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TARIFF AUTHORITY FOR MAJOR PORTS

G.No.114 **New Delhi,** **31 March 2015**

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the application filed by the TM International Logistics Limited (TMILL) for a review of the Order dated 20 May 2014 passed by this Authority, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/34/2014-TMILL

TM International Logistics Limited … Applicant

QUORUM

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Chandra Bhan Singh, Member (Economic)

O R D E R
(Passed on this 13th day of February 2015)

This case relates to the review Application filed by TM International Logistics Limited (TMILL) for review of the Order dated 20 May 2014.

1.2. This Authority has passed an Order dated 20 May 2014 on the proposal received from TM International Logistics Limited (TMILL) for general revision of its Scale of Rates. This Order has been notified in the Gazette of India on 10 June 2014 vide Gazette No.175. This Authority vide letter no. TAMP/44/2012-TMILL dated 11 June 2014 communicated this position to TMILL. The revised Scale of Rates has come into force with effect from 01 July 2014 and shall be in force till 31 March 2016.

2.1. In this backdrop, the TMILL has filed an application dated 09 July 2014 for review of the Order dated 20 May 2014, in accordance with clause 3.3.1. of the tariff guidelines of March 2005.

2.2. The main points for review of the tariff Order as mentioned by TMILL in its e-mail dated 09 July 2014 are summarized below:

(i). Addition of income to the tune of ₹10.67 Crs. on notional basis for 2010-2013:

As TMILL has not submitted the detail of rebate/ discount offered in past period, the Authority has considered the same as 15% and accordingly increased the rate of October 2011 rates by 15%. This method of calculation has resulted in notional revenue of ₹2.71 crores for 11-12 and ₹3.74 crores for 12-13. The Authority has also calculated notional revenue of 2010- 11 as ₹4.22 crores.

(ii). Lower Working Capital considered for 2010-11, 2011-12 & Nil for 2012-13:

The Authority had calculated current liabilities for the year FY 11, 12 and 13 by way of taking an average for Berth no.12 on the basis of derived total current assets. No current liabilities should have been considered in the analysis of past performance. This view also becomes relevant as because sundry debtors is considered as nil by the Authority.

(iii). Non-fixation of rate on per shift basis [12.xLiii]:

The Authority has maintained its stand as per Orders of March and October 2011 stating that from the user's point of view, the duration of deployment of the crane for loading/unloading operation may not be of much relevance and accordingly fixed rate on per MT should be the basis. It may be appreciated from the terminal operator point of view that if the terminal as well the asset remains idle due to reasons attributable to the user viz. non provision of cargo for loading or bad stowage plan result into slow discharge rate or project cargoes requiring sophisticated loading/unloading and thus are very time consuming, a per shift basis rate also becomes important for the operator.

(iv). Per MT rate for Labour charge [Clause 12.xLvi]:

TMILL had proposed a new rate in Section 7.1 for labour charges as ₹50/MT. The Authority has not approved this rate suggesting that the rate is not based on cost and TMILL has not estimated the additional revenue arising out of the proposed new tariff item. The cost of labour working at B#12 has been already included in the cost statement filed by TMILL and the analysis of extra revenue which can be earned from this service has also been furnished.

(v). Past surplus adjustment for 2007-08 to 09-10 [Clause 12.XVII,XVI of Annex.II]:

The Authority has adjusted ₹4.6 crores from purported surplus for 2007-08 to 2009-10 based on October 2011 order. The adjustments of ₹4.60 crores presently on account of purported surplus for the aforesaid period 2007-08 to 2009-10 ought not to have been made by TAMP since the initial imposition of surplus by TAMP by its order dated 25 March 2011 and further reviewed vide order dated 11 October 2011 is under challenge and pending consideration before the Hon'ble High Court at Calcutta.

(vi). Unauthorised occupation charges:

TMILL had requested the Authority vide letter dated 31 January 2014 and in its earlier proposals for tariff fixation to include terms and conditions pertaining to "Unauthorised occupation of Plots" as per Section 13. The Authority has not included the same in the tariff order.

(vii). Computation of Operational expenses for future years:

Capital Employed:
Since no sundry debtors are allowed by TAMP for the purpose of calculation of working capital, current liabilities should also be considered as nil. Any calculation otherwise on account of current liabilities would lead to an erroneous computation of working capital. This was one of the reasons that no current liabilities were taken in the proposal submitted by TMILL.

2.3. Thus, the TMILL has requested this Authority to review the above issues contained in the Order of May 2014, in the light of the submissions made by it.

3.1. Clause 3.3.1 of the tariff guidelines of March 2005 enables this Authority to entertain application for review of any tariff Order to the limited extent of errors apparent on the face of records considered in the relevant proceedings, provided such an application is filed within 30 days from the date of notification in the Official Gazette. The Order passed on 20 May 2014 has been notified on 10 June 2014. Therefore, the application dated 09 July 2011 in the instant case has been filed by the TMILL within the stipulated 30 days time.

3.2. In the past, when the ports/ private terminals have filed review application for review of the tariff Order passed by this Authority, the review application so filed by the ports/ private terminals have been processed following the usual consultation process. Accordingly, the review application of TMILL was processed in a separate proceeding.

4.1. In accordance with the consultative procedure prescribed, the TMILL review application was forwarded to the concerned users/ user organizations for their comments. None of the users/ user organizations have responded till the review of the Order, in spite of a reminder.

4.2. The Kolkata Port Trust (KOPT) vide its letter dated 27 October 2014 has furnished its comments on the review application of TMILL. This was forwarded to TMILL for its comments. The TMILL has responded vide its letter dated 22 December 2014.

5.1. A joint hearing in this case was held on 22 August 2014 at the KOPT premises. At the joint hearing, TMILL and KOPT have made their submissions.

5.2. As decided at the joint hearing, TMILL was requested to furnish some additional information/ clarification vide our letter dated 26 August 2014. Accordingly, the TMILL vide its letter dated 10 September 2014 has furnished the information. The information sought by us and the reply of TMILL thereon are summarised and tabulated below:

<table>
<tr><th>Sl. No.</th><th>Information sought by TAMP</th><th>Replies of TMILL</th></tr>
<tr><td>(i).</td><td>TM International Logistics Limited (TMILL) to furnish hard copy of the power point presentation made at the joint hearing for record and reference.</td><td>Hard copy of presentation is furnished.</td></tr>
<tr><td>(ii).</td><td>During the joint hearing, it was pointed out to TMILL that in absence of actual details, the Authority was forced to consider rebates & discounts @15%. Therefore, as decided at the joint hearing, the TMILL to furnish the actual details relating to rebates and discounts for the years 2010-11 to 2012-13 allowed by TMILL.</td><td>Actual revenue earned by TMILL vis-à-vis the approved rates as per 2008 has been calculated as given below wherein there is an overall discount of 14% given by TMILL for the years 2010-11 to 2012-13.
<table>
<tr><th>FY</th><th>Cargo</th><th>Values Sum of Actual (Value in Crores)</th><th>Sum of Approved (Value in Crores)</th><th>Sum of Difference (value in Crores</th><th>Discount given (%)</th></tr>
<tr><td>2010-11</td><td>Cement Clinker (Shore Handling)</td><td>0.67</td><td>0.92</td><td>0.25</td><td>27%</td></tr>
<tr><td></td><td>Fertilizer</td><td>0.54</td><td>0.60</td><td>0.05</td><td>9%</td></tr>
<tr><td></td><td>Iron Ore</td><td>17.15</td><td>20.72</td><td>3.57</td><td>17%</td></tr>
<tr><td></td><td>Limestone</td><td>0.61</td><td>0.64</td><td>0.04</td><td>6%</td></tr>
<tr><td></td><td>Project Cargo</td><td>3.78</td><td>4.25</td><td>0.48</td><td>11%</td></tr>
<tr><td></td><td>Steel Export</td><td>0.60</td><td>0.65</td><td>0.05</td><td>8%</td></tr>
<tr><td></td><td>Steel Import (Ex-plot)</td><td>3.19</td><td>3.92</td><td>0.73</td><td>19%</td></tr>
<tr><td></td><td>Steel Import (Hook-point)</td><td>1.13</td><td>1.33</td><td>0.20</td><td>15%</td></tr>
<tr><td></td><td>Sugar</td><td>0.54</td><td>0.68</td><td>0.14</td><td>21%</td></tr>
<tr><td colspan="2">2010-11 Total</td><td>28.20</td><td>33.71</td><td>5.51</td><td>16%</td></tr>
<tr><td>2011-12</td><td>Fertilizer</td><td>0.59</td><td>0.61</td><td>0.02</td><td>4%</td></tr>
<tr><td></td><td>HMC</td><td>1.48</td><td>1.48</td><td>-</td><td>0%</td></tr>
<tr><td></td><td>Iron Ore</td><td>11.38</td><td>12.83</td><td>1.45</td><td>11%</td></tr>
<tr><td></td><td>Limestone</td><td>0.42</td><td>0.48</td><td>0.06</td><td>12%</td></tr>
<tr><td></td><td>Project Cargo</td><td>4.98</td><td>5.47</td><td>0.49</td><td>9%</td></tr>
<tr><td></td><td>Steel Export</td><td>0.36</td><td>0.36</td><td>-</td><td>0%</td></tr>
<tr><td></td><td>Steel Import (Ex-plot)</td><td>1.79</td><td>2.19</td><td>0.40</td><td>18%</td></tr>
<tr><td></td><td>Steel Import (Hook-point)</td><td>0.77</td><td>0.84</td><td>0.07</td><td>8%</td></tr>
<tr><td colspan="2">2011-12 Total</td><td>21.76</td><td>24.25</td><td>2.49</td><td>10%</td></tr>
<tr><td>2012-13</td><td>Fertilizer</td><td>0.23</td><td>0.23</td><td>0.01</td><td>2%</td></tr>
<tr><td></td><td>Iron Ore</td><td>3.30</td><td>3.60</td><td>0.30</td><td>8%</td></tr>
<tr><td></td><td>Limestone</td><td>2.53</td><td>3.01</td><td>0.47</td><td>16%</td></tr>
<tr><td></td><td>Project Cargo</td><td>7.34</td><td>7.87</td><td>0.54</td><td>7%</td></tr>
<tr><td></td><td>Steel Export</td><td>7.88</td><td>9.76</td><td>1.87</td><td>19%</td></tr>
<tr><td></td><td>Steel Import (Ex-plot)</td><td>6.06</td><td>7.21</td><td>1.15</td><td>16%</td></tr>
<tr><td></td><td>Steel Import (Hook-point)</td><td>2.24</td><td>2.47</td><td>0.23</td><td>9%</td></tr>
<tr><td></td><td>Sugar</td><td>0.19</td><td>0.27</td><td>0.08</td><td>30%</td></tr>
<tr><td colspan="2">2012-13 Total</td><td>29.77</td><td>34.42</td><td>4.65</td><td>14%</td></tr>
<tr><td colspan="2">Grand Total</td><td>79.73</td><td>92.38</td><td>12.65</td><td>14%</td></tr>
</table>
It is to mention that the Authority should calculate the actual revenue as per clause 2.13 of the tariff guidelines, 2005. The view of TMILL on this issue are already elaborated in review application dated 9 July 2014.</td></tr>
<tr><td>(iii).</td><td>Further, with regard to the request made by TMILL in the joint hearing for having different per tonne rates for handling different types of cargo by Harbour Mobile Crane, the TMILL to furnish workings to arrive at per tonne</td><td>It is requested to the Authority to consider TMILL proposal dated 31 Janaury 2014. In Sl.No. 5 of Form-1 calculation for ascertaining different per MT rate of Harbour Mobile Crane for different cargo has been provided. The revenue is kept same for all the cargoes and different rates are derived based on their productivity. Calculation for justification of the revenue requirement for the crane considering the operating</td></tr>
</table>

<table>
<tr><td></td><td>handling rates for each type of cargo, maintaining a revenue neutral position to TMILL.</td><td>cost is given below:

Harbour Mobile Crane (based on 2012-13 figures)	
(A). Cost Details:	₹ in Lacs
Maintenance and Repair Cost	119
Depreciation	83
Total Cost	202
B)	
Closing block as on 2012-13	787
C)	
ROCE (@16%)	126
D)	
Grand Total (A+C)	328
E)	
Actual Shift of 2012-13	147
F)	
Cost per Shift	223075
G)	
Rate per shift proposed	150000
</td></tr>
</table>

6. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the 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.

7. A summary of the points made by the TMILL in its review application, the corresponding relevant extract from the tariff Order dated 20 May 2014 and our analysis thereon are furnished below:

(1). <u>Addition of income to the tune of ₹10.67 Crores on notional basis for the years 2010-11, 2011-12 and 2012-13:</u>

(a). <u>Points made by TMILL in its Review Application:</u>
The Authority had calculated the Actual operating income for past period taking 2008 rate and multiplying the same with actual tonnage of 11.93 Lakh Metric Tonnes for the year 2010-11. For the year 2011-12 and 2012-13, operating income has been determined by reducing Fixed Deposit from actual income as per segregated accounts and then increasing the same by 15%. On the basis that the TMILL has not submitted the details of rebate/ discount offered in past period, the Authority has considered the same as 15% and accordingly increased the rate of October 2011 rates by 15%. This method of calculation has resulted in notional revenue of ₹2.71 crores for the year 2011-12 and ₹3.74 crores for the year 2012-13. The Authority has also calculated notional revenue of 2010- 11 as ₹4.22 crores.

It is clear from the provision of clause 2.13 of the Guidelines that the financial performance is required to be reviewed by the Authority on actual basis and any addition of revenue on notional basis has not been dealt with in the Guidelines. TMILL had actually passed on the benefit of improved performance in terms of increased volume and cost optimization to the actual users during the same period when the benefits were actually derived (by way of charging lower rates than that of what was calculated by the Authority) rather than passing on the benefits derived from the past customers to the future customers as per the methodology adopted by the Authority.

As per Clause 2.16.1 of the Guidelines, it is not mandatory or obligatory on the TMILL to apply the ceiling levels of rates as notified by the Authority as has been assumed by TAMP for calculation of actual revenue earned during the said past period. TMILL can, if it so desires, charge lower rates within the provisions of the Guidelines.

By seeking not to consider the actual revenue earned by TMILL as per the segregated accounts duly audited by the Statutory Auditors of TMILL and further verified by the Independent Auditors appointed by the KOPT, the Authority has for all practical purposes challenged the said audited accounts, which is erroneous and impermissible.

With the addition of revenue on notional basis (which was not actually earned by the TMILL) amounting to ₹10.67 crores for the period from financial year 2011 to 2013 and accordingly calculating a surplus to be adjusted in future period has erroneously led to passing the benefits to the users twice, once voluntarily by TMILL and again by the Authority by including the unearned revenue in the cost statements and thereby calculating notional profits for TMILL to be adjusted against future tariff.

In paragraph 12(v)(a) of the tariff order as stated herein before, TAMP has sought to fix the "tariff without getting influenced by the pendency of the previous writ petitions filed by the TMILL and keeping in view clause 2.13 of the tariff policy guidelines." Since admitted position of TAMP was fixing the present scale of rates has been stated as aforesaid the question therefore of TAMP segregating the amount kept in Fixed Deposit by TMILL pursuant to order of Hon'ble High Court is therefore a misnomer since it does not comply with the provision of clause 2.13 of the guidelines (i.e) taking into account actual physical and financial performance.

Since by its own admission TAMP ought to have ignored the orders passed in the aforesaid writ petitions as such TAMP could not have segregated the amounts kept in Fixed Deposits by TMILL while calculating actual revenue earned by TMILL for the period 2010-11 to 2012-13. Once TAMP had taken the actual revenue earned irrespective as to whether part of those were kept in a Fixed Deposit Account pursuant to the order of the Court, it thus thereafter could not have added an increase of 15% on account of discounts/ rebates purportedly granted by TMILL to its customers. TAMP, therefore, could not have reduced the actual revenue earned by TMILL for the years 2010-11 to 2012-13 by separating the amount kept in Fixed Deposit, contrary to clause 2.13 of the guidelines and thereafter unilaterally and without any basis and methodology whatsoever add on 15% to the aforesaid revenue. Thus, the calculation of TAMP leading to a notional revenue of ₹10.67 crores is bad without any basis contrary to the provisions of the guidelines, error in application of the methodology and therefore it is requested to rectify the aforesaid error which leads to unwarranted claim of notional revenue.

(b). <u>Relevant Extract from the tariff Order dated 20 May 2014:</u>

<u>*(Paragraph no. 12(v)(b)*</u>

In compliance of the direction of the Hon'ble Court, the TMILL has been intimating us from time to time about the details of the Fixed Deposits being created by it every month, beginning from 24 June 2011 towards the difference between the amount collected by TMILL (based on the

2008 tariff) and the amount of income based on the 2011 tariff. The differential income for the years 2011-12 and 2012-13, based on the details of the fixed deposits furnished by the TMILL works out to ₹371.08 lakhs and ₹308.75 lakhs respectively. This amount of the fixed deposit is reduced from the operating income reflected in the Segregated Annual Accounts for the years 2011-12 and 2012-13 respectively, so as to arrive at the income based on the reduced level of tariff approved in October 2011.

Since the tariff fixing exercise cannot recognize the discounts/ rebates allowed by the private operator at his discretion, the TMILL was specifically requested to furnish the details of the Rebates and discounts, if any, allowed by TMILL during the years 2010-11 to 2012-13. Though the TMILL has responded to the query, it has not categorically denied of allowing any discounts/ rebates during the years 2010-11 to 2012-13. Considering the position that the discounts/ rebates have been allowed by the TMILL in the previous tariff cycle, it may not be incorrect to assume that the TMILL would have offered discounts/ rebates during the years 2010-11 to 2012-13 also.

However, since detailed workings have not been furnished by the TMILL with regard to the calculation of operating income realisable from various activities for the years 2010-11 to 2012-13, it is not found possible to determine the operating income based on the rates approved in October 2011, so as to not recognise the impact of rebates/ discounts. In view of this position, it may not be unreasonable to consider the amount of rebates/ discounts to the tune of 15% of the operating income as determined in the preceding paragraph. If the TMILL is of a view that quantum of rebates/ discounts considered is on the higher side, the TMILL may approach this Authority to the limited extent of reviewing the quantum of component relating to rebates and discounts considered in this analysis.

Further, to have a like to like comparison between the actuals and the estimates, the estimated income for the period from the effective date of implementation of the Order dated 25 March 2011 to 31 March 2013 is modified to reflect the reduction effected.

(c). Analysis:

(i). Business promotional measures like offering rebates or volume discounts are purely part and parcel of the management decisions of the operator. Decisions of the Regulator cannot be influenced by the management decisions of the operators to allow discounts/ rebates to their customers.

(ii). This Authority has taken a view that for the purpose of review of the past performance, income for the previous tariff cycle would be strictly considered as per the approved Scale of Rates of the respective port/ private terminal. In line with this view, this Authority has uniformly followed this approach in fixation of tariff of all major port trusts and private terminals operating thereat.

(iii). As stipulated at Clause 2.16.1 of the tariff guidelines of 2005, the rates fixed by this Authority are ceiling level and the operator has the discretion to allow rebate/ discounts. The Clause only gives the liberty to the major ports/ operators to charge lower than the rates fixed by this Authority, if they so desire, in their commercial interest. But nowhere the said guideline mentions that discounts allowed by the ports/ terminal operators have to be recognized in the tariff fixing exercise.

(iv). Clause 2.13 of the tariff guidelines of March 2005, which are policy directions of the Government and binding on this Authority, warrants this Authority to review the physical and financial performance of the operator. In this process, the discounts/ rebates granted by TMILL are only added back to the income reported in the segregated accounts. This does not amount to challenging the audited accounts, as contended by TMILL.

(v). In view of the above, addition of total rebate and discounts to the actual income to the tune of ₹ 1066.66 lakhs for the years 2010-11 to 2012-13 taken together is found to be in order. Infact, an option was given to TMILL to approach this Authority to the limited extent of reviewing the quantum of component relating to rebates and discounts, if the TMILL is of a view that quantum of rebates/ discounts considered is on the higher side.

(vi). In this connection, the TMILL in the proceedings relating to the Review application has furnished the actual quantum of Rebate and discounts allowed by it during the years 2010-11 to 2012-13 and has stated that the average rebate and discount allowed by it during the years under reference is to the tune of 14%. It is relevant to mention here that the rebates and discounts were considered at 15% of the income as the actual amount of rebates and discounts were not available. Now, since the amount of year wise rebate and discount is made available, there does not appear to be any justification to take into account 14% of rebate and discount on average basis furnished by the TMILL. The year wise amount of rebate and discount given at ₹ 551 lakhs, ₹ 249 lakhs and ₹ 465 lakhs during the years 2010-11 to 2012-13 respectively, aggregating to ₹ 1265 lakhs is now considered in the analysis.

(vii). It is relevant to recall that the tariff Order of October 2011, which had effected an across the board reduction of 17.87% over the then prevailing tariff, was challenged by the TMILL before the Hon'ble High Court of Calcutta and, interalia, an interim stay on the tariff Order has been effected. As a result, the TMILL continued to charge the tariff that has been fixed in the year 2008 and as a result, the income based on the 2008 rates would have been reflected in the Segregated Accounts. When this Authority has been directed by the Hon'ble Court to fix tariff without getting influenced by the pendency of the previous writ petitions filed by the TMILL, this Authority is not prevented from considering the income for the years 2010-11 to 2012-13 based on the reduced level of tariff approved in October 2011. Therefore, the amount of the fixed deposit to the tune of ₹ 371.08 lakhs and ₹308.75 lakhs for the years 2011-12 and 2012-13 respectively, was reduced from the operating income reflected in the Segregated Annual Accounts for the years 2011-12 and 2012-13 respectively, so as to arrive at the income based on the reduced level of tariff approved in October 2011. Therefore, the action taken in this regard as explained above is not a misnomer, as mentioned by TMILL.

(2). Lower Working Capital considered for 2010-11, 2011-12 & Nil for 2012-13:

(a). Points made by TMILL in its Review Application:

The Authority had calculated current liabilities for the year FY 11, 12 and 13 by way of taking an average for Berth no.12 on the basis of derived total current assets.

In this regard, the Authority has maintained its stand while fixation of tariff for the said years vide order of March 2011 and review order of October 2011 by considering current liability while calculation of working capital, though while fixation of tariff for the said years vide order of October 2007 and review order of March 2008, the current liabilities considered by the Authority was nil and also the Guidelines does not provide any norms for calculation of the same. Taking this view into consideration, without prejudice to anything aforesaid, no current liabilities should have been considered in the analysis of past performance. This view also becomes relevant as because sundry debtors is considered as nil by the Authority.

These methods of computation by this Authority has led to an error while fixing tariff for TMILL and hence, the error may be rectified.

(b). Relevant Extract from the tariff Order dated 20 May 2014:

Paragraph no. 12(v)(j)(iv) & (v)

(iv). The TMILL has not furnished the current liabilities for the years 2010-11 to 2012-13. The current liabilities shown in the audited Segregated Accounts is for the entire Haldia division and not with reference to Berth no.12. Therefore, the proportion of Current liabilities of the Haldia Division to the Current Assets of Haldia Division as given in the Segregated Accounts is taken as base and applied to the figures of Current Assets as calculated based on the approach as explained in the preceding paragraphs for the years 2010-11 to 2012-13 in the analysis to calculate current liability.

(v). The Working Capital for the years 2010-11 and 2011-12 works out to ₹112.10 lakhs and ₹35.18 lakhs respectively. In the year 2012-13, since the Current Liabilities is found to be more than the Current Assets, the Working Capital results in a negative figure. Therefore, the Working Capital is considered as NIL for the year 2012-13. Thus, the Capital Employed works out to ₹3835.69 lakhs, ₹3510.63 lakhs and ₹3196.68 lakhs for the years 2010-11 to 2012-13 respectively.

(c). Analysis:

(i). As per Clause 2.9.3 of the tariff guidelines of 2005, Capital Employed comprises of 'Net fixed assets plus working capital'. Clause 2.9.4, defines working capital as 'Current assets less Current liabilities'. The tariff guidelines of 2005 prescribe norms for determining Current assets. This does not imply that Current liabilities have to be ignored in the assessment of working capital. The current liabilities are thus recognized while determining the working capital in all tariff cases.

(ii). The TMILL had not furnished the current liabilities for the years 2010-11 to 2012-13. This Authority was, therefore, constrained to consider the Current liabilities. For the purpose, the proportion of Current liabilities of the Haldia Division to the Current Assets of Haldia Division as given in the Segregated Accounts was taken as base and applied to the figures of Current Assets as calculated in the Order of May 2014 in the analysis. It is noteworthy that such an approach of determining Current liabilities has been carried out in the March/ October 2011 Order of TMILL.

(iii). The TMILL has not pointed out any error apparent on the face of the records warranting a review of the May 2014 Order on this aspect. Therefore, no review in this regard is called for.

(3). <u>Non-fixation of rate on per shift basis:</u>

(a). <u>Points made by TMILL in its Review Application:</u>
The Authority has maintained its stand as per Orders of March and October 2011 stating that from the user's point of view, the duration of deployment of the crane for loading/ unloading operation may not be of much relevance and accordingly fixed rate on per MT should be the basis. It is may be appreciated from the terminal operator point of view that if the terminal as well the asset remains idle due to reasons attributable to the user viz. non provision of cargo for loading or bad stowage plan result into slow discharge rate or project cargoes requiring sophisticated loading/ unloading and thus are very time consuming, a per shift basis rate also becomes important for the operator. The rate provided by the Authority as ₹ 67.07/MT may be workable for Bulk cargo only. However, TMILL will not be able to recover the operating cost if this rate is applied for Steel and Project (Break-Bulk) cargo. As stated above, the productivity level of these cargoes are much lower due to the handling procedure and hence per shift rate is necessary. TMILL can achieve a productivity of 800 MT/Shift for Steel Cargo and 100-200MT/Shift for project cargo by deploying one harbor mobile crane. Hence it will not be possible for TMILL to recover the operating cost by charging the per MT rate approved by the Authority, as per calculations stated below:

Harbour Mobile Crane (based on 2012-13 figures		
	Cost details	**₹ in lakhs**
(i).	Maintenance and Repairs cost	119
	Depreciation	83
	Total Cost	202
(ii).	Closing block as on 2012-12	787
(iii).	ROCE (@ 16%)	126
(iv).	Grand Total (A + C)	328
(v).	Actual Shift of 2012-13	147
(vi).	Cost per shift	223075
(vii).	Rate per shift proposed	150000

It is requested to accordingly bifurcate the tariff for Harbour Mobile Crane on the basis of "per shift" with regard to break-bulk cargo and per ton basis for bulk cargo which incidentally had already been fixed at ₹67.07 per MT.

(b). <u>Relevant Extract from the tariff Order dated 20 May 2014:</u>
<u>*(Paragraph no. 12(xLiii)}*</u>

The issue of prescription of shift based rate for the use of the MHC apart from per tonne rate has been adequately examined and the proposal of the TMILL for shift based rate was rejected for the reasons recorded in the tariff Orders of March and October 2011. The TMILL has not brought out any extraordinary circumstances now, warranting a deviation from the decision already taken earlier. Therefore, the levy of rate for the use of MHC on per tonne basis is to continue.

(c). Analysis:

(i). This Authority has always held that from a user's point of view, the duration of deployment of the crane for loading/ unloading operations may not be of much relevance. For the user, the tariff should correlate to the tangible output i.e. cargo handled. Hence, this Authority has felt it appropriate to prescribe tariff on tonnage basis instead of shift basis.

(ii). Now, the TMILL has stated that if the terminal as well as the asset remains idle due to reasons attributable to the user viz. non provision of cargo for loading or bad stowage plan result into slow discharge rate or project cargoes requiring sophisticated loading/ unloading, the productivity levels of cargoes like Steel and Project cargo are affected and that the TMILL is not in a position to recover the operating cost by charging the per MT rate approved by this Authority. As a result, the TMILL has again emphasized for prescription of shift based rate for the use of HMC at TMILL. Further, with regard to the demand made by the TMILL during the joint hearing to have different per tonne rates for handling different types of cargo, the TMILL has drawn reference to its proposal of January 2014 (which had formed the base for the May 2014 Order of TMILL), wherein the TMILL had proposed the following per tonne rates for handling of cargo by HMC.

Description of cargo	Rate per MT in ₹
Iron Ore	56.25
Limestone	56.25
Fertiliser and other bulk cargo	73.77
HRC/CRC Imports	136.36
Steel Export	112.50
Project Cargo	529.41

(iii). In this connection, it is relevant to mention here that while fixing the rate for the use of HMC on normative basis at many of the major port trusts like New Mangalore Port Trust (NMPT), V.O Chidambaranar Port Trust (VOCPT), Visakhapatnam Port Trust (VPT), Paradip Port Trust (PPT) etc., different per tonne handling rates have been prescribed for major categories of cargo like Dry Bulk cargo, Break Bulk cargo and others. On the same lines, it is felt appropriate to prescribe different per tonne rates for different major types of cargo. The calculation in this regard is explained below:

(iv). The cargo profile of TMILL as contained in its proposal of January 2011 comprises of Dry Bulk cargo (Iron Ore, Limestone & Fertilisers), Break Bulk Cargo (Steel) and Others (Project cargo), being handled by the HMC. In fixation of tariff for a 100 Tonne HMC in the other Major Port Trusts as listed above, the handling rate of 12500 tonnes per day for dry bulk cargo, 6000 tonnes per day in respect of break bulk cargo and 3750 tonnes per day in respect of other cargo has been uniformly adopted. Thus, for the dry bulk cargo, the handling rate works out to 744 tonnes per hour (12500 tonnes per day/ (24 hours * 70% utilization), for the break bulk cargo, the handling rate works out to 357 tonnes per hour (6000 tonnes per day/ (24 hours * 70% utilization) and for other cargo, the handling rate is 223 tonnes per hour (3750 tonnes per day/ (24 hours * 70% utilization).

(v). Based on the above mentioned cargo wise handling rates, the number of operating hours of HMC at TMILL works out to 586 hours as shown in the following table:

Cargo items	Usage of HMC as given by TMILL	Classification of cargo	Estimated Total Traffic			Traffic to be handled by HMC				Productivity per day	Handling Rate per hour	No. of hours for handling average traffic of TMILL
			2013-14	2014-15	2015-16	2013-14	2014-15	2015-16	Average			
Iron Ore	80%	Dry Bulk	267974	250000	250000	214379	200000	200000	204793	12500	744	275
Limestone	50%	Dry Bulk	107190	250000	250000	53595	125000	125000	101198	12500	744	136
Steel Exports	30%	Break Bulk	107190	125000	150000	32157	37500	45000	38219	6000	357	107
Steel Imports	6%	Break Bulk	150065	150000	150000	9004	9000	9000	9001	6000	357	25
Fertilisers	41%	Dry Bulk	26797	20000	20000	10987	8200	8200	9129	12500	744	12
Project cargo	10%	Others	69673	65000	65000	6967	6500	6500	6656	3750	223	30
Steel shipment (SAIL)	0%	Break Bulk	10719	10000	10000	0	0	0	0	6000	357	0
Raw Sugar	0%	Dry Bulk	80392	45000	20000	0	0	0	0	12500	744	0
Total			**820000**	**915000**	**915000**	**327089**	**386200**	**393700**				**586**

(vi). The fuel consumption is, therefore, considered for 586 operating hours at the rate of 70 litres per hour. The cost of diesel is considered at ₹ 55/- per litre as prevailing at the time of finalization of the case in reference.

(vii). The Repairs and Maintenance is considered at ₹ 25.77 lakhs, being the average of the Repairs and Maintenance cost considered in the May 2014 Order of TMILL.

(viii). As per Clause 5.1(a) read with Clause 4.1(a) of the Licence Agreement, the TMILL has to pay revenue share on all kinds of cargo related charges as per prevailing Scale of Rates of KOPT. This Authority has revised the tariff of KOPT in February 2014. Thus, for the year 2013-14, royalty/ revenue share on the use of MHC is considered on the rate of HMC of KOPT at ₹ 52/- per MT that existed prior to the February 2014 revision. For the years 2014-15 and 2015-16, the Revenue share is calculated based on the revised rate of MHC at KOPT to the tune of ₹ 62.40 per MT. Accordingly, 8.126% (being the revenue share to be allowed as a pass through and considered in the tariff Order of TMILL) of ₹ 52 per tonne/ ₹ 62.40 per tonne is factored in the calculation of rate for HMC at TMILL. It is noteworthy that Revenue share was considered as a pass through while arriving at the rate for use of HMC in the Review application Order of TMILL of October 2011.

(ix). Insurance cost is considered at 1% of the capital cost of the HMC, as has been considered in the Review Order of October 2011.

(x). Depreciation is considered at ₹ 66 lakhs for the average written down value at ₹ 6,61,00,000/- and Other Expenses is considered at ₹ 20 lakhs, as has been considered in the Review Order of October 2011.

(xi). Based on the adjustments explained in the preceding paragraphs, the rate for the use of the HMC is worked out. The TMILL has not estimated handling of any coastal cargo by the HMC. Therefore, no coastal traffic is taken into account. However, coastal rate for dry bulk cargo, (other than iron ore and iron ore pellets) break bulk cargo and other cargo is prescribed as per policy. The workings in this regard is attached as **Annex – I**.

(xii). From the workings, it can be seen that the rate for handling dry bulk cargo works out to ₹ 86.24 per MT, break bulk cargo at ₹ 575.48 per MT and ₹ 4082.85 per MT.

However, the TMILL had initially sought per tonne rates as already brought out above. The per tonne rates are seen to have been derived by the TMILL by considering the proposed shift based rate of ₹ 150000/- per shift for 3 shifts as base and by considering the daily productivity of each type of cargo. Nevertheless, since the rates proposed by the TMILL are seen to be lower than the rate derived now by us, it is felt appropriate to approve the rates at the level proposed by the TMILL. However, this should not be construed to endorsing either the shift based rate proposed by the TMILL nor the daily productivity of each type of cargo considered by the TMILL or the methodology adopted by TMILL to arrive at the per tonne rate.

(xiii). The main ground for shift based rate proposed by the TMILL is that the common rate of ₹ 67.07 per Metric Tonne approved in May 2014 tariff order is not sufficient to recover the operating cost, if applied on steel and project cargo. Since the cargo wise rates as proposed by TMILL in its January 2014 proposal indicates higher rates for steel and project cargo, which are considered for approval, prescription of shift based rate is not found necessary. In case, the MHC remains idle due to the reasons attributable to the users, the TMILL can file a well analysed proposal before this Authority to impose penalty on the concerned user for non-utilisation of the crane after allotment.

(xiv). Based on the revised rate approved for different types of cargo and considering the traffic estimated to be handled by HMC for the period from July 2014 to March 2016, the income estimated to be earned by TMILL during the said period works out to ₹ 4.91 crores, as against the income of ₹ 4.58 crores, that would have been realized by TMILL for the same period based on the common rate of ₹ 67.07 per MT approved in the May 2014 Order of TMILL.

(4). Per MT rate for Labour charge:

(a). Points made by TMILL in its Review Application:

TMILL had proposed a new rate in Section 7.1 for labour charges at ₹50/MT. The Authority has not approved this rate suggesting that the rate is not based on cost and TMILL has not estimated the additional revenue arising out of the proposed new tariff item. It is mentioned that the cost of labour working at B#12 has been already included in the cost statement filed by TMILL and along with the analysis of extra revenue which can be earned from this service as shown below:

Sl. No	New Tariff Items	Ref. in proposal	Qty.			Proposed Rate			Revenue		
			13-14	14-15	15-16	13-14	14-15	15-16	13-14	14-15	15-16
(i).	Labour support (in case of project/Other Package/Best Bulk Cargo)	7.7.	65000	65000	65000	50	50	50	3250000	3250000	3250000
(ii).	On-board Equipment Operation (applicable on full parcel size) – All Dry Bulk Cargo	11.b	100000	250000	250000	6.50	6.50	6.50	650000	1625000	1625000
(iii).	On-board Equipment Operation (applicable on full parcel size) – HRC/CRC, Plates Sheets, WRC, Tubes/Pipes	11.b	240000	275000	300000	13	13	13	3120000	3575000	3900000

TMILL apprehended that the aforesaid calculation had not been taken into consideration by TAMP as such it is prayed that these calculation may be taken into consideration by TAMP, there will be no reason for TAMP to refuse the aforesaid service being charged by TMILL which will also provide extra revenue.

(b). <u>Relevant Extract from the tariff Order dated 20 May 2014:</u>

<u>(Paragraph no. 12(xLvi))</u>

The TMILL has proposed a new note under proposed Section 7.1 to the effect that wherever only labour support is provided by TMILL and no equipment support is provided, consolidated rate of ₹50/- per MT will be applicable towards provision of labour for shore handling activity in case of project / any other package / break bulk cargo. This rate is reported to be based on the prevailing market rate. Since the proposed rate is not based on cost of rendering the service and also since the TMILL has not estimated the additional revenue arising out of the proposed new tariff item, the Authority is not in a position to approve the proposed rate.

(c). <u>Analysis:</u>

(i). Admittedly, the TMILL had considered the proposed rate of ₹50/- per MT towards labour support of shore handling while determining the income at the proposed level of tariff in respect of Project cargo (Equipment for shore handling not provided by TMILL). To this extent, there appears to be an error apparent on the face of the records considered in the Order of May 2014. However, the position that the rate of ₹ 50/- per MT is not based on cost of rendering the service, still holds good.

(ii). As mentioned by TMILL above, the cost of labour working at Berth no.12 has been already included in the cost statement filed by TMILL. In other words, this cost has already been factored while arriving at the decision taken in the May 2014 Order. In this backdrop, if the TMILL still desires to have a separate rate towards labour support of shore handling, then it may entail reduction in the rate of any of the tariff item approved vide the May 2014 Order, so as to maintain a revenue neutral position to TMILL. No such reduction in the rate of any of the tariff items approved vide the May 2014 Order has been proposed by the TMILL.

(iii). Nevertheless, considering that the cost of labour working at Berth no.12 has been already included in the cost statement filed by TMILL, non-prescription of a separate rate towards labour support of shore handling to TMILL now, would not put TMILL in a disadvantageous position, as it would be recovering the costs in this regard albeit from some other tariff item.

(iv). In view of this position, there is no merit in the submission made by TMILL for prescription of a separate rate towards labour support of shore handling. However, for the reason brought out above, Paragraph no. 12(xLvi) of the Order dated 20 May 2014, is replaced with the following:

"The TMILL has proposed a new note under proposed Section 7.1 to the effect that whenever only labour support is provided by TMILL and no equipment support is provided, consolidated rate of ₹50/- per MT will be applicable towards provision of labour for shore handling activity in case of project/ any other package/ break bulk cargo. This rate is reported to be based on the prevailing market rate. Since the proposed rate is not based on cost of rendering the service, this Authority is not in a position to approve the proposed rate."

(5). <u>Past surplus adjustment for 2007-08 to 09-10:</u>

(a). <u>Points made by TMILL in its Review Application:</u>
The Authority has adjusted ₹4.6 crores from purported surplus for 2007-08 to 2009-10 based on October 2011 order. This amount is largely related to the notional revenue calculated for this period. For the period 2011-12 to 2012-13, TAMP had adjusted portion of the purported surplus which was assailed by TMILL before the Honorable High Court at Calcutta and the matter is still pending. As such the adjustments of ₹4.60 crores presently on account of purported surplus for the aforesaid period ought not to have been made by TAMP since the initial imposition of surplus by TAMP by its order dated 25 March 2011 and further reviewed vide order dated 11 October 2011 is under challenge and pending consideration before the Hon'ble High Court at Calcutta.

(b). <u>Relevant Extract from the tariff Order dated 20 May 2014:</u>
<u>*(Paragraph no. 12(vi)(e))*</u>

Further, as mentioned in the Review Order of TMILL of October 2011, it may be recalled that three instalments of the additional surplus over and above the admissible return and permissible cost assessed for the period from 2007-08 to 2009-10 amounting to ₹ 459.62 lakhs remains to be adjusted during the tariff cycle 2013-14 to 2015-16.

(c). <u>Analysis:</u>

(i). The TMILL has questioned the adjustment of past surplus to the tune of ₹ 459.62 lakhs pertaining to the period from 2007-08 to 2009-10 as quantified in the October 2011 Order, on the ground that the October 2011 Order is under challenge and pending consideration before the Hon'ble High Court. Further, the TMILL has associated the reason for the surplus of ₹ 459.62 lakhs in the October 2011 to be arising due to the notional revenue calculated for the concerned period in the October 2011 Order and since the Order is challenged and is pending, the Authority ought not to have given effect to the Order.

(ii). This Authority has been directed by the Hon'ble Court to fix tariff without getting influenced by the pendency of the previous writ petitions filed by the TMILL. Therefore, the decision taken in the October 2011 Order that three instalments of the additional surplus over and above the admissible cost and permissible return assessed for the period from 2007-08 to 2009-10 amounting to ₹ 459.62 lakhs for adjustment during the tariff cycle 2013-14 to 2015-16 would remain unaltered. Thus, the adjustment in this regard carried out in the May 2014 should remain intact. The TMILL has not pointed out any error apparent on the face of the records warranting a review of the May 2014 Order on this aspect. Therefore, no review in this regard is called for.

(6). <u>Unauthorised occupation charges:</u>

(a). <u>Points made by TMILL in its Review Application:</u>
TMILL had requested the Authority vide letter dated 31 January 2014 and in its earlier proposal for tariff fixation to include terms and conditions pertaining to "Unauthorised occupation of Plots" as per Section 13. The Authority has not included the same in the tariff

order. The Authority is requested to include the same so that there is better clarity for charging unauthorised occupation plot rents in case of long stayal of cargo.

(b). <u>Analysis:</u>

It is true that the TMILL had proposed to include conditions pertaining to "Unauthorised occupation of Plots" in its Scale of Rates. However, inadvertently, it was missed out while drawing up the revised Scale of Rates of TMILL. It is relevant here to mention that the note proposed by TMILL is in line with a similar conditionality prescribed in the Rent Schedule for land and buildings of KOPT at Haldia. Since the proposed provision is penal in nature and would deter the licensees from the continued unauthorised occupation, this Authority is inclined to approve the penal structure as proposed by the TMILL. It is noteworthy that the licensor port (KOPT) has no objection in this regard.

(7). <u>Computation of Operational expenses for future years:</u>

(a). <u>Points made by TMILL in its Review Application:</u>

(i). Working Capital: Current liabilities (clause 12(xxiv} (b) (v): As per Form 4A, read with the guidelines, working capital includes current assets and current liabilities. In so far as sundry debtors are concerned only two months estate income is allowable debtors. As much as TMILL's business did not have debtors of these nature, as would be seen from segregated accounts, TAMP have calculated Sundry Debtors as NIL.

(ii). Since no sundry debtors are allowed by TAMP as such for the purpose of calculation of working capital, current liabilities should also be considered as nil. Any calculation otherwise on account of current liabilities would lead to an erroneous computation of working capital. This was one of the reasons that no current liabilities were taken in the proposal submitted by TMILL.

Therefore, it is has requested to rectify the error in computation of working capital for the purpose of calculation of capital employed and ensure fair return to the terminal operator as per clause 2.2(ii) of the Guidelines.

(b). <u>Relevant Extract from the tariff Order dated 20 May 2014:</u>

<u>*(Paragraph no. 12(xxiv)(b)(i) to (v))*</u>

(i). The TMILL has not considered Sundry Debtors as part of its estimates of Working Capital.

(ii). The TMILL has considered 50% of the estimated Repairs and maintenance cost for the years 2013-14 to 2015-16 as Inventory for the said years. The TMILL has confirmed that it is in line with the stipulation at Clause 2.9.9 of the tariff guidelines of 2005. The estimated Inventory is reckoning with the moderation effected in the Repairs and Maintenance cost as discussed earlier.

(iii). Cash balance has been calculated at one month's operating expenses including overheads.

(iv). The Security deposit amounting to ₹ 141.61 lakhs is considered for each of the years under consideration, as has been done during the last review of tariff of TMILL.

(v). The TMILL has not furnished the figures of estimated Current liabilities for the years under consideration. As stated earlier, current liabilities relevant for Berth no. 12 have been calculated for the past period. Based on the average ratio between the current assets and current liabilities for the past years i.e. 2010-11 to 2012-13, the current liabilities have been estimated for the years 2013-14 to 2015-16. Thus, the working capital (Current assets less current liabilities) works out to ₹40.74 lakhs, ₹44.93 lakhs and ₹47.41 lakhs for the years 2013-14 to 2015-16 respectively.

(c). Analysis:

(i). As per Clause 2.9.3 of the tariff guidelines of 2005, Capital Employed comprises of 'Net fixed assets plus working capital'. Clause 2.9.4, defines working capital as 'Current assets less Current liabilities'. The tariff guidelines of 2005 prescribe norms for determining Current assets. This does not imply that Current liabilities have to be ignored in the assessment of working capital. The current liabilities are thus recognized while determining the working capital in all tariff cases.

(ii). The TMILL had not furnished the current liabilities for the years 2010-11 to 2012-13. This Authority was, therefore, constrained to consider the Current liabilities. For the purpose, the proportion of Current liabilities of the Haldia Division to the Current Assets of Haldia Division as given in the Segregated Accounts was taken as base and applied to the figures of Current Assets as calculated in the Order of May 2014 in the analysis. It is noteworthy that such an approach of determining Current liabilities has been carried out in the March/ October 2011 Order of TMILL as well.

(iii). The TMILL has not pointed out any error apparent on the face of the records warranting a review of the May 2014 Order on this aspect. Therefore, no review in this regard is called for.

8.1. In the light of the analysis given above, the past deficit quantified for the years 2010-11 to 2012-13 stands revised on account of the impact of rebates and discounts as shown below:

(₹ In Lakhs)

Sl. No.	Items	2010-11	2011-12	2012-13	Total
(i).	Considering actual Rebates and Discount ***(Refer Paragraph no. 7 1c)***	128.81	-21.60	91.13	**198.34**
	Total	128.81	-21.60	91.13	**198.34**

8.2. Thus, the past period deficit for the years 2010-11 to 2012-13 is reassessed as shown below:

₹ in Lakhs

Total Deficit for the period 2010-11 to 2012-13 as assessed in the tariff Order of May 2014	-588.91
Less : Effect of the adjustment explained in the above table	198.34
Revised total deficit	-390.57
50% of the revised past deficit for set off in the current tariff cycle.	-195.29

8.3. Accordingly, a deficit amount of ₹ 195.29 lakhs is to be set off over a period of two years i.e. 2014-15 and 2015-16 instead of ₹ 294.45 lakhs as determined in the tariff Order of May 2014.

9.1. Thus, considering the revised amount of deficit pertaining to the years 2010-11 to 2012-13 as discussed above and keeping all other cost components the same as considered in the Cost statement forming part of the May 2014 Order, it is seen that the TMILL would be in deficit to the tune of around ₹ 48.09 crores during the years 2013-14 to 2015-16 if it operates the facility at the level of tariff fixed in the year 2011, instead of ₹ 49.08 crores, as assessed in the May 2014 Order.

9.2. Based on the approach adopted in the May 2014 Order and considering the Operating income of balance 1 year & 9 months at the 2011 level of tariff at ₹ 44.97 crores (as relied upon in the May 2014 Order), the total revised deficit of ₹ 39.62 crores as a percentage of operating income works out to 88.09% now, instead of 90.30% assessed in the May 2014 Order, as shown below:

(₹ in crores)

Particulars	**As reflected in May 2014 Order**				**As reviewed now**			
	At the 2008 level of tariff		**At the 2011 level of tariff**		**At the 2008 level of tariff**		**At the 2011 level of tariff**	
	2013-14	**2014-15 3 months**	**2013-14**	**2014-15 3 months**	**2013-14**	**2014-15 3 months**	**2013-14**	**2014-15 3 months**
Net Deficit	-5.53	-2.95	-10.15	-4.59	-5.53	-2.95	-10.15	-4.46
Total net deficit	-8.47		-14.74		-8.47		-14.62	
Differential deficit for 1 year and 3 months	-6.27				-6.14			
Deficit at the 2011 level of tariff for the balance 1 year 9 months of the tariff cycle	-34.34				-33.48			
Deficit to be recovered at the 2011 level of tariff in the balance 1 year 9 months of the tariff cycle	-40.61				-39.62			
Operating income of balance 1 year & 9 months at the 2011 level of tariff	44.97				44.97			
Total deficit as a % of operating income	-90.30%				-88.09%			

9.3. Thus, the reduction in the quantum of deficit is seen to be about ₹ 0.99 crores (₹ 40.61 crores – ₹ 39.62 crores). Also, the financial implication arising due to prescription of different per tonne rates for handling different types of cargo by HMC has been quantified earlier at ₹ 32.39 lakhs. Thus, the total impact arising due to Review Application can be quantified at ₹ 131.56 lakhs i.e. about ₹ 1.32 crores.

9.4. The workings with regard to the quantum of deficit is given below:

Particulars	₹ in crores
Revised deficit on account of the Review Application	-39.620
Add: Additional income due to prescription of different per tonne rates for handling different types of cargo by HMC	0.324
Resultant deficit	-39.296
Operating income of balance 1 year & 9 months at the 2011 level of tariff (as quantified in the May 2014 Order)	44.970
Resultant deficit as a % of operating income	87.38%

9.5. Thus, in a nutshell, as against the increase of 90% granted to TMILL vide the May 2014 Order, the increase warranted was about 87.38% for the period from July 2014 to March 2016, as shown above.

9.6. The revised Past period analysis and the Cost statement and the revised workings with respect to the above position is attached as **Annex – II** to **IV**.

9.7. Thus, the effect of the variation arising out of the review application is marginal. The tariff ordered in May 2014 is due for review in another fourteen months. During the next review, the estimates for the years 2013-14 to 2015-16, based on which the quantum of increase has been determined, would be analysed with reference to the actuals and the actual surplus/ deficit would be factored. Keeping in view the above mentioned aspects, and with a view to maintain stability in tariff, the quantum of increase already granted vide Order of May 2014 is not tinkered with, at this juncture. The impact of the above position which would be reflected in the actuals can be taken into account during the next review. Thus, this Authority decides to maintain status quo in the existing level of tariff.

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

(i). To maintain status quo in the existing level of tariff.

(ii). The schedule at Sl.no. 13 of Section 10.1 in the existing Scale of Rates be replaced with the following:

13 Equipment assistance charges for Harbour Mobile Crane of 104 MT

Description of cargo	Rate per MT in ₹
Iron Ore	56.25
Limestone	56.25
Fertiliser and other bulk cargo	73.77
HRC/CRC Imports	136.36
Steel Export	112.50
Project Cargo	529.41

(iii). To insert the following note no. (xvii) at the existing Section 10.3:
"After the expiry of the licences of the yard/shed, or termination or determination or forfeiture of licence, if the licensee continues to occupy it unauthorisedly, the licensee shall be liable to pay compensation for wrongful use and occupation at the following rates till vacant possession is obtained: -

First 30 days	3 times the rate as per prevailing SOR
Next 30 days	5 times the rate as per prevailing SOR
Continued unauthorized occupation beyond 60 days	10 times the rate as per prevailing SOR

11. The amended provision and new provision are deemed to have come into force from the effective date from which the tariff Order of May 2014 is implementable and will be in force till 31 March 2016.

(T.S. Balasubramanian)
Member (Finance)

Annex I

CALCULATION SHEET TO ARRIVE AT THE PER TONNE HANDLING RATE FOR THE MOBILE HAROUR

(Rs in lakhs)

Sl. No.	Description	Estimates as moderated by TAMP		
I	**Optimal capacity**			
		Dry Bulk Cargo	**Break Bulk Cargo**	**Other Cargo**
(vii)	**Average Annual Traffic handled by HMC (in Tonnes)**	**315,120**	**47,220**	**6,656**
II	**CAPITAL COST**			
(i)	Cost of Mobile Harbour Crane	138,700,000		
III	**OPERATING COST PER ANNUM**			
(i)	Fuel Cost (70 ltr per hour* Rs.55 per ltr * 586 hours)	2,256,100		
(ii)	Maintenance & Repair (average for the years 2013-14 to 2015-16)	2,576,504		
(iii)	Royalty/ Revenue share	1,778,900		
(iv)	Insurance @ 1% on Capital cost	1,387,000		
(v)	Depreciation	6,600,000		
(vi)	Other expenses	2,000,000		
	Total Operating Cost (Sum i to vi)	**16,598,504**		
IV	**Return on Capital Employed @ 16%**	10,576,000		
V	**Estimated Annual Revenue Requirement:**			
	(a). Total Operating Cost	16,598,504		
	(b). Return on Capital Employed	10,576,000		
	(c). Total Revenue Requirement	**27,174,504**		
VI	**Cost per MT**	**Dry Bulk Cargo**	**Break Bulk Cargo**	**Other Cargo**
	(a). Total Annual Requirement (₹ in lakhs)	**27,174,504**	**27,174,504**	**27,174,504**
	(b). Traffic	**315120**	**47220**	**6656**
	(c). Cost Per MT			
	(i) Foreign	**86.24**	**575.48**	**4082.85**
	(ii) Coastal	**51.74**	**345.29**	**2449.71**

Annex - II

Sr. No.	Particulars	Estimates relied upon in the tariff Order of 25 March 2011 and as reviewed in the Order dated 10 October 2011			Actuals (Modified to reflect the income at the 2011 level of tariff)		
		2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
	TM INTERNATIONAL LOGISTICS LIMITED (TMILL)						
	Analysis of performance of TMILL for the years 2010-11 to 2012-13.						
	₹ in Lakhs						
	Traffic of Cargo (in MT's)	**1251502**	**1251502**	**1251502**	**1193775**	**850112**	**727870**
I	**Income from services rendered**	3393.35	2738.74	2609.95	3365.59	2053.02	2957.48
	Total	**3393.35**	**2738.74**	**2609.95**	**3365.59**	**2053.02**	**2957.48**
II	**Operating Costs (excluding depreciation)**						
	Operating & Direct Labour	536.78	556.96	577.91	534.46	537.68	618.57
	Maintenance Labour	15.76	16.35	16.97	14.64	16.02	17.46
	Equipment Running Costs	251.13	260.30	269.82	203.94	325.50	145.29
	Royalty / revenue share	187.14	210.60	211.18	204.54	176.46	225.85
	Equipment Hire	3.79	3.79	3.93	39.62	1.04	4.40
	Lease Rentals	207.96	247.07	259.42	179.58	190.68	224.77
	Insurance	38.82	40.03	45.03	28.45	28.81	27.25
	Other expenses	409.30	428.91	460.30	449.76	384.56	344.05
		1650.68	**1764.02**	**1844.56**	**1654.99**	**1660.75**	**1607.64**
III	Depreciation	209.87	214.39	223.39	223.93	248.68	279.49
IV	**Overheads**						
	Management & Administration overheads	401.34	416.43	432.09	435.75	413.60	439.70
	General Overheads	13.97	14.49	15.04	20.40	91.13	106.17
		415.31	**430.92**	**447.13**	**456.15**	**504.73**	**545.87**
V	**Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)**	1117.49	329.41	94.87	1030.53	-361.13	524.48
VI	**Finance & Miscellaneous Income (FMI)**						
	Other Income	0.00	0.00	0.00	0.04	150.02	0.05
	Discounted terminal value receivable as per the concession agreement	0.55	0.62	0.70	0.55	0.62	0.70
	Total	**0.55**	**0.62**	**0.70**	**0.59**	**150.64**	**0.75**
VII	**Finance & Miscellaneous Expenses (FME)**						
	Contribution to Provident Fund	7.11	7.37	7.65	8.43	17.10	24.02
	Total	**7.11**	**7.37**	**7.65**	**8.43**	**17.10**	**24.02**
VIII	**FMI Less FME (VI) - (VII)**	-6.56	-6.75	-6.95	-7.84	133.54	-23.27
IX	**Surplus Before Interest and Tax (V) + (VIII)**	**1110.93**	**322.65**	**87.91**	**1022.69**	**-227.59**	**501.21**
X	**Capital Employed**	3785.47	3694.11	3972.06	3835.69	3510.63	3196.68
XI	**Return on Capital Employed**	605.67	591.06	635.53	613.71	561.70	511.47
XII	**Net Surplus / (Deficit) (IX) - (XI)**	505.25	-268.41	-547.62	408.97	-789.29	-10.26

Annex - III

TM International Logistics Limited (TMILL)
Consolidated Income & Cost statement.

(Rs. In Lakhs)

Sr. No.	Particulars	Actuals (Modified to reflect the income at the 2011 level of tariff)			Estimates furnished by TMILL in January 2014 at the 2008 level of tariff			Estimates as reviewed by TAMP at the 2011 level of tariff		
		2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2013-14	2014-15	2015-16
	Traffic (In MTs)	1193775	850112	727870	765000	915000	915000	820000	915000	915000
I	**Total Operating Income**									
	Cargo handling income	3365.59	2053.02	2957.48	2042.40	2546.92	2719.87	1761.29	2052.48	2208.73
	Others				710.84	594.02	599.02	573.87	426.62	429.27
	Total	**3365.59**	**2053.02**	**2957.48**	**2753.24**	**3140.94**	**3318.89**	**2335.16**	**2479.09**	**2638.00**
II	**Operating Costs (excluding depreciation)**									
	Operating & Direct Labour	534.46	537.68	618.57	699.59	748.56	800.96	699.59	733.96	785.33
	Maintenance Labour	14.64	16.02	17.46	32.06	34.31	36.71	32.06	34.31	36.71
	Equipment Running Costs	203.94	325.50	145.29	304.24	342.12	368.48	308.85	342.24	368.61
	Royalty / revenue share	204.54	176.46	225.85	213.03	244.56	260.25	172.80	234.02	254.24
	Equipment Hire	39.62	1.04	4.40	12.00	15.00	15.00	12.00	15.00	15.00
	Lease Rentals	179.58	190.68	224.77	234.43	244.30	255.16	240.78	246.50	252.35
	Insurance	28.45	28.81	27.25	29.52	46.82	51.82	29.48	51.04	59.61
	Other expenses	449.76	384.56	344.05	512.65	815.07	1,016.79	540.14	807.09	1,006.22
	Total	**1654.99**	**1660.75**	**1607.64**	**2037.52**	**2490.74**	**2805.17**	**2035.69**	**2464.15**	**2778.07**
III	Depreciation	223.93	248.68	279.49	403.11	511.47	540.88	397.93	511.58	540.99
IV	**Overheads**									
	Management & Administration overheads	435.75	413.60	439.70	470.48	503.42	538.66	470.48	503.42	538.66
	General Overheads	20.40	91.13	106.17	113.45	121.40	129.89	113.60	121.55	130.06
	Total	**456.15**	**504.73**	**545.87**	**583.94**	**624.81**	**668.55**	**584.08**	**624.97**	**668.72**
V	**Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)**	**1030.53**	**(361.13)**	**524.48**	**(271.33)**	**(486.08)**	**(695.71)**	**(682.54)**	**(1,121.60)**	**(1,349.77)**
VI	**Finance & Miscellaneous Income (FMI)**									
	Discounted terminal value receivable as per the concession agreement.	0.55	0.62	0.70	0.56	0.64	0.74	0.56	0.64	0.74
	Other Income	0.04	150.02	0.05	0.00	0.00	0.00	0.00	0.00	0.00
	Total	**0.59**	**150.64**	**0.75**	**0.56**	**0.64**	**0.74**	**0.56**	**0.64**	**0.74**
VII	**Finance & Miscellaneous Expenses (FME)**									
	Contribution to Provident Fund	8.43	17.10	24.02	25.70	27.50	29.43	25.70	27.50	29.43
	Total	**8.43**	**17.10**	**24.02**	**25.70**	**27.50**	**29.43**	**25.70**	**27.50**	**29.43**
VIII	**FMI Less FME (VI) - (VII)**	**(7.84)**	**133.54**	**(23.27)**	**(25.14)**	**(26.86)**	**(28.69)**	**(25.14)**	**(26.86)**	**(28.69)**
IX	**Surplus Before Interest and Tax (V) + (VIII)**	**1022.69**	**(227.59)**	**501.21**	**(296.47)**	**(512.94)**	**(724.40)**	**-707.68**	**-1148.46**	**-1378.46**
X	Capital Employed	3835.69	3510.63	3196.68	3494.61	4754.64	4763.70	2880.99	4324.40	4287.48
XI	Return on Capital Employed	613.71	561.70	511.47	559.14	760.74	762.19	460.96	691.90	686.00
XII	Capacity Utilization	88.02%	86.45%	113.00%	64.07%	76.63%	76.63%	68.68%	76.63%	76.63%
XIII	Return adjusted for capacity utilization	613.71	561.70	511.47	559.14	760.74	762.19	460.96	691.90	686.00
XIV	**Net Surplus / (Deficit) after allowable ROCE (IX - XIII)**	408.97	(789.29)	(10.25)	(855.60)	(1,273.68)	(1,486.58)	(1,168.64)	(1,840.37)	(2,064.45)
XV	**50% of the past deficit set off**		(195.28)		0.00	0.00	0.00	0.00	(97.64)	(97.64)
XVI	**Set off of balance three instalment of the past surplus assessed for the period 2007-08 to 2009-10**				0.00	0.00	0.00	153.20	153.20	153.20
XVII	**Total Deficit**				(855.60)	(1,273.68)	(1,486.58)	(1,015.44)	(1,784.81)	(2,008.90)
XVIII	**Net Surplus / (Deficit) as a % of operating income (XVII/I in %)**				-31.08%	-40.55%	-44.79%	-43.48%	-71.99%	-76.15%
XIX	**Average Net Surplus/ (Deficit) as a % of operating income**					-38.81%			-63.88%	

Annex - IV

WORKINGS

	2013-14	**2014-15**
Income at the 2008 level of tariff as given by TMILL	For 7.65 lakh tonnes	For 9.15 lakh tonnes
- cargo handling	2042.40	2,546.92
- plot rentals	525.05	367.55
- HMC	185.80	226.48
	2753.24	3140.94

	For the higher traffic of 8.20 lakh tonnes	For 3 months from April to June 2014
Income at the 2008 level of tariff		
- cargo handling	2189.23	636.73
- plot rentals	562.79	91.89
- HMC	199.15	56.62
	2951.18	785.23
Less: Operating expenses incl. overheads and depreciation	3017.70	900.17
Operating surplus/ (deficit)	(66.52)	(114.94)
FMI less FME	(25.14)	(6.71)
Surplus before interest & tax	(91.66)	(121.65)
Capital Employed	2880.99	4324.40
ROCE	460.96	172.98
Net surplus/ deficit	(552.62)	(294.63)

Particulars	**At the 2008 level of tariff**		**At the 2011 level of tariff**	
	2013-14	**2014-15 3 months**	**2013-14**	**2014-15 3 months**
Net Deficit	-5.53	-2.95	-10.15	-4.46
Total net deficit	-8.47		-14.62	
Differential deficit for 1 year and 3 months	-6.14			
Deficit at the 2011 level of tariff for the balance 1 year 9 months of the tariff cycle	-33.48			
Deficit to be recovered at the 2011 level of tariff in the balance 1 year 9 months of the tariff cycle	-39.62			
Operating income of balance 1 year & 9 months at the 2011 level of tariff	44.97			
Total deficit as a % of operating income	-88.09%			

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.

F. No.TAMP/34/2014-TMILL	**-**	**Review application filed by TM International Logistics Limited for review of the Order dated 20 May 2014.**

1. A summary of the comments of the Kolkatta Port Trust (KOPT) and the response of M/s. TM International Logistics Limited (TMILL) thereon is tabulated below:

Sl. No.	Comments of Kolkatta Port Trust (KOPT)	Reply of TMILL
(i).	Addition of income to the tune of ₹10.67 Crs. on notional basis for 2010-2013: As per the Lincese Agreement [Article 5.1(b)], if any discount is allowed by TMILL to its customers, the same would be ignored for the purpose of calculation of royalty payable by them to KOPT. KOPT has no further comment to offer on the issue.	TMILL is paying Royalty to KOPT based on the provisions of License Agreement irrespective of discounts given to the customers. However, this issue is related to the principle applied by the authority to calculate the operating income of TMILL for the subject period. As explained in details vide TMILL's review application no. TMILL/152/14-15 dated 9the July 2014; the method of calculation is not as per the provision of tariff guidelines of 2004. TMILL once again requested the authority to refer to point no. 1 of the letter dated 9th July 2014 (review application and rectify the error which leads to unwanted claim of notional revenue).
(ii).	Lower Working Capital considered for 2010-11, 2011-12 & Nil for 2012-13: KOPT has no comment to offer on the issue.	As KOPT has not offered any comment, TMILL request the authority to consider the submission of TMILL in the point no. 2 of the letter dated 9th July 2014 so that the error can be rectified.
(iii).	Non-fixation of rate on per shift basis: KOPT Berth no. 12 is a multi-commodity berth handling both dry bulk and break bulk cargo. Productivity of break bulk cargo is usually lower than dry bulk cargo due to inherent nature, dimension, packaging etc. of break bulk cargo. Hence, TAMP may like to consider this issue appropriately.	The comments given by KOPT is in line with the submission of TMILL vide letter dated 9th July 2014 (point no. 3) and subsequent letter dated 10th September 2014 (pint no. 3). TMILL requests the authority to give different rate for Harbour Mobile Crane for break-bulk cargo on per shirt basis.
(iv).	Per MT rate for labour charge Per MT rate for labour charge: In its review application filed with TAMP, TMILL had given reference to a letter dated 31 January 2014. As the said letter has not been made available, it may not be proper to comment on the issue. Hence, TAMP may decide the issue appropriately.	As KOPT has not provided any comments, TMILL request the authority to consider the submissions of TMILL as per letter dated 9July 2014 (point no. 4) and earlier letter dated 31 January 2014. TMILL has provided all clarification and supporting vide the two above mentioned letters. TMILL requests the authority to provide per MT rate for labour charges.
(v).	Past surplus adjustment for 2007-08 to 09-10: KOPT has no comment to offer on the issue.	As KOPT has not offered any comment, TMILL request the authority to consider the submission of TMILL in the point no. 5 of the letter dated 9the July 2014 so that the

		error can be rectified.
(vi).	Unauthorised occupation charges: KOPT's Scale of Rates in respect of allotment of land on short term licenses basis contains provision of `encroachment' charges to discourage unauthorised occupation of areas by fault. KOPT has no objection, if such provision is allowed in TMILL's SOR.	KOPT has suggested that this provision can be included in the SOR of TMILL. TMILL requests the authority to include the same.

2. A joint hearing in this case was held on 22 August 2014 at the KOPT premises. At the joint hearing, TMILL and KOPT have made the following submissions:

<u>TM International Logistics Limited</u>

(i). Makes a brief mention about the history of TMILL i.e. details of the Joint Venture, details of commencement of operations etc.

(ii). Makes a brief power point presentation of its proposal.

(iii). We thank Authority for issuing the tariff Order. We also thank TAMP for giving us an opportunity of being heard on our Review petition.

(iv). However, there are minor issues in the Order, which we wish to highlight.

(v). Regarding Notional Income –

(a). It is known that the rates fixed by TAMP are at ceiling levels.

(b). Due to competition, we have to give lower rates to attract business.

(c). TAMP adds back the discounts to our income and calculates notional income.

(d). In the review of rates of TMILL, the notional income has been considered to the tune of about ₹10.62 crores.

(e). The amount is very huge. Please look into the matter.

(It was pointed out to TMILL that in the absence of actual details, TAMP was forced to consider rebates & discounts @ 15%. However, if TMILL furnishes the actual details, the same can be considered.)

(f). We will look into this.

(vi). Regarding shift based rate for HMC –

(a). Productivity of different types of cargo are different.

(b). A common per tonne rate has been prescribed for use of HMC.

(c). Since the cargo handled by the HMC at TMILL is not very large, the cargo are not able to cross subsidise each other.

(d). We want different per tonne rates for handling different types of cargo.
(The TMILL is advised to furnish workings to arrive at per tonne handling rates for each type of cargo maintaining a revenue neutral position)

(e). TMILL agrees to furnish the workings.

(vii). The new rate of ₹ 50/- per MT towards labour charges has not been approved. Considering the rate of ₹ 88/- per MT at other places (which is based on Unions), the rate proposed by TMILL is reasonable.

Kolkata Port Trust:

(i). The TMILL has not submitted its Segregated Accounts.

(ii). Inspite of TMILL agreeing to form a Special Purpose Vehicle (SPV), it has not been done and has been pending for years.

(iii). TMILL has been given higher rates. But, they will pay revenue share to KOPT as per KOPT's SOR, which is on the lower side. There is conflict in this regard. We request TAMP to intervene.
