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TARIFF AUTHORITY FOR MAJOR PORTS

G No. 59

New Delhi

18 February 2014

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes the proposal received from M/s.IMCOLA Crane Company Private Limited for notification of Scale of Rates for Berth Nos. I to VI & IX at V.O. Chidambaranar Port Trust as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/5/2014-VOCPT

M/s. IMCOLA Crane Company Private Limited ...

Applicant

QUORUM:

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

ORDER

(Passed on 4th day of February 2014)

This case relates to the proposal received from M/s. IMCOLA Crane Company Private Limited for notification of Scale of Rates for Berth Nos. I to VI & IX at V.O. Chidambaranar Port Trust.

2.1. M/s. IMCOLA Crane Company Private Limited (ICCPL) vide its letter no.IMCOLA/VOCPT/43/2013-14 dated 30 December 2013 has requested this Authority to notify its Scale of Rates. The main points made by ICCPL in its letter are summarized below:

- (i). ICCPL is the concessionaire for upgradation of mechanical handling infrastructure at berths I to VI & IX on Build, Own and Operate basis at V.O. Chidambaranar Port Trust (VOCPT).
- (ii). The tariff setting for the said project was undertaken vide case No.TAMP/16/2010-TPT dated 23 July 2010.
- (iii). The project is expected to be commissioned by 10 January 2014.

2.2. Furnishing the draft of the proposed Scale of Rates, the ICCPL vide its above referred letter has requested this Authority to notify its Scale of Rates (SoR) in the Gazette of India.

3.1. Since ICCPL had not furnished the authenticated copy of the Concession Agreement (CA) entered by it with the VOCPT, the ICCPL was requested vide our letter dated 2 January 2014 to furnish the CA.

3.2. In response, the ICCPL vide its letter no.IMC/VOCPT/44/2013-14 dated 2 January 2014 has furnished a copy of Concession Agreement entered by it with the VOCPT for the subject project.

4.1. A copy of ICCPL's letter dated 30 December 2013 was forwarded to the VOCPT, Licensor, vide our letter dated 2 January 2014 seeking its comments. The VOCPT vide its letter dated 23 January 2014 has furnished following comments on the draft SOR proposed by ICCPL:

- (i). The draft SOR submitted as per clause 2.9.1 of TAMP guidelines 2008 is verified with the relevant SOR approved by the Authority vide Notification No.TAMP/16/2010-TPT dated 9 August 2010 applying eligible escalation factor of 17.63% on the base rates. All the rates and terms and conditions are in order except the omission of one Note under Schedule-II for Break-bulk cargo.

4.2. The VOCPT has reproduced the Note under Schedule II for Break-bulk cargo as prescribed by this Authority in the Order dated 23 July 2010, which is given below:

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

5. As per the Concession Agreement furnished by ICCPL at our request, the VOCPT has awarded the project of Upgradation of Mechanical Handling Infrastructure on BOOT basis to M/s. IMCOLA Crane Company Private Limited (ICCPL). The Concession Agreement with VOCPT has been signed on 24 May 2013 and the agreement is valid for a period of 10 years from the date of award of concession.

6.1. As per Clause 2.9.1. of the Tariff Guidelines of 2008 for fixation of upfront tariff, the private operator shall approach this Authority for notification of Scale of Rates containing ceiling rates applicable to his operations before commencement of commercial operations as required under Section 48 of the Major Port Trusts (MPT) Act and as per Clause 2.9.2. of tariff guidelines of 2008, the Scale of Rates to be framed by this Authority shall be in line with the tariff caps prescribed for the port and included in the bid document subject to indexation explained in Clause 2.8. Such Scale of Rates and statement of conditions shall be notified by this Authority in the Gazette of India as required by the Major Port Trusts Act, 1963.

6.2. As per clause 2.8 of the guidelines for upfront tariff setting for PPP Projects at Major Ports, 2008, the Tariff Caps are to 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, and the adjusted tariff will come into force from 1 April of the relevant year to 31 March of the following year.

6.3. The base year for the upfront tariff and the corresponding annual escalation with effect from 1 April 2013 were already communicated to all the Major Port Trusts including VOCPT vide our letter No.TAMP/12/2009-Misc. dated 2 April 2013.

6.4. As per clause 3 [General Note to Schedule (2)] of the Scale of Rates of the upfront tariff Order dated 23 July 2010 fixing upfront tariff for the facility in reference, tariff caps have to be indexed to inflation to an extent of 60% of the variation in the WPI occurring between 1 January 2010 and 1 January of the relevant year. Accordingly, the escalation factor to be applied in the case in reference is 17.63% as per our letter dated 2 April 2013 read with clause 3 of the Scale of Rates.

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

- (i). This Authority has passed an Order No.TAMP/16/2010-TPT dated 23 July 2010 fixing upfront tariff based on the proposal filed by the V.O. Chidambaranar Port Trust (VOCPT) for fixation of upfront tariff for operation of mechanical handling equipments on BOOT basis at VOCPT which was notified in the Gazette of India on 12 August 2010 vide Gazette No.201. The VOCPT has awarded the project of upgradation of mechanical handling equipments at berth Nos.I to VI & IX on BOOT basis at VOCPT to M/s. IMCOLA Crane Company Private Limited (ICCPL) and entered into a Concession Agreement on 24 May 2013 for a period of 10 years.
- (ii). As brought out earlier, Clause 2.9.1. of the Tariff Guidelines of 2008 for fixation of upfront tariff requires the private operator to approach this Authority for notification of the Scale of Rates containing ceiling rates applicable to his operations before commencement of commercial operations. Accordingly, the ICCPL has approached this Authority with a request to notify the Scale of Rates as required under the Tariff Guidelines of 2008.
- (iii). As reported by the ICCPL, the operator expects that the commercial operations will commence w.e.f. 10 January 2014. Relying on the position reported by ICCPL, this Authority is inclined to entertain the proposal of ICCPL for notification of the Scale of Rates approved in July 2010 subject to adjustment with reference to the indexation of the rates so approved to WPI to the extent of 60%.

- (iv). As per Clause 2.9.2. of the Tariff Guidelines of 2008, the Scale of Rates to be framed by this Authority for the private operator as per Clause 2.9.1 should be in line with the tariff caps prescribed for the Port and included in the bid document, subject to indexation as explained earlier. Article 8.1 of the Concession Agreement (C.A.) entered between the VOCPT and ICCPL governs levy of the tariff at multipurpose berth Nos. I to VI & IX as per the Concession Agreement. As per Article 8.1 of the License Agreement, the Concessionaire i.e. ICCPL shall be entitled to recover tariff from the users of the Project Facilities and Services as per the Tariff Notification annexed as Appendix -12. It is seen that Appendix - 12 appended to C.A. gives reference to the Upfront Tariff approved by this Authority vide Order No.TAMP/16/2010-TPT dated 23 July 2010. It also gives reference to the tariff Order No.TAMP/50/2011-VOCPT dated 19 January 2012.
- (v). As regards the latter Order dated 19 January 2012 referred in Appendix-12 of the Concession Agreement, it is relevant to mention that the VOCPT had filed a separate proposal for fixation of tariff for HMC of 120T capacity. This Authority, however, vide its Order No.TAMP/50/2011-VOCPT dated 19 January 2012 has rejected the said VOCPT proposal and has ordered that the upfront tariff prescribed in the Order No.TAMP/16/2010-TPT dated 23 July 2010 holds good for induction of HMC at VOCPT during the specified five years subject to annual indexation of tariff as mentioned in para 9.1. of the said Order of 23 July 2010. Therefore, the reference of Order No.TAMP/50/2011-VOCPT dated 19 January 2012 given in Appendix-12 of the C.A. does not appear to be relevant for notification of Scale of Rates for ICCPL.
- (vi). With reference to the indexation of the upfront tariff fixed vide Order dated 23 July 2010 as required under Clause 2.8. of the 2008 Guidelines, an escalation factor of 17.63% is applied on the tariff caps notified in July 2010. The ICCPL has drawn up the draft proposed SOR applying the escalation factor of 17.63% on the tariff caps notified in July 2010, along with the conditionalities governing the application of rates as prescribed in the said tariff Order. It is only the tariff items notified vide Order of July 2010 that have been subjected to change in view of the application of applicable escalation factor. For the subsequent years as well, the indexation to the extent of 60% of the WPI occurring between January 2010 and January of the relevant year has to be with reference to the tariff approved vide Order no.TAMP/16/2010-TPT dated 23 July 2010 and not with reference to the indexed Scale of Rates approved in this Order. The General note to Schedule (2) proposed by ICCPL retaining the general note approved in the Order dated 23 July 2010 is, therefore, suitably modified clarifying this position. This is in line with the prescription in the Scale of Rates of other BOT operators governed under 2008 guidelines who have commenced the operations. All the other conditionalities governing the application of the rates as approved in the Scale of Rates of the Order dated 23 July 2010 are retained.
- (vii). As rightly pointed out by the VOCPT, the ICCPL, in its proposed draft Scale of Rates, has not included a note governing calculation of incremental ceiling rates prescribed below the Schedule (II) of charges for hire of Harbour Mobile Cranes for Break-bulk cargo (Steel and Bagged Cargo) under Main Schedule 2 in the Order of July 2010. The note under Schedule-II for Break bulk cargo is reproduced below:

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

The said note prescribed by this Authority in Order dated 23 July 2010 is inserted in the Scale of Rates for ICCPL approved by this Authority.

- (viii). As per clause 3.8.5 of the 2008 guidelines, if any question arises requiring clarifications or interpretation of the Scale of Rates and the statement of conditions, the matter shall be referred to this Authority and its decision in this regard will be binding on the operator.
- (ix). The ICCPL is expected to perform at least at the performance norms brought out in the bid documents / concession agreement. The actual performance of the ICCPL will be monitored by this Authority. If any complaint regarding quality of service is received, this Authority may enquire into such allegation and forward its findings to the VOCPT. If any action is to be taken against the ICCPL, the VOCPT shall initiate appropriate action in accordance with the provisions of the Concession Agreement.
- (x). During the commercial operation at the terminal, within 15 days from the end of every quarter, the ICCPL is directed to submit to this Authority through the VOCPT a report containing the physical and financial performance at berth Nos.I to VI & IX during the preceding three months.

7.2. In the result, and for the reasons given above and based on collective application of mind, this Authority approves the Scale of Rates for operation of mechanical handling equipments at Berth Nos.I to VI & IX to be operated by the ICCPL at VOCPT attached as **Annex**.

7.3. The Scale of Rates notified for ICCPL will come into force from the date of commencement of commercial operations by ICCPL at VOCPT.

(T.S. Balasubramanian)
Member (Finance)

IMCOLA Crane Company Private Limited
SCALE OF RATES

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.
- (ii). **“Foreign-going vessel”** shall mean any vessel other than coastal vessel.
- (iii). **“Day”** shall mean the period starting from 6 a.m. of a day and ending at 6 a.m. on the following day.

1.2. General Terms & Conditions

- (i).
 - (a). The cargo related charges for all coastal cargo other than crude including POL, Iron ore and Iron pellets and thermal coal should not exceed 60% of the normal cargo related charges.
 - (b). In case of cargo related charges, the concessional rates should be levied on all the relevant handling charges for ship shore transfer.
 - (c). Cargo from a foreign port which reaches an Indian Port “A” for subsequent transshipment 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.
 - (d). The charges for coastal cargo vessels shall be denominated and collected in Indian rupee.
- (ii). Interest on delayed payments / refunds.
 - (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.
- (iii). All charges worked out shall be rounded off to the next higher rupee on the grand total of the bill.

- (iv). No claims for refund shall be entertained unless the amount refundable is ₹100/- or more. Likewise, the terminal operator shall not raise supplementary bills for short collection, if the amount due to the terminal operator is less than ₹100/-.
- (v). (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.
- (vi). Users will not be required to pay charges for delays beyond reasonable level attributable to terminal operator.

2. CHARGES FOR HIRE OF HARBOUR MOBILE CRANES:

(I). For Dry Bulk Cargo

Average daily crane performance (in Metric Tonne)	Rate per tonne (in ₹)	
	Foreign	Coastal
9500-10499	29.69	17.81
10500-11499	31.43	18.86
11500-12499	33.18	19.91
12500	34.92	20.95
12501-13500	36.67	22.00
13501-14500	38.41	23.04
14501 – 15500	40.15	24.09

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

(II). For Break-bulk cargo:

(A). Steel and Bagged Cargo

Average daily crane performance (in Metric tonne)	Ceiling rate per tonne (in ₹)	
	Foreign	Coastal
5000-5999	65.04	39.02
6000	68.46	41.08
6001-7000	71.88	43.13

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

(B). Others

Average daily crane performance (in Metric tonne)	Ceiling rate per tonne (in ₹)	
	Foreign	Coastal
2750-3749	104.11	62.47
3750	109.60	65.76
3751-4750	115.08	69.05

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

Notes:

- (i). The formula for calculation of average berth-day out put is as follows:
$$\frac{\text{Total Quantity loaded / unloaded by the HMC}}{\text{Total time taken from vessel commencement to completion}} \times 24 \text{ hours}$$
- (ii). According to the average berth-day output for the vessel from commencement to completion of loading / discharge of cargo, the appropriate rate of crane hire charge will be chosen for recovery from port users for the full quantity of cargo loaded / discharged.
- (iii). If one HMC works with another HMC or ELL crane/s, the Berth-day output for the crane will be ascertained on the basis of the quantity as recorded by the HMC's load meter.
- (iv). In case of breakdown of the crane for more than one hour till the vessel leaves the berth, the quantity handled by HMC will be determined taking into account cargo loaded / discharged prior to break-down divided by crane working hours and multiplied by 24.
- (v). In case of stoppages of operation of HMC for more than two hours at a stretch for reasons not attributable to the HMC, appropriate allowance will be allowed to the crane while calculating the total time of crane operation in the vessel. Stoppages of HMC for less than 2 hours will not be taken into consideration for the above purpose. No allowance will be allowed for stoppages attributable to the HMC. All stoppages in loading / unloading operations during working of HMC are required to be certified by the TPT Officers or any other agency nominated by the TPT in the daily vessel performance report.
- (vi). In case shifting of a vessel becomes necessary due to breakdown / non-performance of HMC, the shifting charges of the vessel from berth to anchorage will be recovered from the crane operator in addition to a penalty of ₹1,00,000/- (Rupees one lakh only). The shifting charges so recovered will be refunded to the vessel's agent while the penalty will be retained by the port.
- (vii). In case of dispute on the average output, the decision of the port trust will be final and binding.

3. GENERAL NOTE TO SCHEDULE (2) ABOVE:

The tariff caps prescribed in the Scale of Rates of IMCOLA Crane Company Private Limited takes into consideration the upfront tariff approved by the Authority vide Order No.TAMP/16/2010-TPT dated 23 July 2010 and applying indexation to the extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2010 and 1 January of the relevant year. For the subsequent years as well, upfront tariff approved in the Order No.TAMP/16/2010-TPT dated 23 July 2010 will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2010 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.

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