

(To be Published in Part - III Section 4 of the Gazette of India, Extraordinary)
TARIFF AUTHORITY FOR MAJOR PORTS

No. TAMP/49/2021-MBPT

Mumbai, 17 November 2021

NOTIFICATION

This Authority, in exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), had disposed of the proposal received from Mumbai Port Trust (MBPT) for fixation of Schedule of Rates for way leave / special way leave fees of MBPT for the period 01 October 2017 to 30 September 2022 on 25 October 2021. However, considering the time involved for notifying the Speaking Order, along with the Schedule for MBPT prescribing way leave charges for the 17 Ready Reckoner Zones for Cargo Operated and associated pipelines and for 31 Ready Reckoner Zones for Non Cargo Operated Pipelines of MBPT for the period from 01 October 2017 to 30 September 2022 approved by this Authority, this Authority decided to notify only the Schedule of way leave charges for the 17 Ready Reckoner Zones for Cargo Operated and associated pipelines and for 31 Ready Reckoner Zones for Non Cargo Operated Pipelines of MBPT for the period from 01 October 2017 to 30 September 2022, on 25 October 2021. This order was notified in the Gazette of India on 01 November 2021 vide Gazette no.535. It was stated in the said Notification that this Authority will notify the Speaking Order, in due course of time. Accordingly, this Authority hereby notifies the Speaking order connected with disposal of the proposal of MBPT for fixation of Schedule of Rates for way leave / special way leave fees of MBPT for the period 01 October 2017 to 30 September 2022, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/49/2021-MBPT

Mumbai Port Trust

Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Sunil Kumar Singh, Member (Economic)

ORDER

(Passed on this 25th day of October 2021)

This case relates to a proposal received from Mumbai Port Trust (MBPT) vide its letter No.FA/OEA-L/21(90)/Gen/229 dated 07 September 2021 seeking approval for fixation of Schedule of Rates (SOR) for way leave / special way leave fees for the period from 01.10.2017 to 30.09.2022.

2.1. The main highlights of the MBPT proposal dated 07 September 2021 are as follows:

- (i). Government has issued Policy Guidelines on Land Management for all major ports vide letter No. PD-13017/2/2014/-PD.IV dated 17.07.2015. By Clarification Circular No. 1 of 2018 dated 14.05.2018 and Clarification Circular No.1 of 2019-20 dated 29.04.2019, the Ministry has extended the applicability of the PGLM 2015 to

the non-home occupation / commercial areas of the township areas of Mumbai, Kolkata and Kandla Port. Clause 13 (c) of PGLM of 2015 requires the port to refix the SOR once in five years and obtain TAMP's approval thereto.

- (ii). As provided in Clause 13 of PGLM, Land Allotment Committee (LAC) has recommended rates to be charged for Way Leave / Special Way Leave Fees in various Ready Reckoner Zones for the period 01.10.2017 to 30.09.2022. Same have been approved by MBPT Board vide TR No.149 dated 24.08.2021.
- (iii). In this backdrop, the MBPT has come up with the subject proposal for fixation of Schedule of Rates for way leave / special way leave fees for the period from 01.10.2017 to 30.09.2022 which is submitted for approval to the SOR in terms of Clause 13 (c) of PGLM 2015.

2.2 The background and other main points made by the MBPT in its proposal dated 07 September 2021 are summarized below:

A. Background of the proposal :

- (i). MBPT owns about 944 Hectares of land in Mumbai City from Colaba to, Mahul, Mahim, Mazgaon, Wadala, Worli, Govandi, Titwala etc. MBPT's land is let out on long term leases, 15 months' leases, monthly tenancies and licenses. MBPT also grants permission for Right of Way, without any allotment of land and any right on the land, to the applicant to lay a pipe / cable on payment of some fees either Nominal or Special, where no tenancy right or the beneficial interest is created, whatsoever, in the Trustees' land so occupied, and such permission is not transferable.
- (ii). Nominal way leave are general Way Leaves, which are given on nominal way leave charge of ₹.1/- or ₹.10/- p.m./ p.a. for Utility services like laying of water supply lines, drainage lines by MCGM, electric cables by BEST, telephone lines by MTNL/ BSNL/ DOPT – Telecom, etc. and no profits are derived by laying such connections on the Trustees' land/ passages/ roads to PSU/ Govt. bodies and private parties in terms of policy laid down under various statutes/ laws in accordance with TR No.123 of 1977. The clarification No 17 of PGLM state that "where there is specific central act /statute which govern right of way permission the provision under said central act /statute shall over write these guide lines "for pipe lines, conveyors, jetty & other commercial related pipe lines to be charged as per the policy frame by the respective Board of port.
- (iii). Special way leave is granted for commercial and beneficial use of the Trustees' land for any such right of way like laying of pipelines for crude oil, chemical, vegetable oil, gas or optical fiber cable, railway tracks, electric cables, transmission lines etc. by charging some special way leave fees over a period of time. Way Leave fee is one of the important sources of revenue for the Port.
- (iv). The Ministry vide Clarification Circular No.1 of 2018 dated 14.05.2018 extended the applicability of the PGLM 2015 to the non-home occupation/ commercial area of the township areas of Mumbai, Kolkata and Kandla Port. Thus, the PGLM 2015 has become applicable to the commercial occupations of the township areas of Mumbai Port Trust.
- (v). PGLM provides that proposals for Right of Way permission, etc. shall be recommended by the Land Allotment Committee and approved by the Board. It further provides that Port Trust Board would formulate and approve their own

policy for one-time supervision charges, MGT and additional compensation charges, if any, for granting way leave permission.

- (vi). The provision with regard to Way Leave has been covered in para 19 of the guidelines under the head "Right of Way permission" in PGLM 2014/ 15, which reads as 'The Right of Way permission for laying pipelines / conveyors, etc. from jetties to the tank farms within and outside Port area shall be given with approval of the Board. It shall neither be a lease nor a license. As far as possible, the pipeline should be permitted only underground. There shall not be any allotment of land to a party for giving Right of Way permission. As far as possible, these shall be laid on common user basis and if the same pipeline is required by any other party, it shall be spared, on such terms as agreed between the parties and the Port Trust Board. The parties shall have to abide by the conditions specified by the Port.'
- (vii). The Special Way Leave Fee has been revised by the Board from time to time. In accordance with the Board's Resolution No.138 of 2009 by relating it to 6% p.a. return on land value as per the Stamp Duty Ready Reckoner for the year 2009 for the period up to 30.09.2012. The Special Way leave fee is due for revision from 01.10.2012. Presently, Special WLF cases are being billed as per rate fixed under the TR 138 of 2009 with 4% increase every October.
- (viii). In terms of provision of PGLM 2015, Policy for Right of Way (Special Way Leave) permission, a policy for right of way (special way leave) along with revised SOR, for MBPT land/ water area including Port area has been prepared and recommended by the Land Allotment Committee and approved by the Board vide TR No.109 of 2019 for period 2012-2017 under the title Policy for Right of Way (Special Way Leave) Permission.

B. Main Proposal

- (i). The SoR from 1.10.2017 to 30.9.2022 for Special Way Leave fee is proposed to be revised on the basis of 6% return p.a. on land values of respective zones of Ready Reckoner 2017 for cargo operated pipelines and associated pipelines with 4% increase every year. For non-cargo operating pipelines, Special Way Leave fee is proposed to be revised on the basis of 6% return p.a. on land value arrived by considering highest of the five factors as per PGLM 2014/15.
- (ii). The way leave fee shall be computed based on approval of SoR for the period of 2017-22 by Board and thereafter TAMP for way leave permission granted to air space, under- ground, sea bed and over ground as per policy and procedure followed by MbPT as per TR 540 of 1994 and TR 138 of 2009.
- (iii). There are about 152 nos of pipelines covered by the revision for period 01.10.2017 to 30.09.2022. The special way leaves of pipe line connecting jetty to storage tank and tank to tank are being treated as cargo operated pipe lines and other than that are treated as non-cargo operated pipe lines.
 - (a). Out of which about 113 nos Cargo operated line would mean any special way leave permission meant for conveyance of cargo destined to the Port from the Port could or through the Port limit be in form of pipelines or approach channel or mean of access or any other similar of right of way. The same shall be charged on the basis of 6% return on Ready Reckoner (RR) 2017 values on shown in Annexure -I with 4% increase every year.

- (b). Remaining about 39 nos Non Cargo operated line would mean any special way leave permission not meant for conveyance of cargo destined to the Port from the Port could or through the Port limit be in form of pipelines or approach channel or mean of access or any other similar of right of way. The same shall be charged by adopts 6% return p.a. on land value arrived on the basis of highest of the five factors as per PGLM 2014/15. The value of highest of five factors are shown in Annexure II. They are as per proposal for approval of SoR in respect of land for the period from 1.10.2017 to 30.9.2022 forwarded to TAMP by Estate Division.
- (iv). Charges for special way leave for occupation of air space, underground, seabed and below seabed will be 50% of the rate. Special Way Leave fee for water area would be 50% of the land value of abutting land. The Special Way Leave fee for over-ground pipe lines/ service shall be based on entire land value.
- (v). Further, the re-fixation of the Special Way Leave will be every 5-year subject to maximum of 150% of the Way Leave charges applicable for the fifth year. In case, the prevalent way leave fee is higher than the rate worked out on the above lines, the higher prevalent rate will be continued with 4% increase p.a.
- (vi). Rate for Special Way leave fee for new permission will be at 6% return per annum on value of land as per Stamp Duty Ready Reckoner of relevant year in case of nomination and also be the reserve price in case of competitive bidding with 4% annual escalation compounded in both the cases for cargo operated pipelines and associated facilities of Special Way leave cases, where as non-cargo operating pipelines of Special Way leave cases will be charged on the basis of 6% return p.a. on the land value arrived by considering highest of the five factors as per PGLM 2014/15.
- (vii). Rate applicable for loop length of pipeline On Trestle – The rate for loop length of pipeline laid on trestle are taken at 60% of Spl Way Leave Fee rate of respective trestle in accordance with TR No.257 of 2015.
- (viii). Whenever there are existing agreement/MoU which are still subsisting, the agreement conditions will be prevalent over the new conditions. Whenever there are conflicts, such specific cases will be dealt on case to case basis with LAC recommendations.
- (ix). Wherever, there is limited space/limited width of land available and multiple contenders in such cases the allotment of Right of Way leave will be by the tender cum auction on the basis of MGT or Cargo related way leave or Special Way leave fees for Non-Cargo related occupations. Further, for further allotment and new terms for the pipelines to be laid on the trestle of OPP, FCB and SCB at Pir Pau will be in accordance with Boards approval.
- (x). Each proposal of Right of way permission/Special Way Leave for providing public utility services under the statutory act by the authority such as water supply lines, drainage and sewage lines, electricity cables, overhead lines, infrastructural roads, telegraph cables, optical fiber lines, railway lines, etc., will be dealt on merit as provided under clarification no. 14(i) of clarification circular (Land Management) No- 1 of 2019-20 dated 20.4.2019 issued by Ministry of Shipping, Govt of India. The right of way charges/ special way leave fee will be determined on the basis of provision and rate as per the statute for the same. For utility services by the statutory authority, right of way charges/special way leave fee will be as provided

in the respective statutes for infrastructure services. The revision of existing utility services which have been given on nominal basis will be continued at the same rate has been presently charged at nominal rates in accordance with TR 123 of 1977.

- (xi). Interest on differential arrears due to Revision – Interest will not be applicable on differential arrears on account of revision of Spl way leave fee as per the updated SOR 2017-22, till raising of demand notice. If party fails to pay as per the demand notice/ invoice within the stipulated time mentioned in the demand notice/ invoice, interest as approved by the Board from time to time will be applicable.
- (xii). Rate applicable for pipelines laid on the TRESTLE of Old Pir Pau Pier (OPP), First Chemical Berth and Second Chemical Berth (SCB) which are based on return on investment.
- (a). The rate of Spl Way Leave Fee for the pipeline laid on Old Pir Pau Pier(OPP) and First Chemical Berth (FCB) was finalized vide TR 540 of 1994 at ₹.80.25 per sq meter per month up to 30.09.1992 with 4% increase annually and was valid up to 30.09.2012. Accordingly, rate as on 01.10.2012 works out to ₹.182.87 per sq. m per month. The Board vide TR No 176 of 2018 had accorded the approval to continue the said rate with 4 % annual increase every October valid up to 30.9.2017 and accordingly rate works out to ₹.213.93 per sq. mtr per month, as on 30.09.2017. It is proposed to continue the said rate with 4% increase every October till Sept.2022.
- (b). The rate of Spl Way Leave for the pipeline laid on Second Chemical Berth (SCB) was finalized at ₹.230.64 per sq.mtr. per month for 300 dia. Pipeline as on 01.01.2015 with 4% increase every October as approved vide T.R.No.176 of 2018 and the same will be continued till Sept.2022. The same would be proportionately increased for higher diameter of Pipelines.
- (xiii). In view of above, for cargo operated pipelines, Special Way Leave fee / rates are proposed, which are based on market value as per respective zones of Ready Reckoner of 2017 as on 1.10.2017 with 4% increase every year. For non-cargo operating pipelines Special Way Leave fee/rates are proposed, which are on the basis of 6% return p.a. on land value arrived by considering highest of the five factors as on 1.10.2017, with 4% increase every year.

2.3. Thus, MBPT has sought TAMP's approval for the following SoR :

- (i). **Statement showing Zone Wise Ready reckoner land values for Special Way Leave rates as on 01.10.2017 for Cargo Operated pipelines etc.**

Sr.No	Division/ Village Name	R R Zone No.	Land Value as per RR 2017 in ₹.	@ 6% return on land value as per RR 2017 per SQ.M. per month as on 1.10.2017 in ₹.
1	Colaba	1/3	280000	1,400.00
		1/3A	239300	1,196.50
		1/6	196600	983.00
		1/6A	188600	943.00
2	FORT	2/9	150000	750.00

Sr.No	Division/ Village Name	R R Zone No.	Land Value as per RR 2017 in ₹.	@ 6% return on land value as per RR 2017 per SQ.M. per month as on 1.10.2017 in ₹.
		2/12	229800	1,149.00
		2/13	183100	915.50
		2/22	101300	506.50
		2/23	97000	485.00
		2/34	98500	492.50
3	PRINCESS DOCK	3/35	78400	392.00
		3/35B	77900	389.50
		3/36	56400	282.00
		3/36A	98500	492.50
4	Malabar Hill	7/64	257500	1287.50
		7/66	338100	1960.50
5	MAZGAON	10/78A	51600	258.00
		10/78B	37500	187.50
		10/79	69700	348.50
		10/79A	28100	140.50
		10/80	27100	135.50
6	PAREL SEWRI	11/84	95100	475.50
		11/84A	56400	282.00
		11/85	31300	156.50
		11/85A	39200	196.00
		11/86	26200	131.00
7	WORLI	13/97	113500	567.50
8	DADAR NAIGAUM	14/101	40200	201.00
		14/101A	65200	326.00
9	MATUNGA	16/110	90700	453.50
10	MAHIM	17/116	121700	608.50
		17/119	98600	493.00
11	MAHUL	90/419	19400	97.00
12	AMBAPADA	96/436	45200	226.00
13	GOVANDI/DEONAR	100/471	106600	533.00
14	GOVANDI/BORLA	99/463	56400	282.00
15	TITWALA (KDMC)	26/81	22249	111.25
16	Kanhoji Angre		4,499.45	22.50
17	Jawahar Dweep	90/419	19400	97

Notes:

1. Above rates are exclusive of all Taxes (GST, Taxes, etc.), Service Charges, Penalties, and Interest etc. Same are separately payable by lessees, as may be applicable.

2. The Special Way Leave fee for Optical Fiber Cable will be applicable as per the above rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr.
3. In the event of failure of achieve Minimum Guarantee Throughput (MGT) , the user should compensate the port by paying additional wharf age charges for the shortfall quantity.
4. Transfer- Right of Way Permission are not transferable. However, any case of specific requirement of the party transfer of the Right of Way may be permitted by the Board in its discretion and subject to payment to all past dues, prevailing SoR and transfer fee equivalent to 12 months' way leave fee as per prevailing SoR and for the unauthorized assignment/transfer of way leave permissions granted in past due to merger, amalgamation, etc.be regularized by levy of 24 months revised way leave fee as per prevailing SoR
5. Other aspect related to Right of Way permission will be dealt with as per Policy approved by the Board.
6. Every Special Way Leave shall be examined as per definition of cargo & non cargo operational pipeline before revision of Special Way Leave 2017-22
7. The area occupied by pipe line other than on trestle shall be calculated as per TR 138 of 2019.
8. Wherever stamp duty RR values are not available, land values obtained by the Valuer will be considered.
9. Way Leave/ Special Way Leave fee, whether demanded or not, shall be paid by the lessees/ tenants/ licensees on or before the 15th day of each month succeeding that for which Way Leave / Special Way Leave fee is due.

(ii). **Statement showing Zone wise highest land values of five factors and Special Way Leave rates as on 01.10.2017 for non-cargo operated pipeline etc.**

Sr. No.	Ready Reckoner Zone	Unit No.	Division	TR No / LAC conducted	Rates for land per sq.m. as on 01.10. 2017 (in ₹.)	Rate per sq. mtr. per month @6% return per annum as on 01.10.17 as per PGLM 2015 (in ₹.)
A	B	C	D	E	F	G
1.	14/101	Unit 1	Dadar- Naigaum	TR 112 of 2019 Dt. 20.08.2019	1,15,000/-	575.00
2.	90/419 (PirPau)	Unit 1,14	Mahul	TR 87 of 2019 Dt. 13.08.2019	53,820/-	270.00
3.	10/79	Unit 2, 6,7	Mazgaon	TR 254 of 2020 Dt. 29.01.2021	1,71,310/-	856.55
4.	10/80	Unit 4,7,8,9,13	Mazgaon	(i) TR 289 of 2019 Dt. 25.02.2020 (ii)TR 287 of 2019 Dt. 25.02.2020	1,87,700/-	938.50
5.	2/13	Unit 9,11,15	Fort	TR 269 of 2019 Dt 25.02.2020	2,52,500/-	1262.50
6.	2/22	Unit 11	Fort	TR 150 of 2019 Dt. 24.09.2019	1,91,040/-	955.18
7.	17/119,	Unit 14	Mahim	TR 268 of 2019 Dt. 25.02.2020	1,90,000/-	950.00
8	17/116	Unit 14	Mahim	TR 268 of 2019 Dt. 25.02.2020	1,90,000/-	950.00
9.	14/101A	Unit-1	Dadar-Naigaum	BR 141of 2021 Dt	1,15,632/-	578.16

				24.8.21		
10.	11/86	Unit-1,5,13	Parel –Sewree	BR 128 Dt 24.8.2021	1,20,200/-	601.00
11.	11/85A	Unit-3	Parel–Sewree	Chairman Approval dated 07.01.2020	1,78,450/-	892.23
12.	11/85	Unit-4,5,13	Parel –Sewree	BR 128 Dt 24.8.2021	1,68,450/-	842.30
13.	11/84	Unit-2	Parel –Sewree	BR 129 of 2021 Dt 24.8.21	1,71,310/-	856.55
14.	11/84A	Unit-2	Parel –Sewree	BR 130 of 2021 Dt 24.8.21	1,71,310/-	856.55
15.	10/79A	Unit-3	Mazgaon Divi	BR 140 of 2021 Dt 24.8.21	1,85,585/-	928.00
16.	10/78A	Unit-6,8	Mazgaon	BR 127/24.8.2021	1,70,240/-	851.20
17.	10/78B	Unit-8	Mazgaon	BR 127 of 2021 Dt 24.8.21	1,70,240/-	851.20
18.	3/36	Unit-9,14	Elphiston,Mallet Bunder	BR 132 of 2021 Dt 24.8.21	1,89,633/-	948.16
	3/36	Unit -14	Ferry Wharf, Princess Dock.	BR 139 of 2021 Dt 24.8.21	1,42,467/-	712.34
19.	3/35	Unit-9,10,14	S D /Bunder	BR 133 of 2021 Dt 24.8.21	1,70,240/-	851.20
20.	3/35B	Unit-9,10	Princes Dock	BR 134 of 2021 Dt 24.8.21	1,89,633/-	948.16
21.	2/23	Unit-9,11,15	Mody Bay ,fort,Indira Dock	BR 152 of 2021 Dt 24.8.21	2,11,500/-	1057.50
22.	2/9	Unit-11	Fort	BR 150 of 2021 Dt 24.8.21	2,68,300/-	1,341.50
23.	2/12	Unit-12,	Wellington Estate, Apollo Bunder,Fort	BR 154 of 2021 Dt 24.8.21	2,90,635/-	1453.17
24.	1/6A	Unit-14,12	Jamsadji Bunder,Colaba	BR 136 of 2021 Dt 24.8.21	1,74,381/-	871.91
	1/6A	Unit-12 &14	SassoonDock(insi de),Colaba	BR 135 of 2021 Dt 24.8.21	1,45,077/-	725.38
	1/6A	Unit -12	Apollo Estate	BR 144 of 2021 Dt 24.8.21	2,90,635/-	1453.17
25.	1/3	Unit-12	Apollo Estate,Colaba	BR 148 of 2021 Dt 24.8.21	2,90,635/-	1453.17
26.	1/3A	Unit-12	Colaba	BR 146 of 2021 Dt 24.8.21	3,31,600/-	1658.00
27.	1/4	Unit-15	Pilot Bunder,Colaba	BR 138 of 2021 Dt 24.8.21	2,90,635/-	1453.17
28.	100/471	Unit-5	Govandi/Deonar	TR 43 of 2019	1,55,800/-	752.90
29.	99/463	Unit-5	Govandi/Borla	TR 43 of 2019	1,55,800/-	752.90
30.	26/81(Thane -Kalyan RR)	Unit-5	Titwala	TR 44 of 2019	22,249/-	111.25
31.	Jawahar Deep (Island) & land under reclamation	Unit-12,14	Nearest Zone 90/419	BR 137 of 2021 Dt 24.8.21	28,523/- (J D Island) & 24,680/- (as on 01.10.2019 for land under reclamation)	142.62 (as on 1.10.2017 for J D Island) & Rs 123.40 (as on 01.10.2019 for land under reclamation)

(All the rates for land values has been rounded to the nearest ₹. 10/-)

Notes:

1. Above rates are exclusive of all Taxes (GST, Taxes, etc.), Service Charges, Penalties, and Interest etc. Same are separately payable by lessees, as may be applicable.
2. The Special Way Leave fee for Optical Fiber Cable will be applicable as per the above rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr.
3. In the event of failure of achieve Minimum Guarantee Throughput (MGT), the user should compensate the port by paying additional wharf age charges for the shortfall quantity.
4. Transfer- Right of Way Permission are not transferable. However, any case of specific requirement of the party transfer of the Right of Way may be permitted by the Board in its discretion and subject to payment to all past dues, prevailing SoR and transfer fee equivalent to 12 months' way leave fee as per prevailing SoR and for the unauthorized assignment/transfer of way leave permissions granted in past due to merger, amalgamation, etc.be regularized by levy of 24 months revised way leave fee as per prevailing SoR.
5. Other aspect related to Right of Way permission will be dealt with as per Policy approved by the Board.
6. Every Special Way Leave shall be examined as per definition of cargo & non cargo operational pipeline before revision of Special Way Leave 2017-22
7. The area occupied by pipe line other than on trestle shall be calculated as per TR 138 of 2019.
8. Wherever stamp duty RR values are not available, land values obtained by the Valuer will be considered.
9. Way Leave/ Special Way Leave fee, whether demanded or not, shall be paid by the lessees/ tenants/ licensees on or before the 15th day of each month succeeding that for which Way Leave / Special Way Leave fee is due.

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2.4. The MBPT has stated that its Board has approved the above SOR vide BR No. 149 dated 24.08.2021.

3. In accordance with the consultative procedure prescribed, a copy of the MBPT proposal dated 07 September 2021 was forwarded to the concerned users/ user organizations vide our letter dated 14 September 2021 seeking their comments. Some of the users / user organisations have furnished their comments. The comments received from the users / user organisations were forwarded to MBPT as feedback information. The MBPT vide its letter dated 13 October 2021 has responded to the comments of users / user organisations. Subsequently, the MBPT vide its letter dated 20 October 2021 has furnished its revised reply on some of the comments of the users.

4.1. While acknowledging the proposal, we have vide our letter dated 14 September 2021 requested MBPT to furnish some information/ clarification. The MBPT vide its letter No. EMS/AS-GEN/F-301/1915 dated 06 October 2021 has responded. The information/ clarification sought and the response of the MBPT thereon is tabulated below:

Sl. No.	information/ clarification sought	Response of MBPT
1.	Based on the proposal filed by MBPT, the TAMP vide its Order dated TAMP/62/2019-MBPT dated 8 September 2020 has approved Schedule of Rates (SOR) for Special Way Leave charges of MBPT for 13	The present proposal submitted to TAMP is covering 39 Ready Reckoner zones covering entire Port Trust land. However, in the earlier proposal, submitted to TAMP for the period from 01.10.2012 to 30.09.2017,

	<p>Ready Reckoner zones viz. 14/101, 11/86, 10/79A, 10/80, 11/85, 10/78B, 3/36, 3/35, 2/22, 1/6A, 90/419, 10/78A and 2/23 for the period 01 October 2012 to 30 September 2017. The present proposal of MBPT seeking approval for SOR Way leave/ Special Way leave charges for the period 01.10.2017 to 30.09.2022 is seen to be for 39 Ready Reckoner zones for cargo operated pipelines and 34 Ready Reckoner zones for non-cargo operated pipelines. As such, in the present proposal in reference, the MBPT is seeking approval of Way leave fees for additional 26 RR Zones in respect of cargo operated pipelines and 21 RR Zones in respect of non cargo operated pipelines proposed in addition to Way leave charges prescribed for the RR Zones approved by TAMP vide Order dated 8 September 2020. In this regard, the MBPT to clarify the following :</p>	<p>the same was for revision of SoR limited only to 13 zones. It is to be mentioned that majority of the Way Leaves are concentrated only in the 13 zones. However, as abundant caution, if any new case comes up in any of the other Ready Reckoner zones, it was prudent to get the SoR approved from the TAMP. Accordingly, all the FMV and SoR rate for 39 zones have been submitted to TAMP for period 2017-22.</p>
(a).	<p>The Land policy Guidelines, 2014 has not prescribed any distinction for arriving the Special Way leave Charges for cargo operated pipelines and the non cargo operated pipelines. Further, the earlier approved SOR dated 08 September 2019 has also not prescribed any different rates/ fees for cargo operated pipelines and the non cargo operated pipelines. However, the MBPT has now chosen to propose two different rates/fees for cargo operated pipelines and the non cargo operated pipeline arrived on two different basis respectively. The MBPT to clarify with justification for adopting two different approaches for arriving at the Special way leave charges for cargo operated pipelines and the non cargo operated pipelines separately.</p>	<p>In this case, attention is invited to para No.7 of TR 109 dated 20.8.2019 by which policy for Way Leave was approved by the Board. The distinction was mentioned in all type of Way Leave permissions, i.e. cargo based Way Leave permissions and non-cargo based Way Leave permissions as brought out in para 4 of policy Annexed with the said TR. A copy of the said TR along with the Annexure has been furnished by MBPT.</p>
(b).	<p>The MBPT to confirm that no such way leave permissions were granted/ or applicable during for the period from 01.10.2012 to 30.9.2017 for the additional RR Zones covered by MBPT in the proposal in reference.</p>	<p>As far as the additional zones are concerned, no new permission for non-cargo use or for cargo use was granted during the period 2012-2017. However, 9 new permissions were granted by MbPT in the 13 approved zones during the period 2012-2017 (details of the 9 permissions enclosed herewith) and these permissions were given on nomination basis i.e. without tender-cum-auction-basis and on the basis of 15% return on Ready Reckoner values as provided in the policy provided by the Board vide TR 109 of 2019. The said 9 permissions are different from SoR prescribed for SoR 2012-17 approved by the TAMP and also now proposed in this SoR 2017-22 as the rates of</p>

		<p>return are based on 15% on the Ready Reckoner values of the corresponding area with 4% increase and not 6% return. Port Trust in the TR No.109 of 2019 (para 7) and in the policy annexed with the said TR (para 4) had taken decision for the existing rates are higher than the proposed rates, the same will continue with 4% increase and no return will be effected in Way Leave charges. Further para 4 c (iii) of policy (annexure of the said TR) state that "Earlier for new permission the return of 15% per annum as per RR value of relevant year was being adopted in accordance with TR 269 of 2014 and these cases will not be reopened". However, there is also prescribed ceiling of 150% increase in the fifth year as brought out in para 4 c (iii) of the policy. Accordingly, a note has been added in the revised notes covering the above aspects already approved by the TR. The additional note may be considered for approval.</p>					
(c).	If the MBPT had already granted way leave permission/ applicable for the above additional RR zones during the period 01.10.2012 to 30.9.2017, the reason for not proposing the way leave fee for the said additional RR Zones for the period 2012-2017 may be explained. Also, the basis for recovery of the way leave fees during the period 01.10.2012 to 30.9.2017 without the tariff approved by the TAMP, also to be explained	Not applicable in view of Sl. no.1.(b) above.					
2.	The MBPT to furnish the documentary evidence/ relevant extract of Ready reckoner of land value for each of all the 39 RR zones proposed for Special Way leave Charges as on 01.10.2017 for cargo operated pipelines	[The MBPT has furnished the documentary evidence of relevant Ready Reckoner zones for 39 RR zones].					
3.	The MBPT to furnish the individual LAC recommendations along with Board Agenda item and Board resolution approving the Land Rates per sq. mtr as per PGLM 2015 for each of the 34 RR zones proposed for Special Way leave Charges as on 01.10.2017, for non-cargo operated pipelines.	[The MBPT has attached the relevant LAC recommendation and the Board vide TR approved the FMV and SOR rates for respective zones along with respective TR No. and LAC note].					
4.	The MBPT has proposed following formula for calculation of Way leave charges in the Notes to SOR while seeking approval for SOR for Special way leave charges for the period 01.10.2012 to 30.09.2017 during the month of December 2019. <u>Formula for calculation of W.L.Fee :</u>	<p>MbPT is using the following way leave formulae since decades.</p> <table border="1"> <tr> <td>(i).</td> <td>W.L.Fee per month on land</td> <td>= length of pipeline</td> <td>X (External dia including insulation + 600 mm)/ 1000mm</td> <td>x Rate applicable</td> </tr> </table>	(i).	W.L.Fee per month on land	= length of pipeline	X (External dia including insulation + 600 mm)/ 1000mm	x Rate applicable
(i).	W.L.Fee per month on land	= length of pipeline	X (External dia including insulation + 600 mm)/ 1000mm	x Rate applicable			

	(i).	W.L.Fee per month on land	= length of pipeline	X (External dia including insulation + 600 mm)/ 1000mm	x Rate applicable				(Subject to minimum width of 1 mtr)	
	(ii)	W.L.Fee per month on trestle	= length of pipeline	X (External dia including insulation) / 300mm	x Rate applicable				(Subject to minimum width of 1 mtr)	
	<p>However, no such formula for calculation of way leave charges is seen to be proposed to the notes of SOR of Way leave charges for both cargo operated and non-cargo operated pipelines. The MBPT to furnish the reasons for not proposing such notes relating the formula for calculation of Way leave fees.</p>					<p>The same was brought out in the earlier proposal for SoR 2012-17 and also in the review application dated 22.7.2021. Further the said formulae were also covered in para 2 of the proposal which state that “ as per policy and procedure followed by MbPT as per TR 540 of 1994 and TR 138 of 2009”. In TR 138 of 2009 the formulae are mentioned in para 2.4 and 2.1. A copy of the TR 138 of 2009 was also enclosed with the proposal. However, the formulae are now mentioned in the revised notes furnished herewith which may be considered for approval.</p>				
5.	<p>Some of the notes as prevailed in the SOR for Special Way leave charges for the period 01.10.2012 to 30.09.2017, as approved by TAMP vide Order no. TAMP/62/2019-MBPT dated 8 September 2020, are not seen to be proposed in the SOR of the present proposal seeking approval for special way leave charges for the period 01.10.2017 to 30.09.2022. The MBPT may re-look the notes prescribed in the proposed SOR, with reference to the earlier approved SOR for Way leave charges for the period 01.10.2012 to 30.9.2017 and revise accordingly</p>					<p>Some of the notes were inadvertently deleted. The same are now included in the revised notes furnished herewith which may be considered for approval. [The MBPT has attached revised notes to the SOR for Special Way leave rates as on 01.10.2017 for Cargo Operated Pipelines]</p>				
6.	<p>The MBPT to confirm whether the clause relating to achievement Minimum Guaranteed Throughput (MGT) prescribed in the approved SOR for Special Way leave charges for the period 01.10.2012 to 30.09.2017 is applicable to both cargo operated pipelines and non-cargo operated pipelines. If not applicable for the non-cargo operated pipelines, the MBPT may delete the said clause accordingly.</p>					<p>The MGT clause is applicable only for cargo operated pipelines whereas there is no MGT for non-cargo pipelines. Accordingly, the clause is deleted in the revised footnotes for the non-cargo pipelines enclosed herewith. [The MBPT has attached revised notes to the SOR for Special Way leave rates as on 01.10.2017 for Non Cargo Operated Pipelines]</p>				
7.	<p>A comparative statement to show the Way leave charges approved by TAMP for the period 01.10.2012 to 31.09.2017 and the proposed way leave charges for the period 01.10.2017 to 31.09.2022, for all the areas under consideration, may be furnished.</p>					<p>The comparative statement of Way Leave charges approved by the TAMP for 2012-2017 and the proposed Way Leave charges for 2017-2022 for respective 13 zones is as follows.</p>				

Sl. No.	RR Zone No.	Rate approved by the TAMP per sq.mtr.p.m as on 01.10.2012 for FSI 1.00 ground	Tamp approved rate increase 4% (every oct.) Rate per Sq. Mtr.p. m upto 2017 for FSI 1.00 on ground	RR Rate for Cargo Operation	S Factor for Non Cargo Operation	%Incr for Cargo Operation	% Increase for Non Cargo Operation
1	14/101	120	140.38	201	575	43.18	309.59
2	11/86	69	80.72	131	601	62.29	644.55
3	10/79A	83.50	97.68	140.50	928	43.83	850.01
4	10/80	84.50	98.85	135.50	938	37.07	849.39
5	11/85	86.50	101.19	156.50	842.30	54.66	732.37
6	10/78B	107.50	125.76	187.50	851.20	49.09	576.85
7	3/36	134.00	156.76	282.00	948.16 (Elphinston, Mattat Buder) 712.34 (Ferry Whaft, Princes dock)	78.89	504.85 354.41
8	3/35	244.50	286.03	392.00	851.20	37.05	197.59
9	2/22	237.50	319.96	506.50	955.18	58.30	198.53
10	1/6A	494.50	578.50	943	871.91 (Jamsadhi Bunder, Coloba) 725.38 (Sasson Dock(inside), Coloba) 1453.71 (Apollo Estate)	63.00	50.72 25.39
11	90/419	68.50	80.14	97	270	21.05	236.93
12	10/78A	174.50	204.14	258	851.20	26.38	316.97
13	2/23	265.00	310.01	485	1057.5	56.45	241.12

4.2 While furnishing additional information / clarification, MBPT has revised the conditionalities governing levy of special way leave charges on cargo and non-cargo operated pipelines. The Revised Notes to the SOR for the Special Way leave rates as on 01.10.2017 for

Cargo Operated pipelines and Non Cargo Operated pipelines as furnished by the MBPT vide its letter dated 06 October 2021 is given below.

A. Revised Notes to Annexure- I (Cargo Operated Pipelines)

1. Above rates are exclusive of all Taxes (GST, Taxes, etc.), Service Charges, Penalties, and Interest etc. Same are separately payable by lessees, as may be applicable.
2. The Special Way Leave fee for Optical Fiber Cable will be applicable as per the above rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr.
3. In the event of failure of achieve Minimum Guarantee Throughput (MGT), the user should compensate the port by paying additional wharf age charges for the shortfall quantity.
4. Transfer- Right of Way Permission are not transferable. However, any case of specific requirement of the party transfer of the Right of Way may be permitted by the Board in its discretion and subject to payment to all past dues, prevailing SoR and transfer fee equivalent to 12 months' way leave fee as per prevailing SoR and for the unauthorized assignment/transfer of way leave permissions granted in past due to merger, amalgamation, etc.be regularized by levy of 24 months revised way leave fee as per prevailing SoR.
5. Other aspects related to Right of Way permission will be dealt with as per Policy approved by the Board.
6. Every Special Way Leave shall be examined as per definition of cargo & non cargo operational pipeline before revision of Special Way Leave 2017-22.
7. Wherever stamp duty RR values are not available, land values obtained by the Valuer will be considered.
8. Way Leave/ Special Way Leave fee, whether demanded or not, shall be paid by the lessees/ tenants/ licensees on or before the 15th day of each month succeeding that for which Way Leave / Special Way Leave fee is due.
9. Earlier for new permission, the return of 15% per annum as per RR value of relevant year was being adopted in accordance with TR 269 of 2014 and these cases will not be reopened. Accordingly, the new permissions granted till TR No. 109 of 2019 will not be reopened.
10. The way leave formulae will be as under.

$$\text{Way Leave fee per month on land} = \frac{\text{Length of pipeline} \times (\text{External dia including insulation} + 600 \text{ mm})}{1000} \times \text{rate applicable}$$

(Subject to minimum width of 1 meter)

$$\text{Way Leave fee per month on trestle} = \frac{\text{Length of pipeline} \times (\text{External dia including insulation})}{300} \times \text{rate applicable}$$

11. Rates for way leave fee on land and trestle (i.e. trestle of OPP, FCB, SCB and TCB) will be applicable for the period from 1.10.2017 to 30.9.2022 as approved by Board TR 109 of 2019 and will be revised every five years or as decided by the Board from time to time.
12. Way leave fees will increase by 4% every October. First such 4% increase will be effected from 1.10.2018.
13. In case, the prevalent way leave fee is higher than the revised rate, the higher prevalent rate will be continued with 4% increase per annum.
14. For the purpose of Right of way leave charges, the area occupied by pipelines other than those on trestle shall be calculated based on the width (subject to minimum of 1 meter) and length of those pipelines.

15. Charges for way leave for occupation of air space, under ground, seabed and below seabed will be 50% of the above rates. License fee for water area would be 50% of the license fee of abutting land. The way leave fee for the service shall be based on the full rates.
16. The rate of sp. Way leave for the pipelines laid on OPP and FCB was finalized vide TR 540 of 1994 at ₹. 80.25 per sq meter per month upto 30.9.1992 with 4% increase annually and was valid upto 30.9.2012. Accordingly, rate as on 1.10.2012 works out to ₹.182.87 per sq meter per month. The Board vide TR 176 of 2018 had accorded approval to continue the same rate with 4% increase annual increase every October valid upto 30.9.2017 and accordingly the rate works out to ₹. 213.93 per sq meter per month as on 30.9.2017 which will be continued with 4% increase every October till Sept 2022.
17. The rate of sp. Way leave for the pipelines laid on SCB was finalized vide TR 176 of 2018 at ₹.230.64 per sq meter per month for 300 mm dia pipeline as on 1.1.2015 with 4% increase every October and the same will be continued with 4% increase every October till Sept 2022. The same will be proportionately increased for higher dia pipelines.
18. The rate applicable for loop length of pipeline laid on trestle will be taken at 60% of way leave fee of respective trestle in accordance with TR 257 of 2015.
19. Interest will not be applicable on the differential arrears on account of the revision of the rates till raising of the Demand Notice. However, if party fails to pay as per the Demand Notice or invoice within the time stipulated in the Demand Notice or invoice then interest as approved by the Board from time to time will be applicable.

B. Revised Notes to Annexure- II (Non-Cargo Operated Pipelines)

1. Above rates are exclusive of all Taxes (GST, Taxes, etc.), Service Charges, Penalties, and Interest etc. Same are separately payable by lessees, as may be applicable.
2. The Special Way Leave fee for Optical Fiber Cable will be applicable as per the above rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr.
3. Transfer- Right of Way Permission are not transferable. However, any case of specific requirement of the party transfer of the Right of Way may be permitted by the Board in its discretion and subject to payment to all past dues, prevailing SoR and transfer fee equivalent to 12 months' way leave fee as per prevailing SoR and for the unauthorized assignment/transfer of way leave permissions granted in past due to merger, amalgamation, etc.be regularized by levy of 24 months revised way leave fee as per prevailing SoR.
4. Other aspects related to Right of Way permission will be dealt with as per Policy approved by the Board.
5. Every Special Way Leave shall be examined as per definition of cargo & non cargo operational pipeline before revision of Special Way Leave 2017-22.
6. Wherever stamp duty RR values are not available, land values obtained by the Valuer will be considered.
7. Way Leave/ Special Way Leave fee, whether demanded or not, shall be paid by the lessees/ tenants/ licensees on or before the 15th day of each month succeeding that for which Way Leave / Special Way Leave fee is due.
8. Earlier for new permission, the return of 15% per annum as per RR value of relevant year was being adopted in accordance with TR 269 of 2014 and these cases will not be reopened. Accordingly, the new permissions granted till TR No. 109 of 2019 will not be reopened.

9. The way leave formulae will be as under.

$$\text{Way Leave fee per month on land} = \frac{\text{Length of pipeline} \times (\text{External dia including insulation} + 600 \text{ mm}) \times \text{rate applicable}}{1000}$$

(Subject to minimum width of 1 meter)

$$\text{Way Leave fee per month on trestle} = \frac{\text{Length of pipeline} \times (\text{External dia including insulation}) \times \text{rate applicable}}{300}$$

10. Rates for way leave fee on land and trestle (i.e. trestle of OPP, FCB, SCB and TCB) will be applicable for the period from 1.10.2017 to 30.9.2022 as approved by Board TR 109 of 2019 and will be revised every five years or as decided by the Board from time to time.
11. Way leave fees will increase by 4% every October. First such 4% increase will be effected from 1.10.2018.
12. In case, the prevalent way leave fee is higher than the revised rate, the higher prevalent rate will be continued with 4% increase per annum.
13. For the purpose of Right of way leave charges, the area occupied by pipelines other than those on trestle shall be calculated based on the width (subject to minimum of 1 meter) and length of those pipelines.
14. Charges for way leave for occupation of air space, under ground, seabed and below seabed will be 50% of the above rates. License fee for water area would be 50% of the license fee of abutting land. The way leave fee for the service shall be based on the full rates.
15. The rate of sp. Way leave for the pipelines laid on OPP and FCB was finalized vide TR 540 of 1994 at ₹. 80.25 per sq meter per month upto 30.9.1992 with 4% increase annually and was valid upto 30.9.2012. Accordingly, rate as on 1.10.2012 works out to ₹.182.87 per sq meter per month. The Board vide TR 176 of 2018 had accorded approval to continue the same rate with 4% increase annual increase every October valid upto 30.9.2017 and accordingly the rate works out to ₹. 213.93 per sq meter per month as on 30.9.2017 which will be continued with 4% increase every October till Sept 2022.
16. The rate of sp. Way leave for the pipelines laid on SCB was finalized vide TR 176 of 2018 at ₹.230.64 per sq meter per month for 300 mm dia pipeline as on 1.1.2015 with 4% increase every October and the same will be continued with 4% increase every October till Sept 2022. The same will be proportionately increased for higher dia pipelines.
17. The rate applicable for loop length of pipeline laid on trestle will be taken at 60% of way leave fee of respective trestle in accordance with TR 257 of 2015.
18. Interest will not be applicable on the differential arrears on account of the revision of the rates till raising of the Demand Notice. However, if party fails to pay as per the Demand Notice or invoice within the time stipulated in the Demand Notice or invoice then the interest as approved by the Board from time to time will be applicable.

5. A joint hearing on the case in reference was held on 14 October 2021 at 3.30 p.m. through Video Conferencing. At the joint hearing, MBPT made a brief power point presentation of its proposal. The MBPT and the users/ user organisations have made their submissions during the joint hearing.

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

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

- (i). Section 49 of the Major Port Trusts Act, 1963 (MPT Act) mandates this Authority to frame the Scale of Rates and statement of conditions for use of property belonging to a Board. In other words, Section 49 of the MPT Act empowers this Authority to fix the tariff for the use of the port properties. The way leave charges is a levy, levied for the use of the property of the port. Clarification No. 17 of the clarifications on Policy Guidelines for Land Management, 2015 issued by the MOS vide its letter No.PD-13017/2/2014-PD.IV dated 14 May 2018 read with clause 14 of PGLM 2015 provides that Right of Way permission for laying pipelines / conveyors, etc. for purposes such as telegraph cables, OFC Lines, tank farms, telephone towers, electric cables, etc., can be within and outside port area.
- (ii). The Way Charges in respect of the gas or optical fiber cable, railway tracks, electric cables, transmission lines and pipelines passing through various Ready Reckoner (RR) zones was fixed for the first time by this Authority vide Order No. TAMP/62/2019-MBPT dated 8 September 2020, for a period of five years from 01 October 2012 and upto 30 September 2017. For the period prior to 01 October 2012, the MBPT has reported to have levied the way leave charges as approved by its Board of Trustees. Also, as regards the period prior to 01 October 2012, the lease rentals are reported to have been governed by the Supreme Court judgment.

In this backdrop, the MBPT has now come up with the proposal for revision of way leave charges in respect of the gas or optical fiber cable, railway tracks, electric cables, transmission lines and pipelines laid for carrying of crude oil, chemical, vegetable oil, etc. for the various RR Zones for a period of 5 years from 01 October 2017 and upto 30 September 2022. The proposal of the MBPT has the approval of the Board of Trustees of MBPT.

- (iii). In the subject proposal, the MBPT has sought approval for the separate way leave charges/ fees to be levied for cargo operated pipelines and the non cargo operated pipelines.

In this regard, it is relevant here to mention that the Land Policy Guidelines, 2014 does not prescribe any distinction for arriving at the Special Way leave Charges for cargo operated pipelines and the non cargo operated pipelines. Further, the earlier approved SOR dated 08 September 2019 by this Authority also did not prescribe any different rates/ fees for cargo operated pipelines and the non cargo operated pipelines. On a specific query in this regard, the MBPT has clarified that the distinction for the way leave fees proposed for cargo operated pipelines and non-cargo operated pipelines is as per the policy of Way Leave permission approved by the MBPT Board of Trustees vide its TR 109 dated 20.8.2019. In this regard, it is relevant to mention here that as per the Broad Terms and Conditions for issuance of Right of Way permission for laying pipelines / conveyors etc., which is annexed to the Land Policy Guidelines, it is indicated that the permission for use of various pipelines / lines will be given by the Port Trust Board on such terms as agreed between the parties and Port Trust Board.

- (iv). As stated earlier, the proposal of MBPT seeks approval for levy of way leave charges for the period from 01 October 2017 to 30 September 2022. In this connection, the Bharat Petroleum Corporation Limited (BPCL), Tata Power Company Limited (TPCL), Aegis Logistics Limited (ALL), Hindustan Petroleum Corporation Limited (HPCL), All India Liquid Bulk Importers & Exporters

Association (AILBIEA), Reliance Industries Limited (RIL), GAIL (India) Limited have objected to the retrospective fixation of the Special Way Leave fees from 01 October 2017 to 30 September 2022, on the ground that retrospective revision would jeopardise their financials and would increase their burden, which they may not be in a position to pass it on to customers.

In the case in reference, the lease rentals approved by the Board of Trustees for the lands of MBPT for the period from 1980 upto 30 September 2012 as per the Compromise formula had been upheld by the Hon'ble Supreme Court of India. As such, the Government has advised the MBPT in May 2019 to fix the SoR for all areas of Mumbai Port including Township areas with effect from 01 October 2012 onwards. For the first time way leave charges were approved by this Authority vide Order No. TAMP/62/2019-MBPT dated 8 September 2020 retrospectively, for a period of five years from 01 October 2012 and upto 30 September 2017.

In this regard, it is noteworthy that this Authority does not ordinarily give retrospective effect to the Order. But, in cases governed by special circumstances, it does require retrospective application of its Order. In a case relating to an agreement between New Mangalore Port Trust and the Kudremukh Iron Ore Company Ltd., on the advice of Ministry of Law, the (then) Ministry of Surface Transport had vide its Communication No. PR-14011/5197-P4 dated 16 March 1998 advised this Authority to give retrospective effect. Similarly, based on a proposal received from MBPT, retrospective effect was given for recovery of way leave charges leviable as per the agreement between ONGC and MBPT.

Further, it is to state that this Authority had passed an Order no. TAMP/15/2007-NMPT dated 16 June 2010 revising the lease rentals/ licence fee of the lands of New Mangalore Port Trust (NMPT), retrospectively with effect from 20 February 2007 i.e. on expiry of 5 years from the effective date of the implementation of the previously revised rates. The said Order was notified in the Gazette of India on 23 July 2010 vide Gazette no. 184. A batch of Writ Petitions were filed in the Hon'ble High Court of Karnataka by various parties mainly challenging the retrospective revision of the lease rentals. The Hon'ble High Court of Karnataka vide its Order dated 28 June 2013 has disposed of all the Writ Petitions. The Hon'ble High Court at paragraph no. 16 of the Order has stated the following:

“There cannot be any dispute that collection of enhanced licence fee with retrospective effect is illegal as held by the Apex Court in the case of LALA RAM (D) by L.R. & ORS. – vs – UNION OF INDIA & ANOTHER reported in 2013 SAR (Civil) 347. But if the authority at the inception itself has made it clear to the licensees that what is being charged is only a provisional licence fee after approval by the TAMP, the action of the NMPT cannot be said to be illegal. At the time of issuing the licence itself as well as the time of renewal of licence, it has been made clear by the NMPT that it has proposed revision of licence fee to the TAMP and till such time only provisional licence fee will be charged and that licensees will have to pay the revised licence fee after approval of the TAMP. The licensees having agreed for the said conditions, entered into the contract. Therefore it is not open for the licensees to go against the terms of the contract and contend that it is not open for the authorities to charge licensees revisional licence fee from 20.2.2007. In view of the above, the challenge to the Circular pertaining to revision of licence fee w.e.f. 20.2.2007 vide Annexure-H fails.”

In the proceedings relating to the case in reference, the MBPT has conveyed that it had intimated all the stakeholders that the way leave charges are due for revision from 01 October 2017 onwards.

Incidentally, reference is also drawn to the Order passed by the Gujarat High Court in March 2017, wherein the Hon'ble High Court of Gujarat has taken a view and held that TAMP would consider the proposal and follow the prescribed procedure including inviting suggestions and comments from stakeholders. The determination of Scale of Rates would take place thereafter and that because of very nature of this exercise, when the actual demand would be raised, it would relate to past period. It is the retroactiveness and not retrospectiveness. A retroactive operation of demand would not make it unsustainable in the given set of facts. Thus, the Gujarat High Court had held a view that the ground that the demand is retrospective is, therefore, prima facie not tenable.

Under these circumstances and for the reasons given in the earlier paragraphs, the proposal of the MBPT for recovery of way leave charges for the period from 01 October 2017 to 30 September 2022 is taken up for consideration.

- (v). The MBPT has filed its proposal in September 2021. The said proposal alongwith the information/ clarification furnished by MBPT during the processing of the case, is considered in this analysis.
- (vi). This Authority is mandated to follow the Land Policy Guidelines issued by the Government from time to time for the purpose of determining lease rentals for the lands belonging to the Port Trusts. The Ministry of Shipping in the Government of India has announced Land Policy Guidelines for Major Ports, 2014 in January 2014 which has come into effect from 2 January 2014. Subsequently, the Ministry of Shipping has issued amended Land Policy Guidelines, 2014 under Section 111 of the MPT Act, 1963 for implementation with effect from 17 July 2015. The MBPT has, come up with a proposal for revision of Way Leave Charges, based on the provisions of the Land Policy Guidelines for Major Port Trusts, 2014, as amended in July 2015.
- (vii). As per clause 13(a) read with clause 11.2(e) of the amended Land Policy Guidelines 2014, a Land Allotment Committee (LAC) constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic shall determine the market value of land as per the methodology prescribed in clause 13(a). Accordingly, the MBPT has constituted a Land Allotment Committee (LAC) under the chairmanship of the Dy. Chairman of the Port and the Heads of Departments of Finance, Traffic and Estate being the other members of the Committee.
- (viii). (a). Para 13(a) of the Land policy guidelines of July 2015 prescribes the methodology for determination of market value of the land based on the five factors as prescribed therein. In terms of the said para of the amended Land policy guidelines of 2014, the Land Allotment Committee may normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for similar classification/ activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity with an appropriate annual escalation rate to be approved the Port Trust Board, (iii). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (iv). Rate arrived at by an approved valuer appointed for the purpose by the Port and (v). Any other relevant factor as may be identified by the Port. The amended Land Policy

Guidelines of 2014 also stipulates that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded.

- (b). To determine the Way Leave Charges for cargo operated pipelines and associated pipelines during the period from 01 October 2017 to 30 September 2022, the LAC is seen to have determined the way leave charges considering land value based on the Stamp Duty Ready Reckoner (RR) for the year 2017 as base for the respective areas. For non-cargo operating pipelines, the land value as arrived by land valuer being highest of the five factors as listed in as per PGLM 2014/15 for the respective areas, has been considered to determine this way leave charges.

Thereafter, 6% return on the land value (RR value 2017 in case of cargo operated pipelines and land value as per valuer's Report in case of non-cargo pipelines as considered by LAC) for the respective area has been considered to determine the way leave charges for the overhead pipelines/ cables passing through the said area. Further, a 50% discounting factor has been considered to determine the way leave charges for the pipelines/ cables for occupying airspace, underground, overhead, sea bed and below sea bed, through the respective areas. Thus, the way leave charge has been derived from the market value of the relevant parcel of land over which the pipeline passes.

- (c). The Land Policy Guidelines does not prescribe any specific methodology for determination of way leave charges. In the absence of any specific methodology for determining way leave charges in the Land Policy Guidelines, this Authority has relied on the approach adopted by the MBPT to determine the way leave charges for the cargo operated pipelines and associated pipelines, based on the market value of land based on the State Government Ready Reckoner.
- (d). With regard to non cargo pipelines, as stated earlier, MBPT has considered the Land value of the respective Zones based on the Valuer's Report for arriving the way leave charges. It is noteworthy that Land Policy Guidelines stipulates determining lease rentals based on the market value of the land, irrespective of the end use of the Land. Given that there cannot be a different value for land falling in the same zone on the basis of usage, and considering that earlier way leave charges for the period 01.10.2012 to 30.9.2017 as approved by this Authority vide its order no. TAMP/62/2019-MBPT dated 8 September 2020 is also based on the market value based on State Government Ready Reckoner and also since there is no justification either in the Board approval or the recommendation of LAC as to why highest Market value as per PGLM guidelines is considered for granting way leave permission only for non cargo operated pipelines, this Authority prescribes the Way leave charges for non cargo operated pipelines in MBPT for the period 01 October 2017 to 30 September 2022 based on the State Government Ready Reckoner rates only for the respective Zones.
- (e). Further, as per Clause 12 (A) (I) of the amended Land Policy Guidelines, Licence fee for water area would be 50% of licence fee of abutting land. Resultantly, this Authority approves the way leave charges for the pipelines/ cables for occupying airspace, underground, overhead, sea bed and below seabed, as proposed by the Port.

- (ix). The MBPT has proposed a note in the Schedule for non-cargo pipelines to the effect that the rates for way leave fee on MBPT land and trestles [i.e. trestle of Old Pir Pau Pier (OPP), First Chemical Berth (FCB) and Second chemical berth (SCB)] will be applicable for the period from 01 October 2017 to 30 September 2022 as approved vide Board's TR no. 109 of 2019 and will be revised every five years or as decided by the Board from time to time.

The TR no. 109 of 2019 as referred by MBPT, indicates that the rate of way leave fee on trestle of OPP, FCB and SCB is based on return on investment and that the existing rate will be continued till September 2022 with 4% increase. In this regard, it is to state that the proposal of MBPT does not give details of the methodology adopted by MBPT to determine the existing Way leave charges based on return on investment. The proposed SOR also does not categorically bring out the existing way leave fees being levied and the way leave charges proposed to be levied on trestle of OPP, FCB and SCB.

In this regard, it is submitted that the MBPT has come up with a separate proposal for levy of way leave charges on the trestle of OPP, FCB and SCB, based on the stipulations contained in the Land Policy Guidelines. Therefore, the proposed note is deleted.

- (x). The MBPT is seen to have proposed a note (under both schedules i.e cargo operated and non-cargo operated pipelines) to the effect that the way leave charges shall increase by 4% every October and that the 1st such revision will be effected from 01 October 2018. In this regard, it is relevant here to mention that Clause 13(c) of the Land Policy Guidelines of 2014 gives flexibility to the ports to fix annual escalation which would not be less than 2%. Accordingly, the MBPT has proposed 4% annual escalation. Since the annual escalation rate of 4% is seen to be as per the provision of the Land Policy Guidelines, the proposed rate of 4% annual escalation is approved.
- (xi). The MBPT is seen to have proposed a note (under both schedules) to the effect that in case, the prevalent way leave fee is higher than the revised rate, the higher prevalent rate will be continued with 4% increase p.a.

The Land Policy Guidelines requires the port to prescribe rentals based on the market value of the land. As per the Land Policy Guidelines, the Rent Schedule shall be escalated by minimum of 2% per annum. The Rent Schedule is subject to revision after every five years. These provisions are reflected in the Rent Schedule by way of conditionalities. The provision proposed by the Port is for the purpose of inclusion in the Way Leave Agreement to be entered by the Port. The Scale of Rates framed by this Authority need not contain the clauses to be inserted in the Way Leave agreements to be entered by the port trust with the concerned parties. It is for the Port to enter into Way Leave Agreement ensuing compliance of the Rent Schedule and Land Policy Guidelines of the Government. Even in the case of Kolkata Port Trust, a similar note proposed by the Port was not included in the Rent Schedule approved by this Authority. Even otherwise, it is seen that the proposed rentals based on the land value as per Ready Reckoner, 2017 as furnished by MBPT for all the areas as on 01 October 2017 is higher than the existing rentals as on 30 September 2017. Therefore, prescription of the note proposed by MBPT is seen to be only theoretical and may not be relevant as it will not serve any purpose. Hence, the proposed note is not included in the Way leave Schedule.

- (xii). The MBPT is seen to have proposed a note (in both the schedules) to the effect that for the purpose of Right of way leave charges, the area occupied by pipelines, other than those of trestle shall be calculated based on width (subject to minimum of 1 meter) and length of those pipelines. In this regard, the MBPT has taken a view that since as per the current practice being followed by MBPT, a minimum distance of 300 mm is taken on both sides of pipeline for safety purposes, a minimum land width of 1 meter is necessary for calculating Way leave fees. A formula in this regard has been proposed by the port as one of the note. Many of the users viz., BPCL, TATA, ALL and HPCL have objected to the proposed note and have requested that the special way leave rates may be charged only on the actual area of the pipelines rather than fixing a minimum width of 1 meter.

In this regard, the MBPT has countered the objection made by the users by stating that a minimum distance of 300 mm is taken on both sides of pipeline for calculating the Special way leave fees, keeping in view the safety, repairs and maintenance of pipelines, which has been in vogue at MBPT since the year 1994 and that all the way leave occupants of MBPT were aware of the formula adopted of considering additional distance of 300 mm on both sides of pipeline as a buffer area by MBPT and have paid the way leave charges as per the then prevailing formula without any dispute.

Incidentally, it may be recalled that in September 2020, while fixing the way leave charges for the period 2012-17, the buffer area as proposed by the port then had been deleted. However, subsequently, the port had submitted that the buffer area of 300 mm on both sides of the pipelines is essential as the pipelines generally carry highly inflammable Petroleum products/ inflammatory gases/ poisonous gases etc. and as such, any damage to these pipelines will result in major catastrophe in a highly populated city of Mumbai. The buffer zone was reported to avoid damage to the pipelines while undertaking the construction activity by way of pile foundation/ excavation work. The port had also further stated that exclusion of buffer area of 300 mm on both sides of pipeline in the calculation of way leave charges deprives the port of receiving any remuneration on such excluded area, as the said buffer area cannot be put for any other use by the port. Accordingly, this Authority vide its Order dated 15 September 2021 had restated the inclusion of buffer area in the calculation of way leave charges of pipelines. Hence, the said proposed notes are continued to be prescribed.

- (xiii). A note has been proposed by the port (in both the schedules) to the effect that charges for way leave for occupation of air space, underground, seabed and below seabed will be 50% of rate and that License fee for water area would be 50% of the license fee of abutting land. The said note further stipulates that the way leave fee for over-ground service shall be based on full rate.

In this regard, as per Annexure forming part of the Land Policy Guidelines, 2014, which lists down the Broad Terms and Conditions for issuance of Right of way Permission for laying Pipelines/ Conveyors etc., as per Note no. 3, with regard to underground pipelines, if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines shall be considered as 50% of the diameter and length, for the purpose of levy of Right of Way charges. The note proposed by the port is seen to be based on the stipulation contained in the Land Policy Guidelines, 2014, and hence approved.

- (xiv). Few notes have been proposed by the port (in both the schedules) in connection with levy of Special Way Leave for the pipelines laid on Old Pir Pau Pier (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB). In the said notes, the MBPT has drawn reference to some of its Board Resolutions and have indicated that the rates as finalized by the Board of Trustees of MBPT would prevail till September 2022. Since the proposed notes are not in connection with the rates proposed by the MBPT in the subject proposal, it is felt that the said notes may not form part of the Rent Schedule notified by this Authority. Hence, the proposed notes are not incorporated in the Rent Schedule for Way Leave Charges notified by this Authority.
- (xv). Further, a note proposed by the port (in both the schedules) to the effect that the rate applicable for loop length of pipeline laid on trestle will be taken at 60% of Way Leave rate of respective trestle in accordance with TR No.257 of 2015, is found not in connection with the rates proposed by the MBPT in the subject proposal. Since the charges for loopline is linked to trestle and also on the advice of this Authority in the earlier order dated 8 September 2020 prescribing the way leave charges for the period 1.10.2007 to 1.10.2012, the MBPT has already filed a separate proposal for levy of way leave charge on trestle of OPP, FCB and SCB. It is felt that the said notes may not form part of the Rent Schedule to be approved by this Authority. Hence, the proposed notes is not incorporated in the Rent Schedule for Way Leave Charges notified by this Authority.
- (xvi). A note has been proposed by the port (in both the schedules) to the effect that the special way leave fee for Optical Fibre Cable will be at applicable rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr. A minimum area is stated to have been proposed by the port for safety and maintenance/ repairs purposes. The note as proposed by the port is approved.
- (xvii). A note has been proposed by the port (in both the schedules) to the effect that whenever the Stamp Duty Ready Reckoner values are not available, land value rate obtained by the valuer will be considered. In this regard, it is to state that the Rent Schedule for the Special Way Leave charges during the period from 01 October 2017 to 30 September 2022 has been proposed by the port taking into account the State Government Ready Reckoner rates for all the areas. In such a scenario, prescription of the proposed note is not found relevant. Further, in this regard, it is to state that this Authority is mandated under Section 49 of the Major Port Trusts Act, 1963, to frame Scale of Rates [SOR] at which, and the statement of conditions under which any property belonging to, or in possession or occupation of the Board or any place within the limits of the port approaches may be used for the purposes specified u/s 49 of the Act. As such, this Authority is required by the Act to fix and notify the lease rentals for the port estates. As a result, a blanket approval cannot be given to MBPT to determine the rentals based on Valuer's Report and adopt the same on its own, without specifically seeking TAMP's approval. The proposed note is therefore, deleted.
- (xviii). The MBPT is seen to be erroneously omitted to prescribe a note to the effect that Interest for delayed payment of monthly bills will be charged at 18% per annum as per the existing policy or as may be decided by the Board from time to time, which existed in the SOR of Way leave fees for the period 2012-17. The levy of interest will instill discipline on the users for timely payment of rentals and hence, a note to that effect is included in the SOR in both Rent Schedules.
- (xix). The MBPT has proposed a note regarding the differential interest of Way Leave as per the updated SOR for the period from 2012-17. The note states that the

interest will not be applicable on the differential arrears till raising of demand notice and that if the party fails to pay as per the demand/ invoice within the stipulated time, i.e. 3 months from the receipt of demand notice/ invoice, interest will be applicable as may be decided by TAMP. In this regard, when the Board of MBPT has already decided a rate of 18% interest on delayed payments, the question of this Authority deciding a particular rate of interest for delay in payment of differential rent does not arise. The note proposed by MBPT is, therefore, modified to reflect this position.

- (xx). A note has been proposed by the port (in cargo pipelines schedule) to the effect that in the event of failure to achieve Minimum Guaranteed Throughput (MGT), the user should compensate the port by paying additional wharfage charges for the shortfall quantity. As per the General Terms and Conditions for issuance of Right of Way permission for laying pipelines/ conveyors etc., forming part of the Land Policy Guidelines, for the purpose of Right of way leave charges, each Port Trust Board would formulate and approve their own policy for one time supervision charges, MGT and additional compensation charges if any for granting way leave permission. Prescription of MGT is in the domain of the port. However, the note proposed by the Port is only indicating that failure to achieve MGT will attract payment of additional charges for shortfall quantity, and hence approved to be incorporated in the Schedule of way leave charges.
- (xxi). A note has been proposed by the port (in both the schedules) to the effect that transfer right of Way Permissions are not transferrable. However, any case of specific requirement of the party transfer of Right of Way may be permitted by the Board in its discretion and subject to payment of all past dues, prevailing SoR and transfer fee equivalent to 12 months way leave as per the prevailing SoR and for the unauthorized assignment / transfer of way leave permissions granted in the past due to merger, amalgamation, etc. be regularized by levy of 24 months' revised Way Leave fee as per prevailing SoR. The provision relating to transfer of right of Way Permissions is in the domain of the port. Hence, the proposed note need not form part of the Schedule of Way Leave Charges.
- (xxii). The MBPT has proposed a note to the effect that other aspects related to Right of Way Permission will be dealt with as per policy approved by the Board. The said note is modified to read that other aspects related to Right of Way Permission will be dealt with as per extant Land Policy Guidelines.
- (xxiii). The Bharat Petroleum Corporation Limited (BPCL) have stated that the SOR proposed by the port does not include the case when pipelines are laid in multilayer stacks. The MBPT, while responding to the comments of the users have stated In terms of MBPT policy guidelines under TR No. 109 of 2019, for fixation of charges for special way leave, each way leave pipeline requires prior permission of MBPT and each such way leave permission letter with set of terms and conditions letter Its acceptance become a binding contract for both the parties. The way leave occupations neither lease nor license. The way leave charges are subject to revision of rate of every 5 years. BPCL has been allowed for laying of pipelines on port trust land from Pir Pau to Wadala and other parts of port trust land. For each pipe line there was way leave contract as per the terms and conditions quoted by MbPT and accepted by BPCL. In the said contract terms there was no distinction made for single pipeline over the ground or pipelines in multilayer and every pipeline of special way leave is charged as per formula Therefore, now there is no question to go back terms of such existing contracts by BPCL. The decision of the port in this regard is relied upon.

- (xxiv). The MBPT has also proposed note (in both the schedules) to the effect that whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month. Since the proposed note give clarity and would avoid ambiguity and would instill discipline amongst the tenants/ lessees in the payment of way leave charges, the proposed note is approved.
- (xxv). The MBPT has proposed another note (in both the schedules) to the effect that the rates are exclusive of Taxes, service charges, penalties, interest rates and are separately payable by the lessees. In this regard, it is to state that the tariff approved by this Authority is exclusive of any taxes and statutory duties. The taxes and statutory duties are to be levied by the Port at the applicable rates on the tariff so approved by this Authority. In view of this position, the note as proposed by the Port is approved.
- (xxvi). The MBPT has proposed another note (in both the Schedules) to the effect that every special way leave shall be examined as per the definition of cargo and non-cargo operational pipeline before revision of special way leave in 2017-22. In this regard, no differentiation has been envisaged in the determination of market value of land for cargo and non-cargo operational pipelines, the examination to categorise the pipelines to cargo or non-cargo may not be relevant and hence deleted.
- (xxvii). The charges to be levied for Right Of Way Permission (ROWP) would be as per the Broad terms and conditions for issuance of ROWP for laying pipelines / conveyors etc., forming part of Policy Guidelines for Land Management, 2015. As per clarification 17 on Policy Guidelines for Land Management, 2015 issued by Ministry of Shipping (MOS) vide its letter dated 14 May 2018, where there is a specific Central Act / Statute which govern such ROWP, the provisions under the said Central Act / Statute shall override the Policy Guidelines for charges to be levied for ROWP. In this context, the TATA Power Company Ltd. (TPCL) has contended that the proposed way leave charges are not applicable to the TPCL since the TPCL is a Telegraph Authority and in terms of Telegraph rules – 2016, the underground utilities are not chargeable. So far as the overhead transmission lines are concerned, charges are permitted to be recovered only if the land beneath is unlikely to be used for any other purpose, as per the contention of the TPCL. The TPCL has further requested to classify the power utilities as 'cargo operated', sought further reduction from 50% reduction in rates for HT lines / cables passing through CRS areas, to stop further annual increase in the rates for the pipelines laid on first chemical berth and to levy only administrative fees for unauthorized assignment / transfer of way leave permissions granted in the past due to merger, amalgamation etc. When these contentions of TPCL were shared with the MBPT in consultation process for its response, the MBPT has stated that the TPCL has filed a writ petition before the Hon'ble High Court of Bombay and that the matter is sub-judice.

As per Section 49 of the Major Port Trusts Act, 1963 this Authority is mandated to frame Scale of Rates (SOR) and Statement of Conditions from time to time for use of the properties of the Port. Since the matter is sub-judice, this Authority is not the appropriate forum to adjudicate on the issues raised by TPCL in the current tariff proceedings.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves, the Schedule of way leave prescribing way leave charges for the 17 Ready Reckoner Zones for Cargo Operated and associated pipelines and for 31 Ready Reckoner Zones for Non Cargo Operated Pipelines at of MBPT for the period 01 October 2017 to 30 September 2022 which have been notified separately vide Gazette No. 535 dated 1 November 2021

(T.S. Balasubramanian)
Member (Finance)