

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

TARIFF AUTHORITY FOR MAJOR PORTS

GNo. 21

New Delhi,

12 January, 2010

NOTIFICATION

In exercise of the powers conferred under Sections 48 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the Paradip Port Trust for fixation of tariff for the use of Harbour Mobile Cranes as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/54/2007-PPT

The Paradip Port Trust

Applicant

ORDER

(Passed on this 30th day of December 2009)

This case relates to a proposal received from the Paradip Port Trust (PPT) for fixation of tariff for use of Harbour Mobile Crane (HMC) installed at the PPT.

2.1. The PPT under cover of its letter dated 14 September 2007 forwarded to us a copy of the ABG Heavy Industries Limited (ABGHIL) proposal dated 2 August 2007 addressed to the PPT for fixation of tariff for the use of HMC at the PPT. The main points contained in the proposal are summarized below:

- (i). PPT has entered into a License Agreement (LA) on 12 February 2007 with ABGHIL for installation, operation and maintenance of one HMC inside the PPT for providing service to users for handling of all types of dry bulk cargo, mainly coking coal and other bulk materials like limestone, hard coke and chromite, general cargo, scrap and containers etc., for a period of 5 years, renewable for periods of 5 years at a time thereafter.
- (ii). The throughput estimated for the period of five years from 2007-08 to 2011-12 are as given in the following table:

(Figure in lakhs)

Sl. No.	Particulars	Year				
		2007-08	2008-09	2009-10	2010-11	2011-12
1.	Coal	1.75	6.00	6.60	7.26	7.99
2.	Container	0.90	1.80	2.70	3.60	5.40
	Container (nos)	5000	10,000	15,000	20,000	30,000
3.	Others	0.35	0.70	0.77	0.85	0.93
	Total traffic in tonnes	3.00	8.50	10.77	11.71	14.32

- (iii). The details of the capital cost are as given below:

(Rs. in Lakhs)

(a).	Cost of one number used HMC with a maximum lifting capacity of 104 tonnes	1547.19
(b).	One time up-front premium paid to the PPT	<u>121.00</u>
	Total capital cost	<u>1668.19</u>

- (iv). The details of the estimated operating cost are as given in the following table:

(Figure in lakhs)

Sl. No.	Operating Cost	Year				
		2007-08	2008-09	2009-10	2010-11	2011-12
1	Staff Salary (Operations)					
	(a). one supervisor manager	2.10	4.41	4.63	4.86	5.11
	(b). 4 operators	4.80	10.08	10.58	11.11	11.67
	(c). 4 Tally clerks	3.60	7.56	7.94	8.33	8.75
2.	Staff Salary (Maintenance) 3 Technicians	3.60	7.56	7.94	8.33	8.75
3.	Staff Welfare	2.10	4.41	4.63	4.86	5.11
4.	Fuel & Lubricant	14.40	42.24	56.92	74.46	104.15
5.	Repairs & Maintenance	50.05	52.55	55.18	57.93	60.83
6.	Insurance	16.68	16.68	16.68	11.68	11.68
7.	Office Expenditure					
	(a). Staff	6.00	12.60	13.23	13.89	14.59
	(b). Other	6.00	12.60	13.23	13.89	14.59

Sl. No.	Operating Cost	Year				
		2007-08	2008-09	2009-10	2010-11	2011-12
8.	Land Rentals (150 Sq. mtrs)	0.38	0.80	0.84	0.88	0.92
9.	Business Promotion	5.00	10.00	10.00	10.00	10.00
10.	Revenue Share (Rate per tonne)	30.00	85.00	100.70	117.07	143.18
	Total	151.75	184.86	205.09	223.43	259.20

(v). The ABGHIL has proposed the following rates:

- (a). Rs 64 per Metric Tonne (MT) for the use of HMC by users for handling of all types of dry-bulk cargo, general cargo, scrap etc.,
- (b). Rs. 1000 per container assuming average container weight of 18 MT.

(vi). Based on the projected operating income, operating cost and maximum permissible Return on Capital Employed (ROCE), the ABGHIL has projected deficit financial position for three years period from 2007-08 to 2009-10 as shown below:

(Rs. in Lakhs)

Year ending	2007-08	2008-09	2009-10
Operating Income	184	529	622
Operating Expenditure	133	241	276
Depreciation	334	334	334
Overhead	12	25	26
ROCE	232	182	130
Deficit	(294)	(71)	(14)
Average	(119%)		

(There appears to be some mistake in arriving at the deficit for the years 2007-08 to 2009-10).

2.2. The PPT has stated that the ceiling rate for handling cargo through HMC should be fixed at Rs.43/- per tonne. The calculations furnished by PPT to derive the rate of Rs.43/- per tonne are shown in the following table, after rectifying minor errors found in the calculations of capital employed:

(Rs. In Lakhs)

Particulars	2007-08	2008-09	2009-10	2010-11	2011-12	Total
Traffic (in lakh MT)	3.00	8.50	10.07	11.71	14.32	47.60
Capacity of Crane (in lakh MT)	270.00	270.00	270.00	270.00	270.00	-
Capacity utilisation	1.11%	3.15%	3.73%	4.34%	5.30%	-
Income	184.40	528.80	621.68	719.04	870.88	2924.80
Expenditure (including Depreciation & Overheads)	256.33	377.33	413.33	448.56	510.48	2006.03
Operating Surplus	-71.93	151.47	208.35	270.48	360.40	918.77
Capital Employed	1671.07	1581.09	1476.09	1364.76	1253.45	7346.46
Return on Capital Employed @ 16%	267.37	252.97	236.17	218.36	201.03	1175.90
ROCE Adjusted for capacity utilisation	2.97	7.97	8.81	9.47	10.66	39.88
Amount to be recovered from the Crane (Expenditure + Adjusted ROCE)	259.30	385.30	422.14	458.03	521.14	2045.91

Thus,

<u>Total amount recoverable from the users</u>	= <u>Rs.2045.91</u>	= Rs.43.00 per MT
<u>Total traffic handled</u>	47.60 lakh MT	

3.1. Section 42(4) of the Major Port Trusts Act, 1963 read with Section 48 requires rates to be notified by this Authority in respect of identified services provided by persons authorised under Section 42(3). It was not explained by PPT whether the arrangement between the PPT and ABGHIL is covered under Section 42(3) of the Act.

In cases where authorization arrangement under Section 42(3) is other than by way of BOT Concession Agreement, Clause 7.2. of the tariff guidelines of March 2005 requires this Authority to fix ceiling rates for such services to be applied commonly at the concerned ports without reference to individual service providers. If the arrangement between PPT and ABGHIL is other than by way of BOT arrangement, the proposal in reference forwarded by PPT may require modifications in line with Clause 7.2. of the tariff guidelines.

3.2. When the above mentioned position was referred to PPT for clarification vide our letter dated 4 October 2007 followed by reminder dated 8 January 2008, the PPT responded vide its letter dated 19 February 2008 as follows:

- (i). The arrangement between PPT and ABGHIL is not under Section 42(3) or Section 42(4) of the MPT Act, 1963. The arrangement is by way of a license issued to ABGHIL by the Port for a period of five years to install, operate and maintain a MHC for use of stevedores/ Importers/ Exporters on hire for discharge/ loading of cargo from/ to vessels.
- (ii). Two more cranes are proposed to be installed at the port for the same purpose. It is necessary to fix a ceiling rate in respect of similar or other types of cranes to be placed by the private parties for the purpose.
- (iii). The proposal may be treated as governed by clause 7.2 of the tariff guidelines of TAMP, though strictly it is not within the ambit and scope of such clause.

4.1. In accordance with the consultative procedure prescribed, the proposal from the PPT was forwarded to the concerned user organisations for their comments.

4.2. The comments received from the concerned user organizations were forwarded to PPT as feed back information. The PPT has responded to the comments furnished by the users on its proposal.

5.1 On a preliminary scrutiny of the proposal, the PPT was requested to furnish additional information / clarification on the proposal in reference. The PPT vide its letter dated 20 June 2008 responded. The queries raised by us and the response of PPT are tabulated below:

Sr. No.	Queries raised by us	Response of
1	A copy of the Concession agreement entered into between the port & ABGHIL.	PPT has furnished the copy of the Concession agreement dated 12.02.2007 entered into between the PPT & ABGHIL.
2	PPT to clarify whether the port has introduced any adhoc arrangement for the HMC in terms of clause 2.17.1 to 2.17.4 of the revised tariff guidelines.	The port has fixed an adhoc rate of Rs.43/- per tonne as per clause 2.17.1 to 2.17.4 of the revised tariff guidelines.
3	PPT to furnish the rated capacity of the HMC with detailed workings.	The rated capacity is reworked at 3 million tonnes per annum, in the following manner: 25 cycles x 20 Tonnes x 20 hours x 300 days = 30,00,000 MT per annum.
4	27 million tonnes of traffic per annum is considered by PPT as base for calculation of capacity of one HMC. PPT to verify the calculation and confirm the capacity of HMC.	3 million tonnes of traffic per annum has been considered by port as basis for arriving at the ceiling rate.

5	PPT has arrived at the per tonne rate based on the expenditure estimate on the estimated cargo provided by ABGHIL. The ceiling rate per tonne should be fixed without reference to any individual service provider. The rated capacity of HMC and not traffic handled by one operator may be relevant to derive rate. The cost statement furnished by PPT to be modified suitably adjusting the estimated expenditure for the rated capacity.	Rate per tonne is arrived on the basis of expenditure and traffic projections furnished by ABGHIL.
6	The basis for estimating expenditure under the head 'others' under office expenditure to be explained.	The expenditure under the head 'others' is taken as furnished by ABGHIL.
7	The PPT may explain the basis for considering an amount of Rs.10 lakhs per annum in the cost computation for arriving at the proposed levy.	An amount of Rs.10 lakhs per annum is included in the cost computation as per figures furnished by ABGHIL.
8	An amount of Rs.10 per tonne is considered as revenue share in the cost computation for arriving at the proposed levy. The treatment of royalty should be in line with clause 2.8.1 of the revised tariff guidelines.	
9	Basis and breakup of Overheads to be explained.	Basis and breakup of Overheads is in line with the figures submitted by ABGHIL.

5.2. PPT has confirmed that it has fixed an ad-hoc rate of Rs. 43 per tonne as per Clause 2.17.1. to 2.17.4. of the tariff guidelines of March 2005. The PPT has worked out the ad-hoc rate on the basis of expenditure and traffic projections furnished by ABGHIL. Further, no documentary proof to show the consent of the relevant users for the ad-hoc rate was furnished by the port. To a query in this regard the PPT has furnished the following clarification:

- (i). The ad-hoc rate of Rs. 43 per tonne was derived on the basis of the cost details furnished by ABGHIL. Since the tariff for the comparable services is not available, at the port, the comparable services in the nearby ports were taken into account. It was ascertained that at Vizag Sea Port and New Mangalore Port the tariff for similar services is continuing at Rs. 64 per tonne.
- (ii). With regard to the consent of relevant users on the ad-hoc rate, the HMC operator at the PPT was a part of the proposal for comprehensive revision of the Scale of Rates of PPT and was discussed with the port users in the meeting held on 29 July 2005. However, the relevant Clause of the Scale of Rates was dropped after discussion with TAMP. Even though no further meeting was held with the port users in this regard to obtain their views, the ad-hoc rate was fixed by the Board of Trustees of the PPT in their meeting held on 7 November 2007, in which the representatives of the Utkal Chamber of Commerce & Industry and Paradip Port Stevedores Association were present and participated in the discussion.

6.1. A joint hearing in this case was held on 20 June 2008 at the PPT premises. The CHPT and the concerned users have made their submissions.

6.2. The ABGHIL vide its letter dated 25 June 2008 reiterated its points made at the joint hearing and added that cost of diesel has gone up by almost 25% since the proposal for fixation of tariff was filed by PPT and requested to consider the increased price of fuel and provide an in-built mechanism for future escalation in fuel.

6.3. The exercise in hand is to prescribe ceiling tariff for a HMC without reference to individual operators. There is no clarity in the proposal of PPT as it is solely based on the working of the HMC of ABGHIL. The PPT admitted in the joint hearing that it has granted licenses for two more cranes which will be different from the existing crane of ABGHIL. When this discrepancy was pointed out at the joint hearing, the PPT agreed to revise its proposal based on the different levels of capacity and taking into consideration the estimated average allocation of traffic to different cranes.

7.1. After reminders, the PPT vide its letter dated 5 November 2008 stated that it has submitted its revised proposal under cover of its letter dated 22 August 2008. In the revised proposal, the PPT had only modified the capacity of the HMC from 3 Million tonnes to 2 Million Tonnes. The cost statement furnished by the PPT under cover of its letter dated 22 August 2008 shows that the PPT has not revised the proposal based on the different levels of capacity and estimated average allocation of traffic to different Cranes. Bringing out this position, the PPT was again requested to file its revised proposal. After a couple of reminders, the PPT vide its letter dated 7 May 2009 responded. The main points made by PPT are summarized below:

- (i). PPT has installed three HMCs in three different berths inside the harbour, commissioned by ABG Infralogistics Ltd. (ABGIL), Jindal Steel and Power Limited (JSPL) and Chennai Radha Engineering Works (CREW) as per the details given below:

Particulars	ABGIL	JSPL	CREW
Location	CQ-III	CQ-II	EQ-III
Procurement cost	Rs.16.68 crores	Rs.37.32 Crores	Rs.25.13 Crores
Crane capacity	140 ton	100-140 ton	80-100 ton
Cargo handling capacity	2 Million tones	2 Million tonnes	1.5 Million tonnes
Allocation of traffic	2 Million tones	2 Million tonnes	1.5 Million tonnes
Grab capacity	35 CBM	41 CBM	30 CBM
License fee to port	Rs.10/- per ton	Rs.30/- per ton	Rs.32.60 per ton
Up-front fee to port	Rs.1.20 crores	Rs.6.0 crores	Nil
Procurement year	8/2007	3/2009	3/2009
Period of License Agreement (5 years)	12.2.2007 to 11.2.2012	21.3.2009 to 20.3.2014	26.2.2009 to 25.2.1014

- (ii). (a). JSPL and CREW filed their cost sheets according to which the rates for operation of the cranes stood at Rs.124.50 and Rs.121.83 per tonne respectively. Subsequently, the parties revised the rates to Rs.105.72 and Rs.88.22 respectively. After examination of cost statements of the parties, PPT has ascertained the rates as under:

- (i). JSPL 140 ton capacity - Rs.64.22 per ton
(ii). CREW 100 ton capacity - Rs.69.65 per ton

(The PPT has adjusted upwards the traffic estimation made by JSPL and CREW and adjusted downwards some items of estimated operating expenditure in respect of JSPL which has resulted in the port proposing lower rates than the rates proposed by the concerned parties).

- (b). As already conveyed, the rate for ABGIL 140 ton capacity crane is Rs.43 per tonne.

- (c). The PPT prepared the cost sheets on the basis of the information furnished by JSPL and CREW and the rates for the cranes commissioned by them have been converted into a performance linked tariff as per details shown below:

JSPL		CREW		Remarks
Average Output / day	Rate / tonne	Average Output / day	Rate / tonne	Penalty / Reward
Upto 15000 tonne	Rs.64.00	Upto 10,000 tonne	Rs.69.00*	Base rate
Above 15,001 tonne	Rs.67.00	Above 10,001 tonne	Rs.72.00	5% Reward
Less than 12,000 tonne	Rs.61.00	Less than 8,000 tonne	Rs.66.00	5% Penalty

**(The PPT has shown the base rate as Rs.72/- which does not appear to be correct as seen from the cost statement. The rate of Rs.69 is shown above, to correctly reflect the cost statement position.)*

- (iii). The HMCs are occasionally required to handle containers, heavy lift steel, project cargo, etc., on demand from the users. Since no rate is available for levy Board of Trustees have approved a rate of Rs.1000/- per tonne ad-hoc tariff in their meeting held on 7 November 2007 for handling such cargo.
- (iv). The ad-hoc rates fixed by the PPT are as per Clause 2.17.1 to 2.17.4. of the tariff guidelines of March 2005.

7.2. The PPT has forwarded a copy of the Minutes of the meeting it held with the users on 28 April 2009 on fixation of tariff for use of HMC's by the JSPL and CREW vide its letter dated 9 May 2009. Generally, the users have stated that the rates for all the three cranes should be similar.

7.3. The ABGHIL vide its letter dated 12 May 2009 inviting a reference to the fixation of rates for the HMC commissioned by the JSPL and CREW has stated that the PPT has approved higher rates for HMCs commissioned by the JSPL and CREW in comparison to the ad hoc rate recommended by PPT for the HMC installed by ABGHIL. The ABGHIL has further stated that the PPT has recommended higher ad hoc rates in violation of the indication given at the joint hearing that all HMCs operating at PPT would be allowed to levy the same rate. The ABGHIL has requested to ensure that same tariff is fixed for all HMCs at the PPT.

8.1. The revised proposal of the PPT filed after the joint hearing is to fix operator-wise tariff for HMCs of the crane suppliers. The exercise is to fix ceiling rates for use of HMC at the PPT without reference to individual operators. The PPT was, therefore, again advised to review the proposal and propose ceiling rates based on the different levels of performance bearing in mind estimated average allocation of tariff to different cranes. It was made clear to PPT that this Authority will not be in a position to consider operator-wise rates even as an interim measure.

- 8.2. (a). The PPT vide its letter dated 19 June 2009 submitted a revised proposal in place of earlier proposals submitted by it vide its letter dated 14 May 2007, 22 August 2008 and 7 May 2009. The main points made by PPT are summarized below:
- (i). The rates for all HMCs installed at the PPT are proposed to be determined on the basis of the performance of individual crane.

- (ii). The earlier rates proposed to TAMP on the basis of cost details furnished by various crane operators have been taken into account to work out the rates. The PPT has proposed performance linked tariff for various cranes at the PPT as given in the following table:

Sl. No.	Average daily crane performance in MT	Rate per tonne
1.	UPto 7000 MT	Rs. 40.00
2.	7001 to 8000 MT	Rs. 45.00
3.	8001 to 10,000 MT	Rs. 50.00
4.	10001 to 12000 MT	Rs. 60.00
5.	12001 to 14000 MT	Rs. 65.00
6.	Above 14000 MT	Rs. 70.00

- (b). The PPT has also proposed conditionalities governing the application of rates.

9.1. The PPT vide its letters dated 6 August 2009 and 17 August 2009 has further revised the above proposal, the summary of which is given below:

- (i). Considering annual capacity at 24.00 lakh tonnes for a crane of 100 tonne capacity and taking into account the Annual Revenue Requirement (estimated operating cost and Return on Capital Employed) of Rs.12.07 Crores, the port has proposed a rate of Rs. 50 per tonne for 7000 tonnes average output per day.
- (ii). The port has proposed performance linked rate as given in the following table applicable for all types / capacity of HMCs:

Performance per day (in Metric Tonne)	Rate per tonne (in Rs.)
Upto 6000	40
6001-7000	45
7001-8000	50
8001-9000	55
9001-10000	60
10001-11000	65
11001 and above	70

- (iv). The formula for calculation of average berth-day out put is as follows:

$$\frac{\text{Total Quantity loaded / unloaded by HMC}}{\text{Total time taken from vessel commencement to completion}} \times 24 \text{ hrs}$$

- (v). The other terms and conditions proposed by PPT are as follows:

- (a). If one HMC works with another HMC or ELL crane/s, the Berth-day output for the crane will be ascertained on the basis of the quantity as recorded by the HMCs load meter.
- (b). In case of longer crane breakdowns, the quantity handled by HMC will be determined taking into account cargo loaded / discharged prior to break-down divided by crane working hours and multiplied by 24.
- (c). In case of stoppages of operation of HMC for more than two hours of a stretch for reasons not attributable to the HMC, appropriate allowance will be allowed to the crane while calculating the total time of crane operation in the vessel. Stoppages of HMC for less than 2 hours will not be taken into consideration for the above purpose. No allowance will be allowed for stoppages attributable to the HMC. All stoppages in loading / unloading operations during working of HMC are required

to be certified by the Stevedore of the vessel in the daily vessel performance report.

- (d). According to the average berth-day output for the vessel from commencement to completion of loading / discharge of cargo, the appropriate rate of crane hire charge will be chosen for recovery from port users for the full quantity of cargo loaded / discharged.
- (e). In case of shifting of a vessel on account of breakdown / non-performance of HMC, the shifting charges of the vessel from port to anchorage will be recovered from the crane operator in addition to a penalty of Rs. 1,00,000/- (Rupees one lakh only). The shifting charges so recovered will be refunded to the vessel's agent while the penalty will remain with the port.
- (f). The performance linked tariff for HMC indicated above is for all types of dry bulk cargo. In case, the crane is engaged for loading / unloading containers, heavy lifts, steel materials, project cargo etc. the grab is required to be removed and re-fixed. As such, the users will have to pay hourly rate from the time of removal of grab for hook operation @ Rs. 30,000/- per hour as calculated above.
- (g). In case of dispute on the average output, the decision of port trust will be final and binding.

9.2. Apart from seeking approval for the above proposed performance linked tariff, the PPT has requested to accord approval for recovery of operator-wise interim tariff proposed by it earlier in September 2007 and May 2009.

10. This Authority decided to seek further additional information / clarifications from the PPT. Accordingly, the PPT was requested to furnish further additional information / clarifications vide our letter dated 29 October 2009. After a reminder, the PPT vide its letter dated 10 November 2009 has responded. The additional information / clarifications sought by us and the response of PPT thereupon are tabulated below:

Sr. No.	Additional Information / clarifications sought by us	Response of PPT thereon																														
(i).	PPT to furnish details of annual throughput of cargo handled by each of the HMC since their commissioning at the PPT till September 2009	Annal throughput of cargo handled by each party <table><tr><th colspan="2">ABG Heavy Industries</th></tr><tr><td colspan="2">Work commenced on 17.11.2007</td></tr><tr><td>2007-08</td><td>723,609</td></tr><tr><td>2008-09</td><td>1,828,884</td></tr><tr><td>2009-10</td><td>137,269</td></tr></table> <table><tr><th colspan="2">Chennai Radha Engineering Works</th></tr><tr><td colspan="2">Work commenced on 15.04.2009</td></tr><tr><td>2007-08</td><td>0</td></tr><tr><td>2008-09</td><td>0</td></tr><tr><td>2009-10</td><td>789,870</td></tr></table> <table><tr><th colspan="2">Jindal Steel & Power</th></tr><tr><td colspan="2">Work commenced on 23.04.2009</td></tr><tr><td>2007-08</td><td>0</td></tr><tr><td>2008-09</td><td>0</td></tr><tr><td>2009-10</td><td>1,008,783</td></tr></table>	ABG Heavy Industries		Work commenced on 17.11.2007		2007-08	723,609	2008-09	1,828,884	2009-10	137,269	Chennai Radha Engineering Works		Work commenced on 15.04.2009		2007-08	0	2008-09	0	2009-10	789,870	Jindal Steel & Power		Work commenced on 23.04.2009		2007-08	0	2008-09	0	2009-10	1,008,783
ABG Heavy Industries																																
Work commenced on 17.11.2007																																
2007-08	723,609																															
2008-09	1,828,884																															
2009-10	137,269																															
Chennai Radha Engineering Works																																
Work commenced on 15.04.2009																																
2007-08	0																															
2008-09	0																															
2009-10	789,870																															
Jindal Steel & Power																																
Work commenced on 23.04.2009																																
2007-08	0																															
2008-09	0																															
2009-10	1,008,783																															
(ii).	PPT to furnish the break-up of commodities handled on tonnage basis.	Break up of the commodities handled <table><tr><th colspan="4">ABG Heavy Industries</th></tr><tr><td>Cargo</td><td>2007-08</td><td>2008-09</td><td>2009-10</td></tr><tr><td>Coal</td><td>398,409</td><td>929,820</td><td>107,142</td></tr><tr><td>Iron Ore</td><td>176,958</td><td>809,683</td><td>8,224</td></tr></table>	ABG Heavy Industries				Cargo	2007-08	2008-09	2009-10	Coal	398,409	929,820	107,142	Iron Ore	176,958	809,683	8,224														
ABG Heavy Industries																																
Cargo	2007-08	2008-09	2009-10																													
Coal	398,409	929,820	107,142																													
Iron Ore	176,958	809,683	8,224																													

		<table><tr><td>Cement Clinker</td><td>-</td><td>-</td><td>5,559</td></tr><tr><td>Project cargo</td><td>105</td><td>-</td><td>208</td></tr><tr><td>Chrome Ore</td><td>53,250</td><td>20,000</td><td>661</td></tr><tr><td>Lam Coke</td><td>-</td><td>15,864</td><td>15,475</td></tr><tr><td>Lime Stone</td><td>69,662</td><td>36,917</td><td>-</td></tr><tr><td>Manganese Ore</td><td>25,225</td><td>-</td><td>-</td></tr><tr><td>Granulated Slag</td><td>-</td><td>16,600</td><td>-</td></tr><tr><td>Total</td><td>723,609</td><td>1,828,884</td><td>137,269</td></tr></table>	Cement Clinker	-	-	5,559	Project cargo	105	-	208	Chrome Ore	53,250	20,000	661	Lam Coke	-	15,864	15,475	Lime Stone	69,662	36,917	-	Manganese Ore	25,225	-	-	Granulated Slag	-	16,600	-	Total	723,609	1,828,884	137,269														
Cement Clinker	-	-	5,559																																													
Project cargo	105	-	208																																													
Chrome Ore	53,250	20,000	661																																													
Lam Coke	-	15,864	15,475																																													
Lime Stone	69,662	36,917	-																																													
Manganese Ore	25,225	-	-																																													
Granulated Slag	-	16,600	-																																													
Total	723,609	1,828,884	137,269																																													
		<table><tr><td colspan="3">Chennai Radha Engineering Works & Jindal Steel & Power</td></tr><tr><td colspan="3">2009-10</td></tr><tr><td>Cargo</td><td>Chennai Radha Engineering</td><td>Jindtal Steel & Power</td></tr><tr><td>Coal</td><td>250686</td><td>328,544</td></tr><tr><td>Iron Ore</td><td>317803</td><td>381,013</td></tr><tr><td>Cement Clinker</td><td>113344</td><td>233,246</td></tr><tr><td>Project cargo</td><td>2813</td><td>-</td></tr><tr><td>Chrome Ore</td><td>50338</td><td>29,177</td></tr><tr><td>Lam Coke</td><td>-</td><td>1,525</td></tr><tr><td>Lime Stone</td><td>-</td><td>35,278</td></tr><tr><td>Sweet Sand</td><td>12,530</td><td>-</td></tr><tr><td>Manganese Ore</td><td>42,356</td><td>-</td></tr><tr><td>Total</td><td>789,870</td><td>1,008,783</td></tr></table>	Chennai Radha Engineering Works & Jindal Steel & Power			2009-10			Cargo	Chennai Radha Engineering	Jindtal Steel & Power	Coal	250686	328,544	Iron Ore	317803	381,013	Cement Clinker	113344	233,246	Project cargo	2813	-	Chrome Ore	50338	29,177	Lam Coke	-	1,525	Lime Stone	-	35,278	Sweet Sand	12,530	-	Manganese Ore	42,356	-	Total	789,870	1,008,783							
Chennai Radha Engineering Works & Jindal Steel & Power																																																
2009-10																																																
Cargo	Chennai Radha Engineering	Jindtal Steel & Power																																														
Coal	250686	328,544																																														
Iron Ore	317803	381,013																																														
Cement Clinker	113344	233,246																																														
Project cargo	2813	-																																														
Chrome Ore	50338	29,177																																														
Lam Coke	-	1,525																																														
Lime Stone	-	35,278																																														
Sweet Sand	12,530	-																																														
Manganese Ore	42,356	-																																														
Total	789,870	1,008,783																																														
(iii).	PPT to furnish the performance levels achieved under each category of cargo in tonnage per day.	<table><tr><td colspan="4">Average Daily Performance</td></tr><tr><td colspan="4">ABG Heavy Industries Ltd.,</td></tr><tr><td colspan="4">Date of Commencement 17.11.2007</td></tr><tr><td>Cargo</td><td>2007-08</td><td>2008-09</td><td>2009-10</td></tr><tr><td>Coal</td><td>12,651</td><td>14,252</td><td>7,253</td></tr><tr><td>Iron Ore</td><td>16,554</td><td>21,488</td><td>-</td></tr><tr><td>Lime Stone</td><td>16,562</td><td>25,340</td><td>-</td></tr><tr><td>Cement Clinker</td><td>-</td><td>-</td><td>-</td></tr></table> <table><tr><td colspan="2">Chennai Radha Engineering Works</td></tr><tr><td colspan="2">Date of Commencement 15.04.2009</td></tr><tr><td>Cargo</td><td>2009-10</td></tr><tr><td>Coal</td><td>10055</td></tr><tr><td>Iron Ore</td><td>8691</td></tr><tr><td>Lime Stone</td><td>-</td></tr><tr><td>Cement Clinker</td><td>5698</td></tr></table>	Average Daily Performance				ABG Heavy Industries Ltd.,				Date of Commencement 17.11.2007				Cargo	2007-08	2008-09	2009-10	Coal	12,651	14,252	7,253	Iron Ore	16,554	21,488	-	Lime Stone	16,562	25,340	-	Cement Clinker	-	-	-	Chennai Radha Engineering Works		Date of Commencement 15.04.2009		Cargo	2009-10	Coal	10055	Iron Ore	8691	Lime Stone	-	Cement Clinker	5698
Average Daily Performance																																																
ABG Heavy Industries Ltd.,																																																
Date of Commencement 17.11.2007																																																
Cargo	2007-08	2008-09	2009-10																																													
Coal	12,651	14,252	7,253																																													
Iron Ore	16,554	21,488	-																																													
Lime Stone	16,562	25,340	-																																													
Cement Clinker	-	-	-																																													
Chennai Radha Engineering Works																																																
Date of Commencement 15.04.2009																																																
Cargo	2009-10																																															
Coal	10055																																															
Iron Ore	8691																																															
Lime Stone	-																																															
Cement Clinker	5698																																															

		<table><tr><td colspan="2">Jindal Steel & Power</td></tr><tr><td colspan="2">Date of Commencement 23.04.2009</td></tr><tr><td>Cargo</td><td>2009-10</td></tr><tr><td>Coal</td><td>11789</td></tr><tr><td>Iron Ore</td><td>11567</td></tr><tr><td>Lime Stone</td><td>12451</td></tr><tr><td>Cement Clinker</td><td>11319</td></tr></table>	Jindal Steel & Power		Date of Commencement 23.04.2009		Cargo	2009-10	Coal	11789	Iron Ore	11567	Lime Stone	12451	Cement Clinker	11319
Jindal Steel & Power																
Date of Commencement 23.04.2009																
Cargo	2009-10															
Coal	11789															
Iron Ore	11567															
Lime Stone	12451															
Cement Clinker	11319															
(iv).	The exercise in hand is to fix ceiling rates of use of HMC at the PPT without reference to individual operator. This position was communicated to the PPT way back in June 2008 vide our letter dated 17 June 2008, which was also made clear to PPT at the joint hearing held on 20 June 2008. This position was reiterated vide our letters dated 12 January 2009, 6 May 2009 and 18 June 2009. The PPT was also requested vide our letter dated 18 June 2009, inter alia, not to consider operator-wise rates even as an interim measure. With reference to the port's letter dated 6 August 2009, the PPT to explain why it has not taken into account the earlier advice rendered by the Authority in this regard. The PPT to note that the Authority will not approve or ratify operator-wise rates in this case.	(i). The port installed three Mobile Harbour Cranes from three different suppliers on different dates, terms and conditions. (ii). The capacity of the cranes is also different. ABG Crane is 140 MT capacity, JSPL crane is 100 MT capacity and Chennai Radha Crane is of 80 MT capacity. (iii). ABG Crane was commissioned during February 2007, Chennai Radha in February 2009 and JSPL in April 2009. (iv). While the ABG crane was an used one, the Chennai Radha & JSPL cranes are new cranes. The procurement price of these cranes varies widely. As per their declaration ABG crane was procured at Rs. 16.68 Crores, JSPL at Rs. 37.32 Crores, Chennai Radha at Rs. 25.13 Crores. (v). The user fee being paid by these operators to the port as per the conditions of the tenders is also different. ABG pays an user fee of Rs. 10.00 per tonne to the port, Chennai Radha Rs. 32.60 per tonne and JSPL Rs. 30.00 per tonne. (vi). ABG paid to the port Rs. 1.20 Crores towards upfront premium and JSPL Rs. 6 Crores. Chennai Radha had not paid any upfront premium to the port. (vii). The grabs engaged by the cranes for discharge/ loading of cargo also vary widely. ABG has a 35 cbm grab, Chennai Radha 30 cbm and JSPL 41 cbm grab. (viii). Port Trust submitted the proposal for approval of rate for ABG Mobile Harbour Crane vide letter dated 14.09.2007. The other two cranes were installed during April 2009. Had TAMP communicated the approval of rate for hire of Mobile Cranes during 2008-09, the port would have invited tenders for installation of other two cranes keeping the same in view. Since no TAMP approved rate was available the port had to finalise the tenders without notifying the upfront hire rate. (ix). The operator-wise rates have been approved by the Trust Board in the absence of an approved single rate from TAMP which is in accordance with the Clause 2.17.2 and 2.17.3 of the revised tariff														

		guidelines. In view of the above, the port had no alternative but to recover three different rates for three different cranes which are different to each other in several ways in order to safe guard the interest of the port users. Once a single rate is approved by TAMP which is linked to performance, the same will be implemented by the port prospectively and the present arrangement of charging three rates for three cranes will be discontinued forthwith.
--	--	---

11. 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>

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

- (i). This Authority passed an Order dated 12 October 2007 disposing of the proposal filed by the PPT for general revision of its Scale of Rates. The PPT had then, inter alia, proposed a rate for granting permission to the private operators to install HMCs inside the port area. During the proceedings which culminated into the Order dated 12 October 2007, the port was requested to elaborate the necessity to introduce the new levy with cost details. The port subsequently informed that a service provider has been selected through an open tender process and he will install and operate the HMC and recover charges from those who would hire the cranes. The port, therefore, requested to treat its earlier proposal as withdrawn. In this backdrop, the PPT has filed a separate proposal in September 2007 for fixation tariff for use of HMCs inside the port area.
- (ii). The PPT has granted licenses to some private crane operators to install, operate and maintain the HMC inside the port area for a period of five years from the date of signing of the respective license agreements to provide service to users for handling cargo. The PPT has followed revenue sharing model as consideration to grant license to the crane suppliers. The crane suppliers are authorised by the port to collect the crane hire charges from the users of the crane.
- (iii). As brought out earlier, Section 42(4) of the Major Port Trusts Act, 1963 read with Section 48 requires this Authority to notify the rates in respect of identified services provided by persons authorised under Section 42(3) of the MPT Act. In cases where the authorization arrangement under Section 42(3) is other than by way of a BOT Concession Agreement, Clause 7.2. of the tariff guidelines of March 2005 requires this Authority to fix ceiling rates for such services to be applied commonly at the concerned ports without reference to the individual service provider. The arrangement between the PPT and the Crane Operators is reportedly not a BOT arrangement. But, provision of crange facility is one of the services listed under Section 42 of the MPT Act and, therefore, the tariff for providing crange facility needs to be regulated by this Authority. This position will not undergo a change whether the port itself provides this service or has permitted a private operator to do so. This case is, therefore, taken up for prescription of ceiling rates for the crange service following Clause 7.2. of the tariff guidelines of March 2005. Notably, the PPT has also requested to treat its proposal under Clause 7.2. of the tariff guidelines of March 2005.
- (iv). The authorization arrangement for operation of the HMC at the PPT was not clear from the port's proposal. The PPT was, therefore, informed that its proposal will be registered as a tariff case after receipt of clarification from it in this regard. The PPT took about 5 months time to clarify the authorization arrangement for

operations of the HMC at the PPT. PPT was also advised way back in March 2008 vide our letter dated 4 March 2008 which was re-iterated vide our letter dated 18 June 2008 that tariff in this case will be fixed without reference to any particular operator. It was again made clear to the PPT at the joint hearing held in June 2008 to revise its proposal based on the different levels of capacity without reference to individual operators. The revised proposal submitted by PPT after about 11 months in May 2009, was again found to recommend operator-wise tariff. After it was again pointed out to PPT, the port has submitted its 2nd revised proposal under cover of its letter dated 6 August 2009. That being so, the question of approving any upfront tariff in the year 2008-09 does not arise at all when the port has filed a proposal only in August 2009.

The time taken by PPT to furnish clarification regarding the authorization arrangement for operation of HMC and to submit a revised proposal to fix ceiling rates for use of HMC without reference to individual operators has contributed to the delay in finalizing this case within a reasonable time frame.

- (v). The revised proposal dated 6 August 2009 along with the modifications communicated by PPT vide its letter dated 17 August 2009 is considered and analyzed in the following paragraphs.
- (vi). Since the revised proposal of PPT is to prescribe ceiling rates without reference to individual operators and also to link the rates with performance, it has formulated its proposal based on certain assumed norms and parameters. Clause 2.4.1. of the tariff guidelines of March 2005 calls for attempts to evolve normative cost of each component of port operations. Since separate set of norms under Clause 2.4.1. are not evolved, the norms prescribed in the tariff guidelines of 2008 are relied upon to test the reasonableness of the norms adopted by the PPT. The fixation of tariff based on normative approach linked to performance would encourage an operator to bring efficiency in operations and protects the users from inefficient operations.
 - (a). Considering the designed cycle time of 30 cycles per hour and designed loading rate of 20 tonnes per cycle, the PPT has estimated the capacity of the 100 tonne HMC at 24.00 lakh tonnes per annum for 4000 hours of working of the HMC in a year. The tariff guidelines of 2008 prescribe a norm for cargo handling at multipurpose berth at a rate of 10,000 tonnes per day for dry bulk cargo comprising food grains & fertilizer and coal, limestone, minerals etc.,. The output norm of 10000 tonnes per day prescribed in, the tariff guidelines of 2008 is with reference to operation of 3 numbers of wharf cranes of 20 tonne capacity each. Since the exercise is to prescribe hire charges for a normative HMC of 100 tonne capacity, as proposed by the PPT, the norm prescribed in the 2008 guidelines for the per day handling rate needs to be adjusted suitably.

The average daily performance of the three cranes reported by the PPT ranges from 5698 tonnes to 25340 tonnes per day depending on the category of cargo. But, it has to be recognized that these 3 crane are of different capacity. The exercise on hand is to be fix handling charges for a normative 100 tonne crane as proposed by the port. One of the three cranes, which is reportedly of 100 tonnes capacity has performed in the range of 11,319 tonnes to 12,451 tonnes per day.

Considering the higher handling capacity of HMC as compared to the aggregate capacity of the wharf cranes prescribed in the 2008 guidelines, in the absence of any other norms available, it is reasonable to reckon a 25% increase over the handling rate of 10000 tonnes per day prescribed for operation of 3 numbers of 20 Tonne ELL cranes. Accordingly, handling rate of 12500 tonnes per day for dry bulk cargo is considered in this analysis.

Considering 4000 hours of working in a year which is prescribed for estimation of fuel cost for operations of equipments in the guidelines of 2008, the adjusted annual capacity of the HMC works out to 2.97 million tonnes of dry bulk which is considered in this analysis as the annual capacity of the HMC. Incidentally, this annual capacity level is closer to 3.00 million TEUs conveyed by PPT earlier vide its letter dated 19 June 2008.

- (b). The PPT has estimated the capital cost of the HMC of 100 tonne capacity including two grabs at Rs. 3007.74 lakhs, which includes freight and duties. The estimated capital cost is supported by budgetary quotation obtained by PPT. The exchange rate applied by PPT for conversion of budgetary quotation in Euro is Rs. 67.78 is *updated to Rs. 66.7875* to reflect the exchange rate prevailing at the time of analysis of this case. The Capital cost of the HMC accordingly works out to Rs2963.70 lakhs.
- (c).
 - (i). Consumption of fuel at 70 liters per hour estimated by PPT is taken into account since no separate norm for fuel consumption by crane is available in the tariff guidelines of 2005. The unit cost of fuel is up-dated to Rs. 34.98 per unit prevailing at the time of analysis of this case, vis-à-vis Rs. 40 per unit considered by PPT.
 - (ii). The PPT has estimated repairs and maintenance cost at 5% of the capital cost, which is in line with the norm prescribed for mechanical & electrical equipment at multipurpose berths in the guidelines of 2008.
 - (iii). The insurance cost estimated at 1% of the gross capital cost is also found to be in line with the norm prescribed in the guidelines of 2008.
 - (iv). The depreciation cost worked out by PPT at 11.31% of the capital cost of the crane is modified applying the depreciation rate of 10.34% as per the provisions of the Companies Act, 1956.
 - (v). The PPT has not estimated License Fee for the area occupied by the HMC when it is not in operation.
The tariff guidelines of 2008 stipulate the License fee to be considered as per the rates prescribed in the Scale of Rates of the concerned Major Port Trust. The existing Scale of Rates of PPT prescribe License Fee at Rs. 1200 per month or part thereof for 100 Sq. meters for open stack yard. Since the crane will be operating for 4000 hours in a year, license fee for the idling period of the year is considered at the rate prescribed in the Scale of Rates of PPT.
 - (vi). The PPT has estimated the other expenses at 5% of the capital cost of the crane. The guidelines of 2008 prescribe a norm of 5% of the value of the gross fixed assets for estimation of other expenses. The estimated other expenses is accepted, with slight rectification of arithmetical error found in the calculation of PPT.
- (d). This Authority has adopted the ROCE at 16% for the tariff cases to be decided in the year 2009-10. *The PPT has estimated the ROCE at 16% (Rs. 425.71 lakhs) on the written down value (Rs. 2660.70 lakhs) of the crane and for this purpose the written down value has been worked out by the port after adjusting depreciation of Rs. 339.30 lakhs for one year on the Gross value of crane considered at Rs. 30 Crores.*

The estimated ROCE is modified *and the ROCE is allowed on the average of the written down value for the three years period for which tariff is to be fixed, which works out to Rs.376.13 lakhs.*

- (e). The total Annual Revenue Requirement for operation of HMC at PPT works out to Rs. 1106.60 lakhs which is an aggregate of 16% ROCE (Rs.376.13. lakhs) and estimated operating cost (Rs. 730.47 lakhs). Thus, the base rate for handling dry bulk cargo with HMC works out to Rs. 37.26 per tonne.
- (f). The PPT has also proposed an hourly rate of Rs.30,000/- for the purpose of handling heavy lifts, steel materials, project cargo, containers etc.,

There is no exceptional reasons to deviate from the method adopted for dry bulk and fix the rate for handling heavy lifts, steel materials, project cargo etc., on hourly basis. The tariff guidelines of 2008 prescribe norms also for fixation of rate for break-bulk cargo like steel & bagged cargo and other cargo. It prescribes handling rate of 4000 tonnes per day for steel & bagged cargo and 2500 tonnes per day for others with the deployment of 3 numbers of 20 tonne ELL cranes. The output norms prescribed in the guidelines are with reference to operation of 3 numbers of wharf cranes of 20 tonne capacity each whereas the exercise is to prescribe hire charge for a 100 tonne HMC. Further, it may be relevant to mention that HMC may handle other cargo without grabs not being fitted to the crane. Hence, the handling rate prescribed in the guidelines need to be updated to recognize the above elements.

Based on the information of the quantity of cargo handled by HMC at the Tuticorin Port Trust (TPT) the Authority found that with reference to granite (which falls under other break-bulk cargo), the average performance works out to 3046 tonnes per day for the years 2006-07 to 2009-10 (Upto November). In fact, on standalone basis, the HMC at the TPT has achieved daily handling rate of 2483, 3825, 4341 tonnes per day with reference to the three consignments of granite handled in the year 2009-10. Thus, it is clear that the HMC has achieved performance higher than the handling norm of 2500 prescribed in the guidelines at least for granite which falls under other break-bulk cargo. Notably, the HMC operated at TPT is not a brand-new crane and further it is with a lower capacity of 80 tonne, whereas the exercise undertaken in respect of PPT is to fix a normative handling rate for 100 tonne capacity HMC.

For the reasons explained above, and also recognizing that the handling rate of granite reported by TPT is achieved by a second-hand HMC, this Authority is of the view that considering 50% increase over the handling rate prescribed in the 2008 guidelines may not be unrealistic. This Authority, therefore, decides to reckon a 50% increase over the handling rate prescribed in the guidelines for steel and bagged cargo and other bulk cargo. Similar approach is followed in the case relating to fixation of hire charges of HMC at the TPT.

Accordingly, updated normative handling rate of 6000 tonnes perday for steel and bagged cargo and 3750 tonnes per day for other cargo are considered in this analysis.

Following these adjusted norms and 4000 hours of working of the crane in a year, as prescribed in the tariff guidelines of 2008 and keeping in view 70% utilization factor, as considered in the earlier part of this analysis, the base rate per tonne for use of the HMC for handling steel & bagged cargo and other cargo works out to Rs. 77.49 per tonne and Rs. 124.06 per

tonne, respectively to achieve the estimated ARR of Rs. 1106.06 lakhs for the respective cargo group.

- (vii). The statement for fixing rate per tonne for use of HMC submitted by PPT is modified in line with the above analysis. The modified statement is attached as **Annex - I**.
- (viii). 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. The PPT has not proposed coastal rates for operations of HMC.

The estimated ARR is to be realized from handling of foreign and coastal cargo. That being so, the concessional rate for coastal cargo requires to be 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. In the absence of information relating to the share of the capacity of the HMC to handle coastal cargo and to comply with Clause 4.3. of the tariff guidelines of March 2005, coastal rate is prescribed at 60% of the rate prescribed for normal cargo. It is, however, open for PPT to come up with a suitable proposal for adjustment in rates if concessional tariff prescribed for coastal cargo is likely to have significant impact on the estimated revenue model considered in this analysis.

- (ix). Clause 5.9. of the tariff guidelines of 2005 calls for linking tariff to the benchmark levels of productivity, providing incentive for better performance and disincentive for performance below the benchmark levels. The performance linked tariff proposed by the PPT provides for incentive for high performance and disincentive for underperformance. Further, the rate proposed by the PPT is a common ceiling rate without reference to individual service providers. The concern of the users, as put-forth by FIMI, is to have the comfort of reliable performance by the crane. Besides, the performance linked tariff structure will also, inter alia, suit the situation where cranes of capacity different from the normative level of 100 tonnes are placed in operation.

The performance linked tariff structure proposed by PPT provides for reward by way of an increment in the base rate at Rs. 5 per tonne for achieving performance higher than the cut-off limit at the intervals of 1000 tonnes and a reduction in the base rate at Rs. 5 per tonne for under performance below the cut-off limit equally at an interval of 1000 tonnes. The port has not furnished the basis for devising the slab structure and it does not appear to have been devised after a detailed analysis. An increase of about 10% in tariff for 10% improvement in performance appears to be too liberal. While the interval of 1000 tonnes is retained, the reward by way of an increment in the base rate for achieving the performance higher than the cut-off limit and reduction in the base rate for under performance below the cut-off limit is modified at 5% for every interval of 1000 tonnes from the base capacity.

The PPT has considered an average output of 7000 tonnes per day as a cut-off point for formulating the performance linked tariff. As explained in the earlier paragraphs, the adjusted out-put norm of 12,500 tonnes per day at 70% utilization level has been considered in calculations to derive the base unit rate. Therefore, the cut-off point should be linked to the normative level of 12,500 tonnes. The PPT has considered 11.11 hours in its calculation to derive the cut-off point of 7000 tonnes. Such a discount provides double cushion for idle time since the performance of the crane for the purpose of tariff is to be measured with reference to operating time of a vessel at the Berth.

With reference to the base level tariff for performance of 12,500 tonnes a day, the other performance slabs are adjusted. For the performance level of 12,500 tonnes per day the rate will be Rs. 37.26 per tonne.

For break-bulk cargo also same method adopted for prescription of performance linked slabs for dry-bulk cargo is followed and a performance linked tariff structure is prescribed.

Incidentally, in another proceedings relating to the Visakhapatnam Port Trust, it has been reported to this Authority that the port has procured the services by open competitive bidding for operation, maintenance and manning of MHC for dry bulk operations at Rs. 29.75 per tonne with a performance condition of 10,000 tonnes per day. The performance linked rate fixed in this case following the normative approach come to Rs. 31.67 per tonne for the output slab of 9500-10499 tonnes which gives an indication of reasonableness.

- (x). The levy of charges for shifting of a vessel from the port to the anchorage and a penalty of Rs. 1,00,000 on the crane operator when there is break-down of the crane or when the crane does not perform will act as a deterrent on the crane operator to ensure due performance of the crane. It may be expedient to note that the FIMI has highlighted the effect of break-downs of the equipment. The shifting charge of a vessel recovered from the crane operator is proposed to be refunded to the vessel while the penalty levied on the crane operator will be retained by the PPT.
- (xi). The PPT has proposed a conditionality for determination of quantity handled by HMC in case of longer break-down of the HMC. The port has not described what period constitutes "longer period". It is prescribed that in case of breakdown of the crane for more than one hour till the vessel leaves the berth, the quantity handled by HMC will be determined taking into account cargo loaded / discharged prior to break-down divided by crane working hours and multiplied by 24.
- (xii). (a). During the proceedings of the case, it has been made clear to the PPT on more than one occasion that the rate should be fixed without reference to any individual service provider. The PPT was also requested not to consider operator-wise rates even as an interim measure. It is the decision of the PPT to prescribe different rates for the HMC of different crane suppliers. *The question of giving a tariff to PPT in the year 2008-09 did not arise for the reasons explained in the earlier part of this analysis.* Since Clause 7.2. of the tariff guidelines of March 2005 requires prescription of ceiling rates to be applied commonly without reference to individual service providers, this Authority is not in a position to accede to the request of the PPT to approve the recovery of operator-wise interim tariff. The PPT has contended that the operator-wise rate decided by the port is in accordance with Clauses 2.17.2 and 2.17.3 of the tariff guidelines of March 2005. Clause 2.17.2 stipulates that a major port can levy the proposed rate on ad hoc basis simultaneously with the submission of the proposal for the proposed rate. The PPT filed the proposal proposing operator-wise rate in May 2009 vide its letter dated 7 May 2009 but allowed levy of the proposed operator-wise rates (for CREW and JSPL) in April 2009 that too after the Authority had advised the port about fixing rates without reference to the operators. It was not established by the PPT that the ad hoc rates are derived based on the existing notified tariff for comparable services / cargo as stipulated by Clause 2.17.3 of the tariff guidelines. The said Clause further stipulates that the proposed ad hoc rate must be mutually agreed upon by the port and the concerned users. The minutes of the meeting the PPT had with the users on fixation of tariff for the HMC of CREW and JSPL, copy of which was furnished to us by the PPT vide its letter dated 9 May 2009 do not convey that the PPT had obtained the consent of the users to levy the

rates on ad hoc basis. It is noteworthy that generally the users have requested that the rates for all the three cranes should be similar.

- (b). The proposal of the PPT to prescribe a rate of Rs. 43 per tonne was taken on consultation with the relevant stake holders and the joint hearing convened in this case was to hear the views of the stake holders on the proposed rate of Rs. 43 per tonne. It is noteworthy that generally the users have supported the said rate. Clause 2.17.4. of the tariff guidelines of 2005 enables this Authority to recognize the interim rate adopted in an ad-hoc manner retrospectively. The measure of PPT to implement the rate of Rs. 43/- per tonne on ad-hoc basis is approved as such. The levy of ad-hoc rate from the date of commencement of operations of HMC at PPT is allowed to continue till the effective date of the implementation of the revised rate notified by this Authority. Consequently, the PPT should ensure that billing, if any, done by any operators at rates more than the ad-hoc rate of Rs. 43 per tonne should be adjusted accordingly. for the cargo handled from the respective dates of commencement of their operations till the effective date of implementation of the revised rate is notified by the Authority and the excess charge collected should be refunded to the concerned users.

13.1 In the result, and for the reasons given above and based on a collective application of mind, this Authority approves the following:

- (a). Levy of ad hoc rate of Rs. 43 per tonne from the date of commencement of operations of HMC at PPT till the effective date of the implementation of the final tariff notified by this Authority.
- (b). To insert the following in the existing Scale of Rates of PPT in Chapter – II, Cargo related charges, as Section 2.15(B), after the existing Section 2.15, which may be renumbered as 2.15 (A):
- “2.15 (B). Charges for use of Harbour Mobile Cranes installed by the private operators:
- (I). For Dry Bulk Cargo

Average daily crane performance (in Metric Tonne)	Ceiling rate per tonne (in Rs.)	
	Foreign	Coastal
9500-10499	31.67	19.00
10500-11499	33.53	20.12
11500-12499	35.39	21.23
12500	37.26	22.35
12501-13500	39.12	23.47
13501 – 14500	40.99	24.59
14501 – 15500	42.85	25.71

Note: To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes and for the 2nd thousand tonnes the rate was enhanced to 110% of the base rate. The rate for third thousand tonnes was arrived by enhancing the base rate by 115%. The same methodology shall also be adopted to calculate the rate beyond 15500 tonnes. Likewise, ceiling rates for performance below 9500 tonnes shall be calculated by reducing the base rate accordingly.

(II). For Break-bulk cargo:

(A). Steel and Bagged Cargo

Average daily crane performance (in Metric tonne)	Ceiling rate per tonne (in Rs)	
	Foreign	Coastal
5000-5999	73.62	44.17
6000	77.49	46.50
6001-7000	81.36	48.82

Note: To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes. The same methodology shall also be adopted to calculate the rate beyond 7000 tonnes. Likewise, ceiling rates for performance below 5000 tonnes shall be calculated by reducing the base rate accordingly.

(B). Others

Average daily crane performance (in Metric tonne)	Ceiling rate per tonne (in Rs)	
	Foreign	Coastal
2750-3749	117.86	70.72
3750	124.06	74.44
3751-4750	130.26	78.16

Note: To calculate the incremental ceiling rates as shown above, the base rate was enhanced to 105% for first thousand tonnes. The same methodology shall also be adopted to calculate the rate beyond 4750 tonnes. Likewise, ceiling rates for performance below 2750 tonnes shall be calculated by reducing the base rate accordingly.

Notes:

(i). The formula for calculation of average berth-day out put is as follows:

$$\frac{\text{Total Quantity loaded / unloaded by HMC}}{\text{Total time taken from vessel commencement to completion}} \times 24 \text{ hrs}$$

(ii). According to the average berth-day output for the vessel from commencement to completion of loading / discharge of cargo, the appropriate rate of crane hire charge will be chosen for recovery from port users for the full quantity of cargo loaded / discharged.

(iii). If one HMC works with another HMC or ELL crane/s, the Berth-day output for the crane will be ascertained on the basis of the quantity as recorded by the HMC's load meter.

(iv). In case of breakdown of the crane for more than one hour till the vessel leaves the berth, the quantity handled by HMC will be determined taking into account cargo loaded / discharged prior to break-down divided by crane working hours and multiplied by 24.

(v). In case of stoppages of operation of HMC for more than two hours at a stretch for reasons not attributable to the HMC, appropriate allowance will be allowed to the crane while calculating the total time of crane operation in the vessel. Stoppages of HMC for less than 2 hours will not be taken

into consideration for the above purpose. No allowance will be allowed for stoppages attributable to the HMC. All stoppages in loading / unloading operations during working of HMC are required to be certified by the Stevedore of the vessel in the daily vessel performance report.

- (vi). 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 Rs. 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.
- (vii). In case of dispute on the average output, the decision of the port trust will be final and binding".

13.2. Since the adhoc rate is already in operation, the ceiling rates fixed now will come into effect after expiry of 15 days from the date of its notification in the Gazette of India and shall remain valid for 3 years.

13.3. As per clause 7.2. of the tariff guidelines, the rate approved by this Authority for Harbour Mobile Crane is a ceiling rate and will apply commonly at the port for identical facility / service offered at the port without reference to any particular service provider. As per Clause 7.3. of the tariff guidelines, the Port Trust may ensure by suitably including a necessary condition in the authorization arrangement that the authorised service providers do not charge more than the prescribed ceiling rates.

13.3. The PPT is directed to ensure that billing, if any, done by any operators at rates more than the ad hoc rate of Rs. 43 per tonne should be adjusted accordingly, for the cargo handled from the respective dates of commencement of their operations till the effective date of implementation of the revised rate is notified by this Authority and the excess charge collected should be refunded to the concerned users. The PPT is directed to file a compliance report, within 3 months in this regard.

(Rani Jadhav)
Chairperson

Cost calculation for fixation of rate for use of 100 tonne Harbour Mobile Crane provided by authorised service provider at the Paradip Port Trust

A. For Dry bulk cargo

Rs. In Lakhs

Sr. No.	Particulars	As furnished by PPT vide letter dated 6 August 2009		Norms if any prescribed in 2008 tariff guidelines (multipurpose cargo berth)	Modified Calculation by TAMP	
		Workings			Workings	For Dry bulk - (a) food grains & fertiliser (b) , Coal, lime stone, minerals. etc.,
I	Cost of 100 Tonne Mobile Harbour Crane(Rs. Lakhs)		3007.74			2963.70
II	Capacity					
	Designed cycle time	30 cycles				
	Designed loading rate per cycle	20 tonnes				
	Handling rate per hour (in tonnes)	30 cycles* 20 tonnes / cycle	600	(a) Food grain, fertiliser = 10000 tonnes / day (for vessels more than 30000 tonnes parcel size) (b) Coal, Lime stone, minerals, etc. = 10000 tonnes / day	12500/ (24 hours * 70% utilisation factor)	744
	Working hours per annum		4000	A norm of 4000 hours of working in a year is prescribed for estimating power / fuel cost		4000
	Annual Capacity (in tonnes)	(30 cycles* 20 tonnes * 4000 hours =	2400000		744 tonnes / hour* 4000 hours) =	2976000
	Annual capacity in Million Tonnes		2.40			2.97
III	Operating Cost		Rs. in lakhs			Rs. in lakhs
	(a) Fuel cost	70 ltrs per hour * Rs.40 per litre * 4000 hours	112.00		70 ltrs per hour * Rs. 34.98 per litre * 4000 hours	97.94
	(b) Repairs & Maintenance cost (5% on Equipmetn cost)	5% *Rs.30 crores	150	5% on cost of mechanical equipment	5% * Rs. 2963.70 lakhs	148.19
	(c). Insurance	1% * Rs.30 crores	30.00	1% on cost of mechanical equipment	1% * Rs. 2963.70 lakhs	29.64
	(d). Depreciation	11.31% * Rs. 30 crores	339.30	As per norms prescribed in Companies Act	10.34% * Rs.2963.70 lakhs	306.45
	(e). License Fee	-	-	As per Scale of Rates of PPT	Rs.1200 per month * 7 months	0.08
	(f). Other Expense	5% * Rs. 30 crores	150.00	5% of Gross fixed Asset Value	5% * Rs.2963.70 lakhs	148.19
	Total (a) to (e)		781.31			730.47
IV	ROCE	16% * Rs.2660.70 lakhs	425.71	16% on capital employed	16% * Rs.2350.811 lakhs	376.13
V	Total Cost plus Return on investment		1207.02			1106.60
VI	Hire Charge per shift	Rs. 1207.01 lakhs / 2.4 million tonnes	50			
VII	Hire Charge per tonne (Foreign) in Rs.				Rs.1106.60 lakhs /2.97 million tonnes	37.26
VIII	Hire Charge per tonne (Coastal)				60% * Rs. 37.26	22.35

B. For break bulk cargo

Sr. No	Particulars	Working	Steel & bagged cargo	Others
I	Cargo Handling rate in tonnes / day	(a) Steel & bagged cargo = 4000 tonnes per day (b) Others = 2500 tonnes per day	6000	3750
II	Cargo Handling rate in tonnes / hour	Sr. no I / (24 hours * 70% utilisation norm)	357.00	223
III	Working hours (per annum)		4000	4000
IV	Capacity (tonnes / annum)	Sr. No II * III	1428000	892000
V	Total cost plus return as estimated in Sr. No V in the first table (Rs. in lakhs)		1106.60	1106.60
VI	Hire Charge per tonne (Foreign going) in Rs. / tonne	Sr. No V / IV	77.49	124.06
VII	Hire Charge per tonne (Coastal) in Rs. / tonne	60% of Sr. No VI	46.50	74.44

@Note: Workings for capital employed
Rs. 2963.70 lakhs
10.34%

Gross value of HMC

Rate of Depreciation as per provisions of Companies Act

Value of HMC as at the beginning of the year
Depreciation
Written down Value as at the end of the year
Average written down value

Year 1	Year 2	Year 3
2963.70	2657.25	2350.81
306.45	306.45	306.45
2657.25	2350.80	2044.36
	235081	

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

No.TAMP/54/2007-PPT

- Proposal from the Paradip Port Trust (PPT) for fixation of tariff for use of Harbour Mobile Cranes (HMC) installed at the PPT.

Summary of the comments received from the user organizations and the comments of PPT on the comments of the user organizations are summarised below:

Sl. No.	Comments of the users	Comments of PPT on the comments of users
1.	<u>ABG Heavy Industries Ltd.,</u>	
	(i). ABGIL does not agree with the view of PPT that the rate per tonne is to be fixed at Rs.43/- per tonne, which is much lower than the rate proposed by ABGIL. (ii). PPT has not clarified as to whether the capacity shown at 27 million MT per year is the traffic capacity of the entire PPT. If its is so, it is not clear as to how the capacity of the entire port is relevant to assess the capacity utilisation of one HMC. (iii). The tariff fixed by TAMP is for a period of 3 years based on the projections for 3 years. PPT has not furnished any reason for considering the projections for a period of 5 years. (iv). This the economic life prescribed for the equipment in the Companies Act works out to 9.67 years. The concession period in the case in reference is 5 years. As such the value of the Crane has to be depreciated within 5 years. Hence the depreciation of Rs.333.64 lakhs per annum is to be considered as against the depreciation of Rs.111.33 lakhs	The recommendations of PPT for a ceiling rate of Rs. 42.70 per tonne is as per the guidelines of TAMP. (The PPT has furnished a cost sheet). The capacity of the crane is reassessed as 3.0 million tonnes per annum. The rate is proposed for 5 years on the assumption that the PPT will seek re-approval from TAMP on the same ceiling rate after lapse of three years. Provision for depreciation is made as per Companies Act, 1956.

	per annum claimed by PPT in its proposal. (v). As per the tender document, the crane is required to handle 10000 MT of cargo per day, which works out to 3 million MT per annum by assuming 300 working days in a year. This is the 100% capacity of the MHC. In actual practice, the MHC operator has little or no control in the capacity utilisation of his equipment. All vessels calling at PPT are geared vessels and the MHC would only supplement the vessel's own gear. With only one MHC, it is unlikely that the shippers will switch over to gearless vessels. In view of this, it would not be appropriate to expect higher capacity utilisation and there is no case for adjustment of ROCE based on capacity utilisation. (vi). The rate of Rs.64/- per tonne proposed by ABG for the use of MHC for handling all types of dry-bulk cargo, general cargo and scrap etc. and Rs.1000/- per container assuming the weight of the container at 18 MT, may kindly be approved. (vii). PPT has invited tenders for 2 more HMCs. PPT has awarded the tenders to the Jindal Steel and Power Ltd., (JSPL) and the Chennai Radha Engineering who had offered higher upfront premium and higher revenue share. The rate fixed for ABG HMC should apply to all HMCs licensed at the PPT.	The capacity of the crane is reassessed as 3.0 million tonnes per annum. The port has decided to install two more HMCs at the port. Of these two additional HMCs, only one HMC is likely to work in the three berths configuration where the present ABG crane is working. As per the tender conditions, the additional crane to be installed at CQ-I, CQ-II and CQ-III berths is a brand new crane with much higher value.
2.	<u>TATA Steel Limited</u> (i). The annual capacity of 27 million tonnes arrived at by considering the capacity of the	

	crane as 5000 tonnes per hour for coal and 4000 tonnes per hour for other commodities, appears to be very high and needs to be verified. (ii). Taking into account the current handling charges as well as the total costs incurred in ports by an exporter/ importer, the crane charges should not exceed Rs.45/- per tonne.	
3.	<u>Federation of Indian Mineral Industries (FIMI)</u> (i). The major difference between the rates proposed by ABG & PPT is due to depreciation provision. ABG has considered the life of the HMC only 5 years whereas HMC life is longer, as considered by PPT. (ii). HMC is working at 50% of the guaranteed throughput mainly because of : (a). ABG has imported used HMC. (b). Lack of sufficient skilled workforce to operate the crane. (c). Non-availability of spare parts and technical support to attend breakdown in time. (iii). Exporters / importers have to incur heavy losses on account of detention and demurrage due to frequent breakdowns. (iv). In view of the above, it is suggested to maintain tariff proposed by PPT at Rs.43 per tonne. (v). In order to protect the interests of the users, ABG should be asked to install a new machine to avoid breakdown and achieve throughput as guaranteed. Till the new machine is installed, ABG should ensure that machine is available in running condition with guaranteed performance	PPT has not furnished any comments.

	parameters and shall have to share losses suffered by users on account of breakdown of machine by devising proper formula.	
4.	J.M. Baxi & Co (JMBC) Paradip Port Trust has examined and analysed the information furnished to the port by ABG Heavy Industries Ltd., Therefore, due weightage may be given to the proposal of PPT.	
5.	Steel Authority of India Ltd., (SAIL) SAIL will pay the rate as fixed by TAMP for use of HMC. The rates should be comparable to the rates at other major ports.	

2 A joint hearing in the case in reference was held in the premises of PPT on 20 June 2008. The PPT and the users made the following submissions:

Paradip Port Trust:

- (i). Our initial proposal contains an error in the calculation of the rated capacity of the crane. We have rectified it. The revised capacity is 3 million tonnes per annum. However, there will not be any change in the proposed ceiling rate of Rs. 43/- per tonne for handling bulk cargo.
- (ii). We have already finalized licences for two more cranes which will be of higher handling capacity. The rates to be allowed for ABG crane cannot be applied to them.

ABGHIL

- (iii). The capacity assessed by PPT at 27 million tonnes per annum is absolutely wrong. The loading capacity of our crane will not be more than 500 tonnes per hour.
- (iv). With more cranes coming in, the available traffic shared by all operators. Therefore, PPT should do reasonable rationing of traffic for calculation of tariff.
- (v). Capacity utilization is not a factor which is fully within the control of the operator. The operator depends on the port to allocate vessels to the crane operator. Therefore, the operator cannot be penalized for capacity underutilization by way of reduction in the permissible level of ROCE.

- (vi). The method of working of depreciation needs to be reviewed as the crane will have no alternate use after 5 years.
- (vii). We insist that a rate of Rs. 64/- per tonne for handling bulk cargo is necessary for a viable operation.

JM Baxi & Co

- (viii). The proposed rate is higher when compared to the cost involved in manual handling. We request TAMP to fix a reasonable tariff.

- - - - -