costs**			
	Fuel Cost	27.00	28.35	29.70
	Maintenance Cost	25.18	26.43	29.07
	Insurance Cost	0.00	0.00	0.00
	Depreciation	284.22	284.22	284.22
	Other Expenses	782.70	770.87	745.27
	Total	**1115.82**	**1106.42**	**1084.47**
IV	**Annual Revenue Requirement (ARR)**			
	- Operating costs	1115.82	1106.42	1084.47
	- Return on Capital employed	102.44	111.85	133.73
	Total	1218.26	1218.27	1218.20
VI	**Per tonne Cargo Handling rates**			
	- Foreign cargo	121.83	121.83	121.82
	- Coastal cargo	73.10	73.10	73.09

1.2. Summary of the comments given by Jindal Steel Pvt. Ltd. (JSPL) are given below:

M/s. Jindal Steel and Power Ltd

(i). The Tender Notice dated 09.01.2008 was issued for grant of license for installation, operation and maintenance of two new Harbor Mobile Cranes i.e. one CQ Berth & one EQ Berth inside Harbor of Paradip Port area. Pursuant to the said Tender Notice, Jindal Steel & Power ["**JSPL"**] made an offer on 04.04.2008 and offered a License Fee of ₹30.00 per ton on the estimated quantity of the cargo of 1 MT per annum, as stated in the Tender Document. The said offer of JSPL was accepted vide Work Order dated 25.04.2008 for 100-140 Ton Crane in CQ Berth for 5 years in terms of which JSPL deposited upfront premium of ₹ 6.00 crores and Security Deposit of ₹ 10.00 lacs.

(ii). In terms of the above, JSPL incurred substantial expenditure in procuring a new Harbor Crane and other machineries for the execution of the said work.

(iii). For the purpose of fixation of tariff for the use of aforesaid Mobile Harbor Crane, JSPL vide its letter dated 04.03.2009 tendered its Proposal before the Tariff Authority for Major Ports [**"TAMP"**] in the prescribed format along with necessary Cost Statement and requested for the approval of the tariff at the proposed rate of ₹ 124.50 per ton.

(iv). However, the Board of Trustees of Paradip Port Trust [**"PPT"**] approved Performance Linked Tariff Rates at ₹ 64.00 per ton on ad hoc basis. The said ad hoc basis rates were unilaterally fixed without giving a hearing to JSPL and without taking into account the operational cost as per the details provided by JSPL, which comes to ₹ 124.50 per ton. The said ad hoc charges were required to be fixed in conformity with the Guidelines dated 28th March, 2005 of the Government of India under Section 111 of the Major Ports Trust Act, 1963, which was not the case.

(v). Subsequently, the TAMP vide its letter order dated 30.12.2009 fixed uniform tariff rates at ₹ 43.00 per ton. Since the said tariff was fixed in violation of principles of natural justice and without considering the unique and special facts of the aforesaid Proposal tendered by JSPL, the said order was challenged in Writ Petition No. WP (C) No. 3365 of 2010 before the Hon'ble High Court of Orissa at Cuttack.

(vi). The Hon'ble High Court of Orissa at Cuttack vide order dated 16.05.2012 has, inter alia, held that the fixing uniform tariff rate of ₹ 43.00 per ton for all operators is invalid and the Hon'ble High Court has required TAMP to fix the tariff rates in accordance with the aforesaid Guidelines formulated by Central Government under Section 111 of the Major Ports Trust Act, 1963. The Hon'ble High Court has, interalia held that: -

"*…. The charge should be in commensurate with reference to the establishment charges, upfront amount, security deposit and the expenses to be incurred on the staff, who are required to operate the HMC in the port. These are all relevant aspects, which are to be taken in to consideration by the TAMP and the said proposal is required to be submitted to the PPT by the TAMP and the said proposal is required to be submitted to the PPT by the petitioners...*

…. the same is wholly untenable in law in view of the fact that fixation of rates not commensurate with the operational charges by the service providers – the petitioners herein. Then the operation will not be efficient and the petitioners will put to the losses and that is not the object of permitting service providers to render their service in cargo for transporting goods of the exporter and importers, which will have a serious civil consequence, in view of the law laid down by the Supreme Court…

… the impugned order passed by it the fixing the uniform tariff rate at Rs.43.00 although the petitioners have offered license fee of Rs.30.00 and Rs.32.60 per ton respectively is not valid. The remaining Rs.13.00 and Rs.10.40 will be towards the cost of establishment of cranes, providing staff for operation of the HMCs to the users are totally inadequate, which will affect interest of the petitioners. Therefore, we are of the view that the impugned order suffers from arbitrariness and unreasonableness for the reasons that the licensee intervening applicant who has been operating its HMC from 2007 has agreed to pay Rs.10 per ton to the PPT towards license fee, whereas the petitioners are paying more than 200%, and, therefore, fixing the said uniform rate of license fee to all the service providers is most unreasonable and discriminatory…".

JSPL craves leave to refer to and rely upon the said order and judgment dated 16.05.2012 passed by the Hon'ble High Court of Orissa at Cuttack in WP (C) No. 3365 of 2010 & WP (C) No. 2428 of 2010 filed by M/s Chennai Radha Engineering Works Pvt Ltd. [**"CREW"**]. The said order and judgment of the Hon'ble High Court of Orissa at Cuttack has been upheld by the Hon'ble Supreme Court in SLP (C) No. 28583-28584/2012.

In view thereof, it is essential to fix an operator wise Tariff and evaluate their comparative merits.

(vii). In view of the aforesaid, JSPL submits that fixation of tariff rates for the use of Mobile Harbour Crane for installation, Operation and Maintenance of Mobile Harbor Cranes by JSPL inside the Paradip Port Area may be considered by TAMP on the following parameters/factors:

A **<u>Proposal dated 04.03.2009 of JSPL</u>**

Proposal dated 04.03.2009 as well as documents/ statements tendered by JSPL before PPT/ TAMP, which may be read as part and parcel of the present proposal and be duly considered while fixing the tariff for the subject cranes. The said proposal dated 04.03.2009 is furnished.

[Though the date of proposal is stated as 04.03.2009, which is the Cost statement furnished by JSPL under cover of its letter dated 25 June 2014 is dated as 13.02.2009. The same is reproduced below:]

Sr. No.	Particulars	As given by Jindal Steel Private Limited (JSPL)		
		2009-10	**2010-11**	**2011-12**
I	Traffic	1001000	1251250	1564063
	Annual Traffic (in Million tonnes)	1.001	1.251	1.564
II	**Capital costs**			
	Harbour Mobile Crane	**3752.82**	**3752.82**	**3752.82**
III	**Operating Costs**			
	Fuel Cost	39.96	49.95	62.44
	Maintenance Cost	43.16	53.95	67.44
	Insurance Cost	0.00	0.00	0.00
	Depreciation	424.44	360.78	324.7
	Other Expenses	176.81	221.01	275.64
	Amortisation of Upfront Payment	0.00	0.00	0.00
	Total	**678.74**	**678.65**	**721.42**
IV	**Annual Revenue Requirement (ARR)**			
	- Operating costs	678.74	678.65	721.42
	- Return on Capital employed	562.92	562.92	562.92
	Total	**1241.66**	**1241.57**	**1284.34**
VI	**Per tonne Cargo Handling rates**			
	- Foreign cargo	124.04	124.04	124.04
	- Coastal cargo	74.43	74.43	74.43

B. <u>Differential Tariff</u>

Under the law, the TAMP is empowered to fix differential Tariff i.e. operation wise Tariff. In terms of the wide difference in the quality, nature and capacity of cranes procurement cost, upfront premium and license fee paid, time gap in installation and startup operation of cranes as well as the capacity of grabs engaged between the different operators, it is essential to fix a differential tariff, which has also been observed by the Hon'ble High Court in this behalf.

(i). In terms of the aforesaid Tender, JSPL purchased and installed a new Harbor Mobile Crane from Gottwald, Germany as against the old one installed by AMG Heavy Industries Limited [**"AMGHIL"**], which was bought in 'second hand' from Europe after reconditioning and had already performed 10000 hours operational performance before the commencement of operation in Paradip port. The uniform tariff @ Rs. 43.00 per ton was fixed solely on the basis of the submissions/ proposal of AMGHIL, which cannot be extended to our case for the reasons stated.

(ii). The said new crane installed by JSPL involves a far superior technology and carries out functions in much faster and efficacious manner leading to a higher economic benefit to all. M/s. ABGHIL's crane in spite of having higher design capacity of 140 tons has worked with only 35 CBM Grab, which is much lower than the crane of JSPL, which has used a substantially higher 41 CBM Grab. The ABGHIL's crane is completely hydraulic which is an old technology as compared to JSPL's Gottwald make crane which is hydro-electrical and has a superior technology involving superior electronic and computer controls. The comparative chart pointing out the merits of JSPL and two other operators are referred herein below for consideration and ready reference:

PARTICULARS	ABGHIL	JSPL	CREW
Location-Berth	CQ	CQ	EQ
Procurement Cost	Rs.16.58 crores	Rs.37.32 crores	Rs.25.13 crores
Crane capacity	140 Ton	100-140 Ton	80-100 Ton
Grab capacity	35 CBM	41 CBM	30 CBM
License fee to Port	Rs.10.00 per ton	Rs.30.00 per ton	Rs.32.60 per ton
Upfront fee to Port	Rs.1.20 crores	Rs.6.0 crores	Nil
Procurement year	B/2007	3/2009	3/2009
Period of license agreement (5 years)	12.02.2007	21.03.2009	26.02.2009
Quantity handled during 2009-10 (upto 28.02.2010)	0.56 million ton	1.73 million ton	1.51 million ton

Better equipment and better technology employed by JSPL should involve a different cost structure for JSPL, which is an integral part of any Tariff.

C. **Cost effectiveness**;

Further, JSPL agreed to pay the said License Fees and has been paying ₹ 30.00 per ton to PPT towards License Fee and has also paid ₹ 6.00 crores as upfront premium. The said Licence Fees of ₹ 30 per ton as well as ₹ 5.00 per ton *(₹6.00 crore is meant for 5 years license, so on being divided by 5, annual premium comes to ₹1.20 crore. As per para 12 (vi)(a) of order, annual cargo to be handled is 29.70 Lac Ton per year, if said 1.20 crore is divided by 29.70 Lac, same comes to ₹4.04 per ton and if interest incident is also taken into consideration, the same will come to ₹5 per ton)* towards notional value of ₹ 6.00 crores paid as upfront premium, should also be considered while fixing the tariff. The said premium of ₹6.00 crores paid by JSPL is in the nature of initial capital cost totally unrelated to the revenue which, may be generated from business carried out by JSPL. The said expenditure has to be written off annually in the books of accounts of JSPL over the period of the License like any other capital expenditure. Further, the License Fee payable by JSPL is only relating to loading and unloading of goods and is a direct cost incurred by JSPL and is required to be treated as expense while fixing Tariff. Since the License Fee payable by operators is on tonnage basis, it is essential that the average cargo handled by the operators should be considered for fixing the tariff rates i.e. the actual quantity of the cargo handled by JSPL should be considered for the purpose.

D. **Revision of Tariff rates:**

Furthermore, as per the aforesaid Guidelines, the said Tariff so fixed is required to be reviewed and revised from time to time. In view of the fact that there has been continuous increase in the rates of various parameters required to be considered while fixing the Tariff and since the cost structure has drastically changed over a period of time, JSPL submits that the Tariff rates may be revised for subsequent years in terms of the said Guidelines. Following factors, interalia, may be considered for arriving at revised Tariff rates for subsequent years:

- Cost of Diesel: Periodic increase in Diesel prices which is now at ₹ 72 as compared to ₹ 40 in the year 2009.
- Cost Lubricants and Greases: Similarly the cost of lubricants oils and greases have considerably increased.
- Imported OEM Spare Parts: The subject Crane installed by JSPL is of German Manufacture and most of its critical parts are imported. Rise in prices of Dollar to current ₹ 60 and increase in cost of transportation and taxation have increased the cost of operation manifold.
- Labour costs: With upwardly revision in wholesale price index, cost of labour has also risen dramatically and needs to be factored in.
- Vintage: The Crane is now more than 5 years old in operation hence maintenance costs have gone up.
- Losses in the past: The Crane has been working at almost 50 % of the rates proposed by us and we have suffered severe losses in the past rendering this whole project economically unviable.

Keeping in view the above factors, JSPL has worked out the proposed Tariff rates as on date at ₹ 152/MT an assured tonnage of annual cargo of 1 Million Tons. Detailed calculation in accordance with Format-C of the “fixation of rates for equipment for major ports trust” is annexed hereto as Annexure-II. Taking the proposed rate of ₹ 124.50 per ton as the base rate and capping it with 5.5% hike for every financial year subsequent to the financial year ended 31st March, 2010, the proposed rates for the subsequent years work out as follows:

i) For the year ended 31st March, 2011, the proposed rate is calculated as ₹ 131.35/MT,
ii) For the year ended 31st March 2012 the proposed rate is calculated as is ₹ 138.2 /MT,
iii) For the year ended 31st March 2013 the proposed rate is calculated as ₹145.04/MT and
iv) For the year ended 31st March 2014 the proposed rate is calculated as ₹151.89 / MT.

2.1. In order to give an opportunity of hearing to the PPT and the concerned service providers in compliance of the Order of the Hon’ble High Court and in terms of the consultative procedure prescribed, a joint hearing on the case in reference was held on 27 June 2014 at the premises of PPT at Bhubaneshwar. At the joint hearing, the PPT, CREW and JSPL have made the following submissions:

Paradip Port Trust

(i). Briefly emphasizes the need for having rates for HMCs for faster evacuation of cargo, till mechanization is achieved. The intention of the port is not to earn revenue from HMC operators but to handle more volume in the port.

(ii). We agree that we have delayed in filing the proposal for fixation of tariff for HMC’s, even though the validity of rates have expired in January 2013. We have significantly enhanced the rates to attract suppliers of equipment for the reasons that on earlier attempts in inviting tender for supply of cranes failed to fructify, due to low rates.

(iii). As requested by JSPL, operator wise rates are not possible. However, the benchmark of 12500 tonnes is on higher sider. Further, many slab as prescribed in December 2009 Order are not required.

(iv). We suggest that three slab structure be prescribed as in our proposal.

(v). The upfront premium paid by JSPL is for 5 years. The five year period is over. PPT has requested JSPL to pay upfront premium on a monthly basis for extended period beyond 5 years. But JSPL is objecting. We request TAMP to look into this issue.

Chennai Radha Engineering Works Private Limited

(i). Per day output of 12500 tonnes is not at all possible and viable, due to different types of vessel and different types of cargo. The cargo operation from commencement till completion involves many breaks due to operational requirements.

(PPT : We agree with CREW in this regard. There is a need to account for maintenance breakdown, idle hours etc. There are issues when the crane breaks down, which cannot be settled fast. Unpredictability of assimilation of cargo is also another factor. These factors may be kept in view by TAMP. We will furnish details regarding actual idle hours/ breakdown hours for each operator).

(ii). We use premium diesel for HMC operations whose cost is more than High Speed Diesel. So the higher cost may be taken into account (iii). 5% Maintenance Cost is not sufficient and very meagre. It must be 10%. Cost of spares for 1 HMC is around 98 lakhs per annum.

(iv). Rate for container handling by HMC should also be prescribed.

Jindal Steel and Power Limited

(i). Our cranes are getting old. There is a breakdown of almost 3 months in a year. Therefore, 10% maintenance should be considered.

(ii). Our earlier rate of ₹64/- per tonne is an adhoc rate. It should be regularized at ₹124/- per tonne for 1st year and to be escalated every year to meet price escalation. Also, if the higher cost of our equipment is taken into account, the tariff will go up.

(iii). Operator wise rates have to be fixed.

(iv). Handling rate of 12500 tonnes is not achievable. Actual handling rates of HMC are much less.

2.2. A summary of written submissions received from Service Providers as decided at the joint hearing and the comments of PPT thereon are tabulated below:

Sl. No.	Comments of the Service Providers	Response of PPT
1.	**The Chennai Radha Engineering Works Pvt. Ltd.**	
(i)	The berth day output of 12500 MT arrived for each HMC is not practically viable due to many reasons such as handling different types of cargo & vessel, vessel sequence, weather condition, multi operation by number of HMC in one vessel, delay in evacuation of cargo by the HMC users after unloading at jetty etc.	Has been considered taking into account the actual cargo handled.
(ii)	The intermediate stop for Hatch changing, placement and removal of pay loaders into the hatch, hatch cleaning time, travelling time between one vessel to another during multiple vessel operation etc. of HMC are not considered in arriving the berth day output as per TAMP guidelines.	
(iii)	The price escalation on diesel price and operational manpower cost are not considered while fixing up the rate for HMC usage.	Has been proposed in New price.
(iv)	The license fee payable by the operators to PPT varies for each HMC, but a common tariff have been fixed for all HMCs.	No Comments.
(v)	The license fees payable to PPT by CREW for every Metric Ton of handling the cargo of ₹ 32.60 has not been considered while fixing the tariff.	No comments.
(vi)	It is mentioned in clause 11.5 general conditions of license in tender specification of PPT (No.TD/TM/GEN-56/2008 Dt: 09.01.2008) that “Estimated quantity of cargo is 1.0 Million Ton per annum per each crane. The port offers no guarantee on the above projected quantity”. While fixing up/ computing the tariff, the total annual quantity of 2.97 MMT to be handled at PPT with all existing 5 HMC have been considered instead of 1.0 Million Ton per annum per each crane. However, the capital and operational cost for one HMC only considered.	The quantity was estimated at 1 million tonnes without any mention about the guaranteed cargo.

(vii)	It is mentioned in clause 13 licensee's obligations under the license of tender specification of PPT (No.TD/TM/GEN-56/2008 Dt: 01.09.2008) that "The installer of the crane will be required to submit proposals to port in TAMP's prescribed formats for fixation of rates for use of the cranes. On request by the operator the port can fix an ad-hoc rate for the cranes subject to final orders of TAMP in this regard". The tender has been awarded subject to the conditions of tariff fixed by the TAMP. However certain penalty clauses are mentioned in the TAMP's tariff, which were not included in the tender specifications. It is not clear whether these penalty clauses are considered while computing tariff by TAMP.	No comments.
(viii)	Being an imported equipment, the spares are not available locally and are to be imported. The cost of spares and the expenditure towards the import will be very high. Hence, the maintenance cost considered @ 5% while calculating the tariff is not sufficient and the same may be considered as a minimum of 10% of the equipment cost.	No comments.
(ix)	The cost of premium quality Diesel shall have to be considered instead of High Speed Diesel since the equipment shall have to be operated with premium quality fuel as per the manufacturer's standard.	Has been considered in the new proposal.
(x)	Considering that the port users are regular customers and continuous users of HMC for handling the cargo, we have to facilitate a minimum credit towards the charges payable by them. The working capital interest for the above credit facility shall have to be considered in the operational cost while fixing the tariff.	Has been considered in the new proposal.
(xi)	The type of HMC approved for installation is of grab type. As per the agreement the license for operation of the equipment inside the port area is to handle all type of dry bulk cargo, general cargo and scrap. Even though the grab type HMC is not meant for handling containers, our grab type cranes have to operate for loading and unloading containers. For such usages the rate fixed is very less and there is no guidelines about the rate by TAMP. Incase of utilizing the HMCS of grab type for container handling the rate may be fixed on hourly basis.	No comments.
(xii)	The time limit permitted for maintenance of HMC is not sufficient. Considering that the HMC have been imported, proper preventive/ running maintenance is required for uninterrupted operation. As such, the following maintenance period may be permitted apart from hour maintenance time per shift and 4 days in a month for planned/ pervasive maintenance. (a). 7 days in a year for minor break down. (b). 30 days in a year as and when required for major break down.	This will be taken care as the new proposal has been considered based on the actual cargo handled.
2.	**Orissa Stevedores Limited**	
(i).	The base rate is to be revised upward to meet the present price & cost of operation of the HMC. There is to be sufficient provision to cover the cost of spare parts, cost of repair & maintenance, etc. Rate escalation clause is also to be	No Comments

	incorporated to absorb the impact of increase in the price of diesel, foreign currency exchange rate, increase of wages, etc. There has been increase in the cost of diesel by ₹ 27.56 per liter since December 2010, exchange rate of Rupee with Dollar and Euro by ₹ 20/-, etc. Salaries and other expenditure are also increased substantially in the last four years. Therefore, we request the TAMP and the PPT to fix a rate taking all the inputs in to consideration. The statement of cost & rate calculated on the basis of present cost of HMC of 100 tonne capacity, along with explanation, is furnished. The hire charge so worked out is ₹ 125.78 per MT for both foreign cargo and coastal cargo. It may kindly be noted that the capacity of this crane in grab-mode is maximum 50 tonne including weight of grab up to working radius of 33 meters and the capacity reduces with the increase in working radius.	
(ii).	TAMP had fixed different rates for Foreign & Coastal vessels. Rate for coastal vessels is 40% less than the rate for foreign vessels. As regards to the HMC, the operation time & the expenditure incurred by the HMC is same for a given quantity for both kind of vessels. So, there should not be any difference in the rates applicable for foreign & coastal vessels. Only one rate is to be fixed for the both. HMC Operator cannot afford to reduce hire charges for coastal vessels by 40% as prescribed in the previous order of TAMP. In the joint hearing held by TAMP on 27-06-2014, TAMP advised the PPT to work out for a solution on this issue, so that HMC operator does not incur loss. We request PPT to do the needful in this regard.	No Comments
(iii).	Applicable rates for various types of cargo: (a) Dry Bulk Cargo: For the purpose of calculating the applicable rate, the daily performance (day output) for all kinds of Dry Bulk Cargo is fixed at the same level, which is not rational as the rate of discharge depends also on the bulk-density of the cargo, size of the cargo, moisture content, etc. For example, the discharge rate for Coking Coal can be up to 800 MT per hour, where as in case of Lime Stone it never crosses 400 MT per hour because grab cannot bite into the cargo due to its size. Therefore, for this kind of cargo, either the day out-put for calculating HMC base rate is to be fixed at lower level or else the base rate is to be fixed at a higher level for this kind of cargo	Has been taken care in the present proposal based on the actual cargo handled.
	(b) Break Bulk Cargo (Steel & Bagged Cargo): The calculation of applicable rate for Bagged cargo is furnished, which shows the rate for bagged cargo at ₹ 614.79 per MT. The rate for bagged cargo works to be 16.5 times the rate applicable for dry bulk cargo.	
	(c) Others (Cargoes) What cargoes come under this category are to be defined. As such there is no rate was fixed for container cargo, which is to be reviewed. As per the calculation sheet enclosed for container cargo, the rate works out to ₹ 160.28 per MT. The applicable rate for handling laden container works out to 4.3 times the rate applicable for dry bulk cargo and 16.5 times for empty container.	

(iv).	Methodology for calculating day output for the purpose of applicable rate: Applicable hire charges of HMC are derived on the Performance basis of HMC. Therefore all stoppages not attributable to HMC are to be excluded from engagement time of HMC for calculating the day output for deriving the applicable rate. (a) The phrase “stoppages of operation of HMC” is to be defined clearly. (b) The clause “stoppage less than 2 hours in a stretch, not attributable to HMC, is not considered while calculating the engagement time of HMC for the vessel” gives undue advantage to the users. This clause is to be reviewed and amended. Any stoppage, irrespective of its duration, not attributable to HMC is to be deducted from the engagement time of HMC for deriving the day output for applicable rate. (c) The time consumed for marching of HMC from one hatch to another hatch of the vessel, as per the requirement of the vessel/ stevedores, is to be excluded from the HMC utilization time for calculating the day out-put. (d) At least one hour is to be allowed for the preventive maintenance of the HMC for every 7-hour operation and this one hour is to be excluded from the HMC engagement time for calculating the day out-put for the applicable rate.	As above.
(v).	MAINTENANCE REQUIREMENT OF THE HMC:	
	(a). One day is required for preventive maintenance of the crane after every six days of operation, i.e. a minimum of 4 to 5 days is required in a month for doing preventive maintenance work of the crane. The time consumed for preventive maintenance of the crane is not to be considered as a breakdown of the crane.	As above.
	(b) Apart from the above, total 73 days (20%) of a year is to be allowed for major/ minor breakdown works, without penalty. This is required for breakdown maintenance of the crane. However, 73 days may not be required every year, if the HMC does not develop any premature or major failures. As the HMC is an imported machine, almost all spares/ components are to be imported from the Manufacturer (Germany) only. Even though several spares are kept in stock, it will not cover everything needed. The time taken for importing a spare from the Germany is 10 to 20 days depending on the size and weight of the spares/ component and their availability with the manufacturer of the HMC. Therefore, it takes nearly 30 days to complete any major breakdown maintenance of the crane in such situations.	
(vi)	PENALTY CLAUSE: There is a penalty clause in the TAMP Order which says: ”In case shifting of a vessel becomes necessary due to breakdown/ non- performance of HMC, the shifting charges of the vessel from berth to anchorage will be recovered from the crane operator in addition to a penalty of ₹ 1,00,000/- (Rupees one lakh only). The shifting charges so recovered will be refunded to the vessel’s agent while the penalty will be retained by the port”. In addition to this penalty clause, PPT	Some relaxation is under consideration which will be incorporated in new tender.

<table>
<tr><td></td><td>has put another clause in the contract for penalizing the HMC operator if he cannot supply (engage) the HMC, a penalty of ₹100000/- per day is imposed after the allowed free time for repair work. This clause is to be deleted from the contract, as it is not practicable to complete the repair work in the allowed free time of 5 days in some of the cases. PPT has to review and take a practical view on this issue. We request the PPT to kindly expunge this penalty clause from the present contract and also not include in future. We request the Authority to kindly fix a new tariff for the use of HMC by taking the points explained above in to consideration.</td><td></td></tr>
<tr><td>3.</td><td>Jindal Steel and Power Limited</td><td></td></tr>
<tr><td>A.</td><td><u>Proposal dated 4th March, 2009 Of JSPL</u></td><td></td></tr>
<tr><td>(i).</td><td>The Proposal dated 04.03.2009, as well as the documents/ statements tendered by JSPL before the PPT/ TAMP should be duly considered while fixing the Tariff for the subject Crane in as much as the facts and figures stipulated therein are on an actual basis rather than being unrealistic and/or hypothetical, which is the case in the Proposals dated 06.08.2009 and 17.08.2009 of the PPT.</td><td>No Comments</td></tr>
<tr><td>(ii).</td><td>The figures and basis of the computation of the tariff as proposed by PPT vide the said letters dated 06.08.2009 and 17.08.2009 is totally misconceived, unfounded and without any basis. Foremost, the PPT has erroneously taken the annual capacity of MHC as 2.40 Million Tons Per Annum, which is an unrealistic and unachievable capacity. It is submitted that even the subject tender documents stipulate that the estimated quantity of cargo would be 1 million ton per annum for each HMC and it was on this basis that JSPL had prepared and tendered its Proposal. It is pertinent to mention here that even when JSPL was the lone operator at the Paradip Port it could achieve only about 1.8 million tons in the year 2009 on account of the limited availability of cargo required to be handled at the Paradip Port. However, subsequently new cranes were installed by other operators and since the quantity of cargo required to be handled at the said Port was shared amongst various operators, the achievable annual capacity further decreased.</td><td>The actual cargo handled by individual operators furnished.

(These details are brought out in the subsequent paragraph.)</td></tr>
<tr><td>(iii).</td><td>In this respect, it is pertinent to refer to the year wise cargo handled by the MHC operated by JSPL, as also desired by the Hon'ble TAMP during the course of hearing, which is as follows:
<table>
<tr><th>YEAR</th><th>Annual Quantity Of Cargo Handled (In Million Tons)</th></tr>
<tr><td>2009 – 2010</td><td>1.83</td></tr>
<tr><td>2010- 2011</td><td>2.13</td></tr>
<tr><td>2011 – 2012</td><td>2.63</td></tr>
<tr><td>2012 – 2013</td><td>NIL on account of breakdown of HMC</td></tr>
<tr><td>2013 – 2014</td><td>0.8 (the breakdown continued for major part of the year)</td></tr>
</table></td><td>No comments.</td></tr>
<tr><td>(iv).</td><td>If the delay and / or stoppage of MHC is not attributable to JSPL, the same should not be taken into account for computing the time of crane operation and berth-day output should be calculated accordingly.</td><td>The actual cargo handled by individual operators furnished.</td></tr>
</table>

		(These details are brought out in the subsequent paragraph.)
(v).	The Rate Calculation for HMC as proposed by PPT:	
a.	PPT has erroneously taken the total cost of HMC as Rs.300,773,750/- while the actual cost of the HMC is Rs.375,282,000 as stated in JSPL's Proposal. It is stated that JSPL's HMC has 3 grabs (one each for coal, lime stone and minerals), while PPT has considered price for only 2 grabs. Further, PPT has not taken into account bank and other charges, pre-operative expenses, such as installation, trial run, training expenses etc. while computing the cost of HMC.	No comments.
b.	The said erroneous cost of HMC considered by PPT has a cascading effect on all the further costs computed therein in as much as the said cost of Crane forms the basis of computation of other costs i.e. in the event the base cost of HMC is taken as Rs.375,773,750, the ROCE, Repair Cost, Maintenance Cost, Insurance Cost, Depreciation and other expenses would also increase considerably and the same should be taken into account while computing the tariff.	
c.	Further, PPT has failed to consider direct labor cost of the employees employed by JSPL in the operation and management cost.	Computed as per the TAMP guidelines.
d.	Further, as already submitted above, the annual capacity of HMC computed at 2.40 million tons per annum is unachievable and totally unrealistic. JSPL vide its letter dated 09.02.2010 had made its submissions with respect to the fixation of tariff and had also brought to the notice of PPT that by taking the estimated quantity of cargo at 1 million ton per annum, the cost of cargo handling would be much higher than computed by PPT/ TAMP. (JSPL has furnished a copy of the said letter dated 09.02.2010.)	The capacity may be calculated based on the actual handling.
(vi).	Clause 2.2(iv) provides that Hon'ble TAMP would be guided by established costing methodologies (including cost plus approach) and pricing principle while fixing tariff. Further, the normative cost approach is meant for fixing only the upfront tariff which is not the case in the present matter in as much as the scale of rates for use of crane is required to be fixed. It is submitted that the use of normative cost of each component of Port operation is permissible to encourage cost reduction by way of improvement of efficiency of same operator at every periodic review of tariff rates and not for determination of tariff rates for first time.	No Comments
(vii).	Further, JSPL's HMC is engaged in operation for mainly 3 different types of cargo, [different types of Coal (density ranges between 0.7 to 1.05), Lime stone (density ranges between 1.2 to 1.5) & Ores (density ranges between 2.0 to 2.5)]. Three different types of grabs are used for these different kinds of cargo. Owing to the difference in the nature of these cargo and their respective densities, their berth day output also varies accordingly. It's because more the density of cargo, more is the digging force & digging time required by the crane to grab the material, leading to the increase in the operational cycle time. This leads to a decrease in total	

	number of operational cycles leading to less berth day output. Thus, the Hon'ble TAMP should consider these facts while calculating the berth day output.	
(viii).	JSPL's HMC is engaged mainly in two different types of vessels i.e. Gearless & Geared vessel. The operational cycles vary according to the vessels, mainly on account of safety measures employed while operating HMC. This is so because Gearless vessels do not have vessel mounted cranes in between the HMC slewing range and therefore, the HMC can operate without any obstacle with less operational cycle time. But in case of Geared vessels, there are vessel mounted cranes on either side of HMC slewing range and, therefore, the operator has to operate the HMC very slowly to avoid any damage to the vessel & the crane itself for which the operational cycle time increases. According to this differential operational cycle, time for the berth day output must also vary and the Hon'ble TAMP should consider the same.	It is an operational requirement.
(ix).	Since the JSPL's HMC has crossed 12,500 operational hours, the previously calculated operational cycle time which was calculated as 2min/ cycle must now be considered as 3min/ cycle to compensate for the vintage.	It may be considered as per the actual cargo handling.
(x).	There is no criteria/ tariff fixed with respect to container & project cargo handling. As an adhoc measure JSPL charges according to a single hook operation i.e. ₹ 1000/ hook from which port collects ₹250/ hook operation as royalty. As the hook operation is more time consuming and also increases consumption of diesel & other consumables, a different slab must accordingly be fixed for container & project cargo operations by the Hon'ble TAMP.	May be considered in the new proposal.
B	<u>DIFFERENTIAL TARIFF</u>	
(i).	The Hon'ble High Court of Orissa vide its order dated 16.05.2012 has held that the uniform tariff of ₹ 43.00 per metric ton is invalid and has required the TAMP to fix the tariff rates in accordance with the Guidelines dated 28.03.2005 (The Guidelines) formulated by Central Government under Section 111 of the Major Ports Trust Act, 1963. The Hon'ble High Court has, inter alia held that: - "*…. The charge should be in commensurate with reference to the establishment charges, upfront amount, security deposit and the expenses to be incurred on the staff, who are required to operate the HMC in the port. These are all relevant aspects, which are to be taken in to consideration by the TAMP and the said proposal is required to be submitted to the PPT by the petitioners...* *…. the same is wholly untenable in law in view of the fact that fixation of rates not commensurate with the operational charges by the service providers – the petitioners herein. Then the operation will not be efficient and the petitioners will put to the losses and that is not the object of permitting service providers to render their service in cargo for transporting goods of the exporter and importers, which will have a serious civil consequence, in view of the law laid down by the Supreme Court…*	May be considered in the new proposal.

	… the impugned order passed by it the fixing the uniform tariff rate at Rs.43.00 although the petitioners have offered license fee of Rs.30.00 and Rs. 32.60 per ton respectively is not valid. The remaining Rs. 13.00 and Rs. 10.40 will be towards the cost of establishment of cranes, providing staff for operation of the HMCs to the users are totally inadequate, which will affect interest of the petitioners. Therefore, we are of the view that the impugned order suffers from arbitrariness and unreasonableness for the reasons that the licensee intervening applicant who has been operating its HMC from 2007 has agreed to pay Rs. 10 per ton to the PPT towards license fee, whereas the petitioners are paying more than 200%, and, therefore, fixing the said uniform rate of license fee to all the service providers is most unreasonable and discriminatory…”. (*emphasis supplied*)	
(ii).	It is essential to evaluate the comparative merits of various operators at the Port and accordingly fix an operator wise tariff as also observed by the Hon'ble High Court in as much as the fixation of rates should commensurate with the different operational charges incurred by the different Service Providers/ Operators.	No comments.
(iii).	Even the aforesaid Guidelines also make a provision for differential tariff. Clause 2.10 of the said Guidelines provides, "*Differential tariff scheme, if proposed by the port or private operator, will be entertained after analyzing the factors leading to congestion or under-utilization of facilities, etc."* It is pertinent to mention here that the factors to be considered under the said Clause 2.10 are suggestive and by way of examples and not limited to those specified therein. Further, Clause 2.2 of the said Guidelines provides that while fixation of tariff, the Hon'ble TAMP would be guided by various factors, which would ensure competitive pricing, operational efficiency, competition, economic use of resources, etc., which could be, inter alia, attained by fixing operator wise tariff after accessing their respective costs, efficiency, technology involved etc. Moreover, Clause 2.2 clearly provides that the tariff leverage will be used to improve operational efficiency of the Ports.	May be considered in the new proposal.
(iv).	Further, Clause 2.11.1 of the Guidelines in clear words states as under: - *"2.11.1. Bearing in mind the quid pro quo principle, tariff/ charges leviable shall be commensurate with the services rendered/ facilities provided".* Thus, the Hon'ble TAMP is empowered to fix the differential tariff depending upon the operational efficiency, quality of cranes installed, license fee/upfront premium paid, technology adopted by different operators etc.	No comments.
(v).	In terms of the wide difference in the quality, nature and capacity of cranes procurement cost, upfront premium and license fee paid, time gap in installation and startup operation of cranes as well as the capacity of grabs engaged between the different operators, it is essential to fix a differential tariff, which has also been observed by the Hon'ble High Court in this behalf.	No comments.

<table>
<tr><td>a)</td><td>In terms of the aforesaid Tender, JSPL purchased and installed a new Harbor Mobile Crane from Gottwald, Germany as against the old one installed by AMG Heavy Industries Limited ["AMGHIL"], which was bought in 'second hand' from Europe after reconditioning and had already performed 10000 hours operational performance before the commencement of operation in Paradip Port. The uniform tariff @ ₹ 43.00 per ton was fixed solely on the basis of the submissions/ proposal of AMGHIL, which cannot be extended to our case for the reasons stated.</td><td></td></tr>
<tr><td>b)</td><td>The said new crane installed by JSPL involves a far superior technology and carries out functions in much faster and efficacious manner leading to a higher economic benefit to all. M/s. AMGHIL's crane in spite of having higher design capacity of 140 tons has worked with only 35 CBM Grab, which is much lower than the crane of JSPL, which has used a substantially higher 41 CBM Grab. The ABGHIL's crane is completely hydraulic which is an old technology as compared to JSPL's Gottwald make crane which is hydro-electrical and has a superior technology involving superior electronic and computer controls. The comparative chart pointing out the merits of JSPL and two other operators are referred herein below for consideration and ready reference:
<table>
<tr><td>PARTICULARS</td><td>ABGHIL</td><td>JSPL</td><td>CREW</td></tr>
<tr><td>Location-Berth</td><td>CQ</td><td>CQ</td><td>EQ</td></tr>
<tr><td>Procurement Cost</td><td>₹16.58 crores</td><td>₹37.32 crores</td><td>₹25.13 crores</td></tr>
<tr><td>Crane capacity</td><td>140 Ton</td><td>100-140 Ton</td><td>80-100 Ton</td></tr>
<tr><td>Grab capacity</td><td>35 CBM</td><td>41 CBM</td><td>30 CBM</td></tr>
<tr><td>License fee to Port</td><td>₹10.00 per ton</td><td>₹ 30.00 per ton</td><td>₹ 32.60 per ton</td></tr>
<tr><td>Upfront fee to Port</td><td>₹ 1.20 crores</td><td>₹ 6.0 crores</td><td>Nil</td></tr>
<tr><td>Procurement year</td><td>8/2007</td><td>3/2009</td><td>3/2009</td></tr>
<tr><td>Period of license agreement (5 years)</td><td>12.02.2007</td><td>21.03.2009</td><td>26.02.2009</td></tr>
<tr><td>Quantity handled during 2009-10 (upto 28.02.2010)</td><td>0.56 million ton</td><td>1.73 million ton</td><td>1.51 million ton</td></tr>
</table>
Better equipment and better technology employed by JSPL should involve a different cost structure for JSPL, which is an integral part of any Tariff.</td><td></td></tr>
<tr><td>(vi).</td><td>Clause 2.12 of the Guidelines also clearly stipulates:-
" It is established by the private operator that adopting the existing tariff of port trust will cause hardship to him in view of a higher level of investment made, then a separate cost based tariff will be allowed to him right from the commencement of commercial operations".

In view of the above, it is submitted that the Hon'ble TAMP fixes a differential Tariff i.e. operator wise Tariff.</td><td>No Comments.</td></tr>
<tr><td>C</td><td><u>COST EFFECTIVENESS</u></td><td></td></tr>
<tr><td>(i).</td><td>Further, JSPL agreed to pay the said License Fees and has been paying ₹ 30.00 per ton to PPT towards License Fee and has also paid ₹ 6.00 crores as upfront premium. The said</td><td>Taken care in the present proposal.</td></tr>
</table>

	Licence Fees of ₹30 per ton as well as ₹ 5.00 per ton *(₹6.00 crore is meant for 5 years license, so on being divided by 5, annual premium comes to ₹1.20 crore. As per para 12 (vi)(a) of order, annual cargo to be handled is 29.70 Lac Ton per year, if said 1.20 crore is divided by 29.70 Lac, same comes to ₹ 4.04 per ton and if interest incident is also taken into consideration, the same will come to ₹ 5 per ton)* towards notional value of ₹ 6.00 crores paid as upfront premium, should also be considered while fixing the tariff. The said premium of ₹ 6.00 crores paid by JSPL is in the nature of initial capital cost totally unrelated to the revenue which, may be generated from business carried out by JSPL. The said expenditure has to be written off annually in the books of accounts of JSPL over the period of the License like any other capital expenditure. Further, the License Fee payable by JSPL is only relating to loading and unloading of goods and is a direct cost incurred by JSPL and is required to be treated as expense while fixing Tariff. Since the License Fee payable by operators is on tonnage basis, it is essential that the average cargo handled by the operators should be considered for fixing the tariff rates i.e. the actual quantity of the cargo handled by JSPL should be considered for the purpose.	
D	<u>FIXATION & REVISION OF TARIFF RATES</u>	
(i).	Furthermore, as per the aforesaid Guidelines, the said Tariff so fixed is required to be reviewed and revised from time to time. In view of the fact that there has been continuous increase in the rates of various parameters required to be considered while fixing the Tariff and since the cost structure has drastically changed over a period of time, JSPL submits that the Tariff rates may be revised and/or fixed for subsequent years in terms of the said Guidelines. Following factors, interalia, may be considered for arriving at revised and/or fixing Tariff rates for subsequent years: • Cost of Diesel: Periodic increase in Diesel prices which is now at ₹ 72 as compared to ₹ 40 in the year 2009. • Cost of Lubricants and Greases: Similarly the cost of lubricants oils and greases have considerably increased. • Imported OEM Spare Parts: The subject Crane installed by JSPL is of German Manufacture and most of its critical parts are imported. Rise in prices of Dollar to current more than ₹60 and increase in cost of transportation and taxes have increased the cost of operation manifold. • Labour costs: With upwardly revision in wholesale price index, cost of labour has also risen dramatically and needs to be factored in. • Vintage: The Crane is now more than 5 years old in operation hence maintenance costs have gone up. • Losses in the past: The Crane has been working at almost 50% of the rates proposed by JSPL and JSPL has suffered severe losses rendering this whole project economically unviable.	Taken care for the extent for initiable.
(ii).	Keeping in view the above factors, JSPL has worked out the proposed Tariff rates as on June 2014 at ₹ 152/MT on an assured tonnage of annual cargo of 1 Million Tons. Calculation in accordance with Format-C of the “Fixation of	No comments.

	Rates for Equipment for Major Ports Trust" is furnished. Taking the proposed rate of ₹ 124.50 per ton as the base rate and capping it with 5.5% hike for every financial year subsequent to the financial year ended 31st March 2010, the proposed rates for the subsequent years work out as follows: (a). For the year ended 31st March, 2011, the proposed rate is calculated as ₹ 131.35/MT, (b). For the year ended 31st March 2012, the proposed rate is calculated as is ₹ 138.2 /MT, (c). For the year ended 31st March 2013, the proposed rate is calculated as ₹ 145.04/MT and (d). For the year ended 31st March 2014, the proposed rate is calculated as ₹ 151.89 / MT.	
3	In this respect reliance is placed on Clauses 3.1.2 & 3.1.8 of the Guidelines which provide as under: - *"3.1.2 TAMP will prescribe a timetable specifying when each port should submit tariff proposal for review/revision. Till such a timetable is prescribed, proposal for revision of existing tariff shall be forwarded at least 3 months before these are due for revision. Major Port Trusts, including Private Terminal Operators will be duty bound to send proposal for fixation of tariff within the prescribed time frame. In case of failure on their part to do so, TAMP may for good and sufficient reasons to believe that interests of users are to be protected and/ or to rationalize tariff arrangements commonly at ports, suo motu, initiate proceedings in any tariff mater, review and, if necessary, revise the tariffs. In such proceedings, opportunity of hearing will be given to the concerned ports.* *3.1.8 Tariff once fixed shall be in force for three years unless a different period is explicitly prescribed in any individual case by TAMP or in the past concession agreement. For good and sufficient reasons, ports may propose revision ahead-of-schedule. After the specified validity period is over, the approval accorded will lapse automatically unless specifically extended by TAMP."*	No Comments.
	It is stated that in the present case the TAMP had fixed tariff for three years vide its order dated 30.12.2009, which was challenged by various operators. Since the matter was subjudice, the tariff rates were not revised despite efflux of time. However, under the law and also by virtue of the said Clause 3.1.2, the Hon'ble TAMP is empowered to "*suo motu*" and even otherwise initiate proceedings in any tariff matter, review and also revise the tariffs. Thus, the Hon'ble TAMP is empowered to fix and/ or revise the tariffs for the entire license period with respect to the operation of HMC by JSPL and the extension thereof accorded by PPT. It is pertinent to mention here that since the license period for the operation and maintenance of the HMC by JSPL ended on 20th March 2014 and that since, subsequently, JSPL has been operating and maintaining the same during the extensions granted by the PPT (1st extended period of 03 Months from 21st March 2014 to 21st June 2014 and the 2nd extended period of 04 Months from 22nd June 2014 to 21st October 2014), it is imperative that Hon'ble TAMP fixes the tariff for the entire period, including the said extensions.	

4	Further, under Clause 3.1.8 of the Guidelines, TAMP is empowered to revise the tariffs so fixed even before the expiry of three years for good and sufficient reasons. It is submitted that even otherwise the Hon'ble TAMP has a duty to protect the interest of the operators who could not be made to suffer loss and hardship on account of non-fixation of tariff by the authorities during the license period or even beyond.	No comments.

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