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

TARIFF AUTHORITY FOR MAJOR PORTS

G No. 219 **New Delhi , 9 November 2011**

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 25 March 2011 passed by this Authority, as in the Order appended hereto.

(Rani Jadhav)
Chairperson

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/27/2011-TMILL

M/s. TM International Logistics Limited - - - Applicant

O R D E R
(Passed on this 11th day of October 2011)

This case relates to an application filed by TM International Logistics Limited (TMILL) for review of Order dated 25 March 2011 passed by this Authority.

2. This Authority had passed an Order on 25 March 2011 on the proposal received from TMILL for general revision of its Scale of Rates. Through the said Order, this Authority effected an across the board reduction of 32.29% in the then prevailing rates of TMILL. This Order was notified in the Gazette of India on 25 May 2011, and the revised Scale of Rates was to come into force with effect from 24 June 2011, after expiry of 30 days.

3.1. In this backdrop, the TMILL has filed an application dated 13 June 2011 for review of the Order dated 25 March 2011, in accordance with clause 3.3.1. of the tariff guidelines of March 2005. The main points made by TMILL for review of the said Order are summarized below:

(i). <u>With reference to adjustments made for the financial years 2007-08 to 2009-10:</u>

(a). The Authority has increased the revenue by ₹2246.40 lakhs for the said years on notional basis, which is actually the difference between the revenue that would have been earned by TMILL as per the approved SOR and the revenue actually earned by TMILL.

(b). Though the Authority has considered Security Deposit while calculating working capital for the years 2010-11 to 2012-13, it has failed to consider the same in the working capital for the years 2007-08 to 2009-10.

(c). The Authority has calculated current liabilities for the years 2007-08 to 2009-10 by way of an average for berth no. 12 on the basis of derived total current assets. However, no current liabilities should have been considered for the past period.

(d). Direction to TMILL to refund of ₹23.59 crores as alleged excess collection made by TMILL in the past.

(ii). <u>With reference to tariff fixation for Harbour Mobile Crane (HMC):</u>

(a). Rate based on per shift basis is essential and rate based on per MT may be limited to cargoes which have uniform rate of loading/ unloading.

(b). The percentage of cargo to be handled using HMC for the future (based on which the rate is determined) should be based on the actual share of cargo handled in the past using HMC.

(c). The Authority has considered lesser operational hours leading to lower fuel cost.

(d). Consideration of lower repairs cost in the calculation.

(e). Under the head 'Other expenses', higher salary and wages is to be considered. Royalty payable to KOPT should also be considered as cost.

(f). The Authority has not considered the royalty payable for the usage of HMC for the year 2010-11.

(iii). <u>With reference to adjustments made for the financial years 2010-11 to 2012-13:</u>

(a). The Authority has considered higher volumes for the future years.

(b). There is an error in deriving the surplus at 32.29%, as Authority has failed to consider cost elements like Management and General Overheads and Finance and Miscellaneous Income and Expenses for the years 2011-12 and 2012-13.

(c). The Authority has considered escalation factor of 3.76% for expenditure projections, as against the actual inflation factor of 8.6%.

(d). The Authority has considered the amount towards investment on covered shed as ₹200 lakhs instead of ₹210 lakhs.

(e). By computing current liabilities higher than Current assets, the Authority has considered working capital as NIL.

3.2. Based on the above submissions, the TMILL has stated that the Order of March 2011 contains several errors which are clear from the face of the records and as per provisions of Clause 3.3.1 of the tariff guidelines, the tariff Order of March 2011 requires review by this Authority. TMILL has also requested this Authority to issue such interim directions/ orders so that if the review order takes some time, TMILL does not end up collecting lower revenue from its customers, which would be irreparable loss to TMILL.

4. 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 25 March 2011 has been notified on 25 May 2011. Therefore, the application dated 13 June 2011 in the instant case has been filed by the TMILL within the stipulated time limit of 30 days.

5.1. It may also be relevant to mention here that the TMILL has also filed a Writ Petition in the High Court of Calcutta on 20 June 2011 against the tariff Order of March 2011.

5.2. The Hon'ble High Court after hearing the submissions made on behalf of the parties has disposed the Writ Petition of TMILL on 5 July 2011 directing this Authority to dispose the Review Application dated 13 June 2011 according to its convenience and Law. The Hon'ble High Court has further directed that during pendency of the review, the petitioners (TMILL) will be free to charge their clients at the old rates but difference between the old and the new rates shall be deposited by them month by month in Short term Fixed Deposit in a Nationalised Bank, free from any lien, with regular intimation to this Authority. The Writ Petitioner (TMILL) is to keep on renewing the said Fixed Deposit from time to time until further order is passed by this Authority in the pending review application.

6. In accordance with the consultation process prescribed, a copy of the review application filed by TMILL was circulated on 24 June 2011 to Kolkata Port Trust (KOPT) and the concerned users/ user organisations who were consulted during the proceedings of the general revision proposal of TMILL, seeking their comments. The comments received from the users/ user organisations were forwarded to the TMILL as feedback information. The TMILL has not furnished its remarks on the comments of the users/ user organisations. The comments received from some of the user organisations are summarized below:

<u>The Bengal Chamber of Commerce and Industry (BCCI):</u>

(i). Reduction in notified tariff for Berth no.12 as approved by TAMP is a welcome move and will definitely benefit the users but it should be appreciated that a just and fair return is also given to the operator, i.e., TMILL.

(ii). Even though 18% hike was allowed by TAMP to TMILL during last tariff cycle which was valid till 31st March 2010 and extended from time to time by TAMP, as a body representing several users of the TMILL's facility, it is appreciated that TMILL had passed on the benefit to the users voluntarily during the period of validity of last tariff order by way of charging rates lower than the approved rates. From the review application of TMILL it reveals that the Authority has penalized TMILL for the benefits passed on by TMILL to the users voluntarily which we feel is unfair to TMILL.

(iii). With regard to Working Capital and Current liabilities, the Authority may like to take a view on the subject as it is in a better position to analyze and appropriately consider the matter.

(iv). From the user point of view, having rates on both per MT basis as well as per shift basis for Harbour Mobile Crane would be a good gesture by the TAMP as it will provide them both the options and can avail best suited. For e.g., project cargo and steel cargo like CRC requires sophisticated handling and hence the productivity is low. If a per MT rate is given, then probably the operator may opt for speedy discharge which may affect the quality of handling and may lead to damages to the cargo. In any case, the rate on a per MT basis should not be the same for bulk handling material as compared to the steel materials which require slinging and un-slinging operations leading to lower productivity. With regard to import cargo vis-à-vis export cargo, import cargo will have lower productivity at the time of completion of discharge due to lower bite available to the crane. Considering all the facts as stated above and the usage of HMC being at the option of the user, the contentions of TMILL appear to be correct.

(v). In the past it has been observed that TMILL had voluntarily passed on the benefits of improved traffic to the users by way of charging less to the users and TAMP approved rates being the ceiling rates, consideration of traffic at a level beyond the capacity of TMILL's facility for all the 3 years would be unfair. In any case, if the actual rates that TMILL charges are higher than the competitive facility available next door, the volumes at TMILL's facility would drop. Iron ore is an uncertain cargo which has steep peak and trough period and should not be considered at very high levels for the entire 3 year period.

(vi). The inflation factor may be considered as per the Tariff fixation Guidelines and considering the recent hike in WPI and costs inflation rate of 3.76% seems to be at a lower side.

Indian Chamber of Commerce (ICC):

(i). ICC appreciates the good work done by TAMP in maintaining fine balance between safeguarding the interest of port users and ensuring a just and fair return to the port operators.

(ii). After analyzing the review application of TMILL and co-relating the same with the tariff Order, it appears that there are few areas where the computation includes errors which needs to be corrected on the basis of factual position.

(iii). The act of TMILL of charging rates lower than the ceiling rates during the years 2007-08 to 2009-10 and thereby passing on the benefits of higher volumes and cost optimalisation to the importers and exporters needs appreciation. Calculating profits based on notional income which TMILL has actually not earned will be incorrect to do as such a basis would discourage free market concept. Within the ceiling levels approved by TAMP, the TMILL may be allowed to charge any rate as per guidelines.

(iv). By charging a lower rate, the export/ import volume is bound to increase which is a win-win situation for both TMILL and the exporter/ importer.

(v). Had TMILL charged ceiling rates without any reduction, for obvious reasons, the volume at TMILL terminal would have been less which not only would have impacted the actual physical performance of TMILL, but also the trade would have suffered due to the higher costs. Consideration of actual volumes (which is the outcome of lower rates) and ceiling rates for analyzing the past performance cannot be justifiable and may hamper the business interests, trade and commerce.

(vi). Computation errors pointed out by TMILL are the areas on which the ICC is unable to comment, due to want of details.

(vii). With regard to usage of HMC, the user should have the option and as such the volume of cargo to be handled using HMC should not be taken as the 100% base to be handled by HMC.

(viii). The assumption of maintaining same levels of volume at ceiling rates for all the future years may not be correct, as pointed out by TMILL, higher volumes have been generated in the financial year 2011 by charging lower rates. The same quantity of cargo throughput may not be possible, if revenue is collected by TMILL at ceiling levels without offering any reduction. Infact, if the rate of TMILL is significantly more than the rates of facility next door, the volume of TMILL could be far less.

7.1. A joint hearing in this case was held on 7 July 2011 at the Kolkata Port Trust premises. The TMILL made a presentation highlighting the various points on which review of the tariff Order dated 25 March 2011 has been sought. At the joint hearing, TMILL and KOPT have made the following submissions:

<u>TM International Logistics Limited</u>

(i). We have not charged our customers the 18% increase allowed by TAMP in 2008. Therefore, calculation made by TAMP for the past period is only notional.

(ii). We have highlighted the errors in the calculation of current assets and current liabilities.

(iii). The quantum of reduction of tariff has been determined without considering overheads.

(iv). Mobile Harbour Crane rates require review on various counts.

<u>Kolkata Port Trust:</u>

(i). TMILL holds excess land. If they don't want the 60000 sq. mt. area of additional land taken by them, they should surrender it.

(ii). We get complaints from users of TMILL that MHC is thrust upon them.

7.2. As decided at the joint hearing, we have vide our letter dated 12 July 2011 sought additional information/ clarification from TMILL by 25 July 2011. Accordingly, the TMILL vide its letter dated 25 July 2011 has furnished the requisite 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>The TMILL has mentioned in its Review Application dated 13 June 2011 that the Current liabilities and Provisions reported in the segregated Annual Accounts for the years 2007-08 to 2009-10 includes</td><td>(The TMILL has furnished a Certificate from Chartered Accountant certifying that the TMILL has made total provision of royalty as given in the table below:
<table>
<tr><th>Period</th><th>Royalty Provision made (₹)</th><th>Remarks</th></tr>
<tr><td>1.4.2007 to 31.3.2008</td><td>29768630</td><td>As computed by Independent Auditor for the period from 29.1.2002 to 28.1.2005</td></tr>
</table></td></tr>
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<table>
<tr>
<td></td>
<td>the provision kept for the disputed part of the royalty amount to the extent of ₹297 lakhs, ₹558 lakhs and ₹623 lakhs respectively. However, the Schedule relating to the Current liabilities and Provisions forming part of the Annual Accounts for the respective years does not explicitly reflect the disputed royalty amount. TMILL to furnish Certificate from the Chartered Accountant to substantiate the reported disputed royalty amounts forming part of Current liabilities and Provisions.</td>
<td>
<table>
<tr><td>1.4.2008 to 31.3.2009</td><td>19589478</td><td>As computed by Independent Auditor for the period from 29.1.2005 to 28.1.2007</td></tr>
<tr><td></td><td>8070659</td><td>As computed by Independent Auditor for the period from 29.1.2007 to 31.3.2009</td></tr>
<tr><td>1.4.2009 to 31.3.2010</td><td>3170753</td><td>As computed by Independent Auditor for the period from 29.1.2007 to 28.1.2008</td></tr>
<tr><td></td><td>3312338</td><td>As computed by Independent Auditor for the period from 1.4.2009 to 31.3.2010</td></tr>
<tr><td>Total</td><td>63911858</td><td></td></tr>
</table>
The Certificate, interalia, also states that the Balance Sheet as on 31 March 2010 forming part of the audited accounts includes a sum of ₹63911857/-comprising ₹.29768630/- charged to Profit & Loss Account for the year ended 31 March 2008, ₹27660137/- charged to Profit & Loss Account for the year ended 31 March 2009 and ₹6483091/- charged to Profit and loss account for the year ended 31 March 2010.
</td>
</tr>
<tr>
<td>(ii).</td>
<td>TMILL has now reported in its Review Application in reference that the present labour cost for operation of the Harbour Mobile Crane (HMC) is about ₹20 lakhs per annum. The TMILL to furnish documentary evidence with workings to support the labour cost of ₹20 lakhs for operation of HMC.</td>
<td>
The information furnished by TMILL is as follows:
<table>
<tr><th>Particulars</th><th>Annual CTC as on 25.7.2011 (₹ In lakhs)</th></tr>
<tr><td>Operator – 1</td><td>9.85</td></tr>
<tr><td>Operator – 2</td><td>10.00</td></tr>
<tr><td>Operator – 3</td><td>9.44</td></tr>
<tr><td>Operator – 4</td><td>5.00</td></tr>
<tr><td>Total Annual Cost</td><td>34.29</td></tr>
</table>
The TMILL has also furnished copies of the recent salary revision letter issued to the above mentioned employees, to support the figures given above.
</td>
</tr>
</table>

7.3. At our request, the TMILL vide its e-mail dated 9 September 2011 has furnished cargo wise details about the usage of HMC for the past years 2007-08 to 2009-10, which are given below:

Year	Cargo	Actual Volume handled at B12	Total volume handled by HMC	% cargo handled by HMC	Running Hours	Output/Hr. MT/Hr.
2007-08	Iron Ore	-	-	N.A.	0	0
	Steel	569,111	148,548	26%	1,017	146
	Project Cargo	-	13,322	N.A.	363	37
	Other Bulk	372,747	122,468	33%	508	241
	Total	941,858	284,338	30%	1,888	151
2008-09	Iron Ore	328,124	308,383	94%	545	566
	Steel	300,783	32,536	11%	274	119
	Project Cargo	-	20,016	N.A.	408	49
	Other Bulk	205,418	171,371	83%	386	444
	Total	834,325	532,306	64%	1,612	330
2009-10	Iron Ore	729,969	679,227	93%	1,131	601
	Steel	238,133	44,604	19%	299	149
	Project Cargo	29,612	29,526	100%	578	51
	Other Bulk	207,389	98,843	48%	308	321
	Total	1,205,103	852,200	71%	2,315	368
2010-11	Iron Ore	920,121	699,729	76%	1,065	657
	Steel	118,812	11,067	9%	79	140
	Project Cargo	52,315	20,942	40%	654	32
	Other Bulk	102,527	76,713	75%	288	267
	Total	1,193,775	808,451	68%	2,086	388

7.4. As decided at the joint hearing, KOPT was requested vide our letter dated 12 July 2011 to furnish a detailed note about underutilisation of additional land taken by TMILL and on the complaint received by it from the users that the MHC is thrust upon them. After reminder, the

KOPT vide its letter dated 30 September 2011 has furnished its comments. The summary of the comments made by KOPT is given below:

(i). In terms of TMILL's request, additional land measuring 54,000 Sq. Mtr. (w.e.f. 11.01.2007 and 9,000 Sq. Mtr. (w.e.f. 03.10.2007) inside dock area has been allotted to TMILL. The land has been allotted for setting up cargo storage facilities (including two warehouses) with cargo evacuation arrangements by setting up railway tracks by TMILL with a view to promote cargo traffic at HDC through Berth No.12.

Although some open storage area has been developed, TMILL has failed to set up the required railway sidings and warehouses as proposed by them.

Keeping in view the high demand of land inside the dock area at HDC for cargo storage, the utilisation of said 63,000 Sq. Mtrs. of land allotted to TMILL is not satisfactory which is evident from the fact that during the financial year 2008-09 and 2009-10 the utilisation in respect of available land has been only 12.69% and 52.42% respectively. Although in the year 2010-11 the land utilisation had improved to the level of 80.12%, but in the current fiscal the utilisation has been substantially reduced and till April 2011 the utilisation in respect of land is found to be only 39.69%.

It is felt that the under-utilisation of such prime land in the dock area may add to the cost during cost benefit analysis for fixing the tariff of Berth No.12 resulting in unnecessary escalation of tariff for Beth No.12.

(ii). TMILL handles dry bulk and break bulk cargo at Berth No.12 and themselves had requested for limiting the per metric ton basis rate of HMC for such cargo. Therefore, change in the requirement for per metric ton basis as well as ship basis rate as requested by the TMILL seems to be in variance to their earlier proposal. However, TAMP may like to consider the matter appropriately.

The reasons for idling of MHC stated by TMILL are commonly applicable everywhere for all resources deployed in cargo handling operations. For simultaneous working of MHC and ships crane, TMILL's contention that quantification is not possible is incorrect. As in case of break bulk individual weight will give the combined tonnage and in case of dry bulk the crane system will provide the tonnage handled.

(iii). Regarding traffic as fixed by TAMP, KOPT has nothing to comment.

(iv). The KOPT has received verbal complaints from few users of berth no. 12 that TMILL is insisting on the use of MHC. KOPT took up the complaint to TMILL and the TMILL has confirmed that they would not insist for use of MHC in the event of availability of suitable gears on the vessels.

TMILL is realising the charges for deployment of MHC on shift basis irrespective of the tonnage handled by the cranes and this is adding unnecessary cost for importers/ exporters in the event of non-performance / idling of MHC.

In the Tariff Order dated 25 March 2011, TAMP has rightly fixed the HMC charges on per tonne basis and the Port authority feels that the same should be continued even after review of the instant petition of TMILL for the benefit of the users.

(v). The Independent Auditor, in their report for the period 29.01.2009 to 28.01.2010 has considered royalty on use of MHC in Berth No.12 as per Clause 16.1.12(a) of the Revised Scale of Rates on deployment of actual number of shifts or invoice whichever is higher.

For determination of royalty on income from hiring of Mobile Harbour Crane, the actual revenue earned by TMILL from the said activity needs to be recognised, as has been done by the Independent Auditor.

KOPT is fully entitled to get revenue share from the income earned by TMILL from hiring of Mobile Harbour Crane.

The TMILL had earlier disputed certain aspects of the said computation of the royalty done by Independent Auditor. It is the contention of KOPT that as per the submissions made by TMILL in the review petition, the TMILL agrees that they are obliged to pay Royalty on such basis, till adoption of rates for use of Mobile Harbour Crane.

The actual royalty paid by TMILL against the hiring of Mobile Harbour Cranes to KOPT, may be recognized as such by TAMP.

(vi). Regarding Cargo projections, KOPT had sent its comments on the Tariff Proposal of TMILL. However, Iron Ore Cargo is volatile cargo and now, the annual quantity of Iron Ore to be handled at Berth No.12 to be restricted to 1.50 lakh tonnes as per TMILL earlier projection for additional land allotted to them.

(vii). In the Order of the Tariff Authority dated 17.03.2008, TMILL was directed to refund ₹17.75 crores to the concerned parties from whom they have allegedly collected the excess amount. However, in the Order dated 25.03.11 the Tariff Authority has directed TMILL to refund ₹.23.59 crores in this regard.

In this connection, attention is drawn of the Authority towards the judgement dated 15.05.2009 passed by the Hon'ble Kolkata High Court, wherein the Tariff Authority was directed to recalculate the excess charges realised by TMILL from its clients and to specify how the recalculated excess charges should be adjusted in the tariff already fixed or the future tariff to be fixed for the petitioner company.

In view of the above, Tariff Authority may have a relook into the entire issue.

The KOPT has not accepted the contention of TMILL that the major users of Port have voluntarily written to TMILL that they will not claim any refund charges against the past surplus as computed by the Authority. It is stated that all the five letters enclosed by TMILL with their Review Petition are from their Group Companies or Associated Companies.

Therefore, the point made by the KOPT is that these companies after foregoing the refundable excess amount, may claim/ adjust the same amount in some other way in future from TMILL.

TMILL has other clients who are not their Group Companies or Associated Companies and they have not enclosed any letter from such users.

8. The TMILL made a brief presentation of its case on 26 July 2011 in the office of this Authority.

9. A summary of the points made by the TMILL in its review application and the corresponding relevant extract from the tariff Order dated 25 March 2011 and our analysis thereon are furnished below:

A. <u>With reference to adjustments made for the financial years 2007-08 to 2009-10:</u>

(1). ***<u>Addition of income to the tune of ₹2246.40 lakhs on notional basis:</u>***

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

TMILL had earned total revenue of about ₹6679.46 lakhs during the said 3 years from the operations at Berth no.12 in terms of the License

Agreement which is also validated by the audited segregated accounts. The said audited accounts are further certified by the Independent Auditors as required by KOPT. However, while analyzing the performance of TMILL for the said 3 years, which is required in terms of clause 2.13 of the Guidelines, the Authority has stated at para 15(v)(a) to (c) that the actual income earned by TMILL is ₹8925.75 lakhs and not ₹6679.46 as per the segregated accounts of TMILL and thereby increased the revenue by ₹2246.40 lakhs on notional basis, which is actually the difference between :

(i). The maximum revenue that TMILL could have earned as per the approved SOR of TMILL vide order of March 2008 and

(ii). The revenue that TMILL had actually earned from the customers.

In this regard, as per provisions of clause 2.13 of the Guidelines, it is clear 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.

It is submitted that 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 approved by TAMP) rather than passing on the benefits derived from the past customers to the future customers as per the methodology adopted by the Authority.

It may be borne in mind that the share of revenue earned from the holding company of TMILL from the terminal during the years 2007-08, 2008-09 and 2009-10 were about 41%, 12% and 4% respectively. The share of volume of Tata Steel handled at the terminal during the said years were 27%, 6% and 2% respectively.

As per Clause 2.16.1 of the Guidelines, the rates prescribed in the Scale of Rates are ceiling levels and the ports may, if they so desire, charge lower rates. Therefore, it is not mandatory or obligatory on 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. The Operator can charge lower rates, if so desired, within the provisions of the Guidelines.

By seeking to not 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 ₹2246.40 lakhs for the period from 2007-08 to 2009-10 and by 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.

Without prejudice to above, the Authority had erroneously not considered the fact that the order for 18% increase in the tariff for TMILL was issued in March 2008 which became effective from April 2008 i.e. in the year 2008-09 and TMILL had no avenue to collect the increased tariff from the customers served during 2007-08. Despite this fact, the Authority has calculated revenue for 2007-08 by considering 18% hike in tariff which was not available to TMILL for the entire year of 2007-08.

These methods of computation by the Authority has led to an error while fixing tariff for TMILL and hence, the Authority is requested to rectify the error and pass a fresh order for TMILL.

(b). Relevant Extract from the tariff Order dated 25 March 2011:

(Paragraph no. 15(v)(a) to (c)

(a). As brought out earlier, this Authority in its order of March 2008 allowed an across the board increase of 18% over the then prevailing tariff, to be effective from the effective date of implementation of the Order dated 12 October 2007. Since the impact of the upward revision of tariff is reflected by the actual income, the estimated income for the period from the effective date of implementation of the Order dated 12 October 2007 to 31 March 2010 is updated to reflect the increase granted, so as to enable a correct comparison between the actuals and the estimates.

(b). TMILL has handled a cargo traffic of 941838 MTs, 924992 MTs and 1209077 MTs during the years 2007-08, 2008-09 and 2009-10 respectively, as against the estimated cargo traffic of 900000 MTs, 950000 MTs and 1000000 MTs during the corresponding years. Incidentally, the TMILL had estimated container traffic to the tune of 500 TEUs each during the years 2007-08 to 2009-10. However, the TMILL has not handled any containers during the said period. Thus, as against the estimated total cargo traffic of 2850000 MTs, the TMILL has actually handled cargo of 3075908 MTs. The variation in cargo traffic handled works out to around 8%.

(c). Since the tariff fixing exercise cannot recognize the discounts/ rebates allowed by the private operator at his discretion, the TMILL was requested to furnish a detailed income calculation for the years 2007-08 to 2009-10 based on the actual traffic handled by it and by applying the rates approved in the Scale of Rates (SOR). Based on the workings furnished by TMILL, it is seen that the income based on the rates approved in its SOR for the years 2007-08 to 2009-10 are ₹2784.29 lakhs, ₹2600.57 lakhs and ₹3540.89 lakhs. This is considered as actual operating income for the years 2007-08 to 2009-10, for the purpose of past analysis.

(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 in other cases as listed below:

Sl. No.	Name of the Port/ Private terminal Operator	Reference of the Order
1.	Gateway Terminals India Private Limited (GTIPL)	Order no.TAMP/49/2008-GTIPL dated 3 March 2010
2.	Mormugao Port Trust (MOPT)	Order no.TAMP/57/2008-MOPT dated 14 May 2010
3.	International Seaports Haldia Private Limited (ISHPL)	Order no. TAMP/8/2009-ISHPL dated 19 January 2011
4.	Visakhapatnam Port Trust (VPT)	Order no. TAMP/13/2009-VPT dated 18 February 2011
5.	Chennai Container Terminal Private Limited (CCTPL)	Order no. TAMP/55/2009-CCTPL dated 25 March 2011
6.	Visakha Container Terminal Private Limited (VCTPL)	Order no. TAMP/10/2011-VCTPL dated 11 October 2011

(iii). As stipulated at Clause 2.16.1 of the tariff guidelines of 2005 and as correctly contended by TMILL, 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). Adjustment of past surplus (arrived after adding back the rebates/ discounts) in the future tariff flows from the stipulation contained in Clause 2.13 of the tariff guidelines of 2005 and is inevitable.

(vi). In view of the above, addition of ₹2246.40 lakhs to the actual income for the years 2007-08 to 2009-10 is in order. Therefore, no review in this regard is called for.

(vii). This Authority passed an Order in March 2008 reviewing the earlier Order passed in October 2007, fixing tariff at TMILL. In the review Order of March 2008, this Authority had granted an increase of 18% with retrospective effect i.e. from the effective date of the implementation of the tariff Order of October 2007. The increase in tariff arose because certain amount was directed to be refunded to the concerned parties instead of setting off the said amount in the future tariff of TMILL. The TMILL had an option to refund the amount after adjusting the amount arising due to the increased tariff from the refund amount to the concerned parties. In addition, other administrative and legal mechanisms of recovering dues from the users were also available to TMILL.

Updating the income estimates with the increase of 18% for the relevant period during the year 2007-08 is in order and there is no error in this regard, as alleged by TMILL.

(2). ***Security Deposit not considered for the past years in calculation of Working Capital:***

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

TMILL had submitted that it had paid security deposits in relation to acquiring plots of land at Berth no.12 and arranging for supply of power at Berth no.12 to HDC and WBSEB, respectively amounting to ₹145 lakhs as on 31st March 2008 and ₹144 lakhs each as on 31st March 2009 and 31st March 2010. The break-up of the Security Deposit is as follows:

As on	**31st March 2008**	**31st March 2009**	**31st March 2010**
14000 SQM back-up land – HDC	₹36 lakhs	₹36 lakhs	₹36 lakhs
63000 SQM plot at LL6 – HDC	₹106 lakhs	₹106 lakhs	₹106 lakhs
Power supply at Berth no.12 – WBSEB	₹3 lakhs	₹2 lakhs	₹2 lakhs
Total	**₹145 lakhs**	**₹144 lakhs**	**₹144 lakhs**

However, while reviewing the actual past performance of TMILL, TAMP has not considered any security deposit for the calculation of working capital. It may be noted that at para 15(xxvii)(iv), the Authority had rightly considered security deposit while calculating the working capital to be considered for ROCE calculation for the years 2010-11, 2011-12 and 2012-13.

Thus it is clear that though the Authority recognizes that security deposit forms part of working capital within the purview of the Guidelines, it appears that the Authority had failed to consider the same in the calculation of working capital for the years 2007-08, 2008-09 and 2009-10.

This has led to an error while fixing tariff for TMILL and hence, the Authority is requested to rectify the error and pass a fresh order for TMILL.

(b). Relevant Extract from the tariff Order dated 25 March 2011:

(Paragraph no. 15(xxvii)(b)(iv)

TMILL has requested this Authority to consider the security deposit for the leased land paid to KOPT as an item of current asset. The TMILL has stated that as a part of the license for Berth no.12 and plots taken for conducting operation, TMILL is required to invest capital amount in the form of Security Deposit as per License Agreement/ plot allotment conditions. The TMILL has claimed an amount of Rs.155.75 lakhs as Security Deposit to be included in the Current assets each for the years 2010-11 to 2012-13. The TMILL has not furnished workings to arrive at the amount of Rs.155.75 lakhs. As seen from the details furnished by TMILL, it has considered Security Deposit to the tune of Rs.141.92 lakhs towards the lands allotted to it and Rs.13.83 lakhs as Security Deposit towards supply of power to berth no. 12.

The payment of Security Deposit for the lands allotted to TMILL are governed by the Scale of Rates of the Licensor port, KOPT. As per Note 9 of the then existing Rent Schedule for KOPT at Haldia at the relevant point of time, Security for payment of rent/ licence fee shall be recovered at 12 months rent/ licence fee for all types of allotments. Based on the rate of licence fee applicable at the time of initial allotment of 14000 sq. mtrs and subsequent allotment of 54000 sq. mtrs and 9000 sq. mtrs of land, the Security deposit for 12 months period works out to Rs.141.61 lakhs. Incidentally, this amount is closer to the amount of Rs.141.92 lakhs considered as Security Deposit by TMILL for the lands allotted to it by KOPT.

With reference to the Security Deposit considered by TMILL for power supply, the TMILL has not furnished any details for the same. As such, only an amount of Rs.141.61 lakhs is considered as Security Deposit forming part of Current assets each for the years 2010-11 to 2012-13.

(c). Analysis:

(i). The norms for the current assets forming part of the working capital as listed out in Clause 2.9.9 of the tariff guidelines of 2005, does not specifically include security deposit. However, this Authority on 30 September 2008 passed an Order on refinement of certain areas of the existing approach/ practice followed in tariff setting exercise of major port trust and private terminals thereat. The refinement Order of September 2008, inter alia, stated that the prepayments and advance to be made by the private operators as per the license agreement to the respective licensor port will be recognized as the limit for sundry debtors to the extent they are otherwise permissible as pass through.

(ii). It may be relevant to mention here that after passing of the refinement Order of September 2008, prepayments and advance made by the private operators as per the license agreement is recognized as the limit for sundry debtors in the past period analysis, in cases wherever applicable, irrespective of the position whether the estimates relied upon for the said period included prepayments or Security Deposit as part of Current assets or not. Accordingly, prepayments or Security Deposit has been considered as part of Current assets in some other cases of private terminals. Thus, the Security deposit made by TMILL ought to have been considered as part of Working capital for the years 2007-08 to 2009-10.

(iii). The amount of Security Deposit furnished by TMILL at ₹142 lakhs in its review application for the years 2007-08 to 2009-10 is closer to the amount calculated by us at ₹141.62 lakhs (as mentioned in the March 2011 Order for the future years 2010-11 to 2012-13). The amount of ₹141.62 lakhs is considered as Security deposit forming part of Current assets for the past years 2007-08 to 2009-10 also, as part of working capital.

(iv). For the reasons stated in the tariff Order of March 2011, Security deposit for power supply is not considered as part of working capital for the past years 2007-08 to 2009-10.

(v). The revised Current assets considered in the present analysis vis-à-vis the Current assets assessed in the tariff Order of March 2011 is given below:

(₹. In lakhs)

Items of Current Assets	As assessed in tariff Order of March 2011			As revised now		
	2007-08	*2008-09*	*2009-10*	*2007-08*	*2008-09*	*2009-10*
Debtors	0.00	0.00	0.00	0.00	0.00	0.00
Inventory	27.46	40.92	45.06	27.46	40.92	45.06
Security Deposit	0.00	0.00	0.00	141.61	141.61	141.61
Cash balance	117.30	121.48	158.84	117.30	121.48	158.84
	144.76	**162.40**	**203.90**	**286.37**	**304.01**	**345.51**

(3). ***Current Liabilities:***

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

The Authority has calculated current liabilities for the year 2007-08 to 2009-10 by way of taking an average for Berth no.12 on the basis of derived total current assets.

In this regard, TMILL submits that 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 because sundry debtors are considered as nil by the Authority.

Without prejudice to above, while computing the current liabilities on an average basis, the Authority has not excluded from the "Current Liabilities and Provisions" as per the segregated accounts, the amount shown under the head of "Liability for Lease Hold Land" and the amount pertaining to the disputed royalty amount.

The Liability for Lease Hold Land of ₹4764.07 lakhs as on 31st March 2008, ₹4655.54 lakhs as on 31st March 2009 and ₹4541.62 lakhs as on 31st March 2010 have arisen on account of credit entry passed in the books of accounts corresponding to the capitalization of lease rentals dealt by the Authority at para 15(v)(h) of the order. Since, such capitalization of lease rentals is not considered by the Authority in calculating the net block of assets, corresponding liability included in the current liabilities also requires de-recognition.

Similarly, the current liabilities and provisions as stated in the segregated books of accounts includes the provision kept for the disputed part of the royalty amount which has not been paid to the KOPT and as per para 15(v)(e) of the order, the Authority have excluded the disputed part of the royalty expense amounting to ₹297 lakhs for the year 2007-08, ₹261 lakhs for the year 2008-09 and ₹65 lakhs for the year 2009-10. Accordingly the current liability as taken by the Authority should get reduced by ₹297 lakhs as on 31st March 2008, ₹558 lakhs as on 31st March 2009 and ₹623 lakhs as on 31st March 2010.

The amount remaining un-deducted by the Authority from the current liabilities and provisions calculation on the aforesaid two accounts is provided in the table here in below:

(₹ in lakhs)

Financial Year	Liability for lease hold land	Disputed Royalty	Total
2007-08	4674	297	4971
2008-09	4656	558	5214
2009-10	4542	623	5165

It appears that the above got erroneously omitted while calculating the working capital and accordingly the Authority is requested to rectify the errors and pass a fresh order.

(b). <u>Relevant Extract from the tariff Order dated 25 March 2011:</u>

<u>(Paragraph no. 15(v)(i)(iv)</u>

The TMILL has not furnished the current liabilities for the years 2007-08 to 2009-10. 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 2007-08 to 2009-10 in the analysis.

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

(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 recognized at actuals while determining the working capital in all tariff cases.

(ii). As mentioned in Paragraph no. 15(v)(g) of the Order of March 2011, TMILL has explained that on the ground that it has acquired the right to use the land of KOPT, it has capitalized the entire lease rentals and shown it as an asset in the Segregated Accounts. However, the net block of assets (excluding capitalized lease rentals) as given by TMILL for the years 2007-08 to 2009-10 was taken as base in our analysis.

(iii). Since the capitalized lease rentals were not considered as assets in the analysis, the amount shown under the head of “Liability for Lease Hold Land” in the segregated accounts ought to have been excluded while computing the current liabilities. Therefore, the amount of liability for leasehold land as shown in the Segregated Annual Accounts for the years 2007-08 to 2009-10 at ₹4764.07 lakhs, ₹4655.54 lakhs and ₹4541.62 lakhs respectively, is excluded from the figure of Current liabilities shown in the segregated Accounts.

(iv). It has been mentioned in Paragraph no. 15(v)(e) of the Order of March 2011 that there is some dispute between TMILL and KOPT with regard to the quantum of revenue share payable by TMILL to KOPT. The disputed amount as reported by TMILL is to the tune of ₹297 lakhs, ₹261 lakhs and ₹65 lakhs for the said three years. The TMILL has made provisions for the disputed amount in its Segregated Accounts for the respective years and the amount is not yet paid by the TMILL to KOPT. It is noteworthy that the KOPT had also acknowledged this position.

(v). Since only the undisputed revenue share has been considered for determining the admissible pass through for the years 2007-08 to 2009-10 in the Cost statement, the disputed royalty payment reported to have been provided by TMILL in its Segregated Accounts also ought to have been excluded from the Current liabilities while computing the current liabilities. Therefore, the amount of disputed royalty payment as certified by the Chartered Accountant now for the years 2007-08 to 2009-10 at ₹297.69 lakhs, ₹276.60 lakhs and ₹64.83 lakhs respectively, is reduced from the figure of Current liabilities shown in the segregated Accounts.

(vi). Accordingly, the liability of leasehold land and the disputed royalty amount is reduced from the figure of Current liabilities shown in the Segregated Annual Accounts for the years 2007-08 to 2009-10 respectively and the reduced amount therein is considered as base to determine the proportion of Current liabilities of the Haldia Division to the Current Assets of Haldia Division and applied to the figures of Current Assets as determined in the tariff Order of March 2011 including Security Deposit assessed now, for the years 2007-08 to 2009-10.

(vii). The revised Working capital considered vis-à-vis the working capital considered in the tariff Order of March 2011 is given below:

(₹. In lakhs)

Particulars	As assessed in tariff Order of March 2011			As revised now		
	2007-08	*2008-09*	*2009-10*	*2007-08*	*2008-09*	*2009-10*
Total Current assets as mentioned in the preceding paragraph	144.76	162.40	203.90	286.37	304.01	345.51
Less: Current liabilities	350.58	392.86	572.73	197.42	279.54	369.80
Working Capital	**0.00**	**0.00**	**0.00**	**88.95**	**24.47**	**0.00**
Capital Employed	**2884.99**	**3823.50**	**3946.30**	**2973.94**	**3847.97**	**3946.30**

(viii). Thus, the revised working capital for the years 2007-08 and 2008-09 works out to ₹88.95 lakhs and ₹24.47 lakhs respectively. The working capital for the year 2009-10 continues to be a negative figure and hence is retained as NIL.

The revised capital employed thus works out to ₹2973.94 lakhs, ₹3847.97 lakhs and ₹3946.30 lakhs for the years 2007-08 to 2009-10, as against the figure of capital employed at ₹2884.99 lakhs, ₹3823.50 lakhs and ₹3946.30 lakhs for the said years respectively, as considered in the March 2011 Order.

Return on revised Capital employed at 16% is considered for the years 2007-08 to 2009-10.

(4). ***Direction to refund ₹23.59 crores for past period:***

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

At para 15(ix), the Authority have concluded that the order of the Authority dated 17 March 2008 directing TMILL to refund alleged past surplus/ excess collection by TMILL amounting to of ₹1775.13 lakhs to the concerned parties holds good. In this regard, the Authority may note that the Hon'ble High Court had issued an order dated 15th May 2009 which supersedes the order of the Authority dated 17th March 2008 which provides for re-computation of excess charge by TMILL after considering royalty as an admissible expense for the period upto 31st March 2005 etc. Since, the order of the Hon'ble Single Judge in WP No. 10094(W) 2009 is not stayed, the said order of the Hon'ble Single Judge holds good. Accordingly, as of date the legal position is that pending adjudication of the matter by the Hon'ble High Court the question of any refund of the past surplus does not arise. The act of the Authority to re-compute past surplus/ excess collection for the period till September 2007 and directing TMILL to refund the same to the past users is erroneous and illegal.

Therefore, the Authority has committed an error by way of directing TMILL to refund the amount of ₹23.39 crores as alleged excess collection made by TMILL in the past.

The Authority may further note that the major concerned users in the past have voluntarily written to TMILL that they do not want to claim any refund against the past surplus as computed by the Authority and the copies of all the letters were furnished to the Hon'ble High Court of Calcutta during the disposal of the WP. A copy of these letters are once again attached with the review application for the kind perusal of the Authority.

Furthermore, without prejudice to above, the Authority has recomputed the alleged excess collection by TMILL which is not only arbitrary in nature but also erroneously done by considering notional revenue of ₹655.29 lakhs for the period 2007-08 which is calculated as difference between:

(i). The maximum revenue that TMILL could have earned as per the approved SOR of TMILL vide order of March 2008 and

(ii). The revenue that TMILL had actually earned from the customers.

It may be noted that TMILL had not applied that tariff levels for providing services at the terminal for the entire year 2007-08 and more so because the order for providing the 18% hike in the rates was notified by TAMP in March 2008 and TMILL had no avenue to charge these rates from customers for the entire year of 2007-08. This is also an error in the tariff order.

(b). Relevant Extract from the tariff Order dated 25 March 2011:

(Paragraph no. 15(viii)& (ix)

(viii). It may be recollected that in the Review Order of TMILL in March 2008, an amount of ₹1775.13 lakhs was assessed as additional surplus over and above the admissible cost and permissible return for the period from 2002-03 to September 2007. The said additional surplus was after taking into account the estimated deficit of ₹204.36 lakhs for the first half of the year 2007-08. This additional surplus of ₹1775.13 lakhs was ordered to be refunded to the concerned parties with interest. On analysis of actual performance of TMILL for the year 2007-08, it emerges that the operator has actually made an additional surplus of ₹760.08 lakhs for the entire year of 2007-08. The additional surplus for first 6 months for the year 2007-08 works out to ₹380.04 lakhs as against the estimated deficit of ₹204.36 lakhs for the corresponding period. Hence the revised actual additional surplus for the period from 2002-03 to September 2007 for refund to the concerned parties works out to ₹2359.54 lakhs as against the earlier quantified amount of ₹1775.13 lakhs.

(ix). The revised refundable excess collection as a percentage of actual total operating income is shown below:

(₹ in Lakhs)

Sr. No.	Particulars	Amount
(i).	Total actual operating income for the period 2002-03 to 1st half of 2007-08	10694.47
(ii).	Excess refundable collection as per actuals determined now	2359.54
(iii).	Actual refundable excess collection as a % of actual total operating income	22.06%

In the last review Order of March 2008 of this Authority, the TMILL was directed to refund the excess collection of ₹1775.14 lakhs at 16.36% of the bill amount made by it during the period from the commencement of its operations till 23 November 2007 (i.e. till date on which the revised Scale of Rates fixed by this Authority was to take effect) to the concerned parties. In the Writ petition filed by TMILL in the Hon'ble High Court of Calcutta, one of the prayers of TMILL was to set aside the Order of this Authority to refund the excess collection. The Hon'ble Single Judge of Calcutta High Court has not admitted this prayer of TMILL. The TMILL has preferred an appeal before the Division bench of the Calcutta High Court on various grounds, one among them being that this Authority has no power to direct any refund to its users. Though the Appeal is yet to be disposed of by the Hon'ble High Court of Calcutta, the Hon'ble High Court has not stayed either the operation of the tariff Order dated 17 March 2008 or the judgement and Order dated 15 May 2009 passed by the Hon'ble Single Judge in WP No. 10094 (W). Therefore, the direction given by this Authority to refund the excess collection, holds good. However, the amount to be refunded to the concerned parties stands revised at ₹2359.54 lakhs as against the earlier quantified amount of ₹1775.13 lakhs.

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

(i). It may be recalled that the Hon'ble Calcutta High Court by its Order dated 15 May 2009 had, interalia, directed this Authority to correct the tariff of TMILL by accounting for the royalty/ revenue share payment for the period prior to 31 March 2005 and by adjusting the recalculated excess charges in the tariff already fixed or the future tariff to be fixed for TMILL.

The TMILL has appealed against the Order of the Hon'ble High Court dated 15 May 2009 in July 2009 mainly praying for declaring that clause 2.13 does not empower this Authority to adjust the surplus for the prior period, direct this Authority to cancel its order and for staying the order of the Hon'ble High Court dated 15 May 2009.

This Authority has filed a cross appeal before the Division Bench of the Hon'ble Calcutta High Court on 11 November 2009 against the Order dated 15 May 2009 passed by the Single Judge on royalty/ revenue share. This Authority in the cross appeal has maintained its stand of not allowing any royalty/ revenue share as a pass through for the period prior to 31 March 2005. Both the appeals are yet to be disposed by the Hon'ble High Court.

(ii). Nevertheless, it is clarified that the refund of the amount by TMILL would arise only if the contention of this Authority about inadmissibility of revenue share for the period prior to 31 March 2005 is upheld by the Hon'ble High Court. Therefore, the refund by TMILL is subject to the outcome of the appeal filed by this Authority. This particular point was not clarified in the March 2011 Order.

(iii). This Authority vide its Order of March 2011 has not issued any fresh direction to TMILL to refund the additional surplus for the period from 2002-03 to September 2007. Since the amount quantified earlier for refund included estimates for the period from April 2007 to September 2007, the amount of refund was updated based on the actuals for the period from April 2007 to September 2007.

(iv). Based on the adjustment as explained in the preceding paragraphs, the revised actual additional surplus for the period from 2002-03 to September 2007 for refund to the concerned parties works out to ₹2352.43 lakhs as against the earlier quantified amount of ₹2359.54 lakhs in the tariff Order of March 2011. It is once again clarified that the refundable amount as assessed and indicated above is subject to the outcome of the Writ Appeals pending before the Hon'ble High Court of Calcutta.

(v). The position brought out by KOPT that the letters claiming no refunds furnished by TMILL are from associated companies, is not relevant at this juncture, as this Authority has not changed its earlier decision of directing TMILL to refund the excess collection to the users, subject to the outcome of Writ appeals pending before the Hon'ble High Court of Calcutta.

(vi). The position regarding consideration of rebates/ discounts allowed by TMILL to the users in the actual income has already been dealt elaborately in the preceding paragraph.

(B). <u>With reference to tariff fixation for Harbour Mobile Crane (HMC):</u>

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

(a). <u>Points made by TMILL in its Review Application:</u>
The Authority has mentioned 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 has fixed rate on per MT basis. The Authority should appreciate the fact that from the terminal operator point of view, 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 resulting in slow discharge rate or project cargoes requiring sophisticated loading/ unloading which are very time consuming, a per shift basis rate also becomes important for the operator. Also in many cases, the cargo handling operation are simultaneously done using vessel crane as well as vessel gears. In such cases, it becomes impossible to quantify the amount of cargo loaded/ discharged using HMC. A per shift rate becomes inevitable to address such scenarios.

Accordingly, the Authority is once again requested to notify tariff for the Harbor Mobile Crane on a per shift basis and the per MT based tariff may be limited to general bulk and break bulk cargoes only like iron-ore, limestone, fertilizer and other bulk cargoes and HRC/ CRC imports which has a fair uniform rate of loading/ unloading.

(b). Relevant Extract from the tariff Order dated 25 March 2011:

(Paragraph no. 15(xiii)(b)(ii)

With reference to the income estimated by TMILL from the use of HMC at berth no. 12, it is relevant to mention here that the TMILL has filed a separate proposal for fixation of charges for the use of HMC at berth no. 12 in October 2008. From the proceedings relating to this case, which has been brought out in the earlier part of this Order, it is seen that TMILL has been levying the said rate.

As seen from the workings, the HMC is proposed to be utilised by TMILL in respect of cargo like Iron ore, Steel imports, Fertiliser Raw materials, Sugar and Project cargo. The TMILL has assumed different levels of productivity per day for different cargo and considering the traffic of the respective cargo, has arrived at the number of shifts. Based on the assumptions made by TMILL in its workings and by considering the rate of ₹125000/- per shift, the estimated income from the use of HMC is revised so as to reflect the revised estimates of cargo traffic of Iron ore, Steel imports, Fertiliser Raw materials, Sugar and Project cargo. The revised income from the use of HMC works out ₹582.44 lakhs for the year 2010-11.

Inorder to avoid the hassles of billing based on the actual usage of HMC, the TMILL envisages to levy charges for the use of HMC on tonnage basis, though the operator has also proposed to levy charges on shift basis. 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, it would be more appropriate to prescribe tariff on tonnage basis instead of shift basis. The modified calculation results in a rate of ₹24/- per MT for use of the HMC at berth no. 12. This is discussed in the later part of this analysis. Since the rate on tonnage basis approved for the use of HMC at TMILL will be applicable for the years 2011-12 and 2012-13, the income from the use of HMC for the years 2011-12 and 2012-13 is estimated for the revised traffic estimates at ₹24/- per MT. The income so arrived works out to ₹245.31 lakhs each for the years 2011-12 and 2012-13.

(c). Analysis:

(i). It may be recalled that not only at TMILL, but even in respect of the proposals received from the VO Chidambaranar Port Trust (VOCPT) and Paradip Port Trust (PPT) where the ports had proposed a shift based rate for the use of HMC, this Authority vide its Order no TAMP/22/2007-TPT and TAMP/54/2007-PPT dated 30 December 2009 had approved separate tonne based rate for bulk cargo, break bulk cargo and other cargo taking into account the handling rate of each type of cargo.

(ii). In respect of TMILL, however, a uniform rate has been prescribed for all types of cargo in the tariff Order of March 2011. The uniform rate was then calculated based on a uniform handling rate for all types of cargo. To that extent, there is an error in the calculation of the rate for HMC. As discussed in the subsequent paragraph, separate handling rates for the different types of cargo have been considered in the present analysis and as such the rate for the use of HMC has now been revised.

(iii). The different handling rates for different types of cargo has been factored in the cost by taking into account higher operating hours for the HMC. Thus, by having a common rate, one category of cargo with a lower handling rate would cross subsidise the other category of cargo which has a higher handling rate. That being the case, by the prescription of common rate, the user of the cargo type with a lower handling rate would be the aggrieved party. Therefore, TMILL is not put into any disadvantageous position by way of prescription of a common rate for all category of cargo for the use of HMC. It may be relevant to mention here that in KOPT also, a common rate has been prescribed for the use of HMC at berth no. 2 and 8 of HDC.

(iv). The TMILL has stressed for a shift based rate on the ground that discharge of project cargoes requires sophisticated loading/ unloading and is time consuming. In this regard, it can be seen that project cargo constitutes only a miniscule share i.e. around 2% of the entire total traffic at TMILL and does not warrant a shift based rate. The plea of TMILL for prescription of rates for the use of MHC on per shift basis does not, therefore, merit consideration. In fact, the KOPT has also endorsed the fixation of tariff by this Authority for the use of HMC on per tonne basis and has requested to maintain the same position.

(2). ***<u>Estimated traffic proposed to be handled by HMC:</u>***

(a). <u>Points made by TMILL in its review application:</u>
It appears that the Authority has considered a volume of 12.22 lakhs MT to be handled by HMC for the calculation of per MT rates. We understand that this volume of cargo has been calculated by considering 100% of Iron ore, 100% of Steel Imports, 100% of Project cargo, 100% of other bulk cargoes like fertilizer, sugar and cement clinker out of the alleged per annum volume of 12.51 lakhs MT for the terminal. This is erroneous, as apart from iron ore, the proposal submitted by TMILL did not consider 100% of handling of any other cargo using HMC. It may be pertinent to note that as per the proposal, 100% of iron ore, 5% of steel imports, 20% of fertilizer, 25% of sugar and 50% of the project cargo were considered to be handled by HMC on an estimate basis. However, probably this fact has been overlooked by the Authority and accordingly 100% of such cargoes has been taken to be handled by HMC. This became clearer upon comparing Annexure I and the Cost Statements. At one place in Annexure I, the Authority has considered annual revenue to be earned from HMC amounting to ₹2.94 crores whereas in the cost statements it has considered ₹2.45 crores.

Moreover, the fact that HMC is not mandatory to be used for handling vessel and it is at the option of the user to depute and pay for the HMC, the recent development is that even all the iron-ore exporters are not accepting the usage of HMC for 100% of iron ore exports and accordingly TMILL is losing revenue from the said cargo for HMC. The details of actual usage of HMC with respect to the total volume handled at Berth no.12 and the productivity achieved on per hour basis for the year 2010-11 is given below:

Cargo	Actual volume handled at B#12	Total volume handled by HMC	% cargo handled by HMC	Running hours	Output/ hour (MT/hr)
Iron Ore	9,20,121	6,99,729	76%	1065.2	657
Steel	1,18,812	11,067	9.3%	79.3	140
P.Cargo	52,315	20,942	40%	654	32
Other Bulk	1,02,527	76,713	75%	287.5	267
Total	**11,93,775**	**8,08,451**	**68%**	**2086**	**388**

Since, the actual share of cargo handled using HMC is more conclusive evidence, the % of cargo to be handled using HMC for the future should be based on the said actual position and not on the basis of proposal or any other basis. Thus, the deployment of HMC for iron ore may be considered for 76% of iron ore volume.

From the above it is clear that the tariff for HMC has been fixed at a lower levels (by considering higher tonnage to be handled) which calls for review of the tariff order for rectification of the error.

(b). Relevant Extract from the tariff Order dated 25 March 2011:

(Paragraph no. 15(xxx)(d)

For reasons stated earlier hire charge for the use of HMC is to be prescribed on per tonne basis. Since the estimates of operating cost considered by TMILL in its proposal for fixation of hire charges are not supported by workings, we have attempted to test the reasonableness of the estimated operating costs considered by TMILL with reference to certain established norms considered while fixing hire charges for HMC at the other major ports. In the process, we have moderated some of the estimates of operating costs furnished by TMILL. The rate so calculated, works out to ₹24.00 per MT. A statement for fixing rate per tonne for use of HMC at TMILL is attached as Annex-I.

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 basis for the productivity levels for handling iron ore, steel cargo and other dry bulk cargo proposed by TMILL to measure performance levels inorder to grant rebate for under performance remains unexplained. Further, the proposed note does not indicate incentive for better performance. Therefore, the TMILL is advised to come up with a well analysed conditionalities to govern incentive for better performance and penalty for under performance, within six months from the date of the Order passed by this Authority.

(c). Analysis:

(i). It is a fact that the TMILL in its proposal had indicated the percentage of each type of cargo estimated to be handled by the HMC. It had also indicated that it did not envisage handling of estimated volume of limestone and TATA Steel by HMC. However, in the tariff Order of March 2011, the entire volume of cargo of 1221956 tonnes (except limestone and TATA Steel) was erroneously considered to arrive at the per tonne rate for HMC.

Therefore, the error is rectified by considering traffic of 1022145 tonnes of cargo estimated to use the service of MHC, based on the percentage of handling of each type of cargo as furnished by TMILL, in its proposal of September 2010.

(ii). As stated above, the TMILL had proposed 100% handling of Iron ore traffic by the use of MHC. However, the TMILL in its review application, based on the actual position for the year 2010-11 has requested us to consider 76% handling of the iron ore cargo by the use of HMC. From the details furnished by TMILL for the past years 2008-09 and 2009-10, it is seen that almost 93% to 94% of the total iron ore traffic has been handled by HMC, which is closer to the estimate of 100%, which was relied upon by this Authority in the tariff Order of March 2011. 100% of traffic was considered in the tariff Order of March 2011 based on the projection then furnished by TMILL. A 'review' route cannot be undertaken to require this Authority to modify its decision already taken based on new facts, now brought out by TMILL in its review application. Therefore, no modification to the percentage of Iron ore handling by the use of MHC earlier considered by this Authority is warranted.

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

(i). ***Operating hours:***

The Authority have considered 1642 hours of operation for calculating the fuel cost for handling of alleged 12.21 lakhs metric tonne of cargo annually. This implies that productivity level of about 744 MT per hour has been considered by the Authority for all cargoes. In this regard the Authority should appreciate that though the productivity levels for bulk cargoes would be high but the same for the steel and project cargoes will be much lesser. The actual productivity levels achieved by HMC is given earlier.

Considering a higher productivity level of 744 MT per hour for all cargoes against actual productivity levels of 657 MT/hour for iron ore, 140 MT/hour for steel, 32 MT per hour for project cargo and 267 MT/hour for other bulk cargoes, the Authority have erroneously considered lesser operational hours leading to lower fuel cost which had led to erroneous calculation of tariff for HMC.

(ii). ***Repairs:***

The Authority has considered annual repair cost of about ₹25.25 lakhs per annum for the HMC which is on the basis of proposal submitted to the Authority in 2008 by TMILL. The estimated cost of repairs considered in 2008 by TMILL was on the basis of actual cost incurred during the year 2006-07 and actual volumes of about 6.25 lakhs MT handling per annum i.e. when the actual utilization of HMC was at a very low level. But now, with increased volumes being handled by HMC and the machine becoming older, the repair and maintenance cost is bound to increase. In the proposal submitted by TMILL to the Authority for the General revision of tariff, the actual repairs cost incurred for the year 2009-10 was given as ₹41 lakhs approx which comprises of cost of spares only. Considering inflation factor as applicable for future years, the actual repairs cost would be almost double as compared to the amount considered by the Authority while fixing tariff for the HMC. This has led to erroneous computation of the rates for HMC. Though the overall cost statement considers ₹42.57 Lakhs for 2010-11, ₹44.17 lakhs for 2011-12 and ₹45.83

lakhs for 2012-13 as repair and maintenance costs in Annexure II, but while calculating cost details for fixing the tarrif for HMC as per Annexure I, the Authority has wrongly considered ₹25.25 lakhs towards repair cost of HMC which may be corrected.

(iii). ***Other Expenses:***

₹8 lakhs considered by the Authority for HMC towards other expenses is on the basis of the proposal submitted by TMILL in 2008 which comprised of salary and wages of 4 operators @ ₹2 lakhs each as per salary levels of 2008. The Authority is aware that there has been significant increase in the salary levels at Haldia during 2010 besides general increments. The present salary levels for operators is about ₹5 lakhs per annum and they are within the direct rolls of the company.

Furthermore, while calculating the rate for HMC, the Authority have not considered any cost for royalty amount payable to KOPT in Annexure I even though this has been included in overall cost computation in Annexure II. Accordingly the other expenses requires correction. The Authority should rectify this error by considering other expense cost comprising of labour cost of ₹20 lakhs and cost of Royalty expenses under the head of Other expenses in Annexure I.

(b). Relevant Extract from the tariff Order dated 25 March 2011:

(Paragraph no. 15(xxx)(d)

For reasons stated earlier hire charge for the use of HMC is to be prescribed on per tonne basis. Since the estimates of operating cost considered by TMILL in its proposal for fixation of hire charges are not supported by workings, we have attempted to test the reasonableness of the estimated operating costs considered by TMILL with reference to certain established norms considered while fixing hire charges for HMC at the other major ports. In the process, we have moderated some of the estimates of operating costs furnished by TMILL. The rate so calculated, works out to ₹24.00 per MT. A statement for fixing rate per tonne for use of HMC at TMILL is attached as Annex – I.

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 basis for the productivity levels for handling iron ore, steel cargo and other dry bulk cargo proposed by TMILL to measure performance levels inorder to grant rebate for under performance remains unexplained. Further, the proposed note does not indicate incentive for better performance. Therefore, the TMILL is advised to come up with a well analysed conditionalities to govern incentive for better performance and penalty for under performance, within six months from the date of the Order passed by this Authority.

(c). Analysis:

(i). Fuel Consumption

(a). The handling rate of 744 tonnes per hour adopted in the Order of March 2011 is the same which was earlier considered for handling bulk cargo at some major port trusts.

(b). The cargo profile of TMILL as contained in its proposal of September 2010, included break bulk cargo, steel and project cargo apart from bulk cargo. As rightly pointed out by TMILL, the handling rate of the break bulk cargo, steel and project cargo may not be the same as that of the bulk cargo. As such, consideration of a uniform handling rate of 744 tonnes per hour for all types of cargo to arrive at the operating hours of the HMC in the tariff Order of March 2011 is not correct.

(c). The guidelines of 2008 for upfront tariff fixation prescribe the handling norms/ guidelines for dedicated facilities such as coal, iron ore and container handling. Apart from that, guidelines/ handling norms are prescribed for multipurpose cargo terminal covering dry bulk cargo and break bulk cargo which are found relevant in this case based on the submission of the TMILL that crane deployed will handle bulk, break bulk, steel and project cargo.

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. Considering the higher handling capacity of HMC as compared to the aggregate capacity of the wharf cranes prescribed in the 2008 guidelines and in the absence of any other norms available, it was felt reasonable to reckon a 25% increase over the handling rate of 10,000 tonnes per day prescribed for operation of 3 numbers of 20 Tonne ELL cranes, following the approach adopted by this Authority in the case relating to fixation of hire charge of MHC at other ports. Admittedly, the above position was not brought out in the tariff Order of March 2011.

(d). The tariff guidelines of 2008 prescribe norms for fixation of rate for break-bulk cargo like ‘steel & bagged cargo’ and ‘other cargo’ also. 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. As stated earlier, 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 at TMILL. Further, it may be relevant to mention that MHC 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 recognise the above elements. As decided in the case relating to the fixation of hire charge of MHC at other ports 50% increase over the handling rate prescribed in the guidelines for steel and bagged cargo and other bulk cargo is reckoned with.

Accordingly, updated normative handling rate of 6,000 tonnes per day for steel and bagged cargo, and 3750 tonnes per day for other cargo are considered in this analysis since the HMC at TMILL envisages handling break bulk and project cargo.

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). Based on the above mentioned handling rates, the number of operating hours of HMC works out to 1457 hours as shown in the following table:

Cargo items	Usage of HMC as given by TMILL	Classification of cargo as per Upfront guidelines	Traffic for a year	Traffic based on the usage of HMC as given by TMILL	Productivity per day (25% /50% above the norms prescribed in the guidelines)	Handling rate per hour	No. of hours for handling cargo
1	**2**	**3**	**4**	**5 = 4 * 2**	**6**	**7 = 6/(24*0.7)**	**8 = 5/7**
Iron Ore	100%	Bulk	972441	972441	12500	744	1307
Steel Imports	5%	Break bulk	113901	5695	6000	357	16
Fertiliser	20%	Bulk	36109	7222	12500	744	10
Sugar	25%	Bulk	51862	12965	12500	744	17
Project cargo	50%	Other	47643	23822	3750	223	107
			1221956	**1022145**			**1457**

Considering the applicable handling rates per hour and the estimated traffic proposed to be handled by HMC at TMILL, the total number of operating hours per annum works out to 1457 hours, as shown in the above table. The fuel consumption is, therefore, considered for 1457 operating hours.

(ii). Repairs and Maintenance:

As rightly pointed out by TMILL, the estimated repairs and maintenance cost of HMC considered in the tariff Order of March 2011 at ₹25.25 lakhs was based on the estimate given by the TMILL in its separate proposal filed by it in the year 2008 for fixation of tariff for the use of HMC. In its general revision proposal of September 2010, the TMILL has reported actual repair and maintenance cost of HMC at ₹41.03 lakhs for the year 2009-10. Considering an escalation factor of 3.76%, the repairs and maintenance cost for HMC was considered at ₹42.57 lakhs for the year 2010-11 in the Cost statement of TMILL as a whole. Having considered the updated position in the overall cost position, it may be appropriate to consider the updated position for determining tariff of HMC also. Accordingly, an amount of ₹42.57 is considered as repair and maintenance cost to arrive at the per tonne rate of MHC.

(iii). Other Costs:

As rightly pointed out by TMILL, the estimated salary cost for operation of HMC considered in the tariff Order of March 2011 at ₹8 lakhs for 4 operators was based on the estimate given by the TMILL in its separate proposal filed by it in the year 2008 for fixation of tariff for the use of HMC. The TMILL in its review application has reported increase in the salary cost of the operators of the HMC at ₹ 20 lakhs. Subsequently, at our request, the TMILL has furnished documentary evidence in support of the increased salary cost. The increased salary cost of ₹20 lakhs is considered in the calculation of per tonne rate for operation of HMC.

(iv). Royalty / Revenue Share:

(a). 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. Though revenue share for the revenue realizable from the use of HMC was not considered as a cost component in calculation of per tonne rate of HMC, it was factored in assessing the overall cost position of TMILL as a whole, as admitted by the TMILL in its review application. As such the TMILL was not put into a disadvantageous position.

(b). The TMILL has now made a request to consider revenue share to arrive at the per tonne rate of HMC. As per the provisions of the Licence Agreement, the TMILL would be required to pay royalty/ revenue share to KOPT based on the Scale of rates of KOPT. A rate of ₹52/- per MT has been approved in the Scale of Rates of KOPT for the use of HMC. 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 is factored in the calculation of rate for HMC at TMILL.

(v). Based on the adjustments explained in the preceding paragraphs, the rate for the use of the HMC is revised. The revised rate works out to ₹35.30 per tonne, instead of ₹24.00 per tonne approved in the tariff Order of March 2011. The revised Calculation sheet is attached as **Annex-I.** The details are summarised below:

(Amount in ₹)

Particulars	As per Tariff Order of March 2011	As reviewed now
Capital cost of HMC	138700000	138700000
Estimated traffic proposed to be handled by HMC (in MT)	1221956	1022145
Operating cost		
Fuel cost	4850468	4303840
Repairs	2525000	4257273
Royalty	0	4319093
Insurance	1387000	1387000
Depreciation	6600000	6600000
Other Expenses	800000	2000000
Total	**16162468**	**22867206**
Return on Capital Employed @16%	13216000	13216000
Operating cost plus Return	**29378468**	**36083206**
Rate per tonne (Total cost plus Return / Traffic)	**24.04**	**35.30**

(vi). Based on the revised rate of ₹35.30 per MT and considering a traffic proposed to be handled by HMC at 10.22 lakhs, the income estimated to be earned by TMILL during the years 2011-12 and 2012-13 works out to ₹721.66 lakhs (i.e. ₹360.83 lakhs per annum). Thus, the additional income for the years 2011-12 &

2012-13 on account of revision of the rate for HMC works out to ₹231.04 lakhs (i.e. ₹115.52 lakhs per annum).

(4). **Royalty payment to HDC for usage of HMC for the year 2010-11:**

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

At para 15(xviii) the Authority has at one end considered the undisputed amount of royalty paid by TMILL to KOPT but on the other hand has not considered any royalty amount for providing Harbour Mobile Crane, stating the fact that the rate of HMC was approved by the Authority for KOPT in late 2011. In this regard, the Authority should note that since the rate for mobile crane and shore crane was included in the SOR of KOPT, TMILL had taken a view that the royalty for HMC should be paid to KOPT and the same view was considered by the Independent Auditors while certifying the annual royalty payable by TMILL. Furthermore, the amount of royalty payment was based on actual amount collected by TMILL and both TMILL and KOPT have not disputed this fact. This is being done since the beginning of usage of HMC from the year 2004-05 and the Authority have for past periods considered the royalty for the same in the cost statements. By not considering the royalty payable for HMC in the year 2010-11 alone, the Authority have committed an error while calculating the tariff for TMILL which needs to be rectified.

(b). Relevant Extract from the tariff Order dated 25 March 2011:

(Paragraph no. 15(xviii)

This Authority has recently disposed of the general revision proposal of KOPT in November 2010. The revised cargo related charges have come into effect at KOPT from the later part of March 2011. As stated earlier, 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. The computation of revenue share payment furnished by TMILL for the years 2010-11 to 2012-13 is updated so as reflect the Revenue share on the revised cargo related charges of KOPT like wharfage, on board charges, transportation, loading / unloading/ restacking etc and also the revised cargo wise traffic. In response to our query, the TMILL stated that it has estimated revenue share payable by it to KOPT at the level of the revenue share quoted by the second highest bidder. However, the workings furnished by TMILL show that the Revenue share has been calculated at 10.565% for the years 2010-11 and 2011-12 and 10.585% for the year 2012-13. The estimated revenue share is moderated to 8.126% for the years 2010-11 to 2012-13.

It is noticed that TMILL has considered the rate as prescribed in its Scale of rates for Plot Rentals for the purpose of determining Revenue share from Plot Rentals and the rate of ₹125000/- per shift for use of HMC proposed by it in its separate proposal. Since this is not in line with the provisions of the LA, we have calculated admissible amount of revenue share on plot rentals based on the rates recently notified for HDC at KOPT. In respect of revenue share for the income from the use of HMC at TMILL, the rate of ₹52/- per MT approved in the Scale of Rates of KOPT recently and the revised cargo traffic has been taken into account for the years 2011-12 and 2012-13. No revenue share for use of HMC for the year 2010-11 is considered since no rate for the said service prevailed in the pre-revised Scale of Rates of KOPT.

The TMILL in its calculation has considered Revenue share for on board equipment assistance incase of Iron ore based on the rate prescribed in its Scale of Rates. Since this approach is not in line with the provision in the LA, we have not considered this component in the calculation of Revenue share.

Incidentally, the TMILL in its calculation for Royalty/ Revenue share has included the component of On-board supervision charges. TMILL has reported that the Scale of Rates of KOPT does not prescribe rates for 'On-board supervision'. Since TMILL has to pay revenue share on all kinds of cargo related charges as per prevailing Scale of Rates of KOPT, it has denied the applicability of revenue share on on-board supervision charges. However, KOPT claims the same from TMILL. The TMILL has reported that the matter has gone for arbitral resolution. In this backdrop, it has calculated the Revenue share by considering On-board Supervision charges in its calculations.

The KOPT is of the view that as per the License Agreement [Article 5.1(a)] TMILL is liable to pay royalty to KOPT at the agreed percentage level of the actual revenue earned by Licensee. Accordingly, all income from the activity carried out by TMILL in respect of cargo handling at Berth No. 12 is to be considered for the purpose of calculation of royalty payable by TMILL. Since the Scale of Rates of TMILL includes rate for 'On-board Supervision charges', the income earned by TMILL from such services is to form part of actual revenue earned by TMILL for the purpose of determination of Royalty/ Revenue share.

In this context, it may be relevant to mention here that this Authority in its tariff Order of October 2007 has considered Revenue share on the cargo related charges as per the then prevailing Scale of Rates of KOPT. In line with the approach adopted in October 2007 Order with regard to the Revenue share, the Revenue share is calculated on the cargo related charges prescribed in the Scale of Rates of KOPT for the purpose of this analysis.

By way of abundant caution, it is mentioned that revenue share figures considered in this exercise are only for the tariff fixation purpose and should not be taken as the determination by this Authority of the dispute, between the TMILL and KOPT on the subject payment.

(c). Analysis:

(i). As mentioned in the tariff Order of March 2011, the TMILL has to pay revenue share on all kinds of cargo related charges as per prevailing Scale of Rates of KOPT. The rate for use of HMC has come into effect at KOPT only from the year 2011-12 onwards. Thus, in the tariff Order of March 2011, royalty/ revenue share on the usage of HMC at TMILL has been considered from the year 2011-12 onwards.

(ii). On the ground that the royalty/ revenue share on the income realized from the use of HMC has been allowed as pass through at admissible rate for the years 2007-08 to 2009-10, the TMILL in its review application has claimed royalty revenue share on the income realized from the use of HMC for the year 2010-11 as a pass through.

(iii). As mentioned by TMILL in its review application, the amount of royalty payment on HMC for the past years has been based on actual amount collected by TMILL and both TMILL and KOPT have not disputed this fact. The reasoning that a rate did not prevail in the SOR of the licensor port, KOPT, has not stopped

KOPT from collecting revenue share on the use of HMC. Since KOPT has collected revenue share on the income from HMC, the revenue share upto the admissible level is ought to be allowed as a cost to TMILL. Infact, the KOPT has stated that the actual revenue earned by TMILL from hiring of MHC needs to be recognised for determination of royalty on income, as has been done by the independent auditor.

(iv). As stated by the TMILL, royalty/ revenue share for the years 2007-08 to 2009-10 already includes the component of royalty/ revenue share pertaining to the use of HMC. Therefore, revenue share on the HMC income is to be allowed for the year 2010-11. Accordingly, Royalty/ revenue share at the admissible level of 8.126% on the HMC income furnished by TMILL is considered at ₹30.43 lakhs for the year 2010-11.

(C). With reference to adjustments made for the financial years 2010-11 to 2012-13:

(1). ***Volume projection and financials for the year 2010-11:***

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

At para 15 (xii) the Authority has considered a volume of 12.52 lakhs MT per annum for 2010-11 to 2012-13, which is on the basis of actual volume handled by TMILL during first 11 months of 2010-11 prorated for full year. During submission of revised proposal from TMILL, the Authority had sought actual tonnages handled till August 2010 which was furnished by us and the total quantity handled during first 5 months of 2009-10 was 3.88 lakhs MT. At this pace the volume for 12 months would be about 9.31 lakhs MT. Against this TMILL had projected 9.42 lakhs MT for the year 2010-11 and 9.51 lakhs MT per annum for 2011-12 and 2012-13. Due to sudden surge in the iron ore demand and increase in iron ore exports during the later part of year 2010-11, the actual volume for the year 2010-11 till the month of February was 11.47 lakhs MT. The Authority should appreciate that with the drop in the demand for iron-ore in China, hike in custom duty on iron ore exports and other recent developments at iron ore mines, the export of iron ore at such high levels cannot be sustained for a long term period. The monthly volumes achieved during the year 2010-11 is given below:

Month	Iron ore	Total volume	% of Iron Ore
April-10	106442	116376	91
May-10	26154	84669	31
June-10	33713	52079	65
July-10	-	63679	0
August-10	58680	70739	83
September-10	73349	98661	74
October -10	58861	73412	80
November -10	113353	133979	85
December-10	137341	153075	90
January-11	153276	165577	93
February-11	130235	134965	96
March-11	28717	46565	62
Total for 2010-11	**920121**	**1193775**	**77**

From the above, it is clear that the iron ore volumes has been very volatile ranging from nil quantity per month to 1.53 lakhs MT per month. The Authority may observe that post hike of custom duty on iron ore exports to

20% in Union Budget 2011, the iron ore volume for the month of March has dropped significantly to only 28717 MT. Furthermore, with the falling river draft at Haldia and commissioning of deep-draft port at Dhamra which is the closest port to Haldia, it is likely that significant volume of iron-ore will get shifted from TMILL Berth no.12 terminal to Dhamra Port and thereby the iron ore volumes at Berth no.12 is likely to reduce. Even the 12.09 lakhs MT handled in the year 2008-09 was primarily led by iron ore volumes. The history of Berth no.12 suggests an average throughput of 0.9 lakh MT as given below:

Financial Year	Actual Volume (lakh MT)
2002-03	6.99
2003-04	6.10
2004-05	7.04
2005-06	11.70
2006-07	8.87
2007-08	9.41
2008-09	9.24
2009-10	12.09
2010-11	11.94
Average per annum	**9.26**

Even, during general revision of SOR of KOPT, the Authority had recognized the fact that "Sluggish demand of Iron Ore from China and fluctuating Iron Ore prices in the International market reportedly has led to KOPT anticipating a decline in iron ore traffic" and accordingly considered lower iron ore volumes for future.

It may be noted that, the KOPT had already commented that the traffic projection of about 9.51 lakhs MT projected by TMILL in the proposal was justifiable. Therefore, the volume of 12.52 lakhs MT considered by the Authority is unlikely to be handled by TMILL at berth no.12 on a sustained basis. Volumes for the year 2011-12 and 2012-13 will be based on actual market which as far as iron ore is concerned would be too risky to consider as per the year 2010-11. During the year 2010-11 TMILL had actually handled 11.94 lakhs MT of which 9.20 lakhs MT (77%) was iron ore as against 12.52 lakhs considered by TAMP. This needs rectification. In so far as the years 2011-12 and 2012-13 are concerned, we envisage lesser volumes due to reasons stated earlier and not 12.52 lakhs MT.

An analysis of the capacity considered by the Authority as per para 15(xxix) and the volume projections of 12.52 lakhs MT considered by the Authority at the terminal, it is clear that the Authority have assumed higher volumes surpassing the capacity of the terminal which is unlikely to be achieved always.

Consideration of higher volume projection has led to approval of lower rates and vice versa. In case, the Authority approves lower rates by way of considering higher volumes which actually is unlikely to be achieved TMILL would end up earning lower revenue during the tariff cycle. Even if the Authority gives benefit to TMILL by considering 50% of such shortfall revenue during the next tariff cycle period, the market forces and the competition will not permit TMILL to collect such higher rates in future resulting in permanent and irreparable loss to TMILL which is unjust and unfair.

Consideration of 12.52 lakhs MT for the years 2010-11 to 2012-13 has led to erroneous fixation of tariff for TMILL and accordingly the Authority is requested to rectify the error by considering the actual physical and financial performance for the year 2010-11 and considering volumes for the years 2011-12 and 2012-13 as per projections considered by TMILL in the proposal. The actual detail of physical and financial performance of TMILL during the year 2010-11 is under preparation and will be provided later.

(b). <u>Relevant Extract from the tariff Order dated 25 March 2011:</u>

<u>(Paragraph no. 15(xii)</u>

The cargo profile at berth No. 12 consists of iron ore, limestone, steel, logs, fertilizer, project cargo and earth moving equipment. As against the actual traffic of 1209077 MTs during the year 2009-10, the operator in its revised cost statement has estimated total throughput of 941887 MT, 951500 MT and 951000 MT for the years 2010-11 to 2012-13 respectively. The TMILL has almost estimated the same level of traffic for the years 2010-11 to 2012-13, without considering any growth in its traffic projections.

Considering the actual traffic of 11.47 lakhs MT handled by TMILL during the period of 11 months from April 2010 to February 2011, the annual traffic for the year 2010-11 works out to 12.52 lakh MT, which is comparable to the actual traffic of 12.09 lakh MT for the year 2009-10.

As against the cargo traffic of 941887 MTs as estimated by TMILL in its revised proposal for the year 2010-11, it is seen that the TMILL has already actually handled 1147210 MTs till February 2011. In a scenario where the actuals for almost the entire year is already available, there is no reason why this Authority should not consider the pro-rated traffic based on actuals for the year 2010-11. As a result, cargo traffic of 1251502 MTs is considered for the year 2010-11.

Relying on the statement made by TMILL that it anticipates no growth of traffic during the years 2011-12 and 2012-13 on the ground that market condition is unlikely to change favorably and that with the expected commissioning of HMC at Berth no.2 and 8 of KOPT, and also since KOPT has endorsed the position of no growth in the traffic for all the years under consideration, the traffic for the years 2011-12 and 2012-13 each is estimated at the level of traffic estimated for the year 2010-11 at 1251502 MTs.

The TMILL has not projected any container traffic in its future traffic estimates. It may be recalled that during the last revision of tariff of TMILL in October 2007, the TMILL had included container traffic in its traffic estimations. However, as discussed earlier, no container has been handled by TMILL at Berth No. 12. KOPT has argued that TMILL is not permitted to handle any container traffic and as a result has requested to not prescribe any rate for handling containers in the SOR of TMILL. However, as recorded in the tariff Order of October 2007, the permissible cargo at Berth no. 12 as stipulated in the LA includes containerized cargo and as such, it is for the Licensor and Licensee to sort out the issues among themselves.

If there is a significant reduction in the cargo traffic handled by TMILL during the years 2011-12 and 2012-13, as compared to the traffic estimates considered by us now, it is open for TMILL to seek an ahead of schedule review of its tariff.

(c). Analysis:

(i). The traffic estimates for the year 2010-11 is based on the actual traffic figures up to February 2011 as furnished by TMILL. The traffic level of the year 2010-11 was maintained for the succeeding years 2011-12 and 2012-13 also.

(ii). In this regard, it has to be recognized that while considering a higher traffic levels for the years 2010-11 to 2012-13, the income and expenditure projections for the said years have also been extrapolated in tandem with the increased traffic projections.

(iii). If the actual traffic for the year 2010-11 is to be taken into account and if the estimated traffic for the years 2011-12 and 2012-13 is to be revised as requested by TMILL in its review application, then the entire exercise of fixation of tariff may have to be redone taking the year 2010-11 as base. It cannot confine to just effecting a change in the traffic figures. The present exercise on hand is not for redoing the entire tariff fixation exercise all over again. It is limited to the extent of reviewing the Order of March 2011, to rectify errors, if any, as per the tariff guideline position.

(iv). TMILL has stated that this Authority has considered traffic in excess of the capacity of the terminal. In this regard, it is mentioned that as per Clause 2.9.10 of the tariff guidelines of 2005, Return to be allowed to the operator is linked to the capacity utilization. In the tariff Order of March 2011 of TMILL, capacity has been considered only to determine the rate of return to be allowed to TMILL. Since the expected capacity utilization worked out to be more than 60%, maximum permissible return of 16% has been allowed to TMILL. Thus, by considering the capacity in March 2011 Order, the TMILL has not been put to any disadvantageous position as this Authority has allowed the maximum return on capital employed to TMILL.

(iv). In any case, during the next review of tariff of TMILL, the physical and financial performance for the years 2010-11 to 2012-13 would be analysed based on actuals as per the provisions of the tariff guidelines of March 2005.

(v). Nevertheless, it may be pointed out that Clause 3.1.8 of the guidelines of 2005 permits a port (which includes terminal operators like TMILL) to seek ahead of schedule revision, for good and valid reasons, without waiting for the prescribed three year period to expire. In addition to this provision, this Authority in its Order of March 2011 has allowed an option to TMILL to come up with a proposal for review if actual traffic to be handled in future is found to be significantly lower than the estimates considered in the said tariff Order. Therefore, an alternate remedy of seeking review by this Authority is available to TMILL in the event of non-actualisation of the estimated traffic volumes in future.

(2). ***Calculation error in Annexure III:***

(a). Points made by TMILL in its Review Application:
In Annexure III while deriving the 32.29% of surplus, the Authority has erroneously omitted to consider the following elements of costs for the years 2011-12 and 2012-13 i.e. Management and General Overheads and Finance and Miscellaneous income and expenses.

The non-consideration of aforesaid expenses to the tune of ₹8.92 crores has led to determination of more surplus and accordingly reduction of tariff. This has also led to erroneous computation of tariff for TMILL which needs rectification.

(b). Relevant Extract from the tariff Order dated 25 March 2011:

(Paragraph no. 15(xxxi)(a)&(b)

(a). Since a separate rate is prescribed for the use of HMC, it becomes necessary to consider the cost position excluding the cost position for operation of HMC to assess the cost position for services rendered at TMILL, other than use of HMC. Hence, the Operating Income, Operating Expenses, Capital employed and Return pertaining to HMC are excluded from the Cost statement for TMILL as a whole. A Cost statement excluding the position of HMC is attached as Annex-III. The result disclosed by the Cost statement excluding the position of HMC is summarised below:

Sl. No.	Particulars	₹ in Lakhs
1	Estimated Operating Income excluding the income from HMC for the years 2011-12 and 2012-13	5631.79
2.	Surplus after Return excluding the position of HMC	966.45
3.	Surplus for the year 2010-11	543.54
4.	Adjustment of 2 installments of past surplus	308.62
5.	Total estimated Surplus position excluding the position of HMC (2 + 3 + 4)	1818.61

(b). The estimated surplus as a percentage of estimated operating income works out to 32.29%. Therefore, an across the board reduction of 32.29% is effected in the existing tariff of TMILL.

(c). Analysis:

It is admitted that there is an error in the calculation of percentage of reduction effected. The Management and General Overheads and net of Finance and Miscellaneous income and expenses had not been factored while determining the percentage of reduction due to oversight. The revised calculation is explained in the later part of the analysis.

(3). ***Inflation factor – current movement in Wholesale Price Index:***

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

The Authority at para 15(xiv) mentioned that as because the tariff cases of major port trusts and private terminal operators decided during 2010-11 is based on escalation factor of 3.76% for cost estimates, the same factor has been used for TMILL since deviation is not possible for TMILL alone. In this regard, as per the provisions of the Guidelines, the expenditure projections should be in line with traffic adjusted for price fluctuation with reference to current movement of Wholesale Price Index for All Commodities announced by the Ministry of Finance, Govt. of India. The term "The current movement of Wholesale Price Index for All commodities" would refer to the % change in the WPI as at the end of the financial year as compared to the WPI as on the beginning of the year. The Annual report of the Ministry of Finance, GoI, contains the following statement about WPI:

"Inflation, measured by *variations in the wholesale price index (WPI) on a year-on-year basis was 8.6 per cent in January, 2010* as against 5.0 per cent in January 2009." There is generally a significant difference between the point to point change in WPI and the average during the year.

This fact was already brought out to the Authority during submission of the proposal in September 2010. Since, the actual inflation factor to be considered as per the provisions of the Guidelines is 8.6%, the Authority has committed error by considering inflation factor of 3.76% only. This requires rectification as TMILL is going to actually incur higher costs than the amount estimated by the Authority by applying lower inflation factor.

It may further be noted that, for the years 2006-07, 2007-08 and 2008-09, the Authority was considering the escalation rate to be applied for disposing the tariff orders as average of the change in WPI during the relevant previous financial years. For 2009-10, the average change in WPI was 8.43% but the Authority changed the consistency of applying principles used for last 3 years and notified a rate of 5.80% on the basis of average for last 4 years stating the fact that this has happened due to high volatility in the inflation rate during the year 2008-09. Again in 2010-11, the authority reverted back to average of preceding year and notified escalation rate of 3.76% whereas during the previous year the inflation rate on point to point basis as declared by the GoI as on January 2010 was 8.60%. It may be noted that even during the year 2008-09 the inflation rate was highly volatile with certain weeks showing negative inflation. The Authority has not followed a consistent approach in notifying the applicable inflation rates on a regular basis. If average of last 5 years would have been considered as was done for FY'10 then the rate would have worked out to significantly more than 3.76%.

(b). Relevant Extract from the tariff Order dated 25 March 2011:

(Paragraph no. 15(xiv)

In respect of all the expenditure estimates for the years 2010-11 to 2012-13, TMILL has considered an escalation factor of 8.60% per annum, on the ground that the year on year inflation in January 2010 was about 8.60% as per the Annual Report for the year 2009-10 of Ministry of Finance, Government of India. The TMILL has further contended that the escalation factor of 3.76% notified by this Authority for the tariff cases to be disposed during the year 2010-11 is very low as compared to the actual cost increase experienced.

The annual escalation of the cost estimates is considered in terms of Clause 2.5.1 of the Revised Tariff Guidelines which requires that the expense projections of the major ports and terminal operators should be in line with traffic adjusted for price fluctuation with reference to current movement of Wholesale Price Index for all commodities as announced by the Government of India. It is to be noted that the expenditure estimates are moderated applying the escalation factor of 3.76% in the tariff cases of the major port trusts and private terminal operators decided during the year 2010-11. Therefore, it may not be possible to deviate in the case of TMILL alone, from the procedure followed so far in respect of other cases. Hence, the expenditure projections of TMILL are moderated applying the escalation factor of 3.76% per annum, taking the respective previous year as base.

(c). Analysis:

(i). The tariff guidelines of 2005 require the expenditure to be estimated based on the current WPI (for all commodities) and adjusted for traffic growth. WPI is a weighted average movement of prices of the identified groups. It is not that all groups in the basket of WPI have suffered the same quantum of escalation. The WPI so determined is applied to escalate the expenditure estimations for the future period, furnished by the major port trust and private terminals operating thereat. This Authority has uniformly applied the same escalation factor on the expenditure projections while disposing of the tariff proposals during the year 2010-11.

(ii). TMILL has alleged that this Authority is inconsistent in its approach of notifying the applicable inflation rates. It has to be borne in mind that when an escalation factor is adopted, it is applied for estimation of expenditure projections for a future period of three years. This Authority has to review the escalation factor in the light of the position whether the WPI based inflation will continue to remain at the said level during the period of next three years. As such, this Authority makes a review of the WPI based escalation factor based on the inflation rates as anticipated by some other reliable sources. The intention of this Authority behind such an exercise is only to ensure that higher operating costs estimated based on considering higher escalation factor is not built in the tariff for the users.

(iii). In any case, during the next review of tariff of TMILL, the physical and financial performance for the years 2010-11 to 2012-13 would be analysed based on actuals as per the provisions of the tariff guidelines of March 2005.

(iv). Consideration of escalation factor of 3.76% is in order. The claim of TMILL for consideration of higher escalation factor does not merit consideration.

(4). ***<u>Addition to fixed assets:</u>***

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

The Authority while moderating the additional investments projected to be made by TMILL at Berth no.12, has committed an error by considering ₹200 lakhs towards covered shed in 2012-13 as against ₹210 lakhs projected by TMILL. This has led to consideration of lower capital employed for the year 2012-13 and accordingly computation of higher surplus/ lower deficit for the said year. This has also led to an error in determination of tariff for TMILL.

(b). <u>Relevant Extract from the tariff Order dated 25 March 2011:</u>

<u>(Paragraph no. 15(xxvii)(a)(ii)&(iii)</u>

(ii). Year 2011-12:

The TMILL has proposed additions to the tune of ₹2.30 crores for the following items:

No.	Particulars	₹ in Lakhs
1.	Construction Office at Berth no. 12	30.00
2.	Covered Shed	200.00
	TOTAL	**230.00**

With regard to construction of office, the TMILL has stated that it plans to replace its existing containerized office constructed in 2002, with a permanent structure. The estimate is not supported by any documentary evidence. Since the investment related to basic need of an organisation, the proposed estimate is relied upon and considered in the analysis.

The TMILL has stated that that the investment for construction of covered shed was proposed in the last tariff cycle, however it has been deferred due to delay in provision of Railway connectivity. It may be recollected that during the last revision of tariff of TMILL in October 2007, it had proposed investment of ₹244 lakhs in the year 2007-08 for construction of Covered shed. However, the TMILL has not made this investment as proposed by it as could be seen from the actuals for the past years. This position has been endorsed by KOPT.

The proposed investment is for the purpose of covered shed in the area of 54000 sq. mtrs, allotted to TMILL. Since the investment for railway siding in the area of 54000 sq. mtrs is shifted to the year 2012-13, the proposed investment in covered shed, which is also envisaged at the area of 54000 sq. mtrs of land is also shifted to the year 2012-13.

(iii). No additions have been proposed by TMILL during the year 2012-13.

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

(i). Though the TMILL in Form – 4A had mentioned the estimated capital cost towards Covered shed at ₹210 lakhs, the soft copy of the Form – 4B furnished by it mentioned the capital cost of Covered Shed at ₹200 lakhs. The capital cost of ₹200 lakhs mentioned in Form 4B was considered in the Order of March 2011.

(ii). Since the investment towards covered shed is an estimate and also since it is estimated to be incurred in the fag end of the tariff cycle, the estimate is retained at ₹200 lakhs in the present analysis also.

(5). ***<u>Working Capital – Current liabilities:</u>***

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

As brought out earlier in the review application, the Authority has wrongly computed negative working capital as per books of accounts for the past periods 2007-08 to 2009-10 by erroneously computing current liabilities of TMILL as more than the current assets and further by extending this principle for future years, the Authority has wrongly considered nil working capital.

Furthermore, it may be brought out that since the Authority do not consider any sundry debtors for the purpose of calculation of current assets, the sundry creditors which is the basic component of current liabilities should also be considered as nil which if not done, would lead to erroneous computation of working capital. This was one of the reasons that no current liabilities were taken in the proposal submitted by TMILL.

Therefore, the Authority is requested to rectify the error of considering nil 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 25 March 2011:</u>

(Paragraph no. 15(xxvii)(b)(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 ratio between the current assets and current liabilities for the past period, current liabilities are estimated for the years 2010-11 to 2012-13. The current liabilities so worked out for each year are seen to be more than the current assets, resulting in a negative working capital. Hence, the working capital is considered as NIL in the analysis.

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

(i). For the reasons explained in the earlier part of this analysis, there is a change in the ratio of current assets and current liabilities considered for the past period. Therefore, the quantum of current liabilities has been revised for the years 2010-11 to 2012-13 based on the revised ratio.

(ii). The revised Working capital considered in the present analysis vis-à-vis the working capital assessed in the tariff Order of March 2011 is given below:

(₹. In lakhs)

Particulars	**As assessed in tariff Order of March 2011**			**As revised by TAMP**		
	2010-11	**2011-12**	**2012-13**	**2010-11**	**2011-12**	**2012-13**
Total Current assets	357.81	372.85	382.73	360.35	372.85	382.73
Less: Current liabilities	894.54	932.12	956.82	311.32	322.12	330.65
Working Capital	0.00	0.00	0.00	49.03	50.73	52.08
Capital Employed	**3736.43**	**3643.38**	**3919.99**	**3785.47**	**3694.11**	**3972.06**

Thus, the revised working capital for the years 2010-11 to 2012-13 works out to ₹49.03 lakhs, ₹50.73 lakhs and ₹52.08 lakhs respectively.

The revised capital employed thus works out to ₹3785.47 lakhs, ₹3694.11 lakhs and ₹3972.06 lakhs for the years 2010-11 to 2012-13, as against the figure of capital employed at ₹3736.43 lakhs, ₹3643.38 lakhs and ₹3919.99 lakhs for the said years respectively, considered in the March 2011 Order.

Return on revised Capital employed at 16% is considered in this analysis for the years 2010-11 to 2012-13.

10.1. In the light of the analysis given above, the past surplus quantified for the years 2007-08 to 2009-10 stands revised on account of the following:

(₹ In Lakhs)

Sl. No.	**Items**	**2007-08**	**2008-09**	**2009-10**	**Total**
(i).	Revised Return on account of considering revised Capital Employed. ***(Refer Paragraph no. A 2c and 3c)***	7.12 *	3.91	-	**11.03**
	Total	**7.12 ***	**3.91**	**-**	**11.03**

* For a period of 6 months from October 2007 to March 2008.

10.2. Thus, the revised past period surplus for the years 2007-08 to 2009-10 is assessed as shown below:

	₹ in Lakhs
Surplus for the period from October 2007 to March 2010 assessed in the tariff Order of March 2011. (Refer Paragraph no.15(x) of Order of March 2011)	1543.10
Less : Effect of the adjustment explained in the above table	11.03
Revised Surplus for the period from October 2007 to March 2010	**1532.07**
50% of the revised past surplus for set off over a period of 5 years.	766.03

10.3. Thus, an amount of ₹766.03 lakhs is to be set off over a period of five years beginning from the year 2011-12 instead of ₹771.55 lakhs as determined in the tariff Order of March 2011. After adjusting two instalment in the years 2011-12 & 2012-13, the balance amount of ₹459.62 lakhs will be available for set off in the next tariff cycle commencing from the year 2013-14, instead of ₹462.93 lakhs determined in the tariff Order of March 2011.

11. As stated earlier, the rate for the use of the HMC is revised to ₹35.30 per tonne, instead of ₹24.00 per tonne approved in the tariff Order of March 2011.

12.1. The estimated surplus quantified (before adjustment of past surplus) for the years 2010-11 to 2012-13 in the tariff Order of March 2011 is revised as follows:

(Rs. in Lakhs)

Sl. No.	Items	2010-11	2011-12	2012-13	Total
1.	**Net surplus assessed before adjustment of past surplus, in March 2011 Order.**	**543.54**	**61.07**	**- 86.91**	**517.70**
2.	Add: Additional income from the HMC because of revised rate ***(Refer Paragraph no.B3c3(vi))***	-	115.52	115.52	**231.04**
3.	Less: Revenue share paid to KOPT on the income earned from HMC ***(Refer Paragraph no.B4c)***	- 30.43	-	-	**- 30.43**
4.	Less: Revised Return on account of considering revised Capital Employed. ***(Refer Paragraph no.C5c)***	- 7.85	- 8.12	- 8.33	**- 24.30**
5.	Variation in the net surplus assessed before adjustment of past surplus (2 + 3 + 4)	**- 38.28**	**107.40**	**107.19**	**176.31**
6.	**Revised net surplus before adjustment of past surplus. (1 + 5)**	**505.27**	**168.46**	**20.26**	**694.01**

12.2. The modified Cost statement of TMILL as a whole is attached as **Annex-II**.

13.1. The Cost statement excluding the position of HMC is attached as **Annex-III**. The result disclosed by the Cost statement excluding the position of HMC is summarised below:

Sl. No.	Particulars	₹ in Lakhs
1	Estimated Operating Income excluding the income from HMC for the years 2011-12 and 2012-13	5631.79
2.	Surplus after Return excluding the position of HMC for the years 2011-12 and 2012-13	194.85

3.	Revised Surplus for the year 2010-11	505.27
4.	Adjustment of 2 installments of revised past surplus	306.41
5.	Total estimated Surplus position excluding the position of HMC (2 + 3 + 4)	1006.54
6.	Net Surplus as a percentage of Operating income (6 / 1)	17.87%

13.2. Therefore, an across the board reduction of 17.87% is effected in the tariff of TMILL fixed in March 2008 vide tariff Order dated 17 March 2008, as compared to the earlier reduction ordered at 32.29%.

14. In summary, the review of the tariff Order of March 2011 results in the following effect:

(i). The refundable amount quantified in the tariff Order of March 2011 at ₹2359.54 lakhs stands revised to ₹2352.43 lakhs, which is subject to the outcome of the Writ Appeals pending before the Hon'ble Calcutta High Court.

(ii). ₹771.55 lakhs was determined in the tariff Order of March 2011 as surplus for the period from October 2007 to March 2010. However, the reviewed position indicates the past surplus for the same period at a lower level ₹766.03 lakhs.

(iii). An amount of ₹459.62 lakhs is to be set off in the next tariff cycle commencing from the year 2013-14, instead of ₹462.93 lakhs determined in the tariff Order of March 2011.

(iv). Upward revision of the rate for use of HMC at ₹35.30 per tonne from the earlier rate of ₹24 per tonne and a reduction of other tariff to the extent of 17.87% as against the reduction of 32.29% ordered earlier.

15. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the revised Scale of rates of TMILL, attached as **Annex-IV**. The revised Scale of rates of TMILL will come into effect from the effective date from which the tariff Order of March 2011 is implementable and will be in force till 31 March 2013.

(Rani Jadhav)
Chairperson

Annex - I

WORKING FOR ARRIVING AT THE PER TONNE RATE FOR USE OF HMC AT TMILL.

(Amount in Rs.)

Particulars	As per Tariff Order of March 2011		As reviewed by TAMP	
Capital cost of HMC		138700000		138700000
Estimated traffic propsoed to be handled b	As per revised traffic estimates considered for the year 2011-12 and 2012-13.	1221956	Traffic proposed to be handled by HMC is revised as per the revised traffic estimates considered for the years 2011-12 and 2012-13	1022145
Operating cost				
Fuel cost	70 litres per hour @ Rs.42.20 per litre for 1642 hours	4850468	70 litres per hour @ Rs.42.20 per litre for 1457 hours	4303840
Repairs	As given by TMILL	2525000	For the year 2010-11	4257273
Royalty		0	1022145 MT @ Rs.52 per MT * 8.126%	4319093
Insurance	1% of cost of HMC @ Rs.1387 lakhs	1387000	1% of cost of HMC @ Rs.1387 lakhs	1387000
Depreciation	As given by TMILL	6600000	As given by TMILL	6600000
Other Expenses	As given by TMILL	800000	As given by TMILL	2000000
Total		**16162468**		**22867206**
Return on Capital Employed @16%	82600000*16%	13216000	82600000*16%	13216000
Operating cost plus Return		**29378468**		**36083206**
Rate per tonne (Total cost plus Return / Traffic)		**24.04**		**35.30**

Gross value of HMC		**138700000**							
	2004-05	**2005-06**	**2006-07**	**2007-08**	**2008-09**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
Value of HMC at the beginning of the year	138700000	132100000	125500000	118900000	112300000	105700000	99100000	92500000	85900000
Depreciation	6600000	6600000	6600000	6600000	6600000	6600000	6600000	6600000	6600000
Written dopwn value at the end of the year	132100000	125500000	118900000	112300000	105700000	99100000	92500000	85900000	79300000
Average written down value		125500000							
Thus, Average Capital Employed for the purpose of allowing Return								82600000	

Annex - II

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

(Rs. In Lakhs)

Sr. No.	Particulars	Actuals			Estimates relied upon in the Order of March 2011			Estimates as reviewed by TAMP		
		2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
	Traffic (In MTs)	941838	924992	1209077	1251502	1251502	1251502	1251502	1251502	1251502
I	**Total Operating Income**									
	Cargo handling income	2503.29	2101.57	2709.58	2594.23	2598.12	2600.31	2594.23	2598.12	2600.31
	Others	281.00	499.00	831.31	799.12	462.00	462.00	799.12	577.51	577.51
	Total	**2784.29**	**2600.57**	**3540.89**	**3393.35**	**3060.11**	**3062.31**	**3393.35**	**3175.63**	**3177.83**
II	**Operating Costs (excluding depreciation)**									
	Operating & Direct Labour	393.22	368.32	502.40	536.78	556.96	577.91	536.78	556.96	577.91
	Maintenance Labour	13.62	12.98	13.18	15.76	16.35	16.97	15.76	16.35	16.97
	Equipment Running Costs	105.01	147.94	193.93	251.13	260.30	269.82	251.13	260.30	269.82
	Royalty / revenue share	150.57	147.51	216.76	156.71	210.60	211.18	187.14	210.60	211.18
	Equipment Hire	0.85	11.01	43.38	3.79	3.79	3.93	3.79	3.79	3.93
	Lease Rentals	206.89	214.63	184.40	207.96	247.07	259.42	207.96	247.07	259.42
	Insurance	39.09	29.25	38.82	38.82	40.03	45.03	38.82	40.03	45.03
	Other expenses	245.16	258.08	313.00	409.30	428.91	460.30	409.30	428.91	460.30
	Total	**1154.41**	**1189.72**	**1505.87**	**1620.24**	**1764.02**	**1844.56**	**1650.67**	**1764.02**	**1844.56**
III	Depreciation	151.52	174.53	209.87	209.87	214.39	223.39	209.87	214.39	223.39
IV	**Overheads**									
	Management & Administration overheads	236.66	254.33	386.80	401.34	416.43	432.09	401.34	416.43	432.09
	General Overheads	16.48	13.66	13.46	13.97	14.49	15.04	13.97	14.49	15.04
	Total	**253.14**	**267.99**	**400.26**	**415.31**	**430.92**	**447.13**	**415.31**	**430.92**	**447.13**
V	**Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)**	**1225.22**	**968.33**	**1424.89**	**1,147.93**	**650.77**	**547.23**	**1,117.50**	**766.29**	**662.75**
VI	**Finance & Miscellaneous Income (FMI)**									
	Discounted terminal value receivable as per the concession agreement.	0.38	0.43	0.49	0.55	0.62	0.70	0.55	0.62	0.70
	Prior Period Income	0.00	15.00	8.39	0.00	0.00	0.00	0.00	0.00	0.00
	Total	**0.38**	**15.43**	**8.88**	**0.55**	**0.62**	**0.70**	**0.55**	**0.62**	**0.70**
VII	**Finance & Miscellaneous Expenses (FME)**									
	Contribution to Provident Fund	3.92	4.45	6.85	7.11	7.37	7.65	7.11	7.37	7.65
	Total	**3.92**	**4.45**	**6.85**	**7.11**	**7.37**	**7.65**	**7.11**	**7.37**	**7.65**
VIII	**FMI Less FME (VI) - (VII)**	**(3.54)**	**10.98**	**2.03**	**(6.56)**	**(6.76)**	**(6.96)**	**(6.56)**	**(6.76)**	**(6.96)**
IX	**Surplus Before Interest and Tax (V) + (VIII)**	**1221.68**	**979.31**	**1426.91**	**1141.37**	**644.01**	**540.28**	**1110.94**	**759.53**	**655.79**
X	Capital Employed	2973.94	3847.97	3946.30	3736.43	3643.38	3919.99	3785.47	3694.11	3972.06
XI	Return on Capital Employed	475.83	615.67	631.41	597.83	582.94	627.20	605.67	591.06	635.53
XII	**Net Surplus / (Deficit) after allowable ROCE (IX - XI)**	745.85	363.63	795.51	543.54	61.07	(86.91)	505.27	168.46	20.26
XIII	**50% of the past surplus set off over a period of five years.**		766.04		0.00	154.31	154.31	0.00	153.21	153.21
XIV	**Total Surplus**				543.54	215.38	67.40	505.27	321.67	173.47
XV	**Net Surplus / (Deficit) as a % of operating income (XIV/I in %)**				16.02%	7.04%	2.20%	14.89%	10.13%	5.46%
XVI	**Average Net Surplus/ (Deficit) as a % of operating income**					8.42%			10.16%	

Annex - III

COST STATEMENT EXCLUDING HARBOUR MOBILE CRANE

No.	Particulars	As per tariff Order of March 2011			As reviewed by TAMP		
		2011-12	2012-13	Total	2011-12	2012-13	Total
I	Operating Income as in the Cost statement	3060.11	3062.31		3175.63	3177.83	
	Less: Income from HMC	-245.31	-245.31		-360.83	-360.83	
	Residual Estimated Operating Income	**2814.80**	**2817.00**	**5631.79**	**2814.80**	**2817.00**	**5631.79**
		0.00	0.00				
II	Operating Cost as in Cost statement	1764.02	1844.56		1764.02	1844.56	
	Less: Expenses relating to HMC	-95.62	-99.22		-162.67	-168.79	
	Residual Estimated Operating Expenses	**1668.40**	**1745.34**	**3413.73**	**1601.35**	**1675.77**	**3277.12**
		0.00	0.00				
III	Depreciation as in Cost statement	214.39	223.39		214.39	223.39	
	Less: Depreciation relating to HMC	-66.00	-66.00		-66.00	-66.00	
	Residual Depreciation	**148.39**	**157.39**	**305.79**	**148.39**	**157.39**	**305.79**
IV	Overheads	**0.00**	**0.00**	**0.00**	**430.92**	**447.13**	**878.05**
V	Finance and Miscellaneous Income	**0.00**	**0.00**	**0.00**	**0.62**	**0.70**	**1.31**
VI	Finance and Miscellaneous Expenses	**0.00**	**0.00**	**0.00**	**7.37**	**7.65**	**15.03**
VII	Capital Employed as in Cost statement	3643.38	3919.99		3694.11	3972.06	
	Less: WDV of HMC	-859.00	-793.00		-859.00	-793.00	
	Residual Capital Employed	**2784.38**	**3126.99**	**5911.37**	**2835.11**	**3179.06**	**6014.18**
VIII	Return on Capital Employed as in Cost statement	582.94	627.20		591.06	635.53	
	Less: Return on HMC	-137.44	-126.88		-137.44	-126.88	
	Residual Return on Capital Employed	**445.50**	**500.32**	**945.82**	**453.62**	**508.65**	**962.27**
IX	Residual Surplus after Return (I - II - III - IV + V - VI - VIII)			**966.45**			**194.85**
X	Surplus after Return for the year 2010-11 as in Cost statement			**543.54**			**505.27**
XI	Total Surplus for the years 2010-11 to 2012-13			**1509.99**			**700.12**
XII	Adjustment of 2 instalments of past surplus			**308.62**			**306.41**
XIII	Total Surplus			**1818.61**			**1006.54**
XIV	Total Surplus as a percentage of Residual Operating Income (XIII / I)			**32.29%**			**17.87%**

<u>Annex-IV</u>

T M International Logistics Limited
Scale of Rates for operations at Berth No.12 of Haldia Dock Complex

1 **Short title of Commencement**

The Scale of Rates set out herein shall be called SCALE OF RATES of the T M International Logistics Limited (TMILL), Berth No. 12, Haldia Dock Complex of the Kolkata Port Trust.

2. **Definition**

In this Scale of Rates, unless the context otherwise requires, the following definitions shall apply.

(i). 'T M International Logistics Limited' shall mean the company registered under Companies Act, 1956 having its registered office at 43, Chowringhee Road, Kolkata – 71.

(ii). TMILL premises shall mean the area licensed to TMILL including the back up area allotted under the License agreement.

(iii). 'Day' shall mean the period starting from 6 am of a day and ending at 6 am on the following day.

(iv). 'Demurrage' shall mean charges payable for storage of cargo within TMILL premises beyond free period as specified in this Scale of Rates and shall not include the cargo stored at the area allotted to a port user on licence basis for storage of cargo during the licence period.

(v). 'Hazardous I' shall mean the cargo categorized as Hazardous-I in the list of Hazardous Cargo adopted by the Kolkata Port Trust from time to time.

(vi). 'Month' shall mean 30 consecutive calendar days including holidays unless otherwise specified.

(vii). 'On Board handling Charges' shall mean charges on Cargo/ Commodity/ Article/ Package/ Container for rendering on board services by the TMILL in the form of supply of manpower for ship loading/ unloading operation.

(viii). 'On-board supervision' shall mean certain services, both on-board and on-shore, rendered by TMILL during ship to shore/shore to ship transfer operation of cargo for achieving greater productivity/efficiency in vessel-operation.

(ix). 'Overside Discharge/ Shipment' shall mean the operation of unloading/ loading of cargo ex/into vessel without passing through the quay at the time of discharge/ shipment operation.

(x). 'Shut out' cargo shall mean export cargo left in the TMILL premises having not been shipped on board the vessel for which it was received for shipment in TMILL premises.

(xi). 'Stock Cargo' shall mean cargo received at the Port for shipment without export documents.

(xii). 'TEU' shall mean Twenty Feet Equivalent Unit of container.

(xiii). 'Transhipment' shall mean transfer of cargo/ container from a sea going vessel/ barge to another sea going vessel/barge for destination to other Port/ Ports.

(xiv). 'Wharfage' shall mean the basic dues recoverable on all cargo/ container landed or shipped or transhipped within the TMILL premises.

3. General Principles of Assessment:

(i). The minimum weight/ measurement chargeable shall be 1 tonne/1 CBM although the gross weight/measurement may be less than 1 tonne/1 CBM. In case where the charge is on weight basis and the gross weight is not an exact multiple of 100 Kgs, the same will be rounded off to the next higher multiple of 100 Kgs. Where the gross CBM includes decimals, the same should be rounded off to the next higher whole unit of CBM.

(ii). Rates applicable for a period/ unit other than weight shall be applicable to the part of a period/ unit thereof.

(iii). Unless otherwise specified, if TMILL equipment is booked for landing/ shipment of cargo/ container from/ into vessel or for any other purpose by the vessel, equipment hire charge as specified in Section 10.1 shall be levied.

(iv). Cargo Related Charges shall be levied on the owners of the cargo or their Clearing and Forwarding Agents / Handling Agents except where specified otherwise, or in cases where Ship Owners/Steamer Agents agree to pay such charges.

(v). Samples, Catalogues and other articles for which Shipping Companies charge no freight and on which no Customs duty is payable, diplomatic mail bags, crew baggage and all goods meant for TMILL's use at Berth no.12, HDC shall be exempted from payment of all cargo related charges.

(vi). No demurrage shall be charged for the days during which delivery cannot be effected due to strike by the Kolkata Port Trust/ TMILL employees provided, the concerned Importer or his Authorized Agent files the complete delivery documents on payment of all charges prior to commencement of the strike.

(vii). Interest on delayed payments / refunds:

(a). The user shall pay penal interest on delayed payments under this Scale of Rates. Likewise, the TMILL shall pay penal interest on delayed refunds.

(b). The rate of penal interest will be 14.75%. The penal interest rate will apply to both the TMILL and the port users equally.

(c). The delay in refunds will be counted only 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.

(d). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the TMILL. This provision shall, however, not apply to the cases where payment is to be made before availing the services / use of TMILL Terminal facilities as stipulated in the Major Port Trust Act and / or where payment of charges in advance is prescribed as a condition in this Scale of Rates.

(viii). Before classifying any cargo under “unspecified category” or otherwise, if required, to know the nature of cargo for levy of cargo handling charges, the relevant Customs classification shall be referred to in order to find out whether the cargo can be classified under any of the specified categories mentioned in the schedules.

(ix). Users will not be required to pay charges for delays, beyond a reasonable level, attributable to TMILL.

(x). (a). Wherever a specific tariff for a service/ cargo is not available in the notified Scale of Rates, the TMILL can submit a suitable proposal to the TAMP.

(b). Simultaneously with the submission of proposal, the proposed rate can be levied on an ad hoc basis with due notice to Kolkata Port Trust about levy of such rate, till the rate is finally notified.

(c). The ad hoc rate to be operated in the interim period must be derived based on existing notified tariffs for comparable services/ cargo; and, it must be mutually agreed upon by the TMILL and the concerned user(s).

(d). The final rate fixed by the TAMP will ordinarily be effective only prospectively. The interim rate adopted in an ad hoc manner will be recognised as such unless it is found to be excessive requiring some moderation retrospectively.

(xi). The rates prescribed in this Scale of Rates are ceiling level; likewise the rebates and discounts are floor levels. The TMILL may, if it so desires, change lower rates and/ or allow higher rebates and discounts.

(xii). The TMILL does not handle the following cargoes at Berth no. 12:
(a). Thermal Coal in bulk.
(b). Coking Coal in bulk.
(a). Various types of coke and other black cargo in bulk.
(a). Various types of liquid bulk cargo handled through pipelines.

(xiii). The rate prescribed for handling of containers is applicable for 20 ft. container. For container above 20 ft. and upto 40 ft. the rate would be 150% of the prescribed rate. For containers exceeding 40 ft. the rate would be 200% of the prescribed rate.

(xiv). In case of coastal cargo/ containers, other than thermal coal, iron ore and iron ore pellets, 60% of the prescribed rates shall be applicable.

4. Wharfage Charges:

4.1 Wharfage on Foreign cargo shall be levied at the rates as mentioned in the table below:

Sl. No.	Particulars	Rate per MT (in ₹)
1	Iron Ore & Sand	17.44
2	Limestone, Pig Iron and other Ferrous metals and all types of ore except iron ore.	34.88
3	Finished Fertilizer, Soda, Sulphur, C.I. Goods, Cement, all types of bag cargo and other dry bulk not specified.	61.04
4	Tubes and pipes, Iron and Steel, Newsprint.	52.32
5	Project cargo and machinery & spares (Immobile units)	61.06
6	Containers	1918.62 per TEU
7	Car, any rubber tyre vehicle, earth moving equipment	3488.39 per unit
8	Logs/ Timber/ Veneer	91.57 per CBM
9	All other Cargo not specified above, except those specified at Section 3(xii).	236.00

4.2 On cargo discharged/ shipped overside, charges shall be levied 70% of the above mentioned rates.

4.3. For transhipment of cargo or shifting of cargo on board, charges shall be recovered at 1.5 times the rates specified in 4.1 above.

4.4. On shutout/ stock cargo, which is taken back from TMILL premises, 50% of wharfage shall be levied. In addition, on-board handling charges & shore handling charges, as may be applicable, shall be levied if labour and/or equipment are/ is supplied by TMILL for handling of cargo.

No additional wharfage shall be levied on shutout cargo if the same is subsequently shipped without being removed from port premises.

5. On-Board Charges:

5.1 On-Board Charges shall be levied on Foreign cargo at the rates as mentioned in the table below:

Sl. No.	Particulars	Rate per MT (in ₹)
1	Limestone, Pig Iron and oher Ferrous metals and all types of ore.	26.16
2	Finished Fertilizer, Soda, Sulphur, C.I. Goods, Cement, all types of bag cargo and other dry bulk not specified.ore.	26.16
3	Tubes and pipes, Logs, Iron and Steel, Newsprint.	69.77
4	Project cargo and machinery & spares (Immobile units)	34.88
5	Containers (TEU)	239.83 per TEU
6	Car, any rubber tyre vehicle, earth moving equipment	43.60 per unit

5.2 On cargo discharged / shipped overside, charges shall be levied 70% of the abovementioned rates.

5.3. For transhipment of cargo or shifting of cargo on board, charges shall be recovered at 1.5 times the rates specified in 5.1 above.

6. On-board supervision:

6.1 On-board supervision charges shall be levied for the following services provided by TMILL at berth no. 12 terminal in respect of import/ export cargo at the rates specified below:

a. Unlashing of import cargo.
b. Lashing, securing and dunnaging of export cargo.
c. Providing slings and gears for the cargo handling operation.
d. Tally survey of cargo during discharge.
e. Survey of cargo quality discharged/ shipped.
f. Placement and removal of dunnages at jetty during discharge.
g. Heaping of cargo at hook point.
h. Supervising/ monitoring/ directing the entire cargo handling work during vessel operation including queuing of trailers/ dumper from plot to jetty and vice versa in order to achieve better discharge/ loading thereby reducing the turnaround of the vessel.

Sl. No.	Particulars	Rate per MT (in ₹)
1	Limestone, Pig Iron and other Ferrous metals, all types of ore and other dry bulk cargo	12.70
2	Tubes and pipes, Logs, Iron and Steel, Newsprint discharged from the ship.	78.49
3	Tubes and pipes, Logs, Iron and Steel, Newsprint shipped into ship.	125.96
4	Project cargo and machinery & spares (Immobile units)	145.35
5	Containers	242.25 per TEU
6	Car, any rubber tyre vehicle, earth moving equipment	2906.99 per unit

7. Loading/Unloading/Re-Stacking:
7.1 Following charges for supply of manpower and equipment for loading/ un-loading/ re-stacking of Foreign cargo shall be levied at the rates specified in the table below:

Sl. No.	Particulars	Rate per MT (in Rs.)
1	Limestone, Pig Iron and oher Ferrous metals and all types of ore.	17.44
2	Soda, Sulphur, C.I. Goods, Cement, all types of bag cargo and other dry bulk not specified.	38.76
3	Tubes and pipes, Logs, Iron and Steel, Newsprint.	43.61
4	Project cargo and machinery & spares including their packages weighing less than 20 tonnes.	43.61
5	Containers	156.97 per TEU

Note: For removal of doubts it is hereby clarified that where equipment support is provided and charges are levied under clause 10 – 'Miscellaneous charges' then no separate levy will be made under this section.

7.2 Where a cargo is unloaded and stacked simultaneously at the place of unloading, then it would amount to one operation only.

7.3 Where hoppers are used for the unloading of cargo from the vessel and dumpers are loaded using the hopper then it would constitute one operation of loading activity.

8.Transportation
8.1 The following charges shall be levied on cargo, for which TMILL Terminal undertakes any transportation within the port limits.

Sl. No.	Particulars	Rate per MT (in ₹)
1	Limestone, Pig Iron and other Ferrous metals and all types of ore.	30.51
2	Soda, Sulphur, C.I. Goods, Cement, all types of bag cargo and other dry bulk not specified.	30.51
3	Tubes and pipes, Logs, Iron and Steel, Newsprint weighing less than 20 tonnes.	30.51
4	Project cargo and machinery & spares including their packages weighing less than 20 tonnes.	30.51
5	Containers (TEU)	261.62 per TEU

9. DEMURRAGE
9.1 Demurrage shall be levied on Import cargo (other than containerised cargo) after allowing a demurrage-free period as specified below: -

Sl. No.	Description	Demurrage-free period
1.	Hazardous-I cargo	Actual date of landing
2.	All other cargo except those mentioned at Sl. No. 1,3 & 4	3 days after the last landing date of the vessel by which the cargo is imported.
3.	Non-hazardous cargo using port equipment for delivery, non-hazardous cargo for Nepal and Bhutan, Log, Timber and Veneer.	6 days after the last landing date of the vessel by which the cargo is imported.

4.	Cargo imported by voluntary/relief organization like Missionaries of Charity, Bharat Sevashram Sangha, Ramkrishna Mission, CARE, CRS, WFP and others as may be accepted by Kolkata Port Trust from time to time on the basis of certification by the Appropriate Govt. Authority of Central Govt./State Govt. and Govt. of Nepal/ Bhutan or their local Consulate General.	30 days after the last landing date of the vessel by which the cargo is imported.

***Note* i)** Last Landing Date (LLD) is the date on which a vessel completes her import discharge. However, TMILL may declare any other date as such LLD for cargo already discharged from the vessel when the vessel is not doing cargo operation work in working berth for more than 24 hours for any fault/ reason not attributable to TMILL. In such cases, a vessel may have more than one LLD.

ii) For the purpose of calculation of free time, Customs notified holidays and the KoPT/ TMILL's non-operational days shall be excluded. Sundays shall not be excluded for the purpose of calculation of free time unless Customs notified holidays and the KOPT/ TMILL's non-operational days fall on Sundays.

After demurrage charge begins to accrue no allowance is made for Customs notified holidays or KOPT/ TMILL's non-operational days.

9.2 Demurrage on Import cargo (except log, timber, veneer) shall be levied after the expiry of demurrage free period at the following rates: -

Sl. No.	**Type of cargo**	**Rate in Rupees per tonne per day or part thereof.**	
		For the first 15 days.	**16th day onwards**
1.	Hazardous – I	125.65 per tonne	147.82 per tonne
2	All other cargo	29.57 per tonne	44.34 per tonne

9.3 Demurrage on Import log, timber, veneer shall be levied after the expiry of demurrage free period at the following rates: -

Sl. No	**Type of cargo**	**Rate in Rupees per CBM per day or part thereof.**		
		For the first 7 days.	**8th to 14th day**	**From 15th day onwards**
1.	Log, Timber, Veneer	4.44	8.87	13.29

9.4 No demurrage shall be levied on export/stock cargo, except Hazardous-I category, if such cargo is shipped within 30 days from the date of receipt. However, after the 31st day, demurrage on such cargo shall be levied @ ₹29.57 per tonne per week or part thereof from the date of receipt till the date of shipment.

9.5 Export cargo of Hazardous-I category shall be received only for direct shipment. In case such cargo is not shipped on the date of receipt, demurrage shall be levied at rate of ₹125.65 per tonne per day or part thereof from the day following the date of receipt upto the date of shipment or removal from port premises.

9.6 Demurrage shall be levied on shutout/stock cargo, other than Hazardous I cargo, @ ₹7.39 per tonne per day or part thereof from the date of receipt of cargo upto the date of removal of cargo from the port premises without being shipped. If shutout cargo is shipped by any subsequent vessel provision of clause.9.4 shall apply.

9.7 On cargo/commodity which is received neither as import nor as export nor as stock for shipment, demurrage shall be levied @ ₹29.57 per tonne per day or part thereof from the date of receipt upto the date of removal of the cargo from the port premises.

9.8 On uncleared /Customs confiscated cargo sold by auction or tender or private agreement or in any other manner demurrage shall be levied at the rates specified at clause 9.2 or 9.3, as the case may be, after allowing free time of 10 days after the date the cargo is made available for delivery.

9.9 The demurrage on cargo shall not accrue for the period during which the TMILL is not in a position to deliver cargo for reasons attributable to the TMILL when requested by the user.

10. Storage and Miscellaneous Services:

10.1 Charges shall be levied for the following services/facility as per table below –

Sl.No	Particulars	Rate (in ₹)
1	Despatch related services for opening, cleaning and closing of wagons	5.81 per MT
2	Lease rentals for short term allotment of Hard stand land	39.33 per sq.mtr per month
3	Lease rentals for short term allotment of Hard stand Covered shed	62.01 per sq.mtr per month
4	Lease rentals for short term allotment of bare land	25.29 per sq.mtr per month
5	Charges for supply of unskilled labour	123.18 per manshift
6	Equipment hire charges for Front end loaders of Bucket capacity exceeding 3.5 CBM	9854.21 per shift
7	Equipment hire charges for Front end loaders of Bucket capacity not exceeding 3.5 CBM	4927.10 per shift
8	Equipment hire charges for Forklift of capacity below 10 MT	2052.96 per shift
9	Equipment hire charges for Forklift of capacity between 10 MT and 20 MT	9854.21 per shift
10	Placement and Removal of dunnages at plot for steel cargo wherever customer demands	9.69 per MT
11	Clearing and Forwarding	4.36 per MT
12	High heaping of bulk cargo at plot	19.90 per MT
13	Equipment assistance charges for Harbour Mobile Crane of 104 MT	35.30 per MT
14	Cleaning of Jetty/ deck and water sprinkling for bulk cargo handling wherever necessary for bulk cargo handling.	4.00 per MT

10.2 Equipment hire charges shall be levied at 50% of the specified rates wherever the deployment of equipment is less than or equal to 4 hours in any shift.

10.3 The licensing of open/ covered space by TMILL within its allotted area for a period of up to (11) eleven months on monthly rent basis for storage of import/ export cargo may be done without recourse to a tender procedure. The following conditions shall be followed in such cases:

(i). The period of license shall not exceed (11) eleven months.

(ii). The space allotted shall not be subletted/ assigned/ transferred/ shared by the allottees.

(iii). Encroachment or unauthorized occupation of land and Railway Tracks etc. by the licensee will involve a liability to pay a penalty at the rate of ten times the scheduled license fee in addition to the cost of rectification of damages caused to the TMILL's properties. If the licensee fails to remove the cargo from the encroached area in spite of notice to do so, the cargo will be removed elsewhere within TMILL's allotted area by TMILL at the risk and cost of the licensee and penal license fee at the rate of ten times the normal rate will be levied on the space occupied by the cargo so removed.

(iv). Cargo stored under a license shall be at the entire risk and responsibility of the licensee. The licensee shall post his own watchman to safeguard the cargo stored at the allotted space and to prevent any unauthorized occupation of such space by others.

(v). The licensee shall not construct or put up any building, erection or convenience on space occupied under license.

(vi). In case the licensee fails to hand over the space in vacant possession on the date of expiry of the license, TMILL shall levy normal demurrage charges as per TMILL's Scale of Rates as applicable from time to time for the period the cargo remains in TMILL's premises beyond the period for which the license was granted.

(vii). The licensee shall agree to comply with all rules and directions issued by TMILL from time to time. If the licensee neglects to comply with such rules or directions, TMILL may terminate the license.

(viii). The license is terminable on 15 days' notice on either side. No claim for any compensation whatsoever for revocation of the license will be entertained.

(ix). The licensee shall agree that all payments and expenses of whatever sort due to TMILL in respect of the license be recovered at the rates prescribed on TMILL's Scale of Rates from time to time.

(x). The licensee shall comply with all instructions, rules or regulations that may from time to time be issued by KOPT, Municipal Authority, the Chief Controller of Explosives, Government of India or whosoever concerned in relation to storage of cargo.

(xi). The license fee will be charged from the date of handing over possession of the land on the actual area to be found on demarcation.

(xii). When the storage area is allotted on license basis for storage of import / export cargo, demurrage on cargo stored in the licensed premises shall not be levied again.

(xiii). The licensee shall be required to utilize the allotted land for the purpose for which it is licensed. No change in purpose of utilization will be allowed without specific written permission from TMILL.

(xiv). The licensee will not cause any damage to TMILL's properties. If, however, any damage is caused, the licensee shall be liable to make good the damages at his own cost and arrangement to the satisfaction of TMILL.

(xv). The licensee shall have to make his own arrangements to keep the allotted land and its surroundings neat, clean and in proper sanitary condition.

11. Rebates/Refunds:

In case a vessel idles at berth no. 12 due to non-availability or breakdown of the port equipment or power failure at TMILL or for any other reasons attributable to TMILL, rebate equivalent to the berth hire charges accrued during the idling period of vessel shall be allowed.

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