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Tariff Authority for Major Ports

G. No.81 **New Delhi,** **04 March 2016**

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the V.O. Chidambaranar Port Trust for fixation of Upfront tariff for North Cargo Berth-I for handling Thermal Coal by NLC Tamilnadu Power Ltd. (NTPL) as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/29/2014-VOCPT

V. O. Chidambaranar Port Trust - - - - - Applicant

QUORUM

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Rajat Sachar, Member (Economic)

O R D E R
(Passed on this 15th day of January 2016)

This case relates to a proposal dated 28 May 2014 received from the V.O. Chidambaranar Port Trust (VOCPT) for fixation of upfront tariff for North Cargo Berth-I (NCB-I) for handling Thermal Coal by The NLC Tamil Nadu Power Limited (NTPL) under 2008 guidelines.

2.1. The VOCPT has submitted that the Government of India (Ministry of Shipping) vide its letter No.PD-11015/5/2006-TPT dated 22 October 2009 has granted approval for constructing the North Cargo Berth (NCB) - I on deposit terms for use as captive facility to handle Thermal coal for the NLC Tamilnadu Power Ltd. (NTPL) vide letter dated 22 October 2009. The sanction of the Government, *inter alia*, provides for the NTPL being subject to TAMP rate and to provide Minimum Guaranteed Throughput (MGT).

2.2. The VOCPT has further submitted that the NTPL has constructed the conveyor and loading facilities at the NCB-I. The berth was expected to be operational by June & July 2014. The draft Concession Agreement is yet to be signed in concurrence with the NTPL. The draft concession agreement envisages the payment of revenue share by the NTPL on the cargo moved by vessels carrying Thermal Coal meant for the NTPL. In order to regulate the payment of revenue share, the tariff rate is required for handling thermal coal with reference to the investment made by the NTPL including the cost of NCB-I. The details have been obtained from the NTPL on the investment made by the NTPL, as submitted by the VOCPT.

3.1. In this backdrop, upfront tariff for handling of thermal coal at NCB-I is computed by VOCPT. The computation of upfront tariff and the assumptions made as given by VOCPT are summarised below:

(i). **Optimal capacity**:

Optimal capacity of the Terminal is considered at the optimal stack yard capacity available in an area of 4.00 lakh sqm considering the stacking quantity at 5 tonne per sqm.

(a). Optimal quay capacity:

- The optimal quay capacity is assessed at 8.94 Million Tonnes Per Annum (MTPA) adopting the following parameters.
- The share of capacity of panamax vessels (upto 75,000 DWT) bringing thermal coal is assumed at 100%.
- The ship day output for panamax vessel (for thermal coal) is considered at 35,000 tonnes per day as per the norm prescribed for unloading terminal.

(b). Optimal yard capacity:

The optimal yard capacity calculated by the VOCPT is as follows:

A: Area of the yard (in square metres)	81,450
U: Capacity Utilisation level	70%
Q: Stacking factor (in tonnes/ sq. metre)	5

T: Turnover ratio of plot in a year	17.86
Optimum Yard Capacity	**5.09 MTPA**

(c). Thus, the optimal capacity of the terminal is considered at 5.09 MTPA being lower of the two capacities.

(ii). Capital Cost:

(a). The estimates of expenditure in respect of conveyor cost and shore unloaders have been obtained from the NTPL and the same may change on completion of the project.

(b). The equipment cost is as per the standard requirement of upfront tariff guidelines, 2008. The cost of required stackers and pay loaders as available in the upfront tariff fixation approved by the Authority in the proposal of North Cargo Berth-II is taken into account with due allowance of increase as per cost of inflation index upto 2013-14 with the extrapolation for the year 2014-15.

(c). As far as the cost of conveyor facility is concerned, the proportionate cost of conveyor facility from Berth to Red Gate area with reference to the total area of conveyor within the port limits (75% of the conveyor facility cost is taken as pertaining to the area of port limits).

(d). Accordingly, the total capital cost is estimated at ₹39,007.09 lakhs. The breakup of the capital cost is as below:

(**₹ in lakhs**)

Sl. No.		**Particulars**		**Estimated Capital Cost**
A.	**Cargo handling activity**			
	(i).	Civil Cost		NA
		TOTAL		**--**
	(ii).	Equipments		
		(a). Shore Unloaders etc.,	9122.65	
		(b). Stackers (norms – 2 nos.)	5883.61	
		(c). Conveyors	13537.09	
		(d). Pay loaders & dozers (norms – 4 nos.)	980.60	
		(e). Contingencies, engineering and supervision at 10% on the total base cost	2952.40	
		(f). Works contract tax (4% on 65% of equipment base cost)	-	
		TOTAL		**32476.35**
	(iii).	Miscellaneous cost (5% of i & ii above)		**1623.82**
TOTAL (i + ii + iii)				**34100.17**
B.	**Berthing activity**			
	(a). Cost of the berth		4460.84	
	(b). Contingencies, engineering and supervision at 10% on the total base cost		446.08	
	(c). Works contract tax (4% on 65% of civil base cost)		-	
	TOTAL			**4906.92**
TOTAL CAPITAL COST				**39007.09**

(iii). **Operating cost**:

(a). For Cargo Handling Activity:

Sl. No.	**Particulars**	**Workings**	**₹ in lakhs**
(i).	Power cost	1.4 unit/ tonnes * 5.09 MT * ₹8.00/ unit	570.24
(ii).	Repairs and Maintenance cost		
	(a). Civil assets	1% on civil works	--
	(b). Mechanical and Electrical Equipment including spares	7% on ₹34100.17 lakhs (Mechanical and Electrical works)	2387.01
(iii).	Insurance	1% on gross fixed assets	341.00
(iv).	Depreciation		
	(a). Civil assets	3.34% on civil works	--

Sl. No.	Particulars	Workings	₹ in lakhs
	(b). Mechanical and Electrical works	10.34% on Mechanical and Electrical works	3525.96
(v).	License fee		
	(a). Water front charges	24333.40 sqm for berthing @ ₹334.59/ Sqm/ annum as per port's proposal (Com purposes for 1.7.2012 to 30.6.2017)	81.42
	(b). Way Leave for conveyors	22960.56 Sqm for conveyor trestle within security wall @ ₹1.428/ Sqm/ annum	0.33
(vi).	Other expenses towards salaries and overheads	5% on gross value of assets (₹34100.17 lakhs)	1705.01
	Total Operating cost for Cargo handling activity		**8610.96**

(b). <u>For Berth Hire Activity</u>:

Sl. No.	Particulars	₹ in lakhs
(i).	Revenue Requirement	
	(a). Repairs & Maintenance Charge (1% on capital cost for berth)	44.61
	(b). Depreciation	148.99
	(c). Insurance (1% on total cost for berth hire service)	44.61
	Subtotal (a)	**238.21**
(ii).	Return on capital employed @ 16%	785.11
	Total Revenue Requirement from Berthing Services (i + ii)	**1023.32**

(iv). Return on capital employed is estimated @ 16%.

(v). Accordingly, the Annual Revenue Requirement (ARR) estimated by VOCPT is as follows:

(**₹ in lakhs**)

Sl. No.	Particulars	For cargo handling activity	For Berth hire activity
(i).	ROCE @ 16%	5456.03	785.11
(ii).	Operating cost	8610.96	238.21
(iii).	Total Revenue Requirement	**14066.99**	**1023.32**

(vi). Apportionment of Annual Revenue Requirement (cargo handling activity):

(**₹ in lakhs**)

Sl. No.	Particulars	Apportioned estimated revenue requirement	
		%	**₹ in lakhs**
(i).	Coal Handling Charges	99%	13926.32
(ii).	Storage Charges	--	--
(iii).	Miscellaneous Charges	1%	140.67
	Total Revenue Requirement	**100%**	**14066.99**

(vii). The VOCPT has furnished detailed computation for arriving at the proposed berth hire charge to meet the estimated ARR from berth hire service.

3.2. Based on the working, the following are the proposed upfront tariff for the coal handled at NCB- I by the NTPL for its plant or for other users:

(i). Berth hire charges:

Foreign-going vessel	-	₹2.03/ GRT/ hour
Coastal vessel	-	₹1.22/ GRT/ hour

(ii). Cargo handling charges:

(**Rate per metric tonne**)

Sl. No.	Commodity	Rate in ₹
1.	Thermal Coal (for both foreign and coastal cargo)	276.37

(iii). Miscellaneous charges – ₹2.76 / tonne.

3.3. The VOCPT has submitted that the proposed rates are meant for the captive facility and also to cater to occasional use of the NCB-I for other users. The VOCPT has requested to consider the proposal and communicate the sanction of this Authority under Section 48 of the MPT Act 1963.

The VOCPT has stated that the NTPL is the direct user of the facility and no other user is having stake in the proposal. Therefore, the proposal may be circulated to the NTPL for their comments.

4. In view of few information gaps observed in the proposal, the VOCPT was requested to furnish information/ clarification on a few points vide our letter dated 10 June 2014. The VOCPT has responded vide its letter dated 28 June 2014. A summary of the information / clarification sought by us in the proposal and reply furnished by the VOCPT is tabulated below:

Sr. No.	Information / Clarification sought by us	Response of VOCPT
(i).	The covering letter of the VOCPT dated 28 May 2014 mentions that Ministry of Shipping (MOS) vide its letter dated 22 October 2009 has approved construction of NCB-I to handle thermal coal by The NTPL. Copy of MOS letter No.PD-11015/5/2006-TPT dated 22 October 2009 forwarded by VOCPT as Annexure-I, however, states that the MOS has approved the proposal of VOCPT for allotment of NCB-I to The Neyveli Lignite Corporation (NLC). The VOCPT, therefore, to confirm that the approval stated to have been granted to The NTPL in the VOCPT's letter has the approval of the MOS and if so, a copy of sanction letter of the MOS granting approval for allotment of NCB-I to The NTPL for the construction of facilities at NCB-I at VOCPT may be provided.	The Ministry's approval letter dated 22.10.2009, the subject has been indicated as "Construction of North Cargo Berth in Tuticorin Port Trust on 'Deposit term' work by NLC-TNEB-JV. Accordingly, NLC have formed Joint Venture with Tamil Nadu Electricity Board in the name of "NLC Tamil Nadu Power Limited" (NTPL) to implement the coal based 2 x 500 MW Thermal Power Project at Tuticorin and VOCPT constructed the NCB-I on deposit basis and handed over the berth to the NTPL on captive use basis.
(ii).	The (then) Ministry of Shipping, Road Transport and Highways (MSRTH) vide its communication No.PR-14019/25/2007-PG dated 12 February 2008 has issued policy direction under Section 111 of the Major Port Trusts Act, 1963 issuing guidelines for upfront tariff setting for PPP projects at Major Port Trust. These guidelines for upfront tariff setting for PPP projects at Major Ports were notified in the Gazette of India on 26 February 2008 vide Gazette No.27. As per clause 1.3.1 of the said guidelines, the guidelines apply to all PPP projects for which bids will be invited by setting tariff caps upfront. Based on the upfront tariff caps approved by this Authority, the Major Port Trusts invite bids for the project and the potential bidders quote the revenue share. In the instant case, however, the proposal of the VOCPT states that the project is already awarded to The NTPL. In this context, the VOCPT to give reference to the relevant clause of the tariff guidelines of 2008 which allows determination of upfront tariff after the award of the project by the Major Port Trust. The VOCPT also to clarify	The allotment of Berth to the NTPL is for captive use facility with the approval of Government of India (MOS) vide letter dated 22.10.2009 which inter-alia specify the adoption of TAMP rates. In addition, the upfront tariff guidelines, vide para 1.3.2 provide that Guidelines for Tariff Regulation at Major Ports 2005 shall continue to govern the tariff setting for Major Port Trusts and Private Terminals already operating thereat and also the projects where bidding process is concluded before publication of these guidelines (2008). Hence, the proposal is to be regulated by tariff setting under upfront tariff guidelines, 2008 for PPP Projects.

	as to why the VOCPT did not approach this Authority for determination of upfront tariff for the proposed project under 2008 guidelines prior to inviting the bids.	
(iii).	The proposal of the VOCPT states that details of investment have been obtained from NTPL for computing the proposed upfront tariff. Annex – III of the upfront tariff guidelines of 2008 prescribes norms and principles for determining upfront tariff for coal terminal. Norms for calculation of capital cost prescribed in Para 4 of the said Annex – III, stipulate that the civil construction cost and coal handling equipment cost have to be as per the estimate given by the Port Trust for normative list of civil and equipment cost prescribed in the 2008 guidelines. The proposal filed by the VOCPT based on the details of investment made by an individual operator is, therefore, not found to be in line with the provision stipulated in the 2008 tariff guidelines.	Considering the allotment of berth on captive use basis to the NTPL the relevant requirement for the NTPL only is relevant as being user specific.
(iv).	(a). Section 42 (4) of the Major Port Trusts Act, 1963, read with Section 48 ibid requires rates to be notified by this Authority in respect of identified services provided by persons authorised under Section 42 (3) ibid. It is not clear from the communication of VOCPT as to the nature of licensing arrangement adopted in this case. The VOCPT, therefore, to clarify whether the authorization granted to NTPL is under Section 42 (3) under Major Port Trusts Act, 1963 and with the approval of the Ministry of Shipping in the Government of India.	Yes. The authorization was granted to the NTPL under Section 42(3) under Major Port Trust Act, 1963 and with the approval of Ministry of Shipping.
	(b). In the event the licensing is of BOT nature, tariff guidelines of 2008, which require tariff determination to be done upfront prior to bidding process by the concerned port trust, cannot be applied in the instant case as the project is already awarded by the VOCPT. The tariff for the facility will have to be fixed under 2005 guidelines based on a proposal from the licensee following his cost of operation and level of investment under 2005 tariff guidelines.	As the arrangement of NCB-I as a captive facility and is a new one and revenue share is to be collected, upfront tariff rates are to be fixed to regulate the same. The Tariff guidelines, 2005 is not applicable. Therefore, the upfront tariff as per Guidelines, 2008 may only be relevant and may please be fixed accordingly.
	(c). If the licensing is by any manner other than BOT, then as per clause 7.2 of the tariff guidelines of March 2005 tariff will have to be determined based on a proposal by the landlord port which will apply commonly without reference to any individual service provider.	
(v).	The proposal of the VOCPT makes a mention about draft Concession Agreement (C.A.). Please clarify whether it is draft or final C.A. approved by the MOS. If final C.A. is signed, a copy of the same to be forwarded to us for our reference.	The draft concession agreement has been furnished to the NTPL for their acceptance and the response is awaited.

(vi).	The copy of MOS letter dated 22 October 2009 forwarded by the VOCPT states that the approval is granted for allotment of NCB-I to the NLC as per present guidelines of 1996 on captive use. The VOCPT to forward a copy of captive use policy of 1996 communicated by the Government to VOCPT and other Major Port Trusts.	Copy furnished.
(vii).	The VOCPT letter states that the Government of India has approved construction of NCB-I on deposit term for use as captive facility. However, the MOS letter dated 22 October 2009 does not make any mention of "Deposit term". Please clarify the position.	The Ministry's approval letter dated 22.10.2009, the subject itself has been indicated that 'Construction of North Cargo Berth in Tuticorin Port by 'Deposit Term' work by NLC-TNEB-JV.
(viii).	The proposal of the VOCPT states that since The NTPL is the direct user of the facility and no other user is having stake therein, the proposal may be circulated to The NTPL only. In this context, the attention of the VOCPT is drawn to the mention of the VOCPT in page 3 of its proposal that the said captive facility will occasionally be used by other users as well. Hence, relevant cargo interest (other than The NTPL) as well as common users/ user associations and those representing vessel related activities from the approved list of users (as the proposal includes berth hire) will also have be consulted on the subject proposal. The VOCPT to indicate cargo users other than The NTPL who need to be consulted on the subject proposal.	List indicating cargo users other than the NTPL who need to be consulted on the subject is enclosed.
(ix).	The proposal is not accompanied with the draft proposed Scale of Rates. As a part of consultation process with the concerned stake holders, the draft proposed SOR also needs to be forwarded to all the stake holders along with the proposal, as required by clause 3.2.4 of the tariff guidelines of 2005. The VOCPT, therefore, to forward the draft proposed SOR.	The draft proposed SOR is enclosed.

5. As seen from the reply furnished by the VOCPT, the VOCPT has reiterated that the tariff fixation for NCB-I will fall under the tariff guidelines of 2008. In this regard, another letter was addressed to VOCPT dated 18 July 2014. The VOCPT has responded vide its e-mail dated 4 August 2014. A summary of points raised in our letter dated 18 July 2014 and reply furnished by VOCPT is tabulated below:

Sl. No.	Points observed by us	Reply furnished by VOCPT
(i).	The port has taken a stand quoting clause 1.3.2. of the tariff guidelines of 2008 that since the award of NCB-I project is post 2008, the tariff for NCB-I is required to be fixed following the guidelines of 2008 for fixation of upfront tariff. However, the VOCPT to note that Clause 1.3.1. of the Guidelines of 2008 requires all the Major Port Trusts including VOCPT to set tariff caps upfront before inviting bids. However, the VOCPT did not opt to fix tariff caps upfront prior to inviting bids.	It is submitted that vide clause 1.3. of 2005 Guidelines, the same shall apply to all the Major Ports to whom the provisions of Major Port Trusts (MPT) Act, 1963, as amended from time to time, are applicable or extended and private terminals operating at these ports (herein after referred to as ports) under BOT/ BOOT or any other privatization arrangement adopted by the Government and other service providers authorized under section 42 of the said Act. However, the Guidelines 2008, for upfront setting for PPP Projects

	Notably, Clause 1.3.1. does not differentiate between a project awarded on captive basis or common user basis.	vide clause 1.3.1 provide that the said Guidelines shall apply to all PPP Projects for which bids will be invited by setting tariff caps upfront in the manner provided herein after and such projects are awarded under BOT/BOOT or any other arrangement for private sector participation under Major Port Trusts Act, 1963 adopted by the Government as amended from time to time. The reference to "any other arrangement for private sector participation" covers captive facility since it is specified in addition to all PPP Projects. Clause 1.3.2 (2008 Guidelines) make 2005 Guidelines to govern the tariff setting for Major Ports Trusts and Private Terminals already operating thereat and also projects where bidding process is concluded before publication of these Guidelines (2008) in the Gazette. Therefore, considering the 2005 Guidelines to govern the cases of Major Port Trusts and Private Terminals operating thereat and projects bid before publication of 2008 Guidelines and the provision of governing any other private sector participation in clause 1.3.1 in addition to PPP Projects to be governed by 2008 Guidelines, the proposals of the Port is to be governed under the 2008 Guidelines only. The requirement of bidding prior to setting tariff caps is applicable only to PPP arrangement and not to other arrangement like captive facility so as to invoke application of 2005 Guidelines. Therefore, the Port's request for fixation of upfront tariff for the subject NCB-I Coal Terminal under captive facility may be considered favorably by this Authority.
(ii).	It is noteworthy that in a similar case of award of a BOT project post 2008 at Mumbai Port Trust (MBPT), this Authority vide Order No.TAMP/39/2010-MBPT dated 02/05/2011 observed that as per Clause 1.3.1. of the 2008 Upfront Tariff Guidelines, the Guidelines apply to PPP Projects for which bids are invited by setting tariff caps upfront. In the case of the BOT operator at MBPT, the bid process was concluded post 2008 (in August 2009). Since the MBPT did not opt to fix tariff caps prior to bidding in the case of BOT operator, this Authority held that the BOT case of MBPT will fall under Tariff Guidelines of March 2005; and, the tariff for the BOT operator at MBPT was fixed accordingly following provisions of 2005 tariff guidelines only. The said BOT operator at MBPT has commenced operations and levying tariff fixed based on the tariff guidelines of 2005.	For the reason cited in reply to point (i) above, relating to non-application of the bidding process for the captive arrangement, the case of MBPT BOT Project vide Order No.TAMP/39/2010-MBPT dated 02/05/2011 is not felt relevant for the subject proposal.
(iii).	In one another case at Kandla Port Trust (KPT), based on the approval granted by	The case of the captive arrangement in respect of IFFCO Kisan Bazar Ltd. (IKBL) of

	Ministry of Shipping, Government of India, KPT entered into Concession Agreement (CA) with IFFCO Kisan Bazar Ltd. (IKBL) on 17 February 2011 (post 2008) to build, operate and maintain barge jetty for unloading its captive fertilizers and fertilizers raw materials for a period of 30 years. The said facility is a captive facility and also allows the operator to handle other cargo as well. The KPT had not opted to fix tariff upfront prior to inviting bids for award of the project under the tariff guidelines of 2008. The authorization granted by KPT to IFKBL for setting up of Barge Jetty on Captive Use Basis at Kandla Port in the form of concession agreement is under section 42 (3) of MPT Act, 1963. The IFKBL has recently approached this Authority for fixation of tariff under 2005 guidelines for the terminal as the Concession Agreement allowed IFKBL to handle cargo other than the captive cargo of IFFCO which is being processed as a separate case.	Kandla Port Trust does not specify revenue share and instead provide for collection of wharfage and other charges. But the approval given by Ministry of Shipping permitting the construction of North Cargo Berth-I by Tuticorin Port on deposit terms to The NLC TNEB Joint Venture as per present Guidelines of 1996 on captive usage. The sanction, inter-alia, provide that NLC will be subjected to TAMP rates and will have to provide MGT. Considering the above conditionalities of sanction for the construction and operation of North Cargo Berth-I by The NLC TNEB JV (NTPL) by the Ministry, it is requested that the Port's proposal to fix upfront tariff for the subject project may be considered. This will facilitate to comply with the 1996 Guidelines of Private Sector Participation for captive use (which specify maximum revenue realization) and to impose heavy penalty in the form of revenue share for shortfall in MGT.
(iv).	The VOCPT has confirmed that the authorization granted to The NTPL is under Section 42(3) under Major Port Trust Act, 1963; and, it is with the approval of Ministry of Shipping. The project awarded is a BOT arrangement. Section 42(4) of the Major Port Trusts Act, 1963, read with Section 48 ibid requires rates to be notified by this Authority in respect of identified services provided by persons authorised under Section 42(3) ibid. Determination of tariff upfront prior to awarding the project to The NTPL as required by the tariff guidelines of 2008 cannot be applied in the instant case as the project has already been awarded by the VOCPT. The tariff fixation for the facility at the VOCPT will, therefore, be governed under 2005 guidelines based on a proposal from the licensee following his cost of operation and level of investment under 2005 tariff guidelines in line with the approach followed in the case of IKBL and the BOT operator at MBPT.	For the reasons submitted vide reply to point (i) above, the question of application of 2005 Guidelines does not arise.
(v).	In view of the above statutory position, the VOCPT is again requested to suitably advise the BOT concessionaire to file a proposal complete in all respects following the tariff guidelines of 2005 as per the cost formats prescribed for filing the tariff fixation proposal which are available in the website of TAMP.	Considering the foregoing submissions, it is appropriate that upfront tariff is set as per Guidelines for upfront tariff setting 2008 for the coal handling facility at North Cargo Berth-I belonging to the NTPL for captive use.

6.1. One more letter was addressed to VOCPT dated 1 September 2014. In this context, the VOCPT has vide its e-mail dated 1 October 2014 submitted that the NTPL is proposing to bring the first vessel having coal for their Thermal Power Plant by the end of October month as a trial measure. Taking into account the development, the Port has furnished its point-wise reply reiterating its stand to fix the upfront tariff by adopting the upfront tariff guidelines 2008. A summary of points raised in our letter dated 1 September 2014 and reply furnished by VOCPT is tabulated below:

Sl. No.	Points observed by us	Reply furnished by VOCPT
(i).	One of the points made by the VOCPT is that the approval given by the Ministry of Shipping (MOS) vide its letter No.PD-11015/5/2006-TPT dated 22 October 2009 is as per the present guidelines of 1996 on captive use. In this regard, it is seen that 1996 guidelines referred in the said letter forwarded by the VOCPT under the cover of its letter dated 28 June 2014 relates to "GUIDELINES FOR PRIVATE SECTOR PARTICIPATION" to be followed by Major Port Trust issued by the government even prior to constitution of TAMP. In the said guidelines para (6)(v) deals with policy for Captive facilities for port based industries. The said policy does not prescribe guidelines to be followed for fixation of tariff for captive facilities. That being so, the reference drawn by the VOCPT to 1996 guidelines and seeking approval of upfront tariff under 2008 guidelines citing that it will enable maximum revenue realisation is not clear.	The reference to 1996 Guidelines for Private Sector Participation vide sl.no.2.3 of Port's letter 3rd cited is to indicate the need for compliance of the condition to ensure maximum realization. However, the issue of maximum realization is not specified in the said TAMP Guidelines. Hence, it is requested to adopt the upfront tariff Guidelines 2008 which has already been applied for other similar berths to handle coal alongwith other cargoes under PPP mode, so as to comply with the said requirement of ensuring maximum realization which is possible only under Upfront Tariff Guidelines 2008. This is based on the following factors: (i). If the 2005 Guidelines are applied, the rate will be on cost plus basis (clause 2.4.1) with projected expenditure for the tariff validity cycle to be recovered from the capacity utilization achieved by the captive facility operator (The NTPL). (ii). Return on capital employed is linked to capacity utilization (Clause 2.9.10). The provision vide Clause 2.9.11 provide that in case of private terminal operator, if the investment made is in accordance with obligations under the Concession Agreement, it will be considered for ROCE even if full capacity utilization is not achieved. (iii). Adoption of this is not possible in the present proposal since such obligations could not be prescribed considering the linkage to capacity of the Plant. (iv). As the NTPL is a captive facility designed to have a capacity of 1000MW of Thermal power, the requirement for the Thermal Coal for the Plant is 5.0 million tonnes per annum (MGT is 4.56 million tonnes) whereas similar facility of North Cargo Berth-II has capacity of 6.93 million tonnes and NCB-III & NCB-IV each having capacity of 9.15 million tonnes. Therefore, if 2005 Guidelines are adopted, the rate fixed will be very low based on lower capacity utilisation. (v). If the rates for NCB-II , NCB-III & NCB-IV fixed on upfront tariff are considered, the same are with reference to the Upfront Tariff Guidelines 2008 for Coal Terminal and is with reference to: (a). lower of optimum quay capacity/ optimal stack yard capacity (Clause 3.0 of Norms for Coal Terminal). (b). expenditure projections are allowed for the standard consumption of power and other expenditure linked as percentage on Gross Fixed Assets Value. (c). as per General notes vide Sl.No.3.4.1, the capital employed is with reference to Capital Cost determined in accordance with clause 4.1 of Norms for Coal

Terminal.

(vi). A comparative position of impact on Operating Cost and Return on Capital Employed if the same is worked out as per Upfront Tariff under 2008 guidelines vis-à-vis 2005 guidelines is furnished below:

Sl. No.	Group	Norms as per 2008 Upfront Tariff Guidelines	Implications of Col.3	Implications if 2005 Guidelines
(1)	(2)	(3)	(4)	(5)
1.	(a). Repair and maintenance of civil assets (b). Repair and maintenance of mechanical and electrical equipments including spares	1% of cost of all civil assets 7% of cost of all mechanical and electrical equipments	Fixed throughout the period of the operation of the facility.	Actual/ projected expenditure with respect to the level of operations for the relevant period. However, the same will be minimum in the initial years and will be higher after initial years
2.	Insurance	1% of Gross Fixed Assets value	Fixed with respect to Capital cost.	Actual/ projected cost for the period involved with respect to assets for which insurance is taken.
3.	Depreciation	As per norms prescription in Companies Act or any norms prescribed in the licence agreement whichever is higher.	Allowance is prescribed for adoption of higher of the Companies Act/ norms prescribed in the Licence agreement	Allowance is prescribed for adoption of Companies Act, 1956 only.
4.	Licence Fee (rental for land and other Port assets)	As per Scale of Rates of the concerned Major Port Trust	Actuals / projected	Actuals / projected
5.	Other expenses	5% Gross Fixed Assets value	Fixed with respect to Capital Cost.	Actuals/ Projected expenditure for the relevant period which will not be uniform throughout the period of Agreement.
6.	Return on Capital Employed	Return on capital employed is allowed on the estimated Capital Cost for Civil construction	(a). Original estimated cost at the time of upfront tariff fixation is considered as Capital Employed	(a). As per Clause 2.9.3 Capital Employed will comprise Net Fixed Assets (Gross Block minus Depreciation

				, Equipments & Plant & Machinery, IT Systems and other costs such as preliminary expenses, financing cost, interest during construction.	to adopt the Percentage of Return on Capital Employed prescribed without any change (b). 100% return is allowed without linkage to achievement of capacity utilization of 60% and above.	minus Works in Progress plus Working Capital. (b). As per 2.9.10, Return allowed will be linked to the utilization factor of the capacity of the Port/Terminal as assessed by them considering the berth length and other facilities. (c). 100% return is allowed only if capacity utilization achieved is 60% and above. If the same is between 50% to 60%, pro rata reduction in the maximum permissible return is to be allowed. This has the impact of reduced allowance on the Return on Capital Employed vis-à-vis upfront tariff fixation.
		7	Annual indexation to inflation	Annual indexation is allowed to an extent of 60% of the variation in Wholesale Price Index occurring between 1 January 2008 and 1 January of the relevant previous year.	This is an automatic adjustment of tariff with respect to variation in Wholesale Price Index and is applied every year with respect to percentage of increase notified by TAMP every year. This gives leverage for the operators to get enhanced rate which gives weightage to both increase in operating cost as well	Tariff once fixed for a tariff cycle remains constant throughout the period of tariff cycle and no automatic adjustment is allowed. This puts the operator in a disadvantageous position vis-à-vis the operator under upfront tariff guidelines with a reduced realization due to lower rate without annual escalation.

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<tr><td></td><td></td><td></td><td>as Estimated Capital Cost based on which Return on Capital Employed is being allowed in upfront tariff calculation.</td><td></td></tr>
</table>
(vii). Considering the comparative position furnished at Points (ii) and (iii) above, there will be reduced tariff and reduced revenue realization, if 2005 guidelines are adopted when compared to the rates to be adopted on upfront tariff basis. This is evident from the following table:
<table>
<tr><th>Sl. No.</th><th>Description</th><th>TNEB</th><th>NTPL</th></tr>
<tr><td>1</td><td>Power Generation Capacity</td><td>1050 MW (5*210MW)</td><td>1000 MW (2*500 MW)</td></tr>
<tr><td>2</td><td>Throughput per annum in lakh tonnes</td><td>66.61 lakh tonnes</td><td>45.60 lakh tonnes (MGT)</td></tr>
<tr><td>3</td><td>Wharfage available to Port on Cargo Handled</td><td>₹2,531.06 Lakhs</td><td></td></tr>
<tr><td>4</td><td>Revenue Share at 50% (subject to approval of Board) at the proposed rate based on Annual Revenue Requirement for NCB I</td><td></td><td>₹4712.42 Lakhs</td></tr>
</table>
Therefore, it is submitted that the reduced earning on account of application of Wharfage as against Revenue Share on upfront tariff on MGT will lead to non-compliance of the 1996 Guidelines for Private Sector Participation which stipulate that the Port is to ensure maximum realization.
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<td>(ii).</td>
<td>Apart from this, it is observed that the VOCPT has vide its e-mail dated 4 August 2014 reiterated its earlier submissions quoting clause 1.3.1. and 1.3.2. of the 2008 guidelines reiterating its request that the subject proposal should be considered applying 2005 guidelines.</td>
<td>The e-mail dated 4 August 2014 refer to Port's reply to letter dated 18 July 2014 and the Port's request is confirmed to be for adoption of 2008 Guidelines only vide para 2.1 of the letter dated 18 July 2014.</td>
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<td></td>
<td>A detailed letter dated 18 July 2014 was already addressed to VOCPT clarifying the position as per the provisions of the 2008 tariff guidelines and also referring the decision of this Authority on the guideline position in other similar cases.</td>
<td>Regarding the Authority's letter dated 18 July 2014 Ports submissions vide letter dated 4 August 2014 are reiterated and the Authority is requested to consider the same favorably taking into account the position explained therein and also the reply submitted earlier on compliance of ensuring maximum revenue realization.</td>
</tr>
<tr>
<td></td>
<td>As pointed out in our letter dated 18 July 2014, the VOCPT, therefore, to suitably advise the BOT concessionaire to file a proposal complete in all respects following the tariff guidelines of 2005 as per the cost formats prescribed for filing the tariff fixation proposal which are available in the website of TAMP.</td>
<td>For the submissions above especially considering the need to ensure maximum realization narrated above, the Authority is requested to consider the proposal of the port to fix upfront tariff for the facility under upfront tariff Guidelines 2008, instead of Tariff Guidelines 2005 as mentioned in Para 5 of the reference dated 1.9.2014.</td>
</tr>
<tr>
<td>(iii).</td>
<td>The VOCPT vide its letter dated 28</td>
<td>A draft concession agreement (incorporating the</td>
</tr>
</table>

	June 2014 had mentioned that the draft Concession Agreement is forwarded to the NTPL and response is awaited. The VOCPT also to forward a copy of final Concession Agreement (if finalised) and approved by the MOS for the said project.	observations of the NTPL) is enclosed.

6.2. Apart from the above, regarding the issue of application of the 2005 guidelines for the Buthello Travels for two 60 tons electronic weighbridges installed in Mumbai Port Trust (MBPT) and for IFFCO Kisan Bazar Ltd. (IKBL) of Kandla Port Trust, the VOCPT has made the following submissions in support of its stand about non-application of the said decisions to its current proposal for the Captive facility for coal handling operation at NCB-I:

(i). Operation by The Buthello Travels on BOT basis for two 60 tons electronic weighbridges installed in Mumbai Port Trust (MBPT)

The above Order No.TAMP/39/2010-MBPT dated 2 May 2011 specify the following for the subject regulation under 2005 guidelines:

(a). MBPT Board had sanctioned the proposal in September 2007 to install two electronic weighbridges of 60 ton capacity each on BOT basis. (Para 3(i) of the Order).

(b). Ministry of Shipping vide its letter dated 26.10.2010 has conveyed ex-post-facto approval vide letter dated 26.10.2010 on BOT basis on PPP mode.

(c). As per notification dated 26.2.2008, the upfront tariff guidelines will apply to all PPP projects for which bids will be invited by setting tariff caps upfront, and in the case of the Buthello Travels, tariff cap is not set prior to bidding, this case falls under Tariff Guidelines 2005. (Para 5 of the Order).

The above case is a BOT basis on PPP mode for which bids were invited prior to tariff setting, whereas the current proposal is a captive facility approved by Ministry of Shipping as such, the same will not fall under the 2005 guidelines. Hence, it will be appropriate to consider the current proposal under Upfront Tariff Guidelines 2008 with reference to any other arrangement for private sector participation adopted by Government specified in Clause 1.3.1 of the Guidelines ibid.

(ii). IFFCO Kisan Bazar Ltd. (IKBL) of Kandla Port Trust:

The case of IKBL of Kandla Port Trust is different from the Case of the NTPL, a public sector enterprise establishing the North Cargo Berth I for their own captive usage. As indicated in the letter of Authority vide Para 2.3 of the letter dated 18 July 2014, IKBL have recently approached this Authority for fixing tariff under 2005 guidelines for handling cargo other than the captive cargo of IFFCO. In this connection, the said proposal is not similar to the case of NCB-I to handle coal under captive policy. Besides, the Concession Agreement of IKBL with Kandla Port Trust is not similar to the draft agreement enclosed with reference to compliance to Guidelines for Private Sector Participation 1996 of Government of India to ensure maximum revenue realization.

6.3. Further, the VOCPT has also drawn attention to the following points:

(i). The need to comply with Ministry’s Guidelines to ensure maximum revenue realization as per Guidelines for Private Sector Participation 1996.

(ii). Submissions made by it about non-applicability of adoption of 2005 Tariff Guidelines to the two cases referred to by this Authority vide its letter dated 18 July 2014 this particular case.

Both the above points justify the need for fixation of tariff under upfront tariff guidelines of 2008.

6.4. The port has also pointed out that the proposal submitted by Port for fixation of upfront tariff in respect of NCB I to handle Thermal Coal for consideration of this Authority is on nomination basis as per the directions of the Ministry of Shipping during the year 2011 while sanctioning the Project for Captive Usage. The Concession Agreement for the present PPP project on nomination basis is also not yet signed, pending decision about the revenue share to be paid by the NTPL. Since the Revenue Share is not yet finalized and Agreement is not yet signed, the current proposal cannot be compared with the cases of the Buthello Travels in Mumbai Port Trust and IKBL of Kandla Port Trust where Agreements were signed and thereafter tariff has been fixed/ proposed. Therefore, this Authority is requested to fix the tariff upfront so that Revenue Share can be determined and Agreement can be signed.

6.5. In view of the special circumstances explained above, the Port has again requested to consider its proposal for fixation of upfront tariff under Guidelines for upfront tariff setting for PPP projects at Major Port Trusts, 2008.

7. By considering and solely relying on the reasons furnished by VOCPT vide its letter dated 1 October 2014 and earlier letters brought out in the preceding paragraphs, the proposal dated 28 May 2014 of VOCPT was registered as tariff case and taken up for processing.

8. In accordance with the consultative procedure prescribed, the proposal of VOCPT dated 28 May 2014 was forwarded to the concerned users/ user organisations/ captive user (as forwarded by VOCPT) seeking their comments. The comments received from the users were forwarded to VOCPT as feedback information. The VOCPT vide its letter 12 January 2015 has furnished its reply on comments of the users/ user organisations/ captive user.

9.1. Based on a preliminary scrutiny of the proposal, the VOCPT was requested vide our letter dated 9 January 2015 to furnish additional information/ clarifications. The VOCPT has, subsequent to the joint hearing, vide its letter dated 16 April 2015 furnished its reply on additional information/ clarifications sought by us. Summary of additional information/ clarifications sought by us and the response of the VOCPT is tabulated below:

Sl. No.	Additional information/ clarifications sought by us	Reply furnished by VOCPT
(1).	The proposal filed by the VOCPT is for fixation of upfront tariff for North Cargo Berth following the 2008 guidelines. In this context, The NTPL in their comments dated 12 December 2014 which was forwarded to VOCPT vide our letter dated 16 December 2014 has, apart from other comments, categorically stated that 2008 guidelines cannot be applied in its case as the project set up by NTPL is not a Public Private Partnership (PPP) project. As stated earlier, the VOCPT is requested to give elaborate comments on this point and all other points frontally addressing all the comments made by NTPL. Notwithstanding the above position, on examining the proposal filed by VOCPT, it is observed that additional information/ clarifications are required on a few points as brought out point-wise in the subsequent paragraphs.	Please refer to port's reply vide sl. no.3(b) and 3(c) of Annexure-I port's letter dated 12.01.2015 with respect to the queries raised The NTPL on the subject issue.
(2).	The proposal of the VOCPT states the NTPL is to commence the operations from June/ July 2014. Please indicate the exact date of	The exact date of commercial operation is not yet known. On receipt of the information it will be intimated to the

	commencement of operations by the NTPL.	Authority. However trial run are started and 4 vessels are handled and above 1.25 lakhs tonnes handled at the Berth.
(3).	The proposal of VOCPT is for fixation of upfront tariff for thermal coal. That being so, the reasons for including industrial coal in Annex-IV i.e. the upfront tariff calculation is not clear. If industrial cargo is not relevant for the proposed project it should be excluded.	Due to typographical error printing the reference to the Industrial coal has occurred and no weight is given in the Estimate column. Therefore, the reference may please be ignored. Considering the same is not taken into account below estimate column, there will be no impact.
(4).	**Optimal Capacity:**	
	(i). Coal handling:	
	(a). Optimal Quay Capacity: The VOCPT has assumed share of panamax vessels to be 100%, for time being. The port has not assumed any share of capesize vessels while assessing the optimal quay capacity of coal terminal. The VOCPT may state whether capesize vessels will also be handled at the proposed coal handling terminal during project period. If so, the VOCPT should modify the optimal quay capacity calculation accordingly.	With respect to the availability of 152 mtr. width at Port Entrance Channel and 12.80 mtr draught in the berth and the berth interfaces, the capsize vessel cannot be accommodated. Hence, the panamax size vessels are only considered in the proposal submitted.
	(b). Optimal Yard Capacity: (i). Para 3 of the proposal states optimal yard capacity is estimated for 4 lakh sq. mtrs. of stacking area. However, the stacking area shown in the computation of Optimal Yard Capacity in Annex IV at Sr. No.I(ii)(a) is only 81,450 sq. mtrs. The correct stacking area should be considered in the calculation. (ii). The stacking factor considered by VOCPT for optimal yard capacity is 5 tonnes per sq. mtrs. and annual turnover is 17.86. Explain the basis of assuming these parameters. (iii). The Authority while setting upfront tariff for coal terminal (thermal coal and other than thermal coal) at MOPT vide Order No.TAMP/23/2008-MOPT dated 18 August 2008 has considered stacking factor of 4.70 tonnes per sq. mtrs. and annual turnover of 20. In case of VOCPT, the Authority vide Order No.TAMP/27/2009-TPT dated 23 February 2010 has considered stacking factor for thermal coal at 6.6 and turnover of 28. Thus, when stack height of 6.6 tonnes sq. mtrs. and turnover of 28 can be achieved at VOCPT for handling thermal coal, please explain the reasons why the same cannot be adopted in the current case. (iv). The optimal quay capacity for coal handling terminal is assessed as 8.94 Million Tonnes Per Annum. But, the optimal capacity of the coal handling terminal is pegged at 5.09 Million Tonnes Per Annum as the optimal yard	 (i). The correct stacking area is only 81,450 sqm. and it is also confirmed from The NTPL. Hence, the stacking area considered in the calculation of optimal yard capacity is also correct. The imported coal is sent through conveyor to power plant situated above 4 kms. from berth in port land itself. (ii). The same is based on the information available in the Feasibility Report of The NTPL. Please refer reply above also. (iii). As replied above. (iv). The parameters adopted for stacking height are project specific to the Power Plant of NTPL and hence the question of windfall gain to the operator is not relevant to the upfront tariff

	capacity is the limiting factor. Thus, there is wide mismatch between the optimal quay and yard capacities. It has to be borne in mind that if at a later stage the storage yard area or any other parameters considered for determining yard capacity undergoes a change, it will result in significant increase in Terminal capacity which may result in windfall gain to the operator which will not be a result of the efficiency of the operator but may be due to the parameters assumed at the planning stage. It is relevant here to mention that the upfront tariff guidelines do not prescribe any norm nor does it place any restriction on the port on area to be allotted to the operator for storage purpose. The expectation is to consider the area required to handle the anticipated capacity. In view of the wide gap observed between the optimal quay and optimal yard capacity, the port is requested to examine all the possibilities of improving the yard capacity by improving the various parameters i.e. stacking parameter, storage area for coal, improving the turnover parameter, etc. considered in assessing the optimal yard capacity.	fixation now. If any changes in the parameters occurred at a later stage involving impact on the capacity proposal for revision of tariff will be submitted at appropriate time in future confirming to provisions of clause 2.7.1. of the Guidelines, 2008 providing for review once in five years to adjust for any extraordinary event that could not be foreseen by a prudent person. Considering the captive facility is linked to the operations of the Thermal Power Plant and the imported coal is conveyed through a conveyor, the question of further improvement of yard capacity by increased area will not arise.
(5).	**<u>Capital Cost Estimation:</u>**	
	(i). (a). The upfront tariff guidelines of 2008 adopted by the VOCPT prescribe normative list of civil works for coal unloading terminal which includes cost of berth apron and approach, transfer towers, wagon loading and truck loading station, building, conveyor gallery and marshalling yard. The port has stated that 4 lakh sq. mtr. of area would be available for stacking thermal coal cargo. But, the civil cost does not include capital cost for storage yard. Explain the reasons for not estimating capital cost towards civil works and also explain the reasons for deviation from the normative list of civil works.	The storage area identified is 81,450 sqm. with reference to the design of the plant area. Hence, the same is included in the capital cost of the Plant and the same is not forming part of the project cost of the subject facility covered in the proposal.
	(b). The capital cost for equipment estimated by VOCPT does not include capital cost towards Reclaimer – 2 nos., Wagon trippler – 2 nos., Cranes - 2 nos., workshop equipment, electric power and control switch gears as per normative list of equipment prescribed in the 2008 guidelines for coal unloading terminal. Explain the reasons for deviation from the list of equipment prescribed in the guidelines for each item of deviation.	The capital cost has since been revised with reference to the submissions of The NTPL vide letter dated 24 January 2015 the copy of the same is also marked to Authority, and is relevant to the actual deployment communicated by The NTPL and the same may please be admitted.
	(ii). The total capex estimated by NTPL attached as Annex-II to the proposal is seen to the tune of ₹6602.74 crores. As against that the capex estimated by VOCPT for the proposed project is ₹390.07 crores. Explain the reasons for significant variation in the capex figures considered by VOCPT in the tariff computation.	The capital expenditure of ₹6,602.74 crores is covering the capital cost of berth and in addition the capital cost of Thermal Power Plant and the conveyor cost from the Berth to Plant area. Hence there is a variation. Subsequent to the clarifications made by The NTPL vide letter dated 24 January 2015 the capital cost is updated and revised

		calculations are furnished.
	(iii). The VOCPT has estimated miscellaneous cost at 5% of civil and equipment capital cost which is as per the norms prescribed in the guidelines. Apart from that the VOCPT has also estimated 10% of the equipment cost towards contingencies, engineering the base equipment cost which are not found as per the norms prescribed in the guidelines. Explain the reasons and basis for estimating miscellaneous, capital cost and contingencies cost particularly in the light of the fact that in the current proposal, the VOCPT will have the benefit of availability of the actual capital cost incurred by the NTPL as the project was expected to commence by June/ July 2014. The contingency cost and miscellaneous cost would be relevant when tariff is determined upfront prior to bidding process based on the cost estimated by port. Infact the VOCPT in its proposal at para 3(ii) has stated that the estimated capex will change on completion of the project. Since the project would be completed by now, the VOCPT may consider to update the estimated capital cost with actuals after obtaining the capex figures from the NTPL in the light of the above observation. Consequently, the repairs and maintenance, insurance cost, depreciation, other expenses linked to capital cost should also be modified accordingly.	The 10% of the equipment cost towards contingencies, engineering on the base equipment cost is adopted as done in the case of proposal submitted for NCB-II hence the same may please be admitted.
	(iv). Confirm that the capital cost considered in the computation reflect the current market position.	The capital cost considered in the computation is with reference to the actual cost details furnished by The NTPL.
(6).	**Operating Cost:**	
	(i). Power cost: The VOCPT has considered ₹8.0 per electricity unit for working out power cost. The VOCPT is requested to furnish last three months electricity bills to substantiate the unit rate of power adopted by the port.	Based on the submission by The NTPL, the power cost is revised as ₹4.28 per unit subject to production of the supporting document by The NTPL.
	(ii). Depreciation: The VOCPT has estimated depreciation on handling equipments @ 10.34% as per the Companies Act, 1956. It is, however, relevant to mention that Companies Act, 2013 has been announced by the Ministry of Corporate Affairs which suggests useful life of asset to be considered for computing depreciation. The VOCPT, therefore, to review and modify the deprecation rate applicable under the Companies Act, 2013. This point is relevant for estimating depreciation of assets.	As advised by the Authority the revised rate of depreciation at the rate of 6.33% as per Companies Act, 2013 is considered.
	(iii). License fees:	
	(a). The VOCPT has estimated license fee applying unit rate of ₹334.59 per sq. mtr./ annum. The Authority vide its Order No.TAMP/6/2012-VOCPT dated 4 April 2014 has revised the lease rental for VOCPT lands.	The rate of Licence fee is also considered at 50% of the unit rate of ₹348.64 per sqm. per annum which is applicable for commercial category as per the Authority's Order

	It is seen that the lease rent considered by VOCPT at ₹334.59 per sq. mtr./ annum is not as per the lease rent approved by the Authority in the said Order. The VOCPT to give the reference of the lease rent adopted by the port along with escalation factor applied. Workings of the unit rate considered to be furnished.	No.TAMP/6/2012-VOCPT dated 4 April 2014.
	(b). The unit rate for way leave charges considered by VOCPT at ₹1.428 per sq. mtr./ annum does not match with the way leave charges prescribed in its Scale of Rates of VOCPT at ₹1.42 per sq. mtr./ annum. The VOCPT should correct the estimation in the light of the above observation.	In the calculation, actually the unit rate is considered at the rate of ₹1.42 per sqm. per annum but it is displayed as ₹1.428 per sqm. per annum in the description column. The same is also corrected.
(7).	**<u>Annual Revenue Requirement (ARR):</u>** Para 2 of Annex III relating to norms/ guidelines for fixation of upfront tariff for coal terminal stipulates that the total Annual Revenue Requirement determined is to be apportioned among three tariff groups viz. cargo handling charge, miscellaneous and storage charge in the ratio of 98:1:1 and thereafter the rates for individual tariff items is to be determined. As against that, the VOCPT has apportioned the estimated revenue requirement into two tariff groups i.e. coal handling charges and miscellaneous charges in the ratio of 99:1. The VOCPT has not apportioned any revenue requirement towards storage charges nor has proposed storage charge. Explain the reasons for deviation from the norms prescribed in the guidelines for apportionment of total revenue requirement and not proposing tariff for storage of cargo.	 Please refer the reply to S.No.5(i)(a) above.
(8).	**<u>Berth hire calculation:</u>**	
	(i). (a). Explain the basis of vessel parameters viz. DWT of vessel, average parcel size of panamax vessels, GRT of vessels adopted by the VOCPT for estimating the proposed berth hire charge.	As replied vide sl.no.4(i)(a) only the panamax size vessels are expected to be handled at NCB-I. Hence DWT of vessel, average parcel size of panamax size vessels, GRT of panamax size vessels are considered.
	(b). Justify the vessel parameters adopted for determination of berth hire charge with reference the average GRT, parcel size, DWT of thermal coal handled at VOCPT berth during the last three years viz. 2011-12 to 2013-14.	The vessel parameters adopted similar to NCB-II and the same hold good with respect to the cargo of Thermal Coal imported for the NTPL Power Plant.
	(ii). While arriving at Berth hire rate, the VOCPT has not taken into consideration the impact of coastal concession while proposing the berth hire for foreign-going vessel and coastal vessel. The VOCPT to modify the berth hire calculation in view of the above observation and take into consideration the approach followed in the other upfront tariff cases including VOCPT. Also, explain the basis (to be) adopted for share of foreign and coastal vessels.	The share of Foreign and Coastal depends on the choice of the user The NTPL and the exact share could not be anticipated. For kind information, for the trial run of the plant The NTPL have imported thermal coal in 4 vessels so far and 2 are Foreign and remaining 2 are Coastal. In the computation of proposed tariff of berth hire it was assumed that 100% of the vessels handled were coastal vessels.
	(iii). The berth hire calculation shows total berth days of 145.47 days as against 255.5 days as per norms prescribed in 2008	The optimal capacity of the berth is restricted to yard capacity based on the requirement of the thermal power plant

	guidelines at 70% utilisation. This arises because the optimal capacity of the terminal is pegged at the lower of two capacities at 5.09 MMTPA. In the light of our earlier observation to improve the optimal yard capacity of the terminal, the VOCPT to relook and recompute the berth hire charges for normative days of 255.5 days as required under the tariff guidelines of 2008.	of the captive user The NTPL. Hence at present there is no possibility of improving the yard capacity of the plant.

9.2. While responding to the additional information/ clarifications sought by us and also in line with the point of action decided at the joint hearing brought out in para 12.(i).(b)., the VOCPT vide its dated 16 April 2015 has also furnished the revised proposal. The revised cost statement furnished by the VOCPT vide its letter dated 16 April 2015 is given below:

(₹ in lakhs)

Sl. No.	**Particulars**	**Base**	**Revised VOCPT workings**
(I).	Optimal Capacity		
(i).	Optimal Quantity Capacity		
	(a). Share of vessel size % share of capacity of Panamax vessels (for thermal coal) vessels upto 75000 DWT	(S1)	100%
	(b). Ship day output (in tonnes per day)	(S2)	35000
	(c). Optimal Quantity capacity [0.7 x (s1) x (s2) x 365]		**8,942,500**
	Optimal Quantity capacity (in MTPA)		**8.94**
(ii).	Optimal Yard Capacity		
	(a). Area of yard made available by the port (Sq. mt.) % of Area available for stacking	(A) (U)	81450 70%
	(b). Stacking Quantity per sq. mt.	T/sq. mt. per day (Q)	4.91 Say 5 T/ sq.mt.
	(c). Annual Turnover Ratio of Plot (5.00 x 1000000)/(400000*0.7)	(T)	17.86
	(d). Optimal Yard capacity in tonnes (Thermal Coal) (0.7 x A x U x Q x T)		**5,091,440**
	Optimal Yard capacity in MTPA		**5.09**
(II).	Capital cost		(₹ in lakhs)
(i).	(a). **Civil cost**		-
	Others – Road connectivity		248.61
	Contingencies, Engineering & Supervision	10% on sub total	24.86
	Total Civil cost		**273.47**
	(b). **Equipment cost**		
	Shore unloaders		8097.72
	Stackers		
	Conveyors	Conveyor Cost from Berth to Red Gate	4934.33
	Pay loaders & dozers		-
	Sub total (b)		**13032.05**
	Contingencies, Engineering & Supervision	5.90% on sub total	768.89
	Total Equipment Cost		**13800.94**
	(c). Miscellaneous	5% on (i)(a) & (i)(b)	703.72
	(d). Total Capital Cost for Handling Activity (i)(a)+(i)(b)+(i)(c)		**14778.13**
(ii).	Capital cost for berthing services		
	Cost of Berth		4371.06
	Total Capital Cost for Berthing Services		**4371.06**
(iii).	Total Capital Cost of the Project (i) + (ii)		**19149.19**
(III).	Operating cost		
(i).	Power cost	1.4 per T x ₹4.28 per unit x 5091440 T	305.08
(ii).	R & M		
	- Civil Assets (Road work – Port)	1% on civil work	2.73
	- Mechanical and Electrical Equipment including	7% on Mechanical and	1015.33

Sl. No.	Particulars	Base	Revised VOCPT workings
	spares	Electrical Works	
(iii).	Insurance 1% on Gross Fixed Asset	1% on (i)(d)-(i)(a)	145.05
(iv).	Depreciation		
	- Civil Assets	9.50% on civil assets	25.98
	- Mechanical and Electrical Works	6.33% on Mechanical and Electrical Works	918.15
(v).	License Fee		
	(a). Water Front Charges		
	24333.40 sq. mtr. for berthing @ ₹334.59 per sq. mtr./ pa as per port's proposal (commercial purposes for 1.7.2012 to 30.06.2017)	(working platform-750 sqm+Berthing area 12456 sq.mtr.=13,206 sq.mtr. @ ₹174.34 per sq.mtr./ pa 50% of commercial rate from 1.7.2014)	23.02
	(b). Jetty area	Jetty area 10801.80 sq.mtr.+app.jetty 235.60 sq.mtr.=11037.4 sq.mtr.)*170.92 as on February 2010	18.87
	(c). Way Leave for conveyors	(22960.56 sqm for conveyor trestle within security wall @ ₹1.42 per sq.mtr. per annum)	0.33
(vi).	Other expenses towards salary and OH	5% on (i)(d)-(i)(e)	725.23
	Total Operating cost		**3,179.76**
(IV).	Revenue Requirement & Proposed Tariff		
(i).	Cargo Handling Charges		
1.	Revenue requirement		
	(a). Total Operating cost		3179.76
	(b). Revenue on Capital Employed		2364.50
	(c). Total Revenue Requirement for cargo handling activity		**5544.26**
2.	Apportionment of Revenue Requirement		
	(a). Coal handling charges (99% on ARR)		5488.82
	(b). Miscellaneous charges (1% on ARR)		55.44
			5544.26
3.	Proposed Tariff per tonne rate		
	(a). Coal Handling Charges		
	Revenue Requirement (₹ in lakhs)		5488.82
	Capacity (Million Tonnes Per Annum)		5.09
	Coal Handling Charges (per tonne/ per annum)		**107.84**
	(b). Miscellaneous Charges		
	Revenue Requirement (₹ in lakhs)		55.44
	Capacity (Million Tonnes Per Annum)		5.09
	Miscellaneous charges (per tonne/ per annum)		**1.09**
(ii).	Berth Hire Charges		
	(a). Revenue requirement		
	(i). Repair & Maintenance charge	1% on Berth cost	43.71
	(ii). Depreciation on berth	1.58% on ₹4371.06 lakhs	69.06
	(iii). Insurance	1.00% on ₹4371.06 lakhs	43.71
	Total operating cost for berthing service		**156.48**
	(b). Return on capital employed (16% on total capital cost for berthing service)		699.37
	Total Revenue Requirement for berthing service		**855.85**
(iii).	Berth Hire Charges		(in ₹)
	(a). Foreign going vessel (Thermal Coal) (Rate per GRT per hour)		1.70
	(b). Coastal going vessel (Thermal Coal)		1.02

Sl. No.	Particulars	Base	Revised VOCPT workings
	(Rate per GRT per hour)		

9.3. The VOCPT has forwarded its revised proposal to the NTPL seeking their comments. The NTPL vide its letter dated 20 June 2015 has furnished its comments, which were forwarded to VOCPT for feedback information. The VOCPT vide its letter dated 8 July 2015 has furnished its reply.

10. A joint hearing in this case was held on 13 January 2015 at the VOCPT premises. The VOCPT made a power point presentation of its proposal. At the joint hearing, the VOCPT and the users/ user associations have made their submissions.

11. At the joint hearing, the NTPL had filed a set of documents with reference to the proposal of VOCPT for fixation of upfront tariff for NCB-I which includes copy each of the Memorandum of Understanding dated 28 October 2005 entered between Neyveli Lignite Corporation Ltd. and Tuticorin Port Trust, copy of tariff guidelines of 2008 and 2013 guidelines and proposal of VOCPT dated 28 May 2014.

12. As agreed at the joint hearing,

(i). The VOCPT vide our letter dated 21 January 2015 was requested to take action on the following points:

(a). Forward a copy of the comments furnished by VOCPT on the comments of NTPL to NTPL. If already forwarded, then VOCPT to confirm the position.

(b). The VOCPT expressed the need to revise its proposal to capture the proportionate cost of road connectivity and road lighting provided as common user facility for NCB-II, NCB-III and NCB-IV to NCB-I. The VOCPT, therefore, to review and file revised proposal to this effect latest by 23 January 2015. Simultaneously, forward a copy of the revised proposal to the NTPL and the concerned users with a request to furnish their comments thereon to this Authority and VOCPT within five days thereafter.

(c). The NTPL has submitted that Conveyor and other facility installed at NCB-I is for captive use and that the facility cannot be used by any other users. In light of the above position, the VOCPT to clarify the relevance of its proposal to apply the proposed tariff to other users other than captive use by the NTPL. The VOCPT also to clarify the correct position as regards the provision (to be) incorporated in the Concession Agreement on use of the facility by other users.

(ii). The NTPL was requested vide our letter dated 21 January 2015 to take action on the following points:

(a). At the request of the NTPL, the VOCPT has been requested to share a copy of the comments furnished by it on the comments of NTPL to NTPL. The NTPL to furnish its comments thereon within 10 days after receipt of copy of the comments from the VOCPT.

(b). At the joint hearing, the NTPL reported that they have not verified the tariff computation furnished by VOCPT. Hence, as requested, the NTPL was allowed time upto 23 January 2015 to verify the calculation furnished by VOCPT and furnish its comments thereon.

(c). The NTPL to furnish its comments to this Authority and VOCPT, within five days of receipt of the revised proposal from VOCPT.

(iii). The users/ user organisations vide our letter dated 21 January 2015 were requested to furnish their comments on the revised proposal to this Authority and VOCPT simultaneously, within five days of receipt of the revised proposal from VOCPT.

13.1. With reference to point of action decided at the joint hearing brought out in para 12.(i).(a). and 12.(ii).(a). above, the NTPL vide its letter dated 4 February 2015 has furnished its comments on the comments of VOCPT dated 12 January 2015. The NTPL comments was forwarded to VOCPT as feedback information. The VOCPT has not furnished further comments on the comments of NTPL. It is relevant to state that the NTPL vide its earlier letter dated 12 December 2014 has furnished comments and VOCPT has furnished its comments thereon vide its letter dated 12 January 2015. The comments furnished by NTPL dated 4 February 2015 are on the comments of VOCPT.

13.2. With reference to point of action decided at the joint hearing brought out in para 12.(ii).(b). above, the NTPL vide its letter dated 24 January 2015 has furnished its comments on VOCPT's assumption on computation of tariff proposal. The comments received from NTPL was forwarded to VOCPT as feedback information. The VOCPT has not furnished any comments on the said comments of NTPL, despite reminders. Though the VOCPT has not furnished specific comments on the comments of NTPL, the VOCPT has, in the revised proposal dated 16 April 2015 modified the capital cost for shore unloaders, stackers and berth as indicated by NTPL. As regards conveyors, the VOCPT has estimated the capital cost from berth to red gate at ₹ 4934.33 Lakh.

13.3. The NTPL has further submitted in its letter dated 24 January 2015 that the NTPL is a Government Company wherein the stakeholders are the Neyveli Lignite Corporation Limited and the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO). The power generated is for the benefit of general public. Hence, it has requested to take a lenient view in fixing the tariff.

14. 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 parties will be sent separately to the relevant parties. These details will also be made available at our website http://tariffauthority.gov.in.

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

(i). The Neyveli Lignite Corporation (NLC), a Government of India Enterprise and the then Tuticorin Port Trust (TPT) (Present VOCPT) have entered into a Memorandum of Understanding (MOU) on 28 October 2005 as per the copy of the MOU furnished by NTPL at the joint hearing held on 13 January 2015. As per the MOU, the NLC and the Tamil Nadu Electricity Board (TNEB) have planned to set up a 1000 MW coal based power project at a site in Tuticorin belonging to the VOCPT. The NLC and TNEB have agreed to promote, jointly incorporate and invest in a Joint Venture Company (JVC) for the establishment and operation of the power project for generation and sale of power. The NLC and TNEB have entered into a separate MOU for implementation of the project. The NTPL is the JV for implementation of the Project wherein the stakeholders are the NLC and the TANGEDCO, as submitted by the NTPL in its letter dated 24 January 2015. The VOCPT had agreed in the MOU to allocate, among other facilities, the North Cargo Berth (NCB) for construction of a new captive coal jetty for the JVC for import of coal for the power project.

(ii). The Government of India in the Ministry of Shipping vide its letter No.PD-11015/5/2006-TPT dated 22 October 2009 to the VOCPT has granted approval to the VOCPT for allotment of NCB-I to the NLC as per the Guidelines of 1996 on captive use. The sanction letter of the MOS, *inter alia*, states that the approval is subject to the condition that NLC will be subjected to TAMP rates. The VOCPT has confirmed that authorization is granted by the VOCPT to NTPL under Section

42(3) under Major Port Trust Act, 1963 and with the approval of Ministry of Shipping.

In this backdrop, the VOCPT has filed a proposal seeking approval of this Authority for fixation of upfront tariff for NCB-I for handling Thermal Coal by NTPL following the tariff guidelines of 2008.

(iii). This Authority in exercise of the powers conferred on it by Section 48 of the Major Port Trusts Act, 1963 frames Scale of Rates and conditionalities governing the application of Scale of Rates from time to time for the services rendered by the Major Port Trusts and the persons authorized. Section 42(3) of the said Act of 1963 envisages that a Major Port Trust, with the previous approval of the Central Government enter into any agreement or other arrangement with any body corporate or any other person to perform any of the services and functions assigned to the Major Port Trust under the Act of 1963 on such terms and conditions as may be agreed upon.

(iv). The Government of India in the Ministry of Shipping has issued Tariff Guidelines from time to time to this Authority as policy direction under Section 111 of the Major Port Trusts Act, 1963. The policy direction is binding on this Authority. This Authority fixes the tariff in exercise of powers conferred on it and following the tariff Guidelines as applicable. The following set of Tariff Guidelines came to be issued from time to time:

(a). Tariff Guidelines of 2005

(b). Upfront Tariff Setting Guidelines of 2008 notified on 26 February 2008 for all PPP Projects for which bids will be invited by setting tariff caps upfront when such projects are awarded under BOT / BOOT or any other arrangement for private sector participation under the Major Port Trusts, 1963.

(c). Revised Reference Tariff Guidelines of 2013 for determination of tariff for Projects at Major Ports effective from 9 September 2013.

(v). During the proceedings of the case, the NTPL has raised certain issues. The issues raised by the NTPL and our analysis thereon are given below:

Issue:

(a). The approval given by the Government of India by letter dated 22 October 2009 for allotment of NCB 1 to NLC is as per guidelines of 1996 for captive use and guidelines issued subsequently shall be applicable to the project. The Reference Tariff guidelines of 2013 was issued by the Government of India in September 2013. Therefore, the Reference Tariff guidelines of September 2013 is applicable for the project.

Analysis:

As regards the “guidelines of 1996 on captive use” mentioned in the letter dated 22 October 2009 and the “Reference tariff guidelines of 2013” mentioned by the NTPL, it is stated that a copy of the “guidelines of 1996 on captive use” was called for from the VOCPT. The VOCPT has made available a copy under cover of its letter dated 28 June 2014. It is the guidelines on Private Sector Participation in Ports issued by the Government of India on 26 October 1996. The guidelines provide for, among other things, consideration of captive facilities for port based industries without recourse to a tender subject to approval of the concerned Administrative Ministry and the industry is willing to pay the maximum realization which the port may determine taking into account all relevant factors. The other aspects dealt in the 1996 guidelines are areas identified for privatization, legal & Regulatory frame work, preparation of Feasibility Report etc., taking into account the confirmation of the VOCPT that no other guidelines have been issued thereafter on “Private Sector

Participation in Ports", the guidelines issued on 26 October 1996 are still in force. The guidelines issued in the year 2013 is limited in its application to fixation of Reference Tariff for Projects at Major Ports. As the names of the respective guidelines themselves suggest, the purpose of the 1996 and 2013 guidelines is different from each other. The two guidelines are in different paradigm. The 2013 Reference Tariff fixation Guidelines cannot apply to the NTPL project the berth of which was reportedly handed over by VOCPT to NTPL on 28 September 2012, before issue of 2013 Reference Tariff fixation guidelines.

Issue:

(b). Clause 6.1 of 2013 guidelines provides that 2013 guidelines would apply only in the event of a captive berth awarded following the tendering process and in all other cases, the captive project would be governed by the respective agreement arrived at between the parties concerned. Therefore, VOCPT is not entitled in law to request this Authority to determine the tariff payable by NTPL to VOCPT.

Analysis:

The NTPL has placed reliance on Clause 6.1 of 2013 Reference Tariff guidelines to argue that even the 2013 guidelines would not apply to the NTPL Project since the project was not awarded on tender basis. When the 2013 Reference Tariff guidelines themselves are not relevant for the NTPL project, recourse to Clause 6.1 of the 2013 guidelines to determine tariff on mutual consent has no force. Even in a situation of mutual consent, the statute requires this Authority to notify the tariff in the Gazette of India provided the mutually agreed tariff is as per the applicable Tariff Guidelines issued by the government.

The another issue posed by the NTPL that the VOCPT should not have approached this Authority for fixation of rates is not found to be in line with the provision in the statute. Section 48(1) of the Major Port Trust (MPT) Act, 1963 lists down the services that can be provided by the Major Port Trusts. Section 42(3) read with 3(A) of the MPT Act, 1963 empowers the Major Port Trusts with the previous approval of the Government to authorize any person by entering into any agreement or any other arrangement (whether by way of partnership, joint venture or in any other manner) to perform any of the services listed under Section 42(1) of the MPT Act. Section 48 read with Section 42(4) requires this Authority to notify the rates for the Major Port Trusts as well as for persons authorized by Major Port Trusts under Section 42(3) of the MPT Act. The VOCPT has confirmed that the authorization granted by the VOCPT to NTPL is under Section 42(3) under Major Port Trusts, 1963 and with the approval of the Ministry of Shipping. The VOCPT has approached this Authority seeking for tariff for berth NCB-1. Tariff fixation for the facilities provided at NCB-1 falls well within the regulatory ambit of this Authority. The argument of the NTPL that since it is a non-PPP Project, this Authority has no role to fix the tariff is not in line with the statute position.

Issue:

(c). In none of the other Major Port Trusts, exclusive berth is given on captive basis. NTPL is only one such case.

Analysis:

The point made by the NTPL that at no other Major Ports berth is given for captive purpose is not factually correct. This Authority has fixed tariff for various captive facilities at Major Port Trusts. To name some of these, fertilizer berth at Paradip Port Trust, is given for captive purpose; at Kandla Port Trust (KPT), the KPT has entered into a Concession Agreement (C.A.) with IFFCO Kisan Bazar and Logistics Limited (IKBLL) for captive purpose of IFFCO. This Authority fixes tariff for these captive facilities following the applicable tariff guidelines issued by the Government.

Issue:

(d). The approval of the Government of India for the proposal of VOCPT for allotment of NCB 1 to NLC is as per guidelines of 1996 and any guidelines issued subsequently on the subject shall be applicable to the project. Therefore, the guidelines for fixation of upfront tariff issued in 2008 (prior to 2009) are not applicable. 2008 Guidelines is applicable only for PPP Projects. NTPL is not a PPP Project.

Analysis:

Since the Guidelines for Private Sector Participation in the Major Ports are in a different paradigm as compared to the tariff fixation guidelines, the question of non-applicability of 2008 tariff fixation guidelines to NTPL does not arise merely on the ground that the issuance of 2008 tariff guidelines is prior to the issuance of 2009 guidelines for Private Sector Participation in the Major Ports.

Issue:

(e). Demand of upfront tariff after constructing berth is not tenable.

Analysis:

This issue is analysed in a later paragraph

Issue:

(f). VOCPT cannot approach this Authority for determination of Revenue share. The Revenue share has to be decided first through arbitration as per the arbitration clause of MOU whether NTPL is liable to pay Revenue share to VOCPT and then it can be determined by this Authority.

Analysis:

The jurisdiction of this Authority is limited to fixation of tariff for Major Ports and Private Terminals operating in Major Ports. As brought out in the earlier paragraphs, fixation of tariff only falls within the jurisdiction of this Authority. This Authority does not step beyond its jurisdiction. This Authority does not intervene in fixation of Revenue Share. It is between the concerned parties to decide on the revenue share arrangement. As already brought out during the processing of the case, this Authority has no role on the matter related to revenue share which is purely between the concerned parties to decide i.e. VOCPT and the NTPL in the instant case.

The NTPL has requested this Authority to pass a suitable order bearing in mind that in view of the binding nature of the guidelines issued in 2013, VOCPT cannot seek determination of tariff by this Authority and that the direction contained in the letter dated 22.10.2009 of the Government of India stand superseded by Clause 6.1 of the 2013 Guidelines.

In view of the analysis given above, this Authority will not be in a position to pass the Order as pleaded by the NTPL.

(vi). (a). The NTPL has argued that demand for upfront tariff after constructing berth is not tenable. Therefore, before proceeding ahead with the analysis of this case, as brought out in the earlier paragraphs giving background of the proposal, it is relevant here to state about the series of correspondence exchanged by us with the VOCPT regarding applicability of the upfront tariff guidelines of 2008 for fixation of tariff for NCB-I when the project has already been awarded by the VOCPT to NTPL in the year 2011.

Clause 1.3.1 of the guidelines of 2008 stipulates that the said guidelines apply to all PPP projects for which bids will be invited by setting tariff caps upfront in the manner provided in the said guidelines when such projects are awarded under BOT/BOOT or any other arrangement for private sector participation. Clause 1.3.2. of the said guidelines of 2008 clarifies that the tariff guidelines of 2005 notified on 31 March 2005, as may be amended from time to time, shall continue to govern the tariff setting for the Major Port Trusts and the private terminals already operating thereat and also for the projects where bidding process is concluded before publication of the 2008 upfront tariff guidelines.

Based on the upfront tariff caps approved by this Authority under the tariff guidelines of 2008, the Major Port Trusts invite bids for the project and the potential bidders quote the revenue share. In the instant case, however, the proposal of the VOCPT states that the project is already awarded to NTPL.

(b). In the case of a BOT operator the Buthello Travels at Mumbai Port Trust (MBPT), the bidding process concluded post 2008 (in August 2009). But, since the MBPT did not opt to fix tariff caps prior to bidding in the case of BOT operator, this Authority vide its Order No.TAMP/39/2010-MBPT dated 2 May 2011 held that the tariff of this BOT operator of MBPT will fall under Tariff Guidelines of March 2005; and, the tariff for the Buthello Travels at MBPT was fixed accordingly following provisions of 2005 tariff guidelines in the said Order.

(c). In one another case at Kandla Port Trust (KPT), based on the approval granted by Ministry of Shipping, Government of India, KPT entered into Concession Agreement (CA) with IFFCO Kisan Bazar Ltd. (IKBL) on 17 February 2011 (post 2008) to build, operate and maintain barge jetty for unloading its captive fertilizers and fertilizer raw materials for a period of 30 years. The said facility is a captive facility and also allows the operator to handle other cargo as well. The KPT had not opted to fix tariff upfront prior to inviting bids for award of the project under the tariff guidelines of 2008. The authorization granted by KPT to IKBL in the form of concession agreement is under section 42 (3) of MPT Act, 1963 and the IKBL has filed the proposal for fixation of tariff under 2005 guidelines seeking tariff to handle cargo other than the captive cargo of IFFCO which is being processed as a separate case. It is relevant to state that interim tariff is already approved by this Authority vide Order No.TAMP/55/2013-KPT dated 15 May 2015 till fixation of final rates.

(d). The allotment of Berth to NTPL is for captive use facility with the approval of Government of India (MOS) vide its letter dated 22.10.2009. The sanction letter of the MOS *inter alia* states that the approval is subject to the condition that NLC will be subjected to TAMP rates. Clause 1.3. of the 2008 guidelines deals with application of the guidelines to PPP operator and tariff is to be fixed upfront for Private Sector Participation. The current project is not for Private Sector Participation. It is for captive purpose and that too given to a public sector undertaking. There is no tendering process in this case as the Government has sanctioned the allotment of NCB-I to NLC for captive use. The requirement of bidding prior to setting tariff caps as stipulated in Clause 1.3.1. of 2008 Guidelines is applicable only to PPP arrangement and not to other arrangement like captive facility so as to invoke application of 2005 Guidelines. The proposal submitted by Port for fixation of upfront tariff in respect of NCB-I to handle Thermal Coal for consideration of this Authority is not on PPP basis. The project is awarded during the year 2011 on nomination basis for Captive Usage as per the sanction of the Ministry of Shipping in October 2009.

(e). The case of the Buthello Travels in Mumbai Port Trust was on a PPP mode. The project of NCB-I berth is a captive facility approved by Ministry of Shipping. Further, bidding process for the captive arrangement is not applicable. Hence the VOCPT has contended that the case of the Buthello Travels is not relevant to its case.

(f). The VOCPT has sought to argue that the NCB-I project is also not comparable to the case of IKBL of Kandla Port Trust. In the captive arrangement of IKBL, the Concession Agreement (CA) was already entered between the KPT and the IKBL. Further, the CA does not specify about revenue share. Instead, it provides for collection of wharfage and other charges. Concession Agreement of IKBL with Kandla Port Trust is not similar to the draft agreement to be entered between the VOCPT and NTPL which stipulates compliance to Guidelines for Private Sector Participation 1996 of Government of India to ensure maximum revenue realization, as stated by the VOCPT

(g). Further, in both the cases, Concession Agreements were already signed and thereafter the tariff was proposed by the concerned authorities. Whereas for the NCB-I berth, though the project is awarded to NTPL on captive basis based on the sanction of the MOS, the Concession Agreement with the NTPL is yet to be signed. The percentage of revenue share for the present project is also not yet signed. Since the Revenue Share is not yet finalized between the VOCPT and the NTPL and Concession Agreement is not yet signed and also recognising that it is not a PPP project, the VOCPT has stated that current proposal cannot be compared with the cases of The Buthello Travels in Mumbai Port Trust which was on a PPP mode or the case IKBL of Kandla Port Trust where Concession Agreements were already signed between the concerned parties and thereafter the tariff has been proposed by the concerned authorities.

(h). The another argument put forth by the VOCPT is that the para 6(v) of the Guidelines of 1996 issued by the Government to all Major Port Trusts for Private Sector Participation lays down the policy for Captive facilities for port based industries. The ibid clause stipulates the need for compliance of the condition to ensure maximum revenue realization. The VOCPT has argued that the condition of maximum revenue realization by the port for giving the project for captive facility cannot be complied with if the tariff for NCB-I is fixed under the tariff guidelines of 2005 and not under tariff guidelines of 2008.

Based on the above arguments, the VOCPT has requested this Authority to fix the upfront tariff following the upfront tariff guidelines of 2008 so that Revenue Share can be determined and Concession Agreement can be signed. Thus, the VOCPT has empathetically stressed that the tariff arrangement for NCB-I is to be done following the upfront tariff Guidelines of 2008 and not based on the 2005 guidelines.

As regards the reason for formulating the proposal under 2008 guidelines to ensure maximum revenue realization, it is to be noted that this Authority is not guided by maximization of revenue in fixation of tariff but by the applicable tariff guidelines.

(vii). In the 1996 guidelines, para (6)(v) which deals with policy for Captive facilities for port based industries states that the Major ports is to consider to give land/ waterfront on 100% captive without recourse to a tender, provided such industries are port specific and are approved by the concerned administrative Ministries, and the industry is willing to pay the maximum realisation which the port is determine taking into account all relevant factors. The said policy does not prescribe guidelines to be followed for fixation of tariff for captive facilities. The Ministry of

Shipping while sanctioning the approval for this project has categorically stated that the approval is subject to the condition that the NLC will be subjected to the TAMP approved rates. As stated earlier, the Government has, from time to time, issued tariff guidelines to this Authority for fixation of tariff for Major Port Trusts and private terminals operating thereat. This Authority is bound by the tariff guidelines issued by the Ministry of Shipping from time to time for regulating the tariff for the Major Port Trusts and private terminal operators authorized by the Major Port Trusts and the applicable tariff guidelines is followed by this Authority uniformly for fixation of tariff of the concerned Major Port Trusts and Private Terminal Operators authorized by the Major Port Trusts.

(viii). It is relevant here to state that the based on upfront tariff fixed by this Authority under the upfront tariff guidelines of 2008, the Major Port Trusts invite bids for the project and the potential bidders quote the revenue share. In the instant case, the project is not on PPP mode and hence no bids are invited. The project has been given on nomination basis to NTPL based on the sanction of the MOS in October 2009. The MOS while according sanction to the project has categorically stated that NLC will be subject to TAMP approved rates, as stated in the previous paragraph. The port has reported that Concession Agreement is yet to be signed between the concerned parties viz. NTPL and the VOCPT and revenue share is yet to be fixed. The VOCPT has sought tariff on upfront basis following the tariff guidelines of 2008 to determine the revenue share. Balance of convenience is in favour of the argument of VOCPT to fix tariff based on 2008 tariff guidelines Therefore, this Authority, is inclined to proceed with fixation of tariff for NCB-I berth based on the proposal filed by the VOCPT under the tariff guidelines of 2008.

(ix). Subsequent to filing the original proposal in 28 May 2014, the VOCPT has filed a completely revised proposal vide its letter dated 16 April 2015. In the revised proposal, the port has modified the capital cost taking into consideration the view points of the VOCPT. The handling rate of ₹ 276.37 per tonne proposed in the original proposal is reduced to ₹107.84 per tonne. Likewise, the berth hire charge and the miscellaneous charge are also proposed to be reduced. The revised proposal of VOCPT dated 16 April 2015 along with information/ clarification furnished during the processing of the case are taken into consideration in deciding this case.

(x). The NTPL during the joint hearing had stated that the proposed facility is for captive use only and hence it is not relevant to consult stakeholders other than NTPL. In this context, it is relevant to state that the proposal of VOCPT makes a mention that the project will occasionally be used by other users as well. The VOCPT had also provided the list of users to be consulted and hence apart from NTPL the other concerned stakeholders were also consulted as per the list provided by the port.

The NTPL during the proceeding of the case has submitted that conveyor and other facility installed at NCB-I is for captive use and that the facility cannot be used by any other users. The VOCPT was, therefore, once again requested to clarify the relevance of its proposal to apply the proposed tariff to other users. The VOCPT has reported that there is a provision in the draft Concession Agreement for usage of facility by others when the berth is idle. This Authority, therefore, relies on the clarification of the VOCPT which is a Concessioning Authority. It is relevant here to state that even for the BOT operator viz. IKBL at KPT where the facility is for captive use, the Concession Agreement signed between the KPT and the IKPL allows the operator to handle other cargo as directed by the Concessioning Authority i.e. KPT in order to optimize the use of the facility.

(xi). Optimal Terminal Capacity:

(a). Optimal Quay Capacity:

(i). The port has considered 100% share of panamax vessels for assessing the optimal quay capacity. The port was requested to examine whether capesize vessel are expected to be handled at the proposed terminal during the project period which is for long horizon and also taking into consideration dredging plans of the port. The port has confirmed that capesize vessel cannot be accommodated at NCB-I berth due to availability of only 152 mtr. width at Port Entrance Channel and 12.80 mtr draught in the berth and the berth interfaces. Hence, 100% panamax size vessels are considered for assessing the optimal quay capacity of the NCB-I berth. The position explained by the port is relied upon.

(ii). Considering the share of panamax vessels as stated above and the ship day output for panamax vessel at 35,000 tonnes per day as per the unloading norms prescribed in the guidelines for coal unloading terminal, the optimal quay capacity of the mechanised coal handling terminal of NCB-I works out to 89,42,500 tonnes [i.e. 8.94 Million Tonnes Per Annum (MTPA)] as assessed by the VOCPT.

(b). Optimal Yard Capacity:

(i). The VOCPT has considered stacking area of 81,450 sq. mtrs. for stacking of coal cargo. The VOCPT has confirmed that 81,450 sq. mtrs. of area is identified for stacking of cargo as per the design of the plant and has stated that even the NTPL has confirmed the stacking area. The stacking area parameter given by the VOCPT may, therefore, be relied upon.

(ii). The upfront tariff guidelines of 2008 prescribe the stacking norm for coal terminal at 3 tonnes per sq. metre and the turn over norm of 12.

As against the above norms prescribed in the upfront tariff guidelines of 2008, the VOCPT has considered stacking quantity at 5 tonnes per sq. metre and turnover at 17.86 a year for assessing the optimal yard capacity. Considering the above parameters and applying the formula prescribed in upfront tariff setting guidelines of 2008, the VOCPT has assessed the optimal yard capacity at 50,91,440 tonnes (i.e. 5.09 MTPA) [81450 * 5 T * 17.86 * 70%]. It is relevant here to state that the VOCPT in its upfront tariff proposal for coal terminal has considered stacking factor at 6.6 tonnes/ sq. mtr. and turnover of 28. Bringing out the relevant Order No.TAMP/27/2009-TPT dated 23 February 2010, the VOCPT was requested to examine adoption of improved parameters in this case as well.

Further, as the yard capacity is becoming the limiting factor in this project leading to a wide gap between the two capacities, i.e. optimal quay capacity at 8.94 MTPA and optimal yard capacity at 5.09 MTPA, the VOCPT was also advised to examine whether technically it is possible to improve the yard capacity by exploring all possible mechanism viz. stacking parameter, storage area for coal, improving the turnover parameter etc. The VOCPT has clarified that stacking parameters and the turnover parameters are considered by the port based on the Feasibility Report of the NTPL. The port has further clarified that the parameters adopted for stacking height in the instant case is project specific to the Power Plant of NTPL. The captive facility is linked to the operations of the Thermal Power Plant and the coal received at NCB-I is conveyed through a conveyor. Hence, the port has categorically stated that the question of further improvement of yard capacity by increasing area will not arise. The VOCPT has further justified that NTPL is a captive facility designed to have a capacity of 1000MW of Thermal power. For this purpose, the requirement for the Thermal Coal for the Plant is 5.0 million tonnes per annum

Relying on the above clarification furnished by the VOCPT and also recognising that the stacking and turnover parameters considered by the VOCPT are higher than the norms prescribed in the upfront tariff guidelines, this Authority relies on the optimal yard capacity of NCB-I assessed by the VOCPT at 5.09 MTPA.

(c). Accordingly, the optimal capacity for the NCB-I is considered at 50,91,440 tonnes per annum (i.e. 5.09 MTPA) being lower of the two capacities i.e. quay and yard as assessed by the VOCPT.

(d). The port has stated that if at a later stage there is any change in stacking parameters involving improvement in the optimal capacity, proposal will be submitted for revision of the upfront tariff in line with the provision prescribed in clause 2.7.1. of the tariff guidelines of 2008. The submission made by the VOCPT contradicts its own clarification where the port has stated that the tariff captive facility is linked to the operations of the Thermal Power Plant and the imported coal is conveyed through a conveyor and the question of further improvement of yard capacity will not arise. As regards reference drawn to the clause 2.7.1. of the 2008 guidelines it is relevant to state that the ibid clause states that the upfront tariff caps will be reviewed once in five years to adjust for any extraordinary events that could not have been foreseen by a prudent person. The said guidelines clearly stipulate that the review of tariff caps will be applicable to projects that are bid out subsequently. Thus, the upfront tariff guidelines of 2008 does not provide for review of upfront tariff fixed by this Authority for the projects after the projects are bid out and in the instant case after the CA is signed. The upfront tariff fixed by this Authority once is only subject to the annual indexation as per clause 2.8. of the ibid guidelines. The VOCPT and NTPL are requested to note this position.

It is admitted that in few upfront tariff cases like the upfront tariff fixed for SPM at Kandla Port Trust, this Authority has allowed provision for review of the reference tariff approved by this Authority at the request of the port. This was because the project envisaged change in the project profile itself during the project period like allotment of additional land during the project period. In the instant case, the project profile is not broadly expected to undergo any change as such. Improvement in stacking parameters during the project period due to various factors is inevitable not only in this project but for any project. Upfront tariff is fixed for the optimal capacity. As stated earlier, the stacking parameter assumed by the VOCPT is based on the input of the NTPL and is infact higher than the norm prescribed in the 2008 guidelines.

That being so, the request of the VOCPT for revision of the tariff during the project is not found to be line with clause 2.7.1. of the upfront tariff guidelines of 2008. The upfront tariff fixed by this Authority in the instant case is only subject to the annual indexation as per clause 2.8. of the ibid guidelines.

(xii). Capital Cost:

The capital cost estimated by the VOCPT in the original proposal was ₹39,007.09 lakhs comprising of ₹34,100.17 lakhs towards cargo handling activity and

₹4,906.92 lakhs towards berthing service. In the revised proposal of April 2015, the VOCPT has reviewed the estimates in view of the observation made by the NTPL and modified the capital cost to ₹19,149.19 lakhs comprising of ₹14,778.13 lakhs towards cargo handling activity and ₹4,371.06 lakhs crores towards berthing services. The estimates of capital cost are discussed in the following paragraph.

(a). Cargo handling activity:

(i). Civil construction cost:

(a). The upfront tariff guidelines broadly indicate the list of civil works for coal unloading terminal viz. berth apron and approach, stack yard, Rail tracks for stacker, Reclaimer, Ship unloader Wagons, conveyor galleries, transfer towers, wagon loading & truck loading station, marshalling yard, roads, building, water supply and drainage system and require the port to estimate civil cost. The port has clarified that items listed in the guidelines are not envisaged in the project. The relevant items are included in the capital cost of the plant facility installed by the NTPL for generation of power and are not forming part of the capital cost of the subject facility covered in the proposal.

As stated earlier, the area considered by VOCPT for stacking cargo, for assessing the optimal yard capacity is 81,450 sq. mtrs. However, the capital cost for civil works does not include any capital cost for storage yard. When specifically this was brought to the notice of the port, the VOCPT has clarified that out of the total land allotted by VOCPT to NTPL for installation of the power generation plant, 81,450 sq. mtrs. of area is identified for stacking of cargo as per the design of the plant and the capital cost for storage yard development reportedly forms part of the plant development cost incurred by the NTPL. Thus, it appears from the submission of the VOCPT that this stacking area is part of the plant area and the capital cost is part of plant cost. This area has been considered by the VOCPT only for the purpose of assessing the optimal yard capacity since it is a limiting factor for optimal capacity of this berth. The capital cost of stackyard is not considered by the VOCPT in this exercise of determination of upfront tariff. The port has also not proposed any storage charge. Thus, in short, the area of 81,450 sq. mtrs. considered by the VOCPT is only for the purpose of assessing the optimal yard capacity. The NTPL has also not raised any objection on the approach adopted by the VOCPT. The clarification furnished by the VOCPT is relied upon.

The VOCPT in its revised proposal dated 16 April 2015 has estimated ₹248.61 lakhs being the proportionate capital cost of road and road lighting commonly provided to berths NCB-I , II, III and IV. The NTPL has requested the VOCPT to exclude this estimate of capital cost citing that road developed by the port is commonly used and hence it is treated as a part of port infrastructure. The VOCPT has not accepted the argument of the NTPL. The VOCPT has justified that the capital cost of road connectivity from Red Gate to SEPC Jetty is exclusively used by berth nos. NCB-I, II, III and IV only. The proportionate portion of the capital cost of road relevant to

NCB-I berth i.e. ₹248.61 lakhs is reported to have been considered by the VOCPT in the tariff fixation for this project. The normative list for civil works includes road, amongst other items. The upfront tariff guidelines require to consider the civil cost as estimated by the port. In view of the clarification and justification furnished by the VOCPT, the capital cost of ₹248.61 lakhs estimated by the VOCPT towards common road and road lighting under the head civil works is relied upon and considered for the purpose of upfront tariff fixation of this project.

(b). The VOCPT has estimated 10% of the civil cost towards contingency, supervision and engineering cost. When pointed out that this estimate is not in line with the norms prescribed in the upfront tariff guidelines, the VOCPT has cited upfront tariff fixation of its another project i.e. berth no.NCB-I I where 10% of capex towards contingency, engineering and supervision estimated by the port was allowed by this Authority in upfront tariff fixation.

The NTPL has objected inclusion of this item in the capital cost. In this context, it is relevant here to state that the estimates of contingency, engineering and supervision cost items is relevant when the quantum of capital cost is based on estimates. In the instant case, however, the capital cost considered by VOCPT for arriving at the proposed upfront tariff is reportedly based on the actual capital cost incurred by the NTPL. That being so, the question for providing for contingency, engineering and supervision cost does not arise. The estimate made by VOCPT towards contingency, engineering and supervision cost at 10% of the civil cost is, therefore, excluded. However, 5% of the civil cost is allowed as explained below.

The upfront tariff guidelines of 2008 prescribe a norm of estimating miscellaneous capital cost towards interest cost during construction period, working capital margin, etc., at 5% of capex. The VOCPT has estimated miscellaneous capital cost as per norms under the head equipment. It has, however, not estimated miscellaneous capital cost @ 5% on civil works. In the cost statement prepared by us, 5% of the civil cost is considered as miscellaneous capital cost as per the norms prescribed in the 2008 guidelines.

(c). Subject to above modification, the modified capital cost considered in the computation of upfront tariff fixation is ₹261.04 lakhs as against ₹273.47 lakhs estimated by VOCPT.

(ii). Equipment cost:

(a). The upfront tariff guidelines of 2008 indicate normative list of equipment for coal unloading terminal viz. Ship Unloader- 2 Nos., Reclaimer – 2 Nos., Wagon loader – 1 No., Truck Loader – 1 No., Stacker – 2 Nos., Belt Conveyors, Cranes – 2 Nos., Pay loaders and Dozers – 4 Nos., Workshop equipments and Electrical Power & Control switch gears. As against the prescribed norms, the equipment capital cost estimated by VOCPT includes 2 shore unloaders, 2 stackers and conveyors.

The capital cost for equipment estimated by VOCPT does not include capital cost on other items prescribed in the normative list. When specifically sought reason for exclusion from the normative list, the port has sought to clarify that capital cost has been considered as per the actual deployment of relevant equipment as communicated by the NTPL.

The revised capital cost of ₹8097.72 lakhs considered by VOCPT in its revised proposal of April 2015 for 2 stackers and 2 shore unloaders is based on the information furnished by the NTPL during the processing of the case, which is considered in this analysis.

The VOCPT had in its initial proposal estimated ₹13537.09 lakhs for conveyor. The NTPL during the processing of this case pointed out that this estimate is for total conveyor cost of NTPL from the berth to the place of consumption in the thermal power plant commissioned by the NTPL, which is 4 kms away. The NTPL has, therefore, requested the VOCPT to consider the capital cost of conveyor only to the extent at the berth i.e. ₹417.53 lakhs. The VOCPT in the revised proposal has revised capital cost of conveyor to ₹4934.33 lakhs reportedly considering the conveyor area from berth no.NCB-I to Red Gate. The NTPL has reiterated its request to consider the capital cost of conveyor at the berth alone. The VOCPT has not agreed to the views of NTPL. It has stated that the revised estimates of conveyor cost pertains to the conveyor area from berth to red gate area as furnished by NTPL and is in order. Based on the clarification furnished by the VOCPT, the revised estimates of conveyor cost as furnished by the VOCPT is considered.

Since all the capital cost considered by VOCPT are reportedly based on information furnished by NTPL, the estimates of capital cost furnished by the VOCPT are fully relied upon and considered for arriving at the upfront tariff.

(b). The VOCPT had earlier estimated contingency, supervision and engineering cost at 10% of the capital cost of equipment. This was objected by the NTPL. In the revised proposal, the VOCPT has estimated this item at 5.9% of the capital cost of equipment. This is in addition to 5% of capital cost (including contingencies) estimated towards miscellaneous capital cost as per the norms prescribed in the 2008 guidelines. The cost estimated towards contingency, supervision and engineering is not considered in this exercise for the reasons explained earlier. As regards miscellaneous capital cost, the estimate at 5% of the equipment cost is found to be in line with the norm prescribed in the guidelines and hence considered on the modified capital cost which excludes the 5.9% estimated by the VOCPT towards contingency.

(c). Subject to above analysis, the modified capital cost for equipment comes to ₹13683.65 lakhs (i.e. ₹13032.05 lakhs + ₹651.60 lakhs) as against ₹14504.66 lakhs estimated by VOCPT (₹13800.94 lakhs + ₹703.72 lakhs).

The modified capital cost for cargo handling activity comprising of capital cost for equipment and civil works is ₹13944.69 lakhs as against ₹14778.13 lakhs estimated by VOCPT.

(b). Berth Cost:
As per the upfront tariff guidelines, the capital cost of berth hire services includes cost of construction of berth and cost of dredging, if any, carried out alongside the berth.

The VOCPT in its initial proposal had estimated capital cost of berth at 4460.84 lakhs. On being pointed out by the NTPL that the actual capital cost incurred by it for berth is ₹4371.06 lakhs, the VOCPT has in its revised proposal estimated the capital cost of berth at ₹4371.06 lakhs. Since the revised estimate is reportedly based on the information furnished by the NTPL, the same is relied upon and considered.

The VOCPT has not estimated any capital cost for dredging along side the berth. It has confirmed that dredging in front of the berth is the responsibility of the port.

(c). The return on capital employed is estimated at 16% of the modified estimated capital cost. This works out ₹2231.15 lakhs for cargo handling services as against ₹2364.50 lakhs estimated by VOCPT. For berth hire, the return on capital employed is ₹699.37 lakhs as considered by the VOCPT.

(xiii). <u>Operating Cost for cargo handling activity</u>:

(a). The upfront tariff guidelines for coal terminal prescribe power consumption norm at 1.40 units per tonne. The VOCPT has estimated the power cost adopting the power consumption norm prescribed in the guidelines.

In the original proposal, the VOCPT had considered the unit cost of power at ₹8 per tonne in line with power cost considered in its other reference tariff proposals. In the instant case it is relevant here to mention the NTPL is generating power at the thermal power plant commissioned in the land allotted by the port from the thermal coal received by it at NCB- I berth. The VOCPT, has in the revised proposal, reduced the unit cost of power at ₹4.28 being the actual cost incurred by NTPL towards producing power reportedly as conveyed by NTPL vide its letter dated 4 June 2015. Relying on the clarification furnished by VOCPT, power cost is considered at the level estimated by the port at ₹305.08 lakhs for the optimal capacity of the terminal.

(b). As per the norms prescribed in the 2008 guidelines, the repairs and maintenance cost is estimated at 1% on the civil assets and 7% on the mechanical and electrical equipment, insurance cost at 1% of the gross fixed assets and other expenses at 5% of the modified gross value of fixed assets. It is, however, observed that while estimating insurance cost and other expenses for cargo handling activity, the VOCPT has excluded the capital cost on civil works from the total capital cost estimated for cargo handling activity. The norms prescribed in the 2008 guidelines require to estimate insurance and other expenses at the prescribed level on the gross fixed assets. While the VOCPT has considered the capital cost for civil works for estimation of repairs and maintenance and depreciation, the reasons for excluding the capital cost of civil works for estimation of insurance and other expenses remain unexplained by the port. In our analysis, insurance cost as well as other expenses are estimated on the total modified capital cost estimated for cargo handling activity i.e. without excluding the capital cost for civil works, as per the guideline position.

(c). The VOCPT has estimated depreciation @ 9.5% on civil cost and 6.33% on equipment cost. It is relevant here to state that the depreciation has been considered at the rate of 3.17% on civil cost in other reference tariff cases of VOCPT as estimated by the VOCPT as per the depreciation rate applicable as per the life norms prescribed in the Companies Act, 2013. That being so, depreciation on capital cost towards civil work is modified and considered at 3.17% on the modified capital cost estimates.

The port has stated that the depreciation rates on equipment considered by it at 6.33% is as per the depreciation rate applicable as per the Companies Act, 2013. This is also in line with the depreciation rate considered in other reference tariff cases of VOCPT. That being so, depreciation on equipment is considered at 6.33% on the modified capital cost estimates.

(d). (i). The upfront tariff guidelines of 2008 stipulate that licence fee for port land is to be estimated based on the rates prescribed in the Scale of Rates of the respective Major Port Trusts.

(ii). (a). The VOCPT in the revised proposal has estimated license fee (waterfront charges) for 13206 sq. mtrs. comprising of working platform 750 sq. mtrs. and berthing area of 12456 sq. mtrs. The unit rate applied by the VOCPT for estimating license fee (waterfront charges) for 13206 sq. mtrs. is ₹174.34 per sq. mtr. per annum by considering 50% of the license fee of 348.64 per sq. mtr. per annum applicable from 01.07.2014 to 30.06.2015 for land used for commercial purposes as per lease rental approved by this Authority vide its Order dated 4 April 2014. The unit rate of license fee (waterfront charges) of ₹177.34 per sq. mtr./ annum is updated applying 2% annual escalation applicable from 01.07.2015 as per the lease rental schedule approved by this Authority in the said Order. Accordingly, the modified license fee (waterfront charges) for 13,206 sq. mtrs. of area comes to ₹23.48 lakhs as against ₹23.02 lakhs estimated by the VOCPT.

(b). The VOCPT has also estimated license fee for jetty area measuring 11037.4 sq. mtrs. The unit rate adopted by VOCPT is ₹170.92 per sq. mtr. reportedly as per the rate applicable in February 2010 for commercial area. This Authority vide its Order No.TAMP/6/2012-VOCPT dated 4 April 2014 has approved revised lease rental for VOCPT lands for two quinquennium viz. 1 July 2007 to 30 June 2012 and from 1 July 2012 to 30 June 2017 based on the proposal of the VOCPT. The unit rate applicable as per the said Order is ₹355.65 per sq. mtr./ annum from 1 July 2015 to 30 June 2016 for commercial area. Accordingly, the license fee for jetty area is modified and considered applying the said unit rate and the modified estimate is ₹39.25 lakhs as against ₹18.87 lakhs estimated by VOCPT.

(c). For way leave charges for conveyors, the VOCPT has estimated license fee for 22,960.56 sq. mtrs. of conveyor area for conveyor trestle within the security point of the port. The unit rate adopted by VOCPT for estimating way leave charges at ₹1.42 per sq. mtr. per annum is as per the existing Scale of Rates of VOCPT and hence considered without any modification.

(xiv). The total operating cost for cargo handling activity based on the above analysis works out to ₹3039.74 lakhs as against ₹3179.76 lakhs estimated by the VOCPT.

(xv). Operating cost for berthing service:

The upfront tariff guidelines require the operating cost for berthing services to be estimated at 1% of the cost of construction of berth and cost of dredging carried out alongside the berth. The VOCPT has estimated 1% of capital cost towards insurance and 1.58% towards depreciation while estimating the annual revenue requirement from berthing service, apart from the prescribed norm of 1% towards maintenance. Although the guideline restricts the operating cost at 1% of the berth cost and dredging, the asset requires adequate insurance coverage and the fact that the value of the asset will depreciate due to wear & tear can also not be denied. While fixing upfront berth hire and reference tariff for berthing services at other Major Port Trusts, this position was recognised and the cost of insurance at 1% and depreciation at 3.17% was considered to assess the annual revenue requirement from berthing service. The depreciation rate considered in the other reference tariff cases of other Major Port Trusts is 3.17% as considered for civil works as per the depreciation rate applicable under the Companies Act, 2013. In view of the position explained above, the insurance cost at 1% and depreciation at 3.17% of the capital cost are considered in this case also while estimating the operating cost for assessment of the revenue requirement from berthing services.

In this context, it is relevant here to mention that clause 3.6 of the upfront tariff guidelines gives flexibility to this Authority to decide on a particular item of expenditure, which it considers for incorporation, while computing the upfront tariff cap for which norms are not explicit in the guidelines.

(xvi). The statement for fixing upfront tariff submitted by the VOCPT has been modified in line with the above analysis. A copy of the modified statement is attached as **Annex - I**.

(a). The annual revenue requirement which is sum of the operating cost and return on capital employed is estimated at ₹5270.89 lakhs from cargo handling service as against ₹5544.26 lakhs estimated by the port.

(b). The guidelines for coal terminal require 98% of the total annual revenue requirement to be apportioned to handling charge, 1% towards storage charge and 1% each towards miscellaneous charge. As against that, the VOCPT has apportioned the estimated annual revenue requirement into two tariff groups i.e. coal handling charges and miscellaneous charges in the ratio of 99:1. The VOCPT has not apportioned any revenue requirement towards storage charges nor has proposed storage charge. As stated earlier, the port has clarified that storage area is part of the plant area developed by the NTPL and does not form the part of this project for determination of the upfront tariff. In view of the above position, apportionment of the total annual revenue requirement from cargo handling activity between the two tariff activities i.e. coal handling charges and miscellaneous charges in the ratio of 99:1 is accepted as proposed by the port. Incidentally, even the NTPL has not made any adverse comments on the said apportionment of the ARR between the two activities.

(c). The upfront tariff caps are determined so as to meet the revenue requirement estimated for each of the cargo groups and with reference to the share in the optimal capacity.

(d). As per policy direction of the Government, concessional tariff are to be prescribed for coastal cargo (other than thermal coal and POL including crude oil, iron ore and iron ore pellets) and coastal vessels not exceeding 60% of the normal cargo/ vessel related charges. As per Government policy on Coastal Concession, thermal cargo proposed to be handled at NCB-I berth is not entitled for coastal cargo. That being so, the VOCPT has rightly proposed uniform tariff for foreign and coastal cargo. Based on the above analysis, the handling rate for handling thermal coal comes to ₹102.49 per tonne as against ₹107.84 per tonne proposed by VOCPT for both Foreign and Coastal cargo.

(e). The VOCPT has proposed a provision to state that cargo handling charges prescribed is a composite rate and includes charges for unloading of cargo from the vessel, transfer upto the point of storage, storage at stackyard upto 10 days free period loading onto trucks, wharfage and all other miscellaneous services not specifically prescribed in the Scale of Rates. In this context, as stated earlier, the VOCPT has not envisaged any storage facility for arriving at the proposed upfront tariff for this project. Further, the thermal coal is transferred by conveyor to the NTPL plant and does not involve any loading onto trucks, loading onto wagons as capital cost does not capture such service. That being so the proposed note is modified to state that the cargo handling charges prescribed is a composite charge and covers all cargo handling services, wharfage and all other miscellaneous services not specifically prescribed in the Scale of Rates.

(f). To meet apportioned 1% of estimated annual revenue requirement towards miscellaneous services i.e. ₹55.44 lakhs, the VOCPT has arrived at miscellaneous charge of ₹1.09 per tonne for all miscellaneous services such as environment and management, sweeping of cargo on the wharf, safety measures.

Based on the modified annual revenue requirement apportioned to miscellaneous services at ₹52.71 lakhs, the miscellaneous charge comes to ₹1.04 per tonne for all cargo categories at the estimated optimum capacity of 5.09 Million Tonnes.

(xvii). (a). The modified revenue requirement from berthing service comes to ₹925.35 lakhs as against ₹855.85 lakhs estimated by the port, as analysed earlier.

(b). The VOCPT vide its letter No.FIN-OFFCT-CRG-PROPO-V1-14 2266 dated 8 July 2015 has stated that the berth is constructed by the NTPL, hence no berth hire charges is payable by the NTPL for the vessels berthed in North Cargo Berth No.1. The rate proposed by VOCPT is for the collection of berth hire charges by NTPL if vessels other than those on account of the NTPL is occupying the NCB-I Berth when the berth is lying idle. That being so, the Berth hire charges are prescribed in the SOR as per the proposal of the VOCPT for prescription of the Berth hire subject to modification in the rates as explained in the following analysis.

(c). As stated earlier, only the panamax size vessels are expected to be handled at NCB-I. As per the detailed berth hire calculation furnished by the VOCPT, it is seen that the no of berth days for the optimal capacity of 5.04 MTPA comes to 145.47 days as against normative berth days of 255.5 days as per 2008 guidelines. On being asked to clarify the mismatch in the number of days, the VOCPT has clarified that the optimal capacity of NCB-I berth is restricted to the yard capacity based on the requirement of thermal power plant for captive use of NTPL. The VOCPT has emphatically stated that there is no possibility of improving the yard capacity of the plant. In the instant case, the yard capacity of the plant of the NTPL is the limiting factor. In view of the above clarification furnished by the VOCPT and recognising that the entire tariff fixation is for captive use by NTPL and also in view of submission made by the port that the prescription of berth hire is only to have a rate in case vessels other than those of NTPL occupy the NCB-I berth when berth is idle, the berth hire computation by the VOCPT for the optimal capacity of 5.04 MTPA which works out to 145.47 days is accepted.

(d). The vessel profile and vessel parameters considered by the VOCPT for panamax vessel are relied upon. Based on the vessel parameters, the GRT hours estimated by the port is 13,96,50,912 GRT hours (i.e. 3491 berth hours x 40000 average GRT of vessel). The computation of GRT hours is accepted except for minor modification in total GRT hours which comes to 13,96,40,000 GRT hours based on the above calculation considered by the port.

(e). While arriving at Berth hire rate, the VOCPT had not taken into consideration the impact of coastal concession while proposing the berth hire for foreign-going vessel and coastal vessel. The VOCPT was requested to modify the berth hire calculation and take into consideration the approach followed in the other upfront tariff cases including VOCPT and also furnish the basis considered for share of foreign and coastal vessels.

The port has clarified that the share of Foreign and Coastal vessel depends on the choice of the NTPL and the exact share cannot be anticipated. For the trial run of the plant, the VOCPT has reported that NTPL has imported thermal coal in 4 vessels of which 2 were Foreign-going vessels and remaining 2 coastal vessels. However, the VOCPT has stated that for the purpose of berth hire calculations, it has assumed that 100% of the vessels to be handled at NCB- I will be coastal vessels. The ratio of coastal vessel as furnished by the VOCPT is relied upon.

On perusing the berth hire calculation furnished by the VOCPT, it is seen that there is some arithmetical error and it is not in line with the clarification furnished by the VOCPT. The VOCPT has arrived at the berth hire for coastal vessel by spreading the estimated revenue requirement from berth hire i.e. ₹855.85 lakhs over 60% of the GRT vessel though the port has confirmed that 100% of vessel will be coastal vessel. At the rate proposed by the VOCPT at ₹1.02 /GRT/hour for coastal vessel and considering the total GRT of vessel, the total revenue from berth hire will work out to ₹1424.44 lakhs as against estimated ARR of ₹855.85 lakhs by the VOCPT from this service.

In our computation, the berth hire charges is correctly arrived at by considering the modified estimated ARR of ₹925.35 lakhs and spreading over corrected total GRT of vessel 13,96,40,000 and considering it as 100% coastal vessel as assumed by the VOCPT the berth hire charge comes to Re.0.66/ GRT/ hour (i.e. 925.35 lakhs/ 13,96,40,000). Though the port has not assumed any vessel to be foreign-going, it has proposed rate for foreign going vessel at ₹1.70/ GRT/hour. Following the approach adopted by the VOCPT, the berth hire for foreign going vessel is also arrived at ₹1.10 / GRT/hour (i.e. 0.66*100/60).

Subject to the above analysis, the berth hire for foreign going vessel vessels works out to ₹1.10 per GRT per hour and ₹0.66 per GRT per hour for coastal vessel as compared to ₹1.70 per GRT per hour and ₹1.02 per

GRT per hour for foreign going vessel and coastal vessel respectively computed by the VOCPT. The detailed computation of berth hire is furnished as part of **Annex - II**.

It has already been decided by this Authority while finalising the upfront berth hire at the other Major Port Trusts to approve the upfront berth hire charge in Rupee term only. Therefore, the proposal of the MOPT for prescription of berth hire charges in rupee terms is in line with the decision taken by this Authority in the other upfront tariff cases.

(xviii). The definition of various terms proposed by VOCPT in the draft Scale of Rates is found to be in line with the definition commonly prescribed in the Scale of Rates.

Some of the common conditions stipulated in the guidelines of 2005 and the conditions uniformly prescribed in the Scale of Rates of other major ports / private terminals about status of the vessel for the purpose of vessel related charges, users should not be required to pay charges for delays beyond reasonable level attributable to the private terminal operator, berth hire shall not accrue 4 hours after the time of vessel signaling its readiness to sail, no berth hire shall be levied for the period the vessel is compelled to idle at berth operated by the terminal operator for continuous one hour or more due to non-availability/ break down of equipment or power failure or any other reasons attributable to the terminal operator, proposed by VOCPT are incorporated in the upfront tariff schedule for the proposed multipurpose cargo terminal subject to modification in one of the conditionality as explained below.

The port has not proposed the conditionalities relating to criteria for conversion of foreign going vessel to coastal vessel which is uniformly prescribed in other reference tariff cases where berth hire is prescribed. This Authority vide its Order No.TAMP/53/2015-VOCPT dated 29 September 2015 in view of the clarification sought by the VOCPT has based on the recommendation of the Directorate General of Shipping amended the provisions relating to criteria for conversion of foreign going vessel to coastal vessel prescribed uniformly at all the Major Port Trusts and the concerned BOT operators operating at all the Major Port Trusts. The provisions prescribed in the said Order have been further amended by this Authority in its Order dated 26 November 2015. The provisions are approved by this Authority for common adoption by all the Major Port Trusts and the concerned BOT operators operating at all the Major Port Trusts. The amended provisions prescribed in the said Order dated 26 November 2015 are, therefore, prescribed in the Scale of Rates for NCB- I also.

(xix). The VOCPT has proposed a note stating that the rates and conditions for granting ousting priority berthing/ priority berthing will be governed by the Government guidelines in this regard. The proposed note does not mention about the applicable charges for priority berthing/ ousting priority berthing as per the Government guidelines. The Scale of Rates of VOCPT prescribes that a fee equivalent to berth hire charges for 24 hours or 75% of the berth hire charges calculated for the total period of actual stay at the berth, whichever is higher shall be levied for providing priority berth to any vessel. For providing the ousting priority to any vessel, a fee equivalent to berth hire charges for 24 hours or 100% of the berth hire charges calculated for the total period of actual stay at the berth whichever is higher, is prescribed in the SOR of VOCPT. These conditions are based on the Government guidelines in this regard and are also prescribed in the Scale of Rates of other Major Port Trusts. That being so, in addition to the note proposed by the VOCPT, the above two conditionalities relating to ousting priority and priority berth hire charges also prescribed in the Scale of Rates for berth no.NCB-I .

(xx). As per clause 2.8 of the Guidelines, the tariff caps will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2008 and 1 January of the relevant year. Such automatic adjustment of tariff caps will be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31 March of the following year. The VOCPT has proposed 1 January 2015 as the base WPI for such automatic adjustment every year. The proposed note for annual indexation is approved.

(xxi). The letter No.PD-11015/5/2006-TPT dated 22 October 2009 of Ministry of Shipping addressed to VOCPT, *inter alia*, states that approval accorded by the MOS for construction of NCB-I for captive use by NLC-TNEB joint venture is subject to a Minimum Guaranteed Throughput (MGT) to VOCPT. In case the joint venture fails to provide the desired MGT, heavy penalty to be imposed. Further, this arrangement will become null and void if NLC enters into a joint venture with any private firm. The VOCPT is requested to take note of the above position stated in the MOS letter and accordingly incorporate a suitable provision in the Concession Agreement to be entered with the NTPL.

16.1. Subject to above, the upfront along with conditionalities governing the upfront Tariff has been modified and the modified Tariff Schedule for handling thermal coal at NCB-I is attached as **Annex - III**.

16.2. As specified in clauses 2.9.1. and 2.9.2. of the guidelines, the operator shall approach this Authority for notification of Scale of Rates containing the approved ceiling rates and the statement of conditions, as required under Section 48 of the Major Port Trusts Act, 1963 for levy of rates for the cargo and vessel related services rendered to any other user.

16.3. As per clause 3.8.5 of the guidelines, if any question arises requiring clarifications or interpretation of the Scale of Rates and the statement of conditionalities, the matter shall be referred to this Authority and its decision in this regard will be binding on the operator.

16.4. The performance norms for the project should be clearly brought out in the bid concession agreement. The operator is expected to perform at least at the performance norms brought out in the concession agreement.

16.5. The actual performance of the operator will be monitored by this Authority. If any complaint regarding quality of service is received, this Authority will enquire into such allegation and forward its findings to the V.O. Chidambaranar Port Trust. If any action is to be taken against the operators, the V.O. Chidambaranar Port Trust shall initiate appropriate action in accordance with the provisions of the relevant Concession Agreement.

16.6. During the commercial operation at the terminal, within 15 days from the end of every quarter, the operator shall submit to this Authority through the V.O. Chidambaranar Port Trust a report containing the terminal's physical and financial performance during the preceding three months.

17. In the result, and for the reasons given above, and based on application of mind, this Authority approves the upfront tariff schedule for handling thermal coal by the NTPL at NCB-I of V.O. Chidambaranar Port Trust, which is attached as **Annex - III**.

(T.S. Balasubramanian)
Member (Finance)

Annex - I

COST STATEMENT FOR FIXATION OF TARIFF FOR NORTH CARGO BERTH-I FOR HANDLING THERMAL COAL BY NLC TAMIL NADU POWER LTD ON CAPTIVE BASIS FOLLOWING THE PRINCIPLES OF 2008 TARIFF GUIDELINES BASED ON THE PROPOSAL OF VOCPT

(₹ in lakhs)

Sr. No.	Particulars		Estimate furnished by VOCPT		Estimates of VOCPT modified by TAMP
			Proposal dated 28.05.2014	Revised proposal dated16.4.2015	
I	**Optimal capacity**				
(i).	**Optimal Quay Capacity**				
(a).	Share of Vessel Size				
	% share of capacity of Panamax vessels upto 75000 DWT	(S1)	100%	100%	100%
(b).	Ship day Output (in tonnes per day)	(S2)	35,000	35,000	35,000
(c).	Optimal Quay Capacity = (0.7*S1)*(S2)×365		8,942,500 (0.7*35000*365)	8,942,500 (0.7*35000*365)	8,942,500 (0.7*35000*365)
	Optimal Quay Capacity in Million Tonnes Per Annum (MTPA)		**8.94**	**8.94**	**8.94**
(ii).	**Optimal Yard Capacity**				
(a)	Area of yard made available by the Port (in square metres)	(A)	81,450	81,450	81,450
(b)	% of Area available for stacking	(U)	0.70	0.70	0.70
(c)	Stacking Quantity per square metre (tons)	(Q)	5 T/sqm	5 T/sqm	5 T/sqm
(d)	Annual Turnover Ratio of the plot	(T)	17.86	17.86	17.86
(e)	Optimal Yard Capacity (in tonnes) = 0.7 * A * U * Q * T		5,091,440 (0.7*81450*0.70*5 T *17.86)	5,091,440 (0.7*81450*0.70*5 T *17.86)	5,091,440 (0.7*81450*0.70*5 T *17.86)
(f)	**Optimal Yard Capacity in Million Tonnes Per Annum (MTPA)**		5.09	5.09	5.09
(iii).	**Optimal capacity of the Terminal - lower value of the optimal quay capacity and optimal stack yard capacity (in Million tonnes)**		**5.09**	**5.09**	**5.09**
II	**Capital Cost**				
(i).	**Cargo Handling Activity**		₹ In lakhs	₹ In lakhs	₹ In lakhs
(a).	**Civil Cost**				
	(i) Roads connectivity		-	248.61	248.61
	(ii) Contingencies, engineering and Supervision at 10% on the total base cost by VOCPT (TAMP - Misc Cost-5% as per Norms)		-	24.86	12.43
	Subtotal (a)		-	273.47	261.04
	Total Civil Cost (Old proposal did not consider Civil Cost)			**273.47**	**261.04**
(b).	**Equipment Cost**				
	(i) Shore Unloaders (Old proposal included stores, canteen etc. also. Revised proposal covers only Shore unloadersand stackers 2 Nos.)		9,122.65	8,097.72	8,097.72
	(ii) Stackers (norms - 2 No.)		5,883.61		
	(iii) Conveyors (Revised proposal only includes Conveyors Cost from Berth to Red Gate)		13,537.09	4,934.33	4,934.33
	(iv) Pay loaders & dozers (norms - 4nos.)		980.60	-	-
	Subtotal		**29,523.95**	**13,032.05**	**13,032.05**
	(v) Contingencies, engineering and Supervision (Original proposal has considered 10% on Total base cost, Revised proposal VOCPT has considered 5.9%. TAMP - Not considered)		2,952.40 (29523.95*10/100)	768.89 (13032.05*5.9/100)	
	Total Equipment cost (b)		**32,476.35**	**13,800.94**	**13,032.05**
(c).	**Miscellaneous cost [5% on (b)]**		**1623.82** (32476.35*5/100)	**703.72** (13800.94*5/100)	**651.60** (13032.05*5/100)
	Total Capital cost for Cargo Handling Activity (i)	**(a+b+c)**	**34100.17**	**14778.13**	**13944.69**
(ii).	**Capital Cost for Berthing Services**				
(a).	Cost of berth		4460.84	4371.06	4371.06
(b).	Contingencies, engineering and Supervision (Original porposal considered at 10% and Revised proposal NIL.)		446.08	-	-
	Subtotal (a+b)		**4906.92**	**4371.06**	**4371.06**
	Total Capital cost for Berthing services (ii)	**(a+b)**	**4906.92**	**4371.06**	**4371.06**
(iii).	**Total capital cost of the project**	**(i+ii)**	**39007.09**	**19149.19**	**18315.75**

Sr. No.	Particulars	Estimate furnished by VOCPT		Estimates of VOCPT modified by TAMP
		Proposal dated 28.05.2014	Revised proposal dated16.4.2015	
III	**Operating Cost**			
(i).	**Cargo Handling Activity**	**Estimates (₹ in lakhs)**	**Estimates (₹ in lakhs)**	**Estimates (₹ in lakhs)**
	(a). Power Cost	570.24 (1.4 units per tonne * ₹ 8.0 per unit*5091440 T)	305.08 (1.4 units per tonne * ₹ 4.28 per unit * 5091440 T)	305.08 (1.4 units per tonne *₹ 4.28 per unit * 5091440T)
	(b). Repair & Maintenance			
	- Civil Assets (1% on civil work)	-	2.73	2.61
	- Mechanical & Electrical Equipment Cost (7% on mechanical and electrical works)	2387.01 (34100.17*7/100)	1015.33 (13800.94+703.72*7/100)	957.86 (13032.05+651.60*7/100)
	(c). Insurance (1% on Gross fixed assets)	341.00 (34100.17*1/100)	145.05 (14778.13-273.47*1/100)	139.45 (13944.69*1/100)
	(d) Depreciation			
	- Civil Assets	- 3.34% on Civil Assets	25.98 9.50% on Civil Assets (273.47*9.50/100)	8.27 3.17% on Civil Assets (261.04*3.17/100)
	- Mechanical and Electrical Works	3525.96 10.34% of Mech & Elec Works (34100.17*10.34/100)	918.15 6.33% of Mech & Elec Works (13800.94+703.72*6.33/100)	866.18 6.33% of Mech & Elec Works (13032.05+651.60*6.33/100)
	(e). License Fee			
	(i) Water Front Charges (24333.40 sq. mtr for berthing @ ₹ 334.59 per sq. mtr./p.a.) (Original proposal considered the cost, Revised proposal NIL)	81.42	-	-
	(ii) Working platform- 750 sqm+Berthing area 12456 sq.mr=13206 sq.mtr@ ₹ 174.34 per sq. mtr/pa 50% of commercial rate from 1.7.2014(TAMP-Unit Rate Considered ₹ 177.82/sq. mtr as on 1.7.2015)	-	23.02 (13206*174.34/100000)	23.48 (13206*177.82/100000)
	(iii) Jetty area 10801.80 sq.mr+app.jetty 235.60sq.mr=11037.4 sq.mr)*170.92 as on Feb 2010(TAMP - Unit rate modified based on prevaling rate as on 1.7.2015 at ₹ 355.65 sq.mtr.)	-	18.87 (11037.4*170.92/100000)	39.25 (11037.4*355.65/100000)
	(iii) Way Leave for conveyors (22960.56 sq. mtr for conveyor trestle within security wall @ ₹ 1.42 per sq. mtr. Annum)	0.33 (22960.56*1.42/100000)	0.33 (22960.56*1.42/100000)	0.33 (22960.56*1.42/100000)
	(f). Other Expenses (5% on gross value of assets)	1705.01 (34100.17*5/100)	725.23 (14778.13-273.47*5/100)	697.23 (13944.69*5/100)
	Total Operating Cost (a+b+c+d+e+f)	**8610.96**	**3179.76**	**3039.74**
IV	**Revenue Requirement & proposed tariff**			
(i).	**Cargo Handling charge**			
	1. Revenue Requirement			
	(a). Total Operating Cost	8610.96	3179.76	3039.74
	(b). Return on capital Employed @ 16%	5456.03	2364.50	2231.15
	(c). Total Revenue requirement from cargo handling activity (a+b)	**14066.99**	**5544.26**	**5270.89**
	2. Apportionment of Revenue Requirement			
	(a).Coal Handling Charges (99% of ARR) (Norm 98%)	13926.32	5488.82	5218.18
	(b).Storage Charges (0% of ARR) (Norm 1%)	0.00	0.00	0.00
	(c). Miscelleneous Charge (1% of ARR) (Norm 1%)	140.67	55.44	52.71
	(d). **Total Revenue requirement from cargo handling activity (a+c)**	**14066.99**	**5544.26**	**5270.89**
	3. Proposed tariff per tonne rate			
	(a). Coal Handling Charge (Composite)			
	- Revenue Requirement (₹ in lakhs)	14066.99	5488.82	5218.18
	- Capacity (Million Tonnes per annum)	5.09	5.09	5.09
	Composite Handling Charge (₹ per tonne) (Foreign and Coastal)	**276.37**	**107.84**	**102.49**
	(b). Miscelleneous Charge			
	- Revenue Requirement (₹ in lakhs)	140.67	55.44	52.71
	- Capacity (Million Tonnes per annum)	5.09	5.09	5.09
	- Miscellenous Charge ₹ per tonne	**2.76**	**1.09**	**1.04**
(ii).	**BERTH HIRE CHARGES**			
(a).	**Revenue Requirement**			
	(i). Repairs & Maintenance Charge (1% on captial cost for berth)	44.61 (4460.84*1/100)	43.71 (4371.06*1/100)	43.71 (4371.06*1/100)
	(ii). Depreciation	148.99 (4460.84*1.58/100)	69.06 (4371.06*1.58/100)	138.56 (4371.06*3.17/100)
	(iii). Insurance (1% on total cost for berh hire service)	44.61	43.71	43.71
	Subtotal (a)	**238.21**	**156.48**	**225.98**
(b).	Return on capital Employed @ 16%	**785.11** (4906.92*19/100)	**699.37** (4371.06*16/100)	**699.37** (4371.06*16/100)
(c)	**TOTAL ARR FOR BERTHING SERVICE (a+b) Subtotal**	**1023.32**	**855.85**	**925.35**
	Berth Hire Charge			
	Foreign going vessel (Rate per GRT per hour) in ₹	**2.03**	**1.70**	**1.10**
	Coastal vessel (Rate per GRT per hour) in ₹	**1.22**	**1.02**	**0.66**

Annex - II

BERTH HIRE COMPUATION

Sr. No.	Particulars	Proposal dated 28.5.2014	Proposal dated 16.4.2015	Working of TAMP
i.	Average DWT	75,000	75,000	75,000
ii.	Ship day output	35,000	35,000	35,000
iii.	Average GRT	40,000	40,000	40,000
iv.	Average parcel size	60,000	60,000	60,000
v.	Tonnage expected to be handled	5,091,440	5,091,440	5,091,440
vi.	Average no. of berth days (v / ii)	145.47	145.47	145.47
vii.	No. of berth hours {24 x (vi)}	3491	3491	3491
viii.	Total GRT hours	139,650,912	139,650,912	139,640,000
ix.	**Revenue Requirement**	**1023.32**	**855.85**	**925.35**
x.	**Berth hire - Foreign going vessel**	**2.03**	**1.70**	**1.10**
xi.	**Berth hire - Coastal vessel**	**1.22**	**1.02**	**0.66**

<u>**Annex - III**</u>

V.O. CHIDAMBARANAR PORT TRUST

TARIFF SCHEDULE FOR HANDLING THERMAL COAL AT NCB - I

1.1. Definitions – General

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

(i). **"Coastal vessel"** shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal licence issued by the competent authority/Director General of Shipping.

(ii). **"Day"** shall mean the period starting from 6 a.m. of a day and ending at 6 a.m. on the following day.

(iii). **"Foreign-going vessel"** shall mean any vessel other than coastal vessel.

1.2. General Terms & Conditions

(i). The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for classifying into 'coastal' or 'foreign-going' category for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.

(ii). **(a).** <u>**System of classification of vessel for levy of Vessel Related Charges (VRC)**</u>

(i). A foreign going vessel of Indian flag having a General Trading Licence can convert to coastal run on the basis of a Customs Conversion Order. Such vessel that converts into coastal run based on the Customs Conversion Order at her first port of call in Indian Port, no further custom conversion is required, so long as it moves on the Indian Coast.

(ii). A Foreign going vessel of foreign flag can convert to coastal run on the basis of a Specified Period Licence issued by the Director General of Shipping and a custom conversion order.

(b). <u>**Criteria for levy of Vessel Related Charges (VRC) at Concessional Coastal rate and foreign rate**</u>

(i). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.

(ii). In cases of such conversion coastal rates shall be chargeable till the vessel completes discharging operations at the last call of Indian Port; immediately thereafter, foreign going rates shall be chargeable by the discharge ports.

(iii). For dedicated Indian coastal vessels having a Coastal licence from the Director General of Shipping, no other document will be required to be entitled to coastal rates.

(iii). **<u>Criteria for levy of Cargo Related Charges (CRC) at Concessional Coastal rate</u>**

(a). Foreign going Indian Vessel having General Trading License issued for ‘worldwide and coastal’ operation should be accorded applicable coastal rates with respect to Handling Charges (HC) i.e. ship to shore transfer and transfer from/ to quay to/ from storage yard including wharfage in the following scenario:

(i). Converted to coastal run and carrying coastal cargo from any Indian Port and destined for any other Indian Port.

(ii). Not converted* to coastal run but carrying coastal cargo from any Indian Port and destined for any other Indian Port.
* The Central Board of Excise and Customs Circular no.15/2002-Cus. dated 25 February 2002 allows carriage of coastal cargo from one Indian port to another port in India, in Indian flag foreign going vessels without any custom conversion.

(b). In case of a Foreign flag vessel converted to coastal run on the basis of a Specified Period License issued by the Director General of Shipping, and a Custom Conversion Order, the coastal cargo/ container loaded from any Indian Port and destined for any other Indian Port should be levied at the rate applicable for coastal cargo/ container.

(iv). (a). The berth hire charges for all coastal vessels should not exceed 60% of the corresponding charges for other vessels.

(b). The cargo related charges for all coastal cargo other than thermal coal should not exceed 60% of the normal cargo related charges.

(c). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship shore transfer and transfer from/to quay to/from storage yard including wharfage.

(d). Cargo from a foreign port which reaches an Indian Port “A” for subsequent transhipment to Indian Port “B” will be levied the concession charges relevant for its coastal voyage. In other words, cargo from/to Indian Ports carried by vessels permitted to undertake coastal voyage will qualify for the concession.

(v). In calculating the gross weight or measurement by volume or capacity of any individual item, fractions upto 0.5 shall be taken as 0.5 unit and fractions of 0.5 and above shall be treated as one unit, except where otherwise specified.

(vi). Interest on delayed payments / refunds for usage of the facility other than captive usage of M/s. NTPL.

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

(b). The rate of penal interest will be 2% above the prime lending rate of the State Bank of India.

(c). The delay on refunds will be counted only 20 days from the day 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 terminal operator. This provision shall, however, not apply to the cases where payment is to be made before availing the services where payment of charges in advance is prescribed as a condition in the Scale of Rates.

(vii). All charges worked out shall be rounded off to the next higher rupee on the grand total of the bill.

(viii). (a). The rates prescribed in the Scale of Rates are ceiling levels: likewise, rebates and discounts are floor levels. The terminal operator may, if they so desire, charge lower rates and / or allow higher rebates and discounts.

(b). The terminal operator may also, if they so desire rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling levels.

(c). The terminal operator should notify the public such lower rates and / or rationalisation of the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.

(ix). Users will not be required to pay charges for delays beyond reasonable level attributable to terminal operator.

2. BERTH HIRE CHARGES

Sl. No.	**Vessels**	**Rate per GRT per hour or part thereof**	
		Foreign Going Vessel (in ₹)	**Coastal Vessel (in ₹)**
1.	Vessels	1.10	0.66

Notes:

(i). The Period of berth hire shall be calculated from time the vessel occupies berth till she vacates the berth.

(ii). (a). Berth hire shall stop four hours after the time of the vessel signaling its readiness to sail.

(b). The time limit of 4 hours prescribed for the cessation of the berth hire shall exclude the ship’s waiting time for want of favorable tide conditions, inclement weather and due to lack of night navigation.

(c). The Master/ agent of the vessel shall signal readiness to sail only in accordance with favourable tidal and weather conditions.

(iii). The Penal berth hire shall be equal to one-day's (24 hours) berth hire charges for a false signal.

"False Signal" would be when the vessel signals readiness and asks for a pilot in anticipation even when she is not ready for un-berthing due to engine not being ready or cargo operation not completed or such other reasons attributable to the vessels. This excludes signaling readiness when a vessel is not able to sail due to unfavorable tide, lack of night navigation or adverse weather conditions."

(iv). Ousting Priority / Priority Berth Hire Charges:

(a). The rate and conditions for granting ousting priority berthing / priority berthing will be governed by extant Government guidelines in this regard.

(b). For priority berthing, fees equivalent to berth hire charges for a single day or 75% of the berth hire charges for the period of stay, whichever is higher shall be levied extra.

(c). For Ousting priority, fees equivalent to 100% of the normal Berth hire charges for actual period of stay shall be levied extra.

(v). No berth hire shall be levied for the period when the vessels idle at its berths for continuous one hour or more due to break down of Terminal Operator's equipment or power failure or any other reasons attributable to the Terminal Operator.

3. CARGO HANDLING CHARGES

Sl. No.	Commodity	Unit	Rate in Rupees	
			Foreign	**Coastal**
(a).	Thermal coal	Per Metric Tonne	102.49	102.49

Note:
The cargo handling charges prescribed above is a composite charge and covers all cargo handling services, wharfage and all other miscellaneous services not specifically prescribed in the Scale of Rates.

4. MISCELLANEOUS CHARGES:

The following Miscellaneous charges are applicable for thermal coal handled:

Sl. No.	Particulars	Rate per tonne or part thereof (in ₹)
(i).	Charges for all miscellaneous services such as environment and management, sweeping of cargo on the wharf, safety measures, etc.	1.04

5. GENERAL NOTE TO SCHEDULE (2) TO (4) ABOVE:

The tariff caps will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2015 and 1 January of the relevant year. Such automatic adjustment of tariff caps will be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31st March of the following year.

* * * *

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

F. No.TAMP/29/2014 - VOCPT - Proposal received from V.O. Chidambaranar Port Trust for fixation of upfront tariff for North Cargo Berth-I for handling Thermal Coal by NTPL under 2008 Guidelines.

In accordance with the consultative procedure prescribed, the proposal of VOCPT dated 28 May 2014 was forwarded to the concerned users/ user organisations/ captive user (as forwarded by VOCPT) seeking their comments. The comments received from the users were forwarded to VOCPT as feedback information. The VOCPT vide its letter 12 January 2015 has furnished its reply on comments of the users/ user organisations/ captive users. A summary of the comments received from the users/ user organisations/ captive users are tabulated below:

Sl. No.	Comments of the users/ user organisations/ captive user	Reply furnished by VOCPT
1.	**Tamil Nadu Electricity Board (TNEB)**	
(i).	The share of TANGEDCO in NTPL is 11%. Further it is learnt that the berth NCB - I can be used only by NTPL since there is no technical feasibility to utilize the berth by others.	Factual.
(ii).	On perusal of the workings enclosed in the TAMP letter, it is observed that the coal handling charges (`276.37/MT), miscellaneous charge (`2.76/MT) and berth hire charge (`1.22/GRT/Hour for coastal vessel, `2.03/GRT/Hour for foreign vessel) have been arrived taking into account the operating expenses to be incurred by NTPL and also the return on investment on the capital cost incurred by NTPL for equipments such as shore unloaders & conveyers and cost of berth.	Factual.
(iii).	The Return on capital invested by NTPL and the operating cost to be incurred by NTPL should not be taken into account by VOCPT for arriving at the rates to be charged for NTPL.	The consideration of operating cost incurred by The NTPL and Return on Capital invested by NTPL are based on the Guidelines for Upfront Tariff Setting 2008 relating to Coal Terminal. The above are considered to fix upfront tariff for the facility to be used by The NTPL for handling coal meant for consumption in generating Thermal Power by their Thermal Plant. The same is for working out the equated revenues for the actual traffic handled/ Minimum Guaranteed Traffic whichever is less on which Revenue Share is to be calculated at the agreed percentage. This is similar to the procedure adopted by Port in case of other private operators of Seventh Berth (paying royalty to the Port), Eighth Berth Container Berth (paying revenue share to the Port), Operation of 2 numbers of 120 tonnes of Harbour Mobile Cranes.
(iv).	TANGEDCO has sought the views from the joint venture company NTPL and after receipt of view from NTPL further comments of TANGEDCO will be communicated.	No comments.
2.	**NLC Tamil Nadu Power Limited (NTPL)**	
(i).	At the outset, we submit that unlike the	Factual.

	other commercial operators of Berths and Terminals in the major ports in the country, NCB-1 is to be operated by NTPL only for captive use. The facility is not intended to be used for the benefit of any other user, importer, exporter or shipping companies other than NTPL. The entire cargo that is to be handled at NCB-1 by NTPL is to be utilized only for the 2 x 500 MW Power Plant that is being set up by NTPL. No doubt, under the Draft Concession Agreement which has been forwarded by VOCPT to NTPL, VOCPT has reserved its rights to utilize NCB-1, if required, subject to the terms and conditions to be specified.	
(ii).	(a). We wish to submit that while granting approval to VOCPT by a communication dated 22.10.2009, the Ministry of Shipping, Government of India, has made it clear that the proposal of VOCPT for the construction of NCB-1 was subject to determination of rates by TAMP and that NTPL would be required to achieve a minimum guarantee throughput.	(a). Factual.
	(b). However, even while doing so, the Ministry has further made it clear that the Concession Agreement would be subject to the guidelines framed in 1996 for captive use and that any further guidelines issued subsequently would also be applicable to the project in question.	(b). The 1996 Guidelines issued by the Government for Private Sector Participation provide for consideration of 100% captive facilities by Central/ State PSUs without recourse to tender, provided such industries are Port specific and are approved by concerned Administrative Ministry and Industry is willing to pay the maximum realization which the Port may determine taking into account relevant factors. In addition, the sanction of the Government for the subject captive facility also specify that in case The NLC-TNEB Joint venture fails to provide MGT, they will be imposed heavy penalty. As no other guidelines have been issued thereafter, the above provisions only shall be applicable. Hence the fixation of upfront tariff by TAMP based on the conditions communicated by Ministry of Shipping for the operation of NCB 1 is in order.
	(c). As per 2013 Government of India Guideline, non PPP agreements shall be governed by the agreement between the parties. As visualized, no agreement is reached between the parties.	As per clause (Captive Berths) 6.1, the 2013 Guidelines will be applicable in the event a captive berth is awarded following PPP tendering process. In all other cases, the captive project would be governed by the respective agreement arrived at between the concerned parties. However, the subject proposal is for fixation of upfront tariff as per the Guidelines for Upfront Tariff Setting for PPP Projects at Major Port Trusts, 2008. As per clause 1.3.1 of the 2008 guidelines, captive facility falls under the term "any other arrangement of private sector participation" specified in the clause. Hence, the need for agreement is not a precondition for fixation of tariff under Guidelines for upfront tariff setting for PPP

		projects 2008.
(iii).	(a). In accordance with the proposal submitted by VOCPT and the Memorandum of Understanding (MOU) entered into between VOCPT and NTPL, VOCPT has handed over to NTPL an extent of 22961 sq. metres of land area. Besides NTPL has also constructed the Berth, conveyor and loading facilities and have also installed various equipment at a total cost of `128.86 crores for handling the consignments of coal to be landed at Tuticorin Port for the purpose of the Thermal Power Project. In addition, NTPL would be incurring expenditure in operation and maintenance of the berth and equipment.	(a). Factual.
	(b). It is reiterated at this juncture that as per the proposal of VOCPT as well as the arrangement between VOCPT and NTPL, NTPL would utilize the entire facilities only for captive purposes.	(b). Factual. However, provision is included in the Draft Agreement for usage of the facility by the Port when the berth is idle.
(iv).	(a). In our respectful and considered view, considering the nature of the arrangement between the parties, TAMP has no role to play, in as much as the NCB-1 project is not a PPP Project on tendering basis.	(a). As per the sanction of the Government vide letter No.PD/11015/5/2006-TPT dated 22 October 2009 for the construction of the North Cargo Berth I in Tuticorin Port on captive use basis, the NLC will be subjected to TAMP rates. Hence the current proposal for tariff fixation to the Authority is in order and is justified.
	(b). The power proposed to be generated at the Thermal Power Plant being set up by NTPL is not for captive purposes and is only intended to be used to meet the power requirements of the Central and State Authorities *and not for marketing the power commercially as Merchant Power Supplier.*	(b). The captive facility is linked to immediate usage of The NTPL for importing coal for their Thermal Plant. Hence the issue of meeting power requirements of Central and State Authorities as end users is not relevant to tariff fixation for the facility as a captive use.
(v).	(a). In terms of section 111 of the Major Port Trust Act 1963 (hereinafter referred to as the Act), the Government of India has issued policy directions with regard to framing of guidelines for determination of tariff for Projects at Major Ports. The guidelines were issued on the basis of such directions in 2005, 2008 and 2013. The said guidelines would be binding on all concerned including VOCPT.	(a). Factual.
	(b). The 2008 guidelines framed by TAMP on 26.02.2008 are applicable only for PPP Projects at Major Ports and cannot therefore have any application to the project being set up by NTPL as it is not a PPP Project.	(b). Kind reference is invited to the Port's submission vide letter dated 4 August 2014 and further submission dated 1 October 2014 wherein the justification for adoption of 2008 guidelines was furnished vide para 2 of the letter dated 1 October 2014. The said submissions explained that only if 2008 guidelines is adopted with respect to Clause 1.3.1 of the Guidelines ibid, the compliance to ensure maximum realization can be ensured as per 1996 guidelines for private sector participation.
	(c). Clause 6.1 of the 2013 guidelines makes it clear that the said guidelines would apply to a captive berth only if the project is awarded following the PPP tendering	(c). The relevant clause applicable is 1.3.1 of Guidelines for upfront tariff guidelines 2008 and the clause 6.1 of 2013 guidelines does not prohibit the said coverage by

	process. The aforesaid clause 6.1 also makes it clear that in all other cases a captive project would only be governed by the contract entered into between the parties concerned. Clause 6.1 is extracted below for immediate reference. *"In the event a captive berth is awarded following the PPP tendering process, these guidelines will be applicable. In all other cases, the captive project would be governed by the respective agreement arrived at between the concerned parties."*	means of clause 1.5 of 2013 guidelines. Hence the subject proposal is in conformity with extant guidelines for tariff fixation.
(vi).	Accordingly, in the present case the captive project would be governed by the agreement between the parties namely VOCPT and NTPL. We would therefore submit that VOC Port Trust would not be entitled in law to request TAMP to determine the tariff/ rates/ charges to be paid by NTPL to VOCPT.	Agreement is only for stating the rights, duties and responsibilities and remedies arising out of the contractual arrangement and one of the basis is fixation of upfront tariff under 2008 guidelines and payment of revenue share on the equated revenue at the upfront tariff for the Minimum Guaranteed Tariff or actual traffic handled whichever is higher.
(vii).	Without prejudice to our contention that VOCPT cannot approach the Authority for determining the tariff/ rates/ charges and even assuming without admitting that VOCPT can approach TAMP for the determination/ fixation of the tariff/ charges, etc. we wish to place the following for your consideration. (a). A Port Authority or any other person authorized by the Port under section 42 (3) of the said Act derives its power to levy rates, charges, etc. only in the manner set out under Chapter VI of the said Act. (b). Section 48 contemplates the framing of the scale of rates by TAMP for services to be rendered under section 42 in a Major Port. (c). Section 49 envisages the framing of scale of rates in respect of the usage of any property belonging to or in the possession/ occupation of a Port Authority. (d). Sections 49-A and 49-B contemplate the levy of fees and port dues for rendering certain services in respect of the vessels calling at a major port. (e). It is also open to TAMP to levy consolidated rates under section 50 for a combination of services.	For the submissions vide Sl.No.2(v)(b) above, port's current proposal is maintainable. (a). Factual. However, no levy of rates is contemplated. By virtue of fixation of upfront tariff it is intended to arrive at equated earnings for the traffic handled by the captive facility so as to work out revenue share due to the port. (b). This is not violated in as much as provision of service as captive facility is also recognized under the Section 42 of the MPT Act 1969. (c). Factual. Port's common approaches and Breakwaters are the properties in use. (d). Factual. (e). Factual.
(viii).	It is, however, submitted that in as much as clause 6.1 of 2013 guidelines provides that the said guidelines would apply only in the event of a captive berth which is awarded following the PPP tendering process and that in all other cases, the captive project would be governed by the respective agreement arrived at between the parties concerned, it would not be open to VOCPT to approach TAMP to fix the tariff/ rates/	Please refer to reply to Sl.No.2(v)(b) and (c) above and therefore the consideration of the proposal is in order.

	charges payable by NTPL except in respect of vessel related charges such as pilotage, towage, etc.	
(ix).	In so far as the present project is concerned, NTPL has been permitted to use the assets of VOCPT (in respect of which, way leave charges for conveyor trestle system and water front charges for Jetty area) is to be paid by NTPL as an upfront amount and lease rentals on a yearly basis. So far as the construction/ installation of the facilities and equipment in NCB-1 is concerned, the entire cost of the construction of the facilities and installation of the equipments has been met by NTPL without VOCPT contributing anything in this regard.	It is the provision and consumption of services from the infrastructure created by The NTPL for importing coal in Port Waters and using Common approaches and breakwaters and other infrastructures created by the Port for their Thermal Plant. This leads to payment of revenue share to the Port as paid/ payable by other private operators of Seventh Berth (Paying royalty to the Port), Eighth Berth Container Berth (Paying Revenue Share to the Port), Operation of 2 numbers of 120 Tonnes of Harbour Mobile Cranes. Therefore, the contention that VOCPT did not contribute anything is against facts of actual usage of common facility by The NTPL on par with other private operators of Berth facility and handling facility in the Port Area.
(x).	The only other payment that would be payable by NTPL would be for the vessel related charges in respect of the vessels calling at Tuticorin Port, carrying the cargo for NTPL and towards the services rendered by VOCPT in this regard like pilotage, towage, etc. which would be confined to services rendered upto the stage of berthing of the vessel at NCB-1, falling under clause 6.3 of the Draft Concession Agreement.	The payment of vessel related charges is for provision of entirely different services of using Port Waters, Channel and Harbour Basin, Towages, mooring and piloting facility and Berth facility. In the said facility, since the berth is constructed by The NTPL, no berth hire charges is payable by The NTPL for the vessels berthed in North Cargo Berth No.1.
(xi).	Whileso, VOCPT would not be entitled to levy or claim payment of royalty on a revenue sharing basis nor claim a part of coal handling charges like cost of unloading the cargo in respect of which VOCPT has not rendered any services to NTPL or to the cargo. Therefore, under the arrangement made between the parties and the guidelines issued by the Government of India and notified by TAMP, which are statutory in nature and binding on all the parties, VOCPT cannot apply the principle of collecting royalty on a revenue sharing basis which would be applicable only to an operator of a terminal or specified berth wherein the cargo or containers are handled by the operator for the benefit of third parties and where the operator collects charges from such third parties, as in the case of a container terminal. It must also be noted that VOCPT does not participate in the operations or render any services for the benefit of NTPL.	In view of the reply furnished against Sl.No.2(ix) above and considering the requirement to ensure maximum realization as per scheme for Captive Usage envisaged in the Guidelines for Private Sector Participation 1996 of the Government of India, the contention that Port would not be entitled to levy or claim payment of royalty on revenue share basis is not maintainable.

(xii).	In the circumstances stated above, while NTPL is ready and willing to VOCPT applying and collecting vessel related charges at the rates notified by TAMP from time to time like pilotage and towage, (a). it is submitted that VOCPT cannot approach TAMP to determine royalty on a revenue sharing basis or otherwise. The above position is fortified by the facts namely, that there is no term in the MOU and even in the further communication between the parties for royalty payment to VOCPT on revenue sharing basis. This is so because the entire cost of construction, equipment and O&M is borne by NTPL and it is only for captive use.	(a). Please refer reply to Sl.No.2(xi) above and further the MOU is for allotment of land for construction of power plant and not for space for construction of berth and handling infrastructure including Conveyor.
	(b). In the absence of liability payment to VOCPT by NTPL on revenue sharing basis the question of determination of the share / tariff by TAMP does not arise.	(b). Liability to pay revenue share exists in view of usage of common approaches, breakwaters and others on par with other private operators of berth facilities and handling infrastructure in the Port.
	(c). Further, MOU contain Arbitration clause. Any dispute especially the one, namely whether the NTPL is liable to pay royalty on revenue sharing basis to VOCPT is to be determined first through Arbitration and thereafter the determination of quantum of payment will arise and the same may be determined by TAMP. Till then the role / jurisdiction does not arise since the TAMP cannot determine as to whether NTPL is liable to pay royalty to VOCPT in terms of MOU.	(c). The MOU is for allotment for power plant and space for berth. Prior to signing of the Concession Agreement, the question of invoking the Arbitration clause without the signing of the Agreement and without satisfying the conditionalities Arbitration can be resorted. Also, the subject proposal is only for fixation of upfront tariff to reckon the payment of Revenue Share and not to determine the rate of royalty as contended by the NTPL. Hence, the question of referring the issue of Revenue Share payable to Port to Arbitration does not arise.
(xiii).	We would therefore request the Authority to pass a suitable order/ direction bearing in mind that in view of the binding nature of the guidelines issued in 2013, VOCPT cannot seek determination of the rates/ tariff by TAMP and that the directions contained in the letter dated 22.10.2009 of the Govt. of India stand superceded by clause 6.1 of the 2013 guidelines.	For the foregoing replies submitted, Port reiterates that upfront tariff need to be fixed so as to reckon the Revenue Share payable to the Port on the equated earnings for the operation of the facility operated by The NTPL on par with operation of by other private operators of Berth and handling facilities. Authority is requested to consider the Port's proposal favourably so as to regulate the collection of Revenue Share from The NTPL for the operation of North Cargo Berth 1 to handle coal imported for the Thermal Power Plan which is expected to be operational very shortly.

2. A joint hearing in this case was held on 13 January 2015 at the VOCPT premises. The VOCPT made a power point presentation of its proposal. The presentation also included the comments of port on the comments furnished by NLC Tamil Nadu Power Limited (NTPL) on the proposal of the VOCPT which has been brought out in the earlier paragraph. At the joint hearing, the VOCPT and the users/ user associations have made the following submissions:

V.O. Chidambaranar Port Trust (VOCPT)

(i). Berth is constructed by VOCPT on deposit terms and the berth was handed over to The NTPL on 28 September 2012.

(ii). Capacity of the Terminal is assessed at 5.09 Million Tonnes Per Annum (MTPA) and the Minimum Guaranteed Throughput (MGT) is 4.56 MTPA.

(iii). Dredging in front of the berth is the responsibility of the port.

(iv). The project is mainly for captive use of the NTPL. Provision is included in the draft Agreement for usage of facility by port when berth is idle on mutually agreed terms between port and The NTPL.

(v). Estimated capital cost considered for upfront tariff fixation is ₹390.07 crores. Considering 16% ROCE i.e. ₹54.56 crores and estimated operating cost of ₹86.11 crores, the total Average Revenue Requirement (ARR) is estimated at ₹140.67 crores. The upfront tariff is proposed to meet the estimated ARR.

(vi). Road connectivity and road lighting provided for NCB-I I, NCB-I II and NCB-I V are common user facility. We have not allocated proportionate cost relating to the common user facility to NCB-I in our proposal. We will allocate the proportionate cost and file a revised proposal.

(vii). The Government issued guidelines to all Major Port Trusts in 1996 for Private Sector Participation. The guidelines provide for consideration of 100% captive facilities by Central/ State PSUs without recourse to tender, provided such industries are port specific and are approved by concerned Administrative Ministry and that the Industry is willing to pay the maximum realization. No other guidelines have been issued thereafter for captive purpose.

(viii). We do not know how the NTPL is questioning this Authority of TAMP to fix tariff for NCB-I. The letter dated 22 October 2009 of the Ministry of Shipping (MOS) sanctions allotment of North Cargo Berth (NCB) - I to The Neyveli Lignite Corporation as per the 1996 guidelines for captive use basis. The approval is subjected to TAMP rates and provision for Minimum Guaranteed Throughput (MGT). Hence, current proposal seeking tariff fixation from TAMP is in order and is justified.

(ix). The clause relevant in this case is 1.3. of the upfront tariff guidelines of 2008. As per clause 1.3.1 of the ibid guidelines, captive facility falls under the term “any other arrangement of private sector participation”. Need for Concession Agreement is not a precondition for fixing the upfront tariff.

(x). We sent draft Concession Agreement to NTPL two years back. Since then we have exchanged several correspondence with them. We have not come into consensus on few issues for last two years.

(xi). Pilot commercial operation of NTPL is expected to commence this month end.

(xii). We will reply shortly to the queries raised by TAMP. We request TAMP to approve the proposed rates.

<u>NLC Tamil Nadu Power Limited (NTPL)</u>

(i). The proposal relates to VOCPT and NTPL only. Any tariff fixed will be only for NTPL. Hence, it is not relevant to consult other users.
[TAMP: Page 3 of the VOCPT proposal states that the facility will be occasionally used by other users as well. The VOCPT has furnished the list of users other than The NTPL to be consulted. Hence users other than The NTPL are also consulted]

(ii). Conveyor and other facility installed at NCB-I is for our captive use. The facility cannot be used by any other users.

(iii). In none of the other Major Port Trusts, exclusive berth is given on captive basis to a port user. Ours is only one such case.

[TAMP: The point made by The NTPL that at no other Major Ports berth is given for captive purpose is not factually correct. At Paradip Port Trust, fertilizer berth is given for captive purpose. At Kandla Port Trust (KPT), the KPT has entered into a Concession Agreement (C.A) with IFFCO Kisan Bazar and Logistics Limited (IKBLL) which is for captive purpose for own use of IFFCO. However, in order to optimize the use of the facility, the C.A. allows the operator to handle other cargo as directed by the Concessioning Authority i.e. KPT and also allows the operator to recover tariff from other users of the facility as per the SOR to be notified from time to time.]

(iv). (a). Para 2 of the letter dated 22 October 2009 of the MOS to the VOCPT sanctioning allotment of NCB-I to The NLC states that any guidelines issued subsequently on the subject shall be applicable to this specific project.

(b). 2008 guidelines issued prior to October 2009 is not applicable in our case. Clause 1.3. of the said guidelines deals with application of the guidelines to PPP operator and tariff is to be fixed upfront for Private Sector Participation. The current project is not for Private Sector Participation. It is for captive purpose and that too to for a public sector undertaking. There is no tendering process in this case as the Government has sanctioned the allotment of NCB-I to NLC for captive use. Hence, the 2008 guidelines is not applicable to us.

(v). As regards the guidelines issued after October 2009, the first sentence of clause 6.1 of 2013 guidelines makes it clear that it would apply to captive berth only if the project is awarded following the tendering process. We do not come under the first sentence of clause 6.1. of 2013 guidelines. The second sentence of clause 6.1 of the 2013 guidelines which states that non-PPP agreements will be governed by the agreement between the concerned parties is relevant in our case. No agreement is reached between VOCPT and NTPL. TAMP may not have any role to fix upfront tariff at this stage. It has to be negotiated and agreed between VOCPT and NTPL. Our purpose is limited to say whatever has to be paid has to be based on mutual agreement between VOCPT and us under 2013 guidelines.

(vi). An MOU was entered between the VOCPT and The Neyveli Lignite Corporation Limited (NLCL) on 28 October 2005. It mainly relates to allocation of land by VOCPT to NTPL. The said MOU contains a provision on arbitration. Though no concession agreement is signed for NCB-I till date, MOU contains a clause relating to arbitration.

[VOCPT (Deputy Chairman): Page 4 of MOU dated 28 October 2005 relates to land allotment. It does not relate to tariff fixation.]

(vii). Port has not made any investment on the project. Entire capex is incurred by us.

[VOCPT (Dy. Chairman): In all PPP projects, Major Port Trusts do not invest. The investment is done by PPP operator. There is no special difference between NCB-I project and other projects given on BOT basis to PPP operators. Adjoining berth is also for common user facility for which upfront tariff is fixed under 2008 guidelines.]

(viii). Berth is constructed by VOCPT with our funds on deposit terms. Hence, berth hire is not payable to VOCPT.

(ix). Our project cost is ₹6602. We are not collecting any handling charge or berth hire from any third party user. We were under the impression that vessel related charges are only payable. We agree to pay Vessel related charges viz. Port dues and pilotage we agree to pay. Port has given the land. We admit license fee and way leave charges are also payable to VOCPT. We are not earning revenue from this project. We are not marketing the power generated by us. It will be added to the State / Central Grid. The cargo to be handled at NBC-I is for captive use only.

There cannot be revenue share on this. We have not envisaged any revenue share payable by VOCPT in our project. Any other payment to VOCPT will have direct impact on pricing of power which will directly affect the consumers. It will be against public interest. If approved by TAMP, we will have to include in our cost. We do not know whether the Tamilnadu Electricity Regulatory Commission / Central Electricity Regulatory Commission (CERC) will admit it.

[VOCPT (Dy. Chairman): NCB-I I, NCB-I II and NCB-I V also need not pay any revenue share if the argument of NTPL is accepted. There is no difference between NCB-I and other PPP Projects.]

[TAMP: Joint hearing is restricted to fixation of tariff on the proposal of VOCPT. Fixation of tariff falls well within the jurisdiction of TAMP. TAMP does not step beyond its jurisdiction. TAMP will not intervene into the matter related to Revenue Share. It is between the concerned parties to decide on this matter.]

(x). Coal handling charge proposed by VOCPT for our project is ₹276 per tonne. Whereas, the wharfage rate prescribed in the SOR of the VOCPT for port's berth is also one third of the proposed rate.

(xi). There are few gaps in the computation. We have not gone through the calculation furnished by VOCPT in detail. Without prejudice to our submissions, we will verify the calculation furnished by VOCPT and furnish our comments.

(xii). We request TAMP to make available the comments of VOCPT on our comments to enable us to respond to the comments of VOCPT.
[VOCPT (Dy. Chairman): We agree to share our comments on the comments of NTPL.]

<u>All India Chamber of Commerce and Industry</u>

(i). NTPL is questioning the presence of others at the joint hearing. We are also interested to know as a Chamber what is transpiring at the joint hearing.

3. With reference to point of action decided at the joint hearing, the NTPL vide its letter dated 4 February 2015 has furnished its comments on the comments of VOCPT dated 12 January 2015. The NTPL comments was forwarded to VOCPT as feedback information. The VOCPT has not furnished further comments on the comments of NTPL. It is relevant to state that the comments of NTPL vide its earlier letter dated 12 December 2014 and VOCPT comments thereon is already brought out in the earlier paragraph no.1 at Sl.No.2. The comments furnished by NTPL dated 4 February 2015 are on the comments of VOCPT. Hence, a summary of the comments of NTPL, VOCPT comments and subsequent comments of NTPL as furnished by NTPL in a cohesive manner are tabulated below. The comments repeated by NTPL and VOCPT are not included in the table given below:

Sl. No.	Comments of NTPL	VOCPT comments	Comments of NTPL on comments of VOCPT
(i).	(b). However, even while doing so, the Ministry has further made it clear that the Concession Agreement would be subject to the guidelines framed in 1996 for captive use and that any further guidelines issued subsequently would also be applicable to the project in question.	(b). The 1996 Guidelines issued by the Government for Private Sector Participation provide for consideration of 100% captive facilities by Central/ State PSUs without recourse to tender, provided such industries are Port specific and are approved by concerned Administrative Ministry and Industry is willing to pay the maximum realization which the Port may determine	Although the Government of India order dated 22.10.2009 states that the proposal for construction of North Cargo Berth-I is approved as per present guidelines of 1996 on captive user, the said order states that guidelines issued subsequently shall be applicable to the project. Hence 2013 guidelines would apply as stated in paragraph 6 of our reply dated 12.12.2014. 2008

		taking into account are relevant factors. In addition, the sanction of the Government for the subject captive facility also specify that in case The NLC-TNEB Joint venture fail to provide MGT, they will be imposed heavy penalty. As no other guidelines have been issued thereafter, the above provisions only shall be applicable. Hence the fixation of upfront tariff by TAMP based on the conditions communicated by Ministry of Shipping for the operation of NCB 1 is in order.	guidelines would not also apply. Clause 1.3.1 of the 2008 guidelines relates to PPP projects through invitation of bids for private sector participation. The present case is not a PPP and is not through invitation of bids.
(ii).	As per 2013, Government of India Guideline non PPP agreements shall be governed by the agreement between the parties. As visualized, no agreement is reached between the parties.	As per clause (Captive Berths) 6.1, the 2013 Guidelines will be applicable in the event a captive berth is awarded following PPP tendering process. In all other cases, the captive project would be governed by the respective agreement arrived at between the concerned parties. However, the subject proposal is for fixation of upfront tariff as per the Guidelines for Upfront Tariff Setting for PPP Projects at Major Port Trusts, 2008. As per clause 1.3.1 of the 2008 guidelines captive facility falls under the term “any other arrangement of private sector participation” specified in the clause. Hence, the need for agreement is not a precondition for fixation of tariff under Guidelines for upfront tariff setting for PPP projects 2008.	
(iii).	(a). In our respectful and considered view, considering the nature of the arrangement between the parties, TAMP has no role to play, in as much as the NCB-1 project is not a PPP Project on tendering basis.	(a). As per the sanction of the Government vide letter No.PD/11015/5/2006-TPT dated 22 October 2009 for the construction of the North Cargo Berth I in Tuticorin Port on captive use basis, the NLC will be subjected to TAMP rates. Hence the current proposal for tariff fixation to this Authority is in order and is justified.	Please refer to paragraphs 6 and 7 of our letter dated 12 December 2014. It is reiterated that the end consumer for electricity would suffer if tariff is levied as per TAMP rates.

	(b). The power proposed to be generated at the Thermal Power Plant being set up by NTPL is not for captive purposes and is only intended to be used to meet the power requirements of the Central and State Authorities *and not for marketing the power commercially as Merchant Power Supplier.*	The captive facility is linked to immediate usage of The NTPL for importing coal for their Thermal Plant. Hence the issue of meeting power requirements of Central and State Authorities as end users is not relevant to tariff fixation for the facility as a captive use.	
(iv).	(a). In terms of section 111 of the Major Port Trust Act 1963 (hereinafter referred to as the Act), the Government of India has issued policy directions with regard to framing of guidelines for determination of tariff for Projects at Major Ports. The guidelines were issued on the basis of such directions in 2005, 2008 and 2013. The said guidelines would be binding on all concerned including VOCPT.	(a). Factual.	We reiterate that 2008 guidelines would not apply and in terms of clause 6.1 of 2013 guidelines, tariff fixation would have to be through mutual agreement.
	(b). The 2008 guidelines framed by TAMP on 26.02.2008 are applicable only for PPP Projects at Major Ports and cannot therefore have any application to the project being set up by NTPL as it is not a PPP Project.	Kind reference is invited to the Port's submission vide letter dated 4 August 2014 and further submission dated 1 October 2014 wherein the justification for adoption of 2008 guidelines was furnished vide para 2 of the letter dated 1 October 2014. The said submissions explained that only if 2008 guidelines is adopted with respect to Clause 1.3.1 of the Guidelines ibid, the compliance to ensure maximum realization can be ensured as per 1996 guidelines for private sector participation.	
	(c). Clause 6.1 of the 2013 guidelines makes it clear that the said guidelines would apply to a captive berth only if the project is awarded following the PPP tendering process. The aforesaid clause 6.1 also makes it clear that in all other cases a captive project would only be governed by the contract	The relevant clause applicable is 1.3.1 of Guidelines for upfront tariff guidelines 2008 and the clause 6.1 of 2013 guidelines does not prohibit the said coverage by means of clause 2.15 of 2013 guidelines. Hence the subject proposal is in conformity with extant guidelines for tariff fixation.	

	entered into between the parties concerned. Clause 6.1 is extracted below for immediate reference. *"In the event a captive berth is awarded following the PPP tendering process, these guidelines will be applicable. In all other cases, the captive project would be governed by the respective agreement arrived at between the concerned parties."*		
(v).	Accordingly in the present case the captive project would be governed by the agreement between the parties namely VOCPT and NTPL. We would therefore submit that VOC Port Trust would not be entitled in law to request TAMP to determine the tariff/ rates/ charges to be paid by NTPL to VOCPT.	Agreement is only for stating the rights, duties and responsibilities and remedies arising out of the contractual arrangement and one of the basis is fixation of upfront tariff under 2008 guidelines and payment of revenue share on the equated revenue at the upfront tariff for the Minimum Guaranteed Tariff or actual traffic handled whichever is higher.	It is reiterated that 2008 guidelines would not apply.
(vi).	Without prejudice to our contention that VOCPT cannot approach this Authority for determining the tariff/ rates/ charges and even assuming without admitting that VOCPT can approach TAMP for the determination/ fixation of the tariff/ charges, etc. we wish to place the following for your consideration. (a). A Port Authority or any other person authorized by the Port under section 42 (3) of the said Act derives its power to levy rates, charges, etc. only in the manner set out under Chapter VI of the said Act. (b). Section 48 contemplates the framing of the scale of rates by TAMP for services to be rendered under section 42 in a Major Port. (c). Section 49	For the submissions vide Sl.No.2(v)(b) above, port's current proposal is maintainable. (a). Factual. However, no levy of rates is contemplated by virtue of fixation of upfront tariff and is intended to arrive at equated earnings for the traffic handled by the captive facility so as to work out revenue share due to the port. (b). This is not violated in as much as provision of service as captive facility is also recognized under the Section 42 of the MPT Act 1969. (c). Factual. Port's	There cannot be any revenue share due to the port as NTPL is paying license fee, way leave charges for the use of land provided by VOCPT and the entire cost of infrastructure, operation and maintenance is borne by NTPL.

	envisages the framing of scale of rates in respect of the usage of any property belonging to or in the possession/ occupation of a Port Authority. (d). Sections 49-A and 49-B contemplate the levy of fees and port dues for rendering certain services in respect of the vessels calling at a major port. (e). It is also open to TAMP to levy consolidated rates under section 50 for a combination of services.	common approaches and Breakwaters are the properties in use. (d). Factual. (e). Factual.	
(vii).	It is however submitted that in as much as clause 6.1 of 2013 guidelines provides that the said guidelines would apply only in the event of a captive berth which is awarded following the PPP tendering process and that in all other cases, the captive project would be governed by the respective agreement arrived at between the parties concerned, it would not be open to VOCPT to approach TAMP to fix the tariff/ rates/ charges payable by NTPL except in respect of vessel related charges such as pilotage, towage, etc.	Please refer to reply to Sl.No.2(v)(b) and (c) above and therefore the consideration of the proposal is in order.	We reiterate our response in our letter dated 12 December 2014
(viii).	In so far as the present project is concerned, NTPL has been permitted to use the assets of VOCPT (in respect of which, way leave charges for conveyor trestle system and water front charges for Jetty area) is to be paid by NTPL as an upfront amount and lease rentals on a yearly basis. So far as the construction/ installation of the facilities and equipment in NCB-1 is concerned, the entire cost of the construction of the facilities and installation of the equipments has been met by NTPL without VOCPT contributing anything in	It is the provision and consumption of services from the infrastructure created by The NTPL for importing coal in Port Waters and using Common approaches and breakwaters and other infrastructures created by the Port for their Thermal Plant. This leads to payment of revenue share to the Port as paid/ payable by other private operators of Seventh Berth (Paying royalty to the Port), Eighth Berth Container Berth (Paying Revenue Share to the Port), Operation of 2 numbers of 120 Tonnes of Harbour Mobile Cranes. Therefore, the contention	The Major Ports Act does not provide or authorize TAMP to fix revenue share or royalty. TAMP's jurisdiction would be limited to fixation of tariff for use of property belonging to VOCPT and for services if any rendered.

	this regard.	that VOCPT did not contribute anything is against facts of actual usage of common facility by The NTPL on par with other private operators of Berth facility and handling facility in the Port Area.	
(ix).	The only other payment that would be payable by NTPL would be for the vessel related charges in respect of the vessels calling at Tuticorin Port, carrying the cargo for NTPL and towards the services rendered by VOCPT in this regard like pilotage, towage, etc. which would be confined to services rendered upto the stage of berthing of the vessel at NCB-1, falling under clause 6.3 of the Draft Concession Agreement.	The payment of vessel related charges is for provision of entirely different services of using Port Waters, Channel and Harbour Basin, Towages, mooring and piloting facility and Berth facility. In the said facility, since the berth is constructed by The NTPL, no berth hire charges is payable by The NTPL for the vessels berthed in North Cargo Berth No.1.	Vessel related charges would be payable by NTPL.
(x).	Whileso, VOCPT would not be entitled to levy or claim payment of royalty on a revenue sharing basis nor claim a part of coal handling charges like cost of unloading the cargo in respect of which VOCPT has not rendered any services to NTPL or to the cargo. Therefore under the arrangement made between the parties and the guidelines issued by the Government of India and notified by TAMP, which are statutory in nature and binding on all the parties, VOCPT cannot apply the principle of collecting royalty on a revenue sharing basis which would be applicable only to an operator of a terminal or specified berth wherein the cargo or containers are handled by the operator for the benefit of third parties and where the operator collects charges from such third parties, as in the case of a container terminal. It must also be noted that VOCPT does not participate in the operations or render any	In view of the reply furnished against Sl.No.2(ix) above and considering the requirement to ensure maximum realization as per scheme for Captive Usage envisaged in the Guidelines for Private Sector Participation 1996 of the Government of India the contention that Port would not be entitled to levy or claim payment of royalty on revenue share basis is not maintainable.	Our reply and response to point no.(ix) as reiterated above.

	services for the benefit of NTPL.		
(xi).	In the circumstances stated above, while NTPL is ready and willing to VOCPT applying and collecting vessel related charges at the rates notified by TAMP from time to time like pilotage and towage,		
	(a). it is submitted that VOCPT cannot approach TAMP to determine royalty on a revenue sharing basis or otherwise. The above position is fortified by the facts namely, that there is no term in the MOU and even in the further communication between the parties for royalty payment to VOCPT on revenue sharing basis. This is so because the entire cost of construction, equipment and O&M is borne by NTPL and it is only for captive use.	(a). Please refer reply to Sl.No.2(xi) above and further the MOU is for allotment of land for construction of power plant and not for space for construction of berth and handling infrastructure including Conveyor.	There is a reference in the MOU to provide for space for construction of berth.
	(b). In the absence of liability payment to VOCPT by NTPL on revenue sharing basis the question of determination of the share / tariff by TAMP does not arise.	Liability to pay revenue share exists in view of usage of common approaches, breakwaters and others on par with other private operators of berth facilities and handling infrastructure in the Port.	Our response to point no.(ix) is reiterated.
	(c). Further, MOU contain Arbitration clause. Any dispute especially the one, namely whether the NTPL is liable to pay royalty on revenue sharing basis to VOCPT is to be determined first through Arbitration and thereafter the determination of quantum of payment will arise and the same may be determined by TAMP. Till then the role / jurisdiction does not arise since the TAMP cannot determine as to whether NTPL is liable to pay royalty to VOCPT in terms of MOU.	The MOU is for allotment for power plant and space for berth. Prior to signing of the Concession Agreement, the question of invoking the Arbitration clause without the signing of the Agreement and without satisfying the conditionalities Arbitration can be resorted. Also, the subject proposal is only for fixation of upfront tariff to reckon the payment of Revenue Share and not to determine the rate of royalty as contended by The NTPL. Hence, the question of referring the issue of Revenue Share payable to Port to Arbitration does not arise.	There is Arbitration clause in the MOU dated 28 October 2005 and the same is binding on the parties. In the event of differences, the same would have to be referred to Arbitration.
(xii).	We would therefore request this Authority to pass a suitable order/	For the foregoing replies submitted, Port reiterates that upfront tariff need to be	NTPL being a Public Sector Project promoted in public interest, it cannot be placed

	direction bearing in mind that in view of the binding nature of the guidelines issued in 2013, VOCPT cannot seek determination of the rates/ tariff by TAMP and that the directions contained in the letter dated 22.10.2009 of the Govt. of India stand superceded by clause 6.1 of the 2013 guidelines.	fixed so as to reckon the Revenue Share payable to the Port on the equated earnings for the operation of the facility operated by The NTPL on par with operation of by other private operators of Berth and handling facilities. Authority is requested to consider the Port's proposal favourably so as to regulate the collection of Revenue Share from The NTPL for the operation of North Cargo Berth 1 to handle coal imported for the Thermal Power Plan which is expected to be operational very shortly.	on par with other private operators. As already submitted, the guidelines do not contemplate reckoning of revenue share on par with other private operators particularly since NTPL is a captive project and the entire cost of infrastructure, operation and maintenance is borne by NTPL.

4. With reference to point of action decided at the joint hearing, the NTPL vide its letter dated 24 January 2015 has furnished its comments on VOCPT's assumption on computation of tariff proposal. The comments received from NTPL was forwarded to VOCPT as feedback information. The VOCPT has not furnished any comments on the said comments of NTPL, despite reminders. A summary of the VOCPT's assumption on tariff workings and remarks of NTPL thereon is tabulated below:

Sl. No.	Particulars	VOCPT's assumption on tariff workings	Remarks of NTPL
1.	Capital Cost		
1.1.	Conveyors	₹13537.09 lakhs considered	The cost indicated in VOCPT workings is the total conveyor cost of NTPL which is from the berth at the port to the place of consumption in the plant (Boiler). The cost incurred towards conveyors at the berth which is ₹417.53 lakhs alone may please be considered as capital cost.
1.2.	Shore Unloader	The Capital Expenditure as adopted in Revised Cost Estimate by NTPL for Store, Canteen and Shore unloader of ₹3122.65 lakhs has been considered.	The estimates taken by VOCPT for Shore Unloader cost is based on NTPL Revised Cost Estimates (RCE). The actual awarded cost for Shore Unloader is ₹8097.72 lakhs. So, the cost for Shore Unloader may be taken at actual awarded cost.
1.3.	Stackers	₹5883.61 lakhs has been considered for two nos.,	The awarded cost of Shore Unloader of ₹8097.72 lakhs includes the cost towards Stackers. There is no separate extra cost incurred towards Stackers. Therefore, VOCPT is requested, not to consider it as a separate item.
1.4.	Cost of Berth	Shown as ₹4460.84 lakhs.	The actual cost incurred for the Berth is ₹4371.06 lakhs. So, VOCPT is requested to consider the actual cost incurred towards construction of berth instead of cost considered in Revised Cost estimate.

5.1. The VOCPT has forwarded its revised proposal to the NTPL seeking their comments. The NTPL vide its letter dated 20 June 2015 has furnished its comments, which were forwarded to VOCPT for feedback information. The VOCPT vide its letter dated 8 July 2015 has furnished its reply. A summary of the comments received from The NTPL on the revised proposal of VOCPT and reply furnished by port is tabulated below:

Sl. No.	Comments received from the NTPL	Reply furnished by port
(i).	The VOCPT submitted their proposal unilaterally to TAMP and endorsed a copy subsequently to NTPL.	The revised proposal is based on further discussions with the NTPL after joint hearing dated 13.1.2015. The reduction of rate from ₹276.37 per MT to ₹107.84 per MT is an evidence that port accommodated the request of The NTPL wherever justified.
(ii).	Prima facie the demand of revenue sharing under PPP model is not applicable in the case of NCB-I where the berth has been constructed by VOCPT after getting entire capital cost and 7% supervision charges from NTPL.	Revenue share is not concerning upfront tariff fixation and hence not relevant for consideration by the Authority.
(iii).	The demand of upfront tariff after constructing berth for captive use with approval of competent authority is not tenable.	The upfront tariff proposal is with respect to fixation of TAMP rates as per directions of Ministry of Shipping vide letter No.PD-11015/5/2006-TPT dated 22.10.2009 communicating the sanction with respect to confirmation of 1996 Captive Policy Guidelines.
(iv).	In the meantime, three ships have arrived at VOCPT on 06.05.2015, 29.05.2015, 14.06.2015, NTPL was not allowed to berth the same and forced NTPL to pay wharfage charges as per Scale of Rates (SOR) and then only these ships were allowed to be berthed. A copy of the letter dated 18.04.2015 received from VOCPT is furnished. These payments were made by NTPL under protest.	Payment of charges for services rendered by port including wharfage charges (subject to finalisation of revenue share) are outside the scope of tariff fixation. Hence, this does not merit consideration.
(v).	However on examination of the calculation of revenue share model of VOCPT, it is noticed that unrelated expenses were also included which in turn increase the revenue share amount.	The proposal is for upfront tariff fixation and not for revenue share. The calculations of port are reiterated and the same is based on upfront tariff guidelines. Hence the proposal is in order.
(vi).	NTPL's comments on the workings of VOCPT's tariff proposal are given, which are brought out in the subsequent part of the note.	Factual. The port has furnished its reply, which are brought out in the subsequent part of the note.
(vii).	The purpose for which the plant is installed by NTPL is for power generation to cater the requirement of southern states of our country and power tariff is fixed by CERC, the regulatory authority for power generation companies.	Not relevant to tariff fixation.
(viii).	Inclusion of this charges will hike the power tariff in turn, which requires clearance from CERC.	Not relevant to tariff fixation.

5.2. With regard to para 5.1. Sl. No.(vi)., the remarks/ views of the NTPL on the workings of VOCPT's tariff proposal and reply furnished by port thereon is tabulated below:

Sl. No.	Particulars	VOCPT's Assumption on Tariff Workings	NTPL's remarks/ views	Reply furnished by port
(i).	**Capital cost**			

(a).	Road Connectivity	₹248.61 lakhs	The Road connectivity may please be considered as the infrastructure of port and the road connectivity is commonly used, this may not be included as capital cost.	As the capital cost pertaining to the Road connectivity from Red Gate to SEPC Jetty is exclusively used by NCB-I to NCB-IV and SEPC the relevant portion of capital cost pertains to NCB-I of ₹248.61 lakhs only is incorporated in the tariff workings. The issue was already discussed in the TAMP Hearing held on 13.01.2015 and hence, the views of The NTPL are not agreed to.
(b).	Contingencies, Engineering & Supervision on Civil Cost	₹24.86 lakhs (10% on Road Connectivity)	The Road Connectivity may be considered as the infrastructure of port and hence the contingencies, engineering & supervision cost may also not to be included as capital cost.	The incorporation of contingencies engineering & supervision on civil cost at 10% on Road Connectivity is as per TAMP norms and is reiterated with respect to port's comments in respect of Sl.No.1 above.
(c).	Conveyors	₹4934.33 lakhs considered	The area involved in laying conveyors may be ascertained and accordingly lease rent may be charged on yearly basis.	The incorporation of conveyor cost pertaining to the area from the berth to red gate as furnished by The NTPL is in order.
(d).	Contingencies, Engineering & Supervision on Civil Cost	5.90% on Equipment cost	As per the Government approval on project cost, 5% has been allowed towards contingencies and overheads. Hence, 5.90% on equipment cost may be revised to 5%.	Earlier, the rate of percentage of contingencies Engineering & Supervision on Equipment cost is adopted at 10% as per TAMP norms and it was modified to 5.90% based on the submission of NTPL with respect to actual contingencies and overhead cost incurred in the Project by NTPL. Hence, Port's calculations are reiterated.
(e).	Miscellaneous	5% on civil cost and equipment cost	The Miscellaneous cost has already been included in Contingencies, Engineering & Supervision on Equipment Cost, this cost may not be included as Capital	The inclusion of 5% on Civil and Equipment cost is in addition to Contingencies, engineering and supervision as per standard norms stipulated by TAMP. An allowance vide Sl.No.(d)

			Cost.	above at 5.90% towards Contingencies, engineering and supervision instead of adopting 10% as per standard norms as stated in reply to Sl.No.(d). The Miscellaneous cost at 5% on Civil & Equipment cost is as per upfront tariff guidelines and hence the same is to be considered.
(ii).	**Operating Cost**			
(a).	Power cost	Tariff Rate of ₹4.28 per unit considered	Actual cost by NTPL towards producing power may alone by considered.	The adoption of power cost at ₹4.28 per unit is with respect to The NTPL's actual cost and is considered based on the submission made by the The NTPL vide letter dated 04.06.2015. Hence the same is in order.
(b).	R&M (Mechanical & Electrical Equipment including Spares)	7% on capital cost	2.57% on capital cost may only be considered based on Allowable O&M cost of ₹170 crores on project cost of ₹6602.74 crores.	The adoption of 7% on capital cost towards R&M (Mechanical & Electrical Equipment including spares is as per standard norms stipulated in upfront tariff guidelines notified by TAMP for Coal Terminal. Hence, Port's calculations are in order.
(c).	Insurance cost	1% on capital cost	Based on our past records, the insurance charge on equipment is ₹0.187 per thousand. Hence, VOCPT is requested to consider insurance cost as ₹0.187 per thousand. The insurance cost in VOCPT workings has been calculated on Gross Fixed Assets. However, in normal market scenario, insurance premium is paid on value of Net Fixed Assets. Hence, VOCPT is requested to consider insurance cost on Net Fixed Assets.	As per upfront tariff guidelines stipulated by TAMP, the insurance cost on Capital cost is considered at 1% on Gross Block value of capital cost.
(d).	Depreciation	6.33% on capital cost	In the CERC guidelines, the rate of depreciation for Gross Equipment Cost is 5.28%.	The Depreciation towards Mechanical & Electrical works at 6.33% on Gross value

			Hence, VOCPT is requested to consider depreciation rate in line with CERC guidelines. Also, the capital cost may be considered as 95% after reducing the salvage value 5% for depreciation.	of Fixed Assets is as per revised rate of Depreciation as per Companies Act, 2013 as per upfront tariff guidelines. Hence the rate as per CERC Guidelines as sought for by The NTPL is not agreed to.
(e).	Other Expenses towards Salary and Overheads	5% on Gross value of Assets	This may kindly not be consider since, 2.57% on capital cost includes (S.No.2.2) other expenses towards salary and wages as well.	The adoption of 5% on Gross value of Assets towards other expenses is as per TAMP Guidelines. Hence the same is in order and request of The NTPL is not agreed to.
(iii).	Return on Capital Employed	16% on capital cost has been considered	Pre Tax weighted average rate for the return on equity and cost of debt of NTPL may please be considered as return on equity employed.	ROCE at the rate of 16% has been considered as per the upfront tariff norms stipulated by TAMP. Hence Port's calculations are reiterated.
(iv).	Revenue share per ton	52.17% of share without service tax	As 52.17% is applicable only to PPP model, which is operating on commercial basis whereas NCB-I constructed for captive use of NTPL. Hence, the applicable percentage may kindly be considered on nominal basis.	This is outside the scope of upfront tariff fixation.
(v).	Berth hire charges	Foreign going vessel at ₹1.70 per GRT per hour Coastal going vessel at ₹1.02 per GRT per hour	The cost of berth, running and maintenance cost is incurred by NTPL. The berth (NCB-I) has been constructed for the captive use of NTPL. Hence, VOCPT is requested not to charge the berth hire charges.	Since the berth is constructed by The NTPL, no berth hire charges is payable by The NTPL for the vessels berthed in North Cargo Berth No.1. The rate proposed is for the collection of berth hire charges if vessels other than those on account of The NTPL is occupying the NCBI Berth when the berth is lying idle.

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