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Tariff Authority for Major Ports

G No. 64

New Delhi, 14 March 2012

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the Kolkata Port Trust (KOPT) for fixation of Schedule of Rent for KOPT's land at Haldia Dock - II as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/40/2011-KOPT

Kolkata Port Trust

- - -

Applicant

ORDER

(Passed on this 14th day of February 2012)

This case relates to a proposal received from the Kolkata Port Trust (KOPT) for fixation of Schedule of Rent for KOPT's land at Haldia Dock – II

2. The main points made by KOPT in its proposal dated 28 July 2011 are summarized below:

- (i). KOPT has obtained possession of about 162.84 acres of land comprising two mouzas viz. Shalukkhali and Rupnarayanchak from State Govt. for setting up of Haldia Dock - II. This location is about 12 km upstream of the existing location of Haldia Dock Complex. The entire land will be fenced and brought within the Custom bonded area.
- (ii). A substantial portion of the land at Haldia Dock - II will be allotted for creation of cargo handling terminals comprising jetties, storage areas, Railway Marshalling Yard, Rake Loading Yard etc. All these facilities are proposed to be developed through private investment on Design, Build, Finance, Operate and Transfer (DBFOT) basis. Besides, KOPT may also make other allotments at the said area.
- (iii). In view of this, there is a necessity to fix land rent / licence fee of the above mentioned land in possession of KOPT at Haldia Dock – II as per Section 49 of the MPT Act, 1963.
- (iv). In pursuance of the provisions of the extant Land Policy Guidelines for Major Ports circulated by the Ministry vide letter no. PT-11033/4/2009-PT dated 13 January 2011 [Clause-6.3.(1)], a committee headed by Chairman and comprising of Dy. Chairman, HDC, General Manager (M&S), Manager (Admn.), Manager (F), FA&CAO, Chief Executive Officer, HDA, Representative of Collector, Purba Medinipore have recommended lease rent/ license fee for the said land together with conditionalities for allotment.
- (v). The Committee for the purpose of assessment of market value of land noted that there is neither published ready recknor of land value issued by the Government of West Bengal pertaining to the area in question nor tender rate for a similar transaction for the said region. As such, the Committee has considered the transaction in respect of a land acquired by the Haldia Development Authority (HDA) for setting up power plant by Haldia Energy Limited (a subsidiary of CESC) in areas adjoining Haldia Dock – II, as a relevant transaction for the purpose of assessing the market value of Haldia Dock – II.
- (vi). From the details forwarded by HDA, the cost of its acquisition works out to ₹38.80 lakhs per acre. As the above transaction has taken place about a year back, the same has been escalated by 2% escalation per annum at ₹39.57 lakhs per acre, as per Land Policy Guidelines.
- (vii). The estimated capital cost for developing about 162.84 acres of land and creation of various common user facilities such as security bundh, approach road, boundary wall, connection railway line, Railway Marshaling yard etc. at an estimated cost of ₹96.21 crores, as given below:

Sl. No.	Item of work	Estimated capital cost (₹ in crores)
1	Marshalling Yard and Railway Approach to plots (4 x	20.25

	850m + 470m = 8100m) i.e. 8.1 km @ 2.5 Cr. per km.	
2	Land filling for 8.1 km railway track for 50 m width @300.00 per sqm.	12.15
3	Approach road of approximately 5 km long @ 1.5 Cr. per km.	7.50
4	Land filling for 5 km road approach (15 m wide) @ 300.00 per sqm.	2.25
5	Land development cost for the balance area of the land inside the custom bounded area other than the land area proposed.	13.73
6	Security bundh at 5m ACD 9 (3 km long)	7.62
7	Construction of road over security bundh (1.8 km long) @ 1.5 Cr per km.	2.70
8	Security boundary wall alongwith concertina at the periphery of the encroachment (3 m high) of 3.27 km @ 13000.00 per m.	4.25
9	Railway connectivity between Marshalling Yard and Loading Bay and extension of Marshalling Yard thereof (2 km at a rate 2.5 crore per km)	5.00
10	Prefeasibility soil test.	0.15
11	Temporary demarcation fencing	0.25
12	Port administrative building (3 storied building with 5000 sq. ft floor area at each floor) with ancillary facilities like garage, fencing, security fgates, garden etc.	3.00
13	Culvert and Drainage network	2.00
A	Total Civil Cost (1 to 9)	80.85
14	Detailed engineering and project supervision @ 7% on A above	5.66
15	Contingency @ 3% on A above	2.43
16	Work contract tax @ 4% on 100% of civil cost (A above)	3.23
17	Miscellaneous cost @ 5% of project cost (A above)	4.04
B	Supervision, Contingency etc. (14 to 17)	15.36
C	Grand Total (A + B)	96.21
	Cost of development per acre (₹ In lakhs)	59.08

- (viii). Taking into account the capital value of land at ₹39.57 lakhs per acre and development cost of ₹59.08 lakhs per acre and by considering a yield of 6%, the monthly rent per 100 square metres of land has been arrived at ₹1219/-.

3.1. The KOPT has proposed to introduce Schedule of Rent for KOPT's land at Haldia Dock – II prepared on the basis of the recommendation of the Committee. The Board of Trustees of KOPT have approved the rate alongwith conditionalities recommended by the Committee vide Resolution No. 92 dated 7 July 2011.

3.2. Accordingly, the KOPT has proposed the following:

- (i). **Land:**

Description of Land	Rate of rent / licence fee per 100 sq. mtrs. per month
Dock Interior Zone (inside custom bonded area) (Bare land)	₹ 1219/-

- (ii). **Others:**

- (a). Charges for using the waterfront abutting Haldia Dock – II land shall be 50% of the scheduled rent/ licence fee of the land i.e. ₹610/- per 100 sq. mtrs. per month.

(b). Way leave permission fee will be charged as follows:

- (i). For laying essential utility service lines like telephone lines, water supply lines, sewerage lines, low voltage domestic electric line running on single pole etc. way leave charges shall be levied @ ₹1000/- per calendar year or part thereof.
- (ii). For laying overhead conveyors and high voltage transmission lines with towers, way leave charges will be charged on the basis of scheduled rent for the area coming in the alignment of the structures.
- (iii). For laying pipelines, way leave charges will be computed on the basis of the above mentioned scheduled rent/ licence fee following the methodology given in the existing Scheduled of Rent of KOPT's land and buildings at Haldia as approved by Tariff Authority for Major Ports for Haldia Dock Complex vide Order No. TAMP/7/2010-KOPT and notified vide No.47 dated 8 March 2011 and the extant land policy guidelines.

(iii). **Notes:**

- (a). All the rates provided in the SOR shall get automatically escalated by 2% per annum after expiry of one year from the effective date of implementation of this Rent Schedule, and the escalated rates shall be considered as the prevailing Scheduled Rent for the concerned year.
- (b). The other terms and conditions of allotment shall be the same as approved by the TAMP for Haldia Dock Complex vide Order No.TAMP/7/2010-KOPT and notified vide No.47 dated 8 March 2011 and the extant land policy guidelines.

4. In accordance with the consultation process prescribed, a copy of the proposal was circulated to the users/ user organisations bodies/ major Coal importers /Iron ore exporters and prospective bidders (as furnished by the KOPT) for seeking their comments. The comments received from the users/ user organisations bodies/ major Coal importers/ Iron ore exporters and prospective bidders were forwarded to the KOPT. KOPT has responded to the comments made by the prospective bidder.

5. Based on the preliminary scrutiny of the proposal, the KOPT was requested vide our letter dated 19 October 2011 to furnish information/ clarifications on few points. The KOPT vide its email dated 13 January 2012 has furnished its response. A summary of the queries raised by us and the response furnished by KOPT is tabulated below:

Sl. No.	Queries raised by us	Reply from KOPT
I	General:	
(i).	The KOPT to confirm that its proposal is in conformity with the Land Policy for Major Ports approved by the Government of India and made applicable to all major port trusts vide MOS letter No. PT-11033/4/2009-PT with effect from 13 January 2011.	Confirmed
(ii).	KOPT may also confirm that the rate structure proposed by the KOPT is in accordance with end use as reflected in the Land Policy guidelines referred to above.	Confirmed
(iii).	If on any matter the present proposal deviates from the Land Policy Guidelines referred above, KOPT to furnish the details thereof and the reasons therefor.	The present proposal of fixing rate of rent / licence fee is as per the Land Policy Guidelines.

(iv).	The tariff filing forms viz., Form – 1, Form – 2A and Form – 2B required to be furnished along with the proposal for revision of the Estate rentals is not found attached with the proposal. The KOPT to furnish the said forms along with the requisite details, duly filled in.	The Tariff filing forms viz. Form-1, Form-2A and Form-2B duly filled up and are enclosed.
(v).	The KOPT has stated that it has obtained possession of about 162.84 acres of land from State Government. In this regard, the KOPT to furnish the actual price paid by KOPT for the said land.	<u>In respect of 112.25 acres of land –</u> (i) One time payment - ₹15.94 crores (ii) Mutation fees - ₹3.37 lakhs (iii) Annual land revenue payable - ₹ 9.68 lakhs. <u>In respect of 50.59 acres of land</u> (i) One time payment – ₹6.94 crores (ii) Mutation fees – ₹1.52 lakhs (iii) Annual rent payable – ₹2.02 lakhs
(vi).	The KOPT to quantify and furnish the additional annual revenue estimated to be earned by it from the allotment of land at the Haldia Dock – II by way of levy of the proposed rates. In this regard, it is noteworthy that at the time of disposal of the General Revision proposal of KOPT in November 2010, the additional income estimated to be earned by KOPT from the allotment of land at the Haldia Dock – II had not been anticipated and as such the same has not been factored to arrive at the percentage increase then granted to KOPT. The KOPT is, therefore, to propose suitable adjustments in its existing Scale of Rates approved in November 2010, so as to ensure a revenue neutral position to KOPT.	The instant proposal is for fixation of rates and conditionalities under Section-49 of MPT Act for utilization of land at Haldia Dock-II. In the instant case, as mentioned in the FORM-I, major portion of the land would be utilized by the successful BOT Operators for setting up of port facilities. The remaining portion of the land would be utilized for setting up of utility services like protection bundh, common user railway yards, roads, office, environmental protection measures etc. Besides, some land would also be kept in reserve for future use, commensurate with the growth of Haldia Dock-II. As per the present indication, the award of respective PPP contracts are expected to be made by end of 2012-13. Naturally, 2/3 years would be thereafter required to develop the port facilities etc. Details of revenue income, expenditures as well capital employed pertaining to the instant proposal have been furnished in FORM-2A and FORM-2B respectively. It may be seen that the return on the capital employed based on the income from the estate rentals only is within the 16% allowable return. It being so, approval of the proposed rate would not disturb the revenue neutral position of KOPT. In this regard, it is also clarified that the income, expenditure as well as the capital employed indicated in the said FORM-2A & 2B had not been included by KOPT in the proposal for revision of Scale of Rates and revision of Rent Schedule, recently disposed off by the TAMP.

II	Valuation of Land:	
(i).	Clause 6.3 (1) of the Land Policy guidelines of 2010 prescribes the various factors to be reckoned with for determination of the market value of the port land. It is seen from the proposal that the KOPT has considered the transaction in respect of a land acquired by the Haldia Development Authority (HDA) for setting up power plant by Haldia Energy Limited (a subsidiary of CESC) in areas adjoining Haldia Dock – II, as a relevant transaction for the purpose of assessing the market value of Haldia Dock – II, on the ground that there is neither published ready recknor of land value issued by the Government of West Bengal pertaining to the area in question nor tender rate for a similar transaction for the said region. In this context, the KOPT to furnish the following:	-----
	(a). Clause 6.3 (1) (a) (ii) of the Land Policy guidelines of 2010 stipulates the average rate of actual relevant transactions registered in the last three years in the port's vicinity, as one of the factors for the purpose of assessment of market value of land. Therefore, the KOPT to furnish the average rate of actual relevant transactions registered in the last three years in the vicinity of Haldia Dock – II area.	The proposed rates have been arrived at on the basis of actual transaction of land for industrial purpose having taken place recently in the vicinity of Haldia Dock-II. There is no other similar relevant transaction having taken place in the recent time in areas adjoining Haldia Dock-II. TAMP may refer the report of Pricewaterhouse who undertook land valuation of KOPT's land at Haldia. It may be seen that the said Consultant had to base its report on the transaction of residential land because of lack of transaction relating to industrial purpose. From the residential transaction, the consultant had to derive the probable transaction rates for industrial purpose.
	(b). The reasons as to why the KOPT has not arrived at the market value of the land at Haldia Dock – II by appointing an approved valuer, as stipulated in Clause 6.3 (1) (a) (iv) of the Land Policy guidelines of 2010, to be explained.	TAMP may be aware that the Consultant (Pricewaterhouse) appointed by KOPT for undertaking valuation of KOPT land at Haldia, after examining various alternatives provided in the Land Policy Guidelines could only utilize one factor relating to relevant transaction in the vicinity of port land. The Pricewaterhouse also failed to obtain relevant industrial transaction in the adjoining land and therefore, had to use mathematical models to derive industrial value from residential value. The instant land is located at a remote place. However, there exists a recent transaction relating to industrial purpose which has been utilized by KoPT for assessing the market value of the Haldia Dock-II land for the purpose of proposing scheduled rate of rent / licence fee.

	(c). The copy of the Report of the Committee constituted for assessment of market value of land at Haldia Dock – II attached with the proposal suggests that the total cost of acquisition of land in the vicinity of Haldia Dock – II by the HDA is ₹ 39.56 crores. However, the copy of the document furnished by KOPT in support of the cost of acquisition of 101.97 acres of land by the HDA at ₹39.56 crores is found to be only the estimated cost of acquisition. Therefore, the KOPT to furnish document to reflect the actual cost of acquisition of land by HDA and modify the proposed rates suitably, if necessary.	As per procedure the amount estimated by the State Govt. relating to acquisition of land and placed to the Requiring Body (RB) is the amount actually to be paid by the RB to the State Govt. prior to getting possession of the land. Hence, the amount of ₹ 39.56 crores is the actual amount payable by the RB (HDA).
	(d). From the copies of the document furnished by KOPT in support of the cost of acquisition of land by the HDA, it is seen that an area wise detailed valuation of land has been indicated in Columns 1 to 3 and the total market value of the land is indicated in the column 4. The KOPT to explain as to why a similar type of valuation of land cannot be assessed in respect of land at Haldia Dock – II also.	Out of the total of 162.84 acres, 112.25 acres were under the possession of the Housing Department of the State Govt. and the remaining land was vested with the State Govt. Accordingly, State Govt. did not have to go for fresh acquisition of land for Kolkata Port Trust. Therefore, similar type of valuation of land as done for HDA is not possible.
	(e). While finalizing the lease rental revision proposals of some of the Major Port Trusts including KOPT, the Authority felt that it would be appropriate for a Port Trust to assess the market value under all the options given in the Land Policy guidelines for Major Ports and derive lease rentals based on the one which is most beneficial to it. The KOPT is, therefore, to assess the market value of its landed estate under all options given in the Land Policy guidelines and derive lease rentals based on the one which is most beneficial to it.	The item wise details are as follows:- 1. There is no ready recokoner of the area concerned published by State Govt. 2. There are no tender rates in the area concerned of Haldia Dock-II. TAMP may be aware that M/s. Price Water House in their report of land valuation of KoPT's land at Haldia and Kolkata have indicated that the few tender rates obtained by HDC are not representative for land valuation at the existing location of Haldia Dock Complex. This situation has not changed. 3. KoPT has utilized actual relevant transaction registered in the vicinity of Haldia Dock-II. 4. The reasons for not appointing a Consultant has already been detailed in the foregoing.
	(f). KOPT to confirm as to whether the sole transaction of land mentioned above is representative enough to determine the value of land for the entire area relating to the Haldia Dock – II.	Confirmed. More so because Haldia Dock –II is located just adjacent to the land whose transaction value which has taken place in 2010 and where an industrial unit is to come up.
(ii).	The KOPT has envisaged allotment of the substantial portion of the land at Haldia Dock - II for creation of cargo handling terminals comprising jetties, storage areas, Railway Marshalling Yard, Rake Loading Yard etc. However, the copy of the document furnished by KOPT relating	The Land Policy envisages determination of market value of the land belonging to the port where from rent is to be fixed at 6% yield. The market value of the land has been assessed on the basis of actual industrial

	to the acquisition of land by HDA shows that the said land is for the purpose of small, medium and large scale industries and Railway Corridor. In view of the differences in the end use, the KOPT to explain as to how the transaction relating to the value of the land at HDA can be taken as base to determine the value of land for Haldia Dock – II.	transaction that has taken place in the areas adjoining Haldia Dock-II. On the same, the amount proposed to be spent by KOPT for making it fit for utilization for port purpose has been added. The sum total value has been considered as the market value for assessment of rent. Therefore, KOPT has not merely taken the acquisition cost incurred by HDA for acquiring land for industrial purpose as the base to determine value of land for Haldia Dock – II.
(iii).	In addition, the estimated cost of acquisition of 101.97 acres of land by the HDA at ₹ 39.56 crores is after factoring into account certain exemptions in the value of the land. Further, the estimated value of land also takes into account additions towards value of houses, trees and Pan Baraj, Solatium, vested land value, additional compensation, Barga compensation, removal cost and other administrative and legal charges. In this regard, the KOPT to confirm that the land at Haldia Dock – II would also be eligible for the said exclusions in the value of land, as that of HDA and furnish justification for the additional cost considered in the estimates and relevance of such additional cost for Haldia Dock – II.	As already stated, the land concerned of 162.84 acres was already under possession of State Govt. in a vacant condition for a long time. Out of 162.84 acres, 50.59 acres was vested with State Govt. and the remaining land was acquired by State Govt. long time back. It is not possible to obtain the cost break up from State Govt. for the remaining land of 112.25 acres which it had acquired long time back. KOPT has utilized the recent acquisition cost of HDA in respect of the adjoining land as representative for assessing the market value of Haldia Dock-II land.
III.	<u>Cost For Development off Land:</u>	
(i).	The KOPT to furnish the basis supported by documentary evidence to justify the quantum of the work and the cost of development of each component envisaged to develop the 162.84 acres of land and creation of various common user facilities such as security bundh, approach road, boundary wall, connection railway line, Railway Marshaling yard etc. at an estimated cost of ₹ 96.21 crores.	The KOPT has furnished details relating to calculation of cost structure for various items of civil work. (A copy of the Feasibility Report reported to have been attached to the letter as Annex – 2 is not found attached. However, Clause 8.2 of the Feasibility Report furnished by KOPT for its Upfront tariff proposal relating to the PPP projects at Haldia Dock – II, makes a mention about the costs to be incurred by the KOPT to create common user facilities.)
(ii).	KOPT to confirm whether the unit cost of each component of the civil works considered in the estimation of cost structure for civil works to be carried out for development of Haldia Dock – II reflects the prevailing market rates.	The rate analysis is based on current PWD Schedule of rates and prevailing market rates.
(iii).	KOPT to clarify as to whether factoring the development cost of the land for assessment of the lease rentals is in line with the Land Policy guidelines of 2010.	Yes. The Clause 6.3(1) (v) of Land Policy guidelines of 2010 provides that any other relevant factor as may be identified by the port, may be taken into account to determine the value of Port land.
IV	<u>Rentals Proposed for Haldia Dock – II:</u>	
(i).	The KOPT has proposed a uniform rate of ₹1219/- per 100 square metres per month. Clause 6.3 (1) (e) of the Land Policy Guidelines of 2010 stipulates that	The entire land for Haldia Dock-II has been proposed to be within custom bound area. Therefore, KOPT has proposed one rate of ₹1219/- per 100 sq. mtrs. per

	SOR should vary in accordance with the purpose of the end use of the land, as reflected in the Land Use Plan of the port. The KOPT to, therefore, propose differential lease rentals for the land at Haldia Dock – II, keeping in mind the end use plan of the port. It is noteworthy that the Rent Schedule for land of KOPT at Haldia, also prescribes different rates for Residential Zone, Industrial Zone, Commercial Zone, Dock Interior Zone etc.	month for land at Haldia Dock-II.
(ii).	The KOPT to furnish the basis and the workings to arrive at the proposed way leave charges for essential utility services at ₹1000/- per calendar year.	The existing Schedule of Rent of KOPT's land and buildings at Haldia for such way leave charges is ₹1438/- per calendar year or part thereof. The proposed rate for Haldia Dock-II has been kept on the lower side because of the Greenfield nature of the project at Haldia Dock-II where no essential utility service facility exists as on date.
(iii).	With reference to Way leave charges for laying pipelines, the KOPT has proposed a conditionality that the way leave charges will be computed on the basis of the proposed rent Schedule following the methodology given in the Schedule of Rent of KOPT at Haldia vide Order dated 19 January 2011. It is preferable to have a self-sufficient Schedule of Rent for Haldia Dock – II without the need to refer to the Schedule of Rent of Haldia. As such, the KOPT to propose an appropriate conditionality to govern the levy of way leave charges for pipelines, in line with the conditionality prescribed in this regard in the Schedule of Rent of KOPT at Haldia.	Proposed methodology of computation of way leave charges for pipelines at Haldia Dock-II, in line with that prescribed in this regard in the extant Schedule of Rent of KOPT at Haldia, is given below : “ For laying pipelines carrying Crude Oil, POL Products and other Liquid Cargo over or under the ground, way-leave licence fee will be charged as follows: For the purpose of way leave charges, the area occupied by single pipelines shall be calculated based on the diameter and length of those pipelines. In case of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks shall be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails, jetties, etc., the respective users shall be billed pro-rata for 50% of the concerned area assuming that they do not have exclusive possession of land and what they have is only 'Right of Way'. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines shall be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges. For allowing overhead conveyors and high voltage transmission lines and towers, way-leave licence fee will be charged on the basis of the scheduled rent for the area coming in the alignment of the structure.”

(iv).	Apart from allotment of substantial portion of land at Haldia Dock – II for creation of cargo handling terminals to be developed by DBFOT basis through private investment, the KOPT also envisages to make other allotments at the said area. In this context, it is relevant to mention here that the Land Policy Guidelines of 2010 stipulates allotment of land through a competitive bidding process by inviting tenders. It is possible to obtain rates in the tendering/ auctioning which may be more than the Schedule of Rates. In such an eventuality, it may be advisable that the rates of rentals to be fixed now may be readjusted immediately instead of waiting for the expiry of the prescribed validity period of five years for revision of rates. Such adjustment may assume significance since the initial rates are derived not based on proper valuation of concerned lands but by extrapolating the values obtained by HDA for some other lands. Please comment.	KOPT intends to develop the area acquired at Haldia Dock II for creation of port facilities through PPP basis from a virtual Greenfield scenario. The project will require about 3 years from date of signing of Concession Agreement (end of 2012-13). Demand for allotment of land for other purposes will be generated thereafter. By that time, the next revision is expected to be due. Moreover, we have to fix land rent / licence fee at present to prepare the upfront tariff for the proposed DBFOT project. Incidentally, upfront tariff proposal with the proposed land rent / licence fee has already been submitted to TAMP. Therefore, we cannot wait for tender rates to generate for fixing land rent / licence fee in respect of Dock-II land.
V	<u>Conditionalities Governing The Schedule Of Rent For Haldia Dock – II:</u>	
	The KOPT has proposed a general conditionality in its proposed draft Rent Schedule stating that the other terms and conditions of allotment shall be the same as approved by the Authority for HDC vide Order no. TAMP/7/2010-KOPT vide Gazette no. 47 and extant Land Policy Guidelines. However, the conditionalities prescribed vide tariff Order of January 2011 for allotment of land at Haldia includes conditionalities governing the lease or licence fees for the existing leases and licences. However, incase of Haldia Dock – II, it would be a case of allotment of land on fresh lease/ licence basis. Further, conditionalities approved for Haldia is inclusive of conditionalities governing allotment of land inside Dock Interior Zone for storage of import/ export cargo and other than the Dock Interior Zone. In view of the above, it may not be advisable to have a blanket condition stating that the other terms and conditions of allotment as applicable for the Haldia would also apply to Haldia Dock – II. The KOPT is, therefore, to prescribe suitable fresh set of conditionalities, to govern the rates chargeable for the facilities envisaged to be created at Haldia Dock – II.	Fresh set of conditionalities of allotment of KOPT land at Haldia Dock-II have since been prepared and are enclosed for perusal.

6. A joint hearing in this case was held on 25 January 2012 at the Kolkata Port Trust (KOPT) premises. The KOPT made a power point presentation of its proposal. At the joint hearing, the KOPT and the concerned users/ organisation bodies have made their submissions.

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

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

- (i). The KOPT has acquired 162.84 acres of land from State Government for setting up of Haldia Dock - II. The port has proposed to fence the entire land and treat it as a Custom bonded area. A substantial portion of the land is proposed to be allotted for creation of cargo handling terminals on Design, Build, Finance, Operate and Transfer (DBFOT) basis. Besides, KOPT also envisages to make other allotments at the said area. It is for the said land that the KOPT has filed a proposal for fixing of the lease rentals.
- (ii). The proposed lease rentals for the land alongwith the conditionalities have been recommended by a Committee headed by Chairman, KOPT and consisting of officials of KOPT and representatives from Haldia Development Authority (HDA) and Collector of Purba Medinipore. Further, the proposed lease rentals and the conditionalities have been approved by the Board of Trustees of KOPT.
- (iii). For the purpose of determining lease rentals for the lands belonging to the Port Trusts, this Authority is mandated to follow the land policy guidelines issued by the Government from time to time as stipulated in Clause 8 of the tariff guidelines issued by the Government in March 2005, as a policy direction under Section 111 of the MPT Act, 1963. The KOPT has confirmed that its proposal is in line with the Land Policy for Major Ports announced by the Government of India and made applicable to all major port trusts vide MOS letter No. PT-11033/4/2009-PT dated 4 March 2011.
- (iv). The Land Policy Guidelines clearly lay down the procedure and the methodology to be adopted for determining the market value and the lease rental of the port lands. As per Clause 6.3(1) of the Land Policy Guidelines, the market value of land can be determined taking into consideration any or all of the factors like (i) State Government's ready reckoner value, (ii) the average rate of actual relevant transactions took place in last three years for the lands in the port's vicinity, adding 2% escalation per annum, (iii) highest accepted tender value of port lands for similar transaction, (iv) rate arrived at by an approved valuer and (v) any other relevant factors as may be identified by the port. The lease rent has to be fixed at 6% of the market value of the land so determined and the rate is to be escalated by 2% per annum till such time the rate is revised with approval of this Authority.
- (v). While according approval to the lease rental proposals of other major ports trusts including KOPT, this Authority had taken a view that it would be appropriate for a Port Trust to assess the market value under all options given in the Land Policy guidelines and derive lease rentals based on the one which is most beneficial to the port. The KOPT was, therefore, advised to re-assess the market values of its landed estates under all options given in the Land Policy guidelines and derive lease rentals based on the one which is most beneficial to it.

Reportedly, no ready reckoner for the relevant area is published by the State Government. Tender rates are also not available. It is the position of KOPT that the Consultant engaged by it for carrying out the valuation of KOPT lands at Haldia in its exercise to revise the lease rent/ licence fee for the estates at Haldia earlier, which culminated into the tariff Order dated 19 January 2011, the Consultant could make use of only factors relating to relevant transaction in the vicinity of the port lands after examining the various alternatives contained in the Land Policy Guidelines. The KOPT has also stated that there is no other similar relevant transaction having taken place in the recent time in areas adjoining Haldia Dock-II. It is noteworthy that the KOPT has confirmed that the sole transaction of

acquisition of land by the HDA relied upon by it is representative enough to determine the market value of land for the entire area relating to the Haldia Dock – II.

Land being a valuable resource, a port must strive to ensure the maximum income from its landed estates. Determining the market value of land based only on a single approach may not always reflect the correct position. Nevertheless, taking into account the position that a Committee headed by Chairman of KOPT has relied upon the said sole transaction and that the proposal of KOPT has the approval of its Board of Trustees and also taking into account the positions that there is no objections from any of the users/ prospective bidders consulted in this case, with regard to the approach adopted by the KOPT, this Authority relies upon the approach adopted by KOPT to base its calculations based on the sole transaction of acquisition of land by HDA.

- (vi). The approach adopted by KOPT in valuation of its land at Haldia Dock – II and to arrive at the proposed lease rentals is summarized below:
- (a). The HDA has acquired land in the year 2010 in areas adjoining Haldia Dock – II at ₹38.80 lakhs per acre. The KOPT has updated the said value of land by applying 2% escalation per annum to arrive at the value of land as in the year 2011 at ₹39.57 lakhs per acre.
 - (b). Further, the KOPT has estimated the development cost for creation of various common user facilities at ₹96.21 crores in the land at Haldia Dock - II, which works out to ₹59.08 lakhs per acre.
 - (c). Taking into account the capital value of land at ₹39.57 lakhs per acre and development cost of ₹59.08 lakhs per acre and by considering a yield of 6%, the monthly rent per 100 square metres of land has been arrived at ₹1219/- by KOPT.
- (vii). As brought out earlier, the assessed market value of the land has been enhanced by 2% per annum to arrive at the value of the land for the year 2011. Escalating the value of land by 2% per annum is found to be in line with one of the factors listed under Clause 6.3(1)(ii) of the Land Policy Guidelines for assessment of market value of land. Since the year 2012 has already begun, the value of the land as arrived by KOPT as of 2011 is further updated by allowing escalation at 2% per annum for the year 2012 so as to reflect the market value of the land that may prevail during the year 2012.
- (viii). The KOPT has estimated development costs to the tune of ₹96.21 crores, which works out to ₹59.08 lakhs per acre. As seen from the details furnished by KOPT, the development costs is towards creation of various common user facilities such as security bundh, approach road, boundary wall, railway line connectivity, Railway Marshaling yard etc. Concast Infratech Limited (CIL) is of the view that since the KOPT is bound to provide the facilities to the operator, the cost of development and creation of infrastructure should be excluded and only the market value of bare land should be considered in calculation of monthly rent.

The Land Policy Guidelines of 2010 does not explicitly stipulate development cost to be considered for deriving lease rentals. To a query raised in this regard, the KOPT has clarified that development cost falls under the ambit of Clause 6.3(1)(v) of Land Policy guidelines of 2010 which provides that any other relevant factor as may be identified by the port, may be taken into account to determine the value of Port land.

In this connection, it is relevant to mention here that the Feasibility Report furnished by KOPT in relation to its Upfront Projects at Haldia Dock – II clearly mentions that in addition to the civil costs to be incurred by BOT Operators, the KOPT has to invest on some common user facilities essential for the operation of

the proposed BOT terminals at Haldia Dock – II for which the substantial portion of the land is envisaged to be allotted by KOPT. As stated by the KOPT, since the projects are green field projects, the basic facilities may have to be provided by the Licensor port. The Feasibility report also makes a mention about this, as brought out above. In view of the above and keeping in view the clarification furnished by KOPT, the cost of developing the land to provide common facilities is considered alongwith the estimated market value of the bare land as proposed by the port to determine the rentals for the said land.

- (ix). To a query to KOPT, the KOPT has furnished the rate analysis for all cost components for estimation of development cost, except estimates for the work relating to Culvert and Drainage network. The KOPT has confirmed that the rate analysis is based on current PWD Schedule of rates and as per prevailing market rates. For the work relating to Culvert and Drainage network, the KOPT has stated to have determined the amount on a lumpsum basis. The cost of development of each component as furnished by KOPT is relied upon.

The KOPT has not furnished any documentary evidence with regard to the quantum of the work to be undertaken. However, the Feasibility Report furnished by KOPT in relation to its Upfront Projects at Haldia Dock – II, specifies the quantum of each component of work to be undertaken, which is found to be in tandem with the quantum of work considered for estimating development costs.

Further, the estimates of KOPT also capture contingencies, project supervision cost, works contract tax and miscellaneous cost as a certain percentage of the cost which is also considered in the analysis.

- (x). Thus, except for the updation of the value of the land as of the year 2012, no other change is effected in the estimated market value of land and in the development cost as furnished by KOPT. Considering 6% yield on the sum total of the value of the land and the development cost, the rate works out to ₹1229/- per 100 square metres of land. The modified working is attached as **Annex - I**.
- (xi). This Authority has passed an Order in November 2010 revising the Scale of Rates of KOPT. Since the Order of November 2010 considered the cost position for the period upto 31 March 2013, the validity of the tariff so approved was prescribed till 31 March 2013. Since the additional income estimated to be earned by KOPT from the allotment of land at the Haldia Dock – II had not been anticipated at the time of disposal of the general revision proposal of KOPT in the year 2010, the same had not been factored to arrive at the percentage increase in the rates then granted to KOPT.

As reported by KOPT, major portion of land at Haldia Dock – II would be utilized by the successful BOT Operators for setting up of port facilities, who would be awarded the contracts only by end of 2012-13. Further, the KOPT has stated that demand for allotment of land for other purposes will be generated thereafter only. Since the port would start realizing income from the lands at Haldia Dock – II only from the year 2013-14 onwards, which would fall in the next tariff cycle, no adjustments in the existing Scale of Rates of KOPT approved in November 2010 is found necessary in the current tariff cycle.

- (xii). For using the waterfront abutting Haldia Dock – II, the KOPT has proposed to recover 50% of the scheduled rent/ licence fee. CIL has requested to either eliminate the license fee for the waterfront section or to prescribe it at 25% of the scheduled rent/ license fee applicable for bare land on the ground that the entire waterfront has to be developed by the operator from the scratch. Development of waterfront area by an operator may not take away the entitlement of the port to levy licence fee for the water front area. Prescription of licence fee for the water area at 50% of the licence fee of abutting land is in line with the stipulation contained in Clause 6.2.2.3 (k) of the Land Policy Guidelines of 2010 and hence approved.

- (xiii). When asked to furnish the basis and the workings to arrive at the proposed way leave charges for essential utility services at ₹1000/- per calendar year, the KOPT has sought to justify the proposed rate citing the rate of ₹1438/- per calendar year approved in respect of Haldia on the ground that the proposed rate for Haldia Dock-II has been kept on the lower side because of the Greenfield nature of the project where no essential utility service facility exists as on date.

In this context it is relevant to mention here that though a rate of ₹1438/- per calendar year or part thereof has been approved by this Authority for Haldia, the KOPT has been advised to come up with a suitable proposal to levy charges based on the distance covered by the telephone and electric lines, as done in respect of Cochin Port Trust (COPT) while approving way leave charges for TV cable lines vide Order dated 16 June 2010. Nevertheless, the proposal of KOPT to levy a lumpsum of ₹1000/- per calendar year or part thereof is approved subject to the condition that the KOPT should come up with a suitable proposal to levy charges based on the distance covered by the utility service lines.

- (xiv). Conditionality prescribing way leave charges for laying pipelines carrying crude oil, POL products and other Liquid cargo over or under the ground is seen to be in line with the formula prescribed for calculating way leave charges for pipelines in case of Jawaharlal Nehru Port Trust (JNPT), COPT, New Mangalore Port Trust (NMPT) and at Haldia itself. Hence the same is approved.
- (xv). Majority of the conditionalities proposed by the Port for the levy of the proposed rent/ licence fee for lands at Haldia Dock – II are found to be similar to the conditionalities prescribed in the Rent Schedule of Haldia approved in January 2011. Further, some conditionalities proposed by KOPT are in line with the provisions contained in the Land Policy Guidelines of 2010. These conditionalities are approved and incorporated in the Rent Schedule of Haldia Dock – II. The other conditionalities proposed by KOPT are discussed in the following paragraphs.
- (xvi). The KOPT has proposed a conditionality to the effect that all the rates provided in the Scale of Rates shall get automatically escalated by 2% per annum after expiry of one year from the effective date of implementation of the Rent Schedule and the escalated rates shall be considered as the prevailing Scheduled Rent for the concerned year. In this regard, Tamil Nadu Electricity Board (TNEB) has requested to consider an escalation of 2% every three years. As rightly pointed out by KOPT, the Land Policy Guidelines do not permit escalation of Rent once in three years.

As per the Land Policy Guidelines of 2010, the Rent Schedule is subject to revision after every five years. This provision has been incorporated suitably in the Rent Schedule as conditionality.

- (xvii). KOPT has proposed a conditionality to the effect that the lease may be granted for a period not exceeding 30 years as per provisions of the prevailing Land Policy Guidelines issued by the Central Government. In this regard, it may be recollected that the KOPT has stated to treat the land at Haldia Dock – II as custom bonded area. As per the stipulation contained at Clause 6.1.1 (b) of the Land Policy Guidelines of 2010, land inside custom bound area can be allotted on medium term lease basis upto 10 years only. There is no doubt that the KOPT proposes to allot the land at Haldia Dock – II to BOT operators whose licence period is normally for a period of 30 years. However, it is also noteworthy that KOPT envisages making other allotments also at the said area. Therefore, and given the stipulation contained in the Guidelines, this Authority is not in a position to prescribe the term of the lease at variance with the guideline position. Incase the KOPT has to allot land inside Custom bonded area for a longer period, the KOPT may have to approach the Government for relaxation in the provision as provided for at Clause 6.7 of the Land Policy Guidelines of 2010.

- (xviii). The KOPT has proposed notes to prescribe an interest rate of 14.25% per annum to be levied on the outstanding dues from the due date of payment. The proposed notes have been modified to reflect the prevailing Prime Lending Rate of State Bank of India at 14.75% plus 2%.
- (xix). As brought out earlier, the KOPT envisages to allot the major portion of the land to the successful BOT operators apart from other allotments. As per the letters dated 29 August 2011 and 20 December 2011 received from the Ministry of Shipping conveying some decisions of the Cabinet Secretariat, sale or long term lease of land belonging to the Government or Government controlled statutory authorities would need specific approval of the Cabinet except the cases of transfer of land from one Central Government department/ Ministry to another.

Further, the Land Policy Guidelines of 2010 are reportedly under review by the Government. The matter has been referred to the Government seeking clarification whether this Authority can proceed with the disposal of the proposals received from the major ports for revision of their estate related charges based on the Land Policy guidelines of 2010. Since the lease rentals incase of Haldia Dock – II lands would have a bearing on the proposal filed by KOPT for fixation of Upfront tariff for the PPP projects envisaged at Haldia Dock – II and keeping in view the priority attached by the Government for quick finalization of upfront cases, the proposal of KOPT for fixation of lease rentals for the lands at Haldia Dock – II is approved in line with the Land Policy Guidelines of 2010. However, if the exercise of review of Land Policy Guidelines of 2010 has an impact on the lease rentals and the conditionalities approved for Haldia Dock – II, the KOPT is advised to come up with a suitable proposal in this regard. Further, the KOPT is also advised to keep in view the directions of the Cabinet Secretariat and Ministry of Shipping regarding long term lease of land at Haldia Dock – II.

9.1. The Rent Schedule for allotment of Land at Haldia Dock – II alongwith the conditionalities is attached as **Annex - II**.

9.2. The Rent Schedule will become effective after expiry of 30 days from the date of notification of the Order in the Gazette of India and shall be in force for five years. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

(Rani Jadhav)
Chairperson

Annex - I

STATEMENT SHOWING THE CALCULATION OF LEASE RENTALS FOR LANDS OF KOLKATA PORT TRUST AT HALDIA DOCK - II.

Sl. No.	Particulars	Amount in ₹	
		As given by KOPT	As per TAMP
1	Market value of land per acre as per HDA as in 2010.	3879750	3879750
2	Market value of land per acre as in 2011 with 2% escalation.	3957345	3957345
3	Market value of land per acre as in 2012 with 2% escalation.	3957345	4036492
4	Cost of development per acre	5908254	5908254
5	Total cost per acre (3 + 4)	9865599	9944746
6	Yield @ 6% per annum per acre	591936	596685
7	Monthly Rent per acre (6 / 12 months)	49328	49724
8	Monthly Rent per 100 square metres as proposed by the KOPT (7 / 40.46856 sq. mtrs)	1219	1229

* the final Monthly rental has been rounded off to nearest rupee.

**SCHEDULE OF RENT FOR LAND OF KOLKATA
PORT TRUST AT HALDIA DOCK - II.**

I. Land

Description of land	Rate of rent/ licence fee per 100 sq. mtrs. per month
Dock Interior Zone (inside custom bonded area) (Bare land)	₹1229/-

II. Others

A. Charges for using the waterfront abutting Haldia dock –II land shall be 50% of the scheduled rent / licence fee of the land i.e. ₹614/- per 100 sq. mtrs. per month.

B. Way leave permission fee will be charged as follows :

- i) For laying essential utility service lines like telephone lines, water supply lines, sewerage lines, low voltage domestic electric line running on single pole, etc. way leave charges shall be levied @ ₹1000/- per calendar year or part thereof.
- ii) For laying overhead conveyors and high voltage transmission lines with towers, way leave charges will be charged on the basis of scheduled rent for the area coming in the alignment of the structures.
- iii) For laying pipelines carrying Crude Oil, POL Products and other Liquid Cargo over or under the ground, way-leave licence fee will be charged as follows:

For the purpose of way leave charges, the area occupied by single pipelines shall be calculated based on the diameter and length of those pipelines. In case of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks shall be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails, jetties, etc., the respective users shall be billed pro-rata for 50% of the concerned area assuming that they do not have exclusive possession of land and what they have is only 'Right of Way'. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines shall be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges.

III. Notes

A. All the rates provided in the SoR shall get automatically escalated by 2% per annum after expiry of one year from the effective date of implementation of this Rent Schedule and the escalated rates shall be considered as the prevailing Scheduled Rent for the concerned year. The Rent Schedule is subject to revision every five years.

B. Conditionalities for allotment of land:

B (i) The allotment of land will be for activities directly related to port operations and / or which aid the port activities and sea trade as per provisions of prevailing Land Policy Guidelines issued by the Central Govt.

B (ii) For allotment of land (other than licensing of land for storage of import/export cargo):

B (ii) (A) Lease:

1. Lease may be granted for a period not exceeding 10 years as per provisions of prevailing Land Policy Guidelines issued by the Central Govt. Such allotments may be either on tender basis or for captive use.
2. In case of leases granted through tender procedure, the accepted tendered rate of lease rent/ upfront premium shall be applicable.
3. Renewal of leases may be considered on the basis of the prevailing Land Policy Guidelines issued by the Central Govt.
4. In case of all leases, subletting [full or partial] may be considered on the basis of the prevailing Land Policy Guidelines issued by the Central Govt. and if subletting is allowed, the same shall be on recovery of necessary charges thereof.
5. The following cases will be treated as cases of mutation and for granting such mutation, a fee equivalent to 5% of the 12 month's rent or ₹10,000/- whichever higher shall be recovered :-
 - (a) In case of death of the lessee, transfer to the legal heirs or legal successor or representative.
 - (b) Transfer consequential to the order of the Court or as per new Certificate of Incorporation as per Registrar of Companies.
 - (c) Transfer consequential to lessee becoming subject to laws of insolvency or liquidation.

- (d) Gratuitous transfer to any of the legal heirs due to old age, infirmity or some other valid reasons.
 - (e) Transfer from one Government Department or Public Sector Undertaking or Government Company to any other Government Department or Public Sector Undertaking or Government Company.
6. In case of allotment on upfront basis, the upfront premium shall be calculated on the basis of Present Value (PV) of lease rentals for the entire period of lease taking discount rate as 8%. In case of lease of land on upfront basis, ₹1/- shall be charged as annual rent per calendar or part thereof.
7. Change of use of leased land may be permitted in case such change being in conformity with the land used plan and subject to payment of higher rates for the new usage as existing in the prevailing Schedule of Rent (SoR).

B (ii)(B) Licence :

1. Licence of land may be granted for a maximum period of 11 months, in accordance with the prevailing Schedule of Rent (SoR). KoPT at its discretion may also renew licences. Each renewal shall be treated as a fresh licence. KoPT at its discretion may also allot land on licence basis by inviting tenders.
2. In case of Licences, the rate of licence fee will be enhance automatically as and when the Schedule of Rent (SoR) will be revised upward as per III (A) above.

B(ii)(C) Other conditions :

1. In addition to rent / license fee, the lessees / licensees will be required to pay the following:
 - a. Municipal tax etc. as applicable.
 - b. Electricity charges / water charges at actuals plus 19.25% on the actual amount as overheads, if electricity/ water is supplied from KOPT Sources.
2. The lessees/licensees will also be required to pay and discharge all present and future rates, Service Taxes, Education Cesses, taxes, duties, charges, assessments, outgoings and premium in respect of policy of insurance against any risk whatsoever which are now or may at any time hereafter be assessed, charged or imposed upon or payable in respect of the demised land and/or any factory and/or building or structure erected by the lessees/licensees thereon or the owners or occupiers in

respect thereof except the owners' share of municipal taxes in respect of the demised land.

3. Security Deposit shall be recovered as follows:-

- (a) In case of lease on upfront basis, no Security Deposit shall be recovered.
- (b) In case of lease on lease rent basis, one year's rent shall be kept as non-interest bearing Security Deposit.

The Security Deposit is refundable after completion of lease/license period (without any interest) subject to adjustment of dues/damages.

- (c) In case of allotment on licence basis, non-interest bearing security deposit shall be equivalent to 11 month's licence fees. If the period of licence is less than 11 months, then the non-interest bearing security deposit shall be equivalent to the licence fee for the period for which licence is granted.

The Security Deposit is refundable after completion of lease/ license period (without any interest) subject to adjustment of dues/damages.

- 4. Without prejudice to other appropriate action being taken, damages at 3 (Three) times the respective zonal rate of rent/license fee as per prevailing Schedule of Rent (SoR), will be recovered for encroachment of KoPT's land/building for the first month of encroachment. For the next two months of encroachment, the damages shall be recovered at 5 (Five) times the respective zonal rate of rent/license fee as per prevailing Schedule of Rent (SoR) and hereafter if the encroachment continues, the damages shall be recovered at 10 (Ten) times the respective zonal rate of rent/license fee as per prevailing Schedule of Rent (SoR) for the encroached area.
- 5. In case of leases/licenses, in the event of expiration/ termination/ determination of lease/ licence or forfeiture of lease/licence, if the lessee /licensee continues to occupy the premises unauthorizedly, the lessee or the licensee shall be liable to pay compensation for wrongful use and occupation of the premises at three (3) times the prevailing scheduled rate of rent/license fees for the premises concerned, till the vacant possession is obtained.
- 6. (a) In case of lease of land/building on lease rent basis, the annual rent will be recovered in advance in the form of Post Dated Cheques. However, if there be any upward revision of rent due to imposition of new Schedule of

Rent (SoR), etc, supplementary amounts shall be required to be deposited by the lessee for which necessary intimation will be given.

- (b) The rent/licence fee, whether demanded or not, shall be paid by the licensees/ lessees on or before the 15th day of each month succeeding that for which the rent/license fee etc. is due.
 - (c) In case of way leave licenses, the way-leave licence fees, whether demanded or not, shall be paid by the licensees on or before 15th day of the calendar year succeeding that for which licence fee etc, is due.
 - (d) Any other dues, shall be paid by the lessee/ licensee within fifteen days from the receipt of payment notice.
7. In case of default in payment of rent/license fee /compensation and other dues within one month from the due date of payment specified above, interest @16.75% will be charged on the outstanding dues from the due date of payment.

B (iii) For licensing of land for storage of import/export cargo:

The licence of land for storage of import/export cargo may be granted in accordance with the Schedule of Rent without recourse to tender procedure under the following terms & conditions. KoPT at its discretion may also allot land on licence basis by inviting tenders.

1. The licence shall be upto a maximum period of 11 months. KoPT at its discretion may also renew licences. Each renewal shall be treated as a fresh licence. If the licensee requires renewal of the license, an application for renewal must be made to the authority concerned of KOPT well in advance as per prescribed format.
2. The licensee shall utilize the allotted land /covered space for the purpose for which it is licensed. No change in purpose of utilization will be allowed. The space allotted shall also not be subletted/ assigned/transferred.
3. The license is terminable on 7 days' notice on either side. No claim for any compensation whatsoever for termination of the license will be entertained.
4. The licensee shall agree to comply with all rules and directions issued by KoPT from time to time. If the licensee neglects to comply with such rules or directions, the port may terminate the license.

5. The licensee shall comply with all rules or regulations that may from time to time be issued by the Dock Safety or the Department of Explosives or whomsoever concerned in relation to storage of cargo.
6. (i). 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.

(ii). The licensee shall make his own arrangements to keep the allotted land/ covered space and its surroundings neat, clean and in proper sanitary condition.
7. In addition to payment of license fee as per prevailing SOR , the licensee shall pay municipal tax, if required and as applicable.
8. Security Deposit equivalent to the licence fee for the period for which the licence inside DIZ is granted shall be recovered. The security deposit is refundable after completion of the license period subject to adjustment of dues & damages.
9. 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 licence fee, in addition to the cost of rectification of damages caused to the Port 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 by the Port at the risk and cost of the licensee and penal licence fee at the rate of ten times the normal rate will be levied on the space occupied by the cargo so removed.
10. After the expiry/termination/ determination/ forfeiture of the licence, if the licensee continues to occupy it unauthorizedly, the licensee shall be liable to pay compensation for wrongful use and occupation at the following rates till vacant possession is obtained: -

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

11. (A) The license fee whether demanded or not shall be paid as per the following due dates of payment: -
 - (a) For period of license exceeding 30 days and which is exact multiple of 30 days: Within seven days of expiry of each 30 days.

(b) For period of license exceeding 30 days but not exact multiple of 30 days:

(i) For the portion of the total license period, which is exact multiple of 30 days: Same as (a) above.

(ii) For the balance period of the license which is not exact multiple of 30 days: Within seven days of expiry of the balance period.

(c) For period of license less than 30 days: Same as (b)(ii) above.

(B) In case of default in payment of rent / licence fee / compensation and other dues within one month from the due date of payment specified above, interest @ 16.75% will be charged on the outstanding dues from the due date of payment.

12. The licence fee will be charged from the date of handing over possession of the land and occupation of actual area of the land to be found on demarcation by the licensee.

13. The licensee shall not cause any damage to KoPT 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 KoPT.

14. The minimum area to be licensed to a single licensee will be 1000 square meters.

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

TAMP/40/2011-KOPT - Proposal from the Kolkata Port Trust for fixation of Schedule of Rent for KOPT's land at Haldia Dock-II.

A summary of comments received from the users/ user organisations bodies/ major Coal importers/ Iron ore exporters and prospective bidders and comments of KOPT thereon are tabulated below:

Sl. No.	Comments of users / user organisations bodies / major Coal importers / Iron ore exporters and prospective bidders	Reply furnished by KOPT
1.	Tamil Nadu Electricity Board	
(i).	The proposed schedule of rent at Haldia Dock - II is acceptable to TANGEDCO as the rent is less than one third of the present rent at Haldia Dock Complex. However, with regard to the position that the Scale of Rates shall get automatically escalated by 2% per annum after effective date of implementation, it is requested that rent may be escalated by 2% once in three years.	KOPT has not furnished any comments on the points made by TANGEDCO.
2.	Transstory - OJSC Consortium	
	They have no comments to offer.	
3.	Concast Infratech Limited	
(i).	The charges for using the waterfront appurtenant the Haldia Dock - II land shall be 50% of the scheduled rent / license fee of the land i.e. ₹610/- per 100 sq.meters. per month. In this regard, it is submitted that as the entire waterfront has to be developed by the operator from the scratch, it is requested that the license fee for the waterfront section be eliminated or made to 25% of the scheduled rent / license fee of the rent applicable for bare land.	The proposed provision has been incorporated in line with provisions of the extant Land Policy for Major Ports 2010 issued by the Central Govt. vide Memo No. PT-11033/4/2009-PT dated 13 January 2011. As such, the request cannot be acceded to.
(ii).	With regard to rate getting automatically escalated by 2% per annum after expiry of one year from the date of its incorporation by TAMP and the escalated rates to be considered as the prevailing scheduled rate of rent and license fee, it is requested that the escalation on the base rate be applied as mentioned in the SOR instead of compounding it.	- do -
(iii).	KOPT has stated that it is required to incur capital cost for developing the land of about 162.84 acres and creation of various common user facilities such as security bundh, approach road, boundary wall, connecting railway line, railway marshalling yard, etc. at an estimated cost of ₹96.21 crores or ₹59,08,254/- per acre. Since the advantage of these common user facilities to be created by KOPT will directly go to the private operators, the KOPT has stated that it is entitled to recover a fair return on the	In a greenfield situation, one of the factors which determine the value of a land is the availability of basic facilities required by the BOT operators to utilize the land for the slated purpose. The capital investment proposed to be made in the instant case is for development of such facilities. Therefore such cost is to be

	above capital cost from the private operators. In this regard, we would request KOPT to exclude the cost of development and creation of infrastructure in calculation of monthly rent. As the above mentioned facilities are basic infrastructure needed for the proper use of bare land, in any case KOPT has to provide this facilities to the operator. Only the market value of bare land should be taken into consideration for calculation of SOR.	factored in for deriving rates.
(iv).	Further it is believed that the selection of the developer will be based on the revenue sharing with the KOPT, hence KOPT will also be a stakeholder in the overall development of the project. So we see no point why we should consider paying extra (apart from revenue sharing) for the allied infrastructure development.	No comments furnished.
4.	TM International Logistics Limited (TMILL)	
(i).	The rent to be considered for the proposal of the KOPT for upfront tariff fixation for projects in Haldia Dock – II (North and South) should be in sync with the determination of Tariff as per this proposal.	KOPT has not furnished any comments on the points made by TMILL.

2. 1. A joint hearing in this case was held on 25 January 2012 at the Kolkata Port Trust (KOPT) premises. At the joint hearing, the KOPT and the concerned users/ organisation bodies have made their submissions:

Kolkata Port Trust (KOPT)

- (i). Our proposal fully follows the Land Policy Guidelines, 2010.
- (ii). The proposed rate is based on the actual transaction that took place in the adjacent plot of land belonging to Haldia Development Authority.
- (iii). The proposed conditionalities are same as per the Land Policy Guidelines.

Central Warehousing Corporation (CWC)

Proposed rates appear to be on the higher side.

2.2. The other users present at the joint hearing have not made any comments.

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