

(To be Published in Part - III Section 4 of the Gazette of India, Extraordinary)
Tariff Authority for Major Ports

No. TAMP/52/2021-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), has disposed of the proposal received from Mumbai Port Trust (MBPT) for fixation of Schedule of Rates and revision of rent / compensation for the period 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT on 01 November 2021. However, considering the time involved for notifying the Speaking Order along with the Rent Schedule for MBPT prescribing Lease rentals for the 19 Ready Reckoner Zones for the period 01 October 2017 to 30 September 2022, approved by this Authority, this Authority decided to notify only the Rent Schedule for MBPT prescribing Lease rentals for the 19 Ready Reckoner Zones for the period 01 October 2017 to 30 September 2022. Accordingly, the Rent Schedule for MBPT prescribing Lease rentals for the 19 Ready Reckoner Zones for the period 01 October 2017 to 30 September 2022, approved by this Authority on 01 November 2021 was notified in the Gazette of India on 12 November 2021 vide Gazette no 554. 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 the disposal of proposal of MBPT for fixation of Schedule of Rates and revision of rent / compensation for the period 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/52/2021-MBPT

Mumbai Port Trust

Applicant

QUORUM

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

ORDER

(Passed on this 1st day of November 2021)

This case relates to a proposal received from Mumbai Port Trust (MBPT) vide its letter No. FA/OEA-L/38(21)/Gen/265 dated 22 September 2021 for fixation of Schedule of Rates and revision of rent / compensation for the period 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT.

2.1. The submissions made by MBPT in its proposal dated 22 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 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 for various Ready Reckoner Zones. Same have been approved by MBPT Board. Subsequently, the MBPT vide its letter dated 14 October 2021 has furnished the relevant Board Resolutions approving the Schedule of Rates (SoR) for the period from 01.10.2017 to 30.09.2022 in respect of Mumbai Port Trust letout land falling under various Ready Reckoner Zones (19 zones)
- (iii). In this backdrop, the MBPT has come up with the subject proposal for seeking approval for fixation of Schedule of Rates and revision of rent / compensation for the period 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT – 19 RR Zones 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 22 September 2021 are summarized below:

A. Background :

- (i). Mumbai Port Trust owns about 944 Ha of land in Mumbai City. The land in the Mumbai city limits falls under the jurisdiction of A, B, C, M, G-North, E, F-North and F-South Wards. The said land stretches from Colaba to Wadala, Mahim, Worli, Govandi, Pir Pau, Mahul, Titwala etc. and is divided into 15 administrative units for management of these estates. The landed estates are divided into 2 main categories, viz. (i) lettable land and (ii) non-lettable land. Non-lettable land includes areas occupied by offices of sister department, administrative offices of Mumbai Port Trust, Port Trust quarters, Port Trust hospital, etc. The lettable category includes areas let out on long term leases, 15 monthly leases, monthly tenancies and licenses. There are also a few plots which are vacant and can be let out. The present proposal is for approval of Schedule of Rates (SOR) for the period 01.10.2017-30.09.2022.
- (ii). The Board vide various TRs of 2021 accorded approval to Schedule of Rates (SoR) for the period from 01.10.2017 to 30.09.2022 in respect of Mumbai Port Trust letout land falling under various Ready Reckoner Zones (19 zones) applicable to all the Expired leases/Fifteen Monthly leases/Monthly Tenancies/Licenses of the plots Non Home occupations.

B. Policy Guidelines:

- (i). The Land Management Policy Guidelines for Major Ports, 2010 issued by the Ministry was adopted by the Board vide TR No.21 of 2011 read with Supreme Court Judgement. The Ministry subsequently, with the approval of the cabinet, issued Land Policy guidelines for Land Management by Major Ports 2014 (PGLM), which was applicable for all Ports except for the land relating to the township areas of Kandla, Mumbai and Kolkata Port, for which it was stated that separate policy will be formulated. The amended policy guidelines were issued in 2015.
- (ii). The Ministry vide clarification Circular (Land Management) No.1 of 2018 dated 14.05.2018, Clarification No.2 of 09.03.2019 and Clarification No.1 of 2019-20 dated 29.04.2019 issued clarification circular on various issues of PGLM 2014/15

extending the applicability of the PGLM 2015 to the non-home occupation/ commercial areas of the township areas of Mumbai, Kolkata and Kandla Port upto 31.03.2020 with a sunset clause. The PGLM 2015 has thus become applicable to the township areas of Mumbai Port Trust. The Ministry vide further letter dated 27.01.2021 has clarified that *“since PGLM 2014 has been approved by the cabinet, it is valid until it is revised by the cabinet. Hence, compiled PGLM, 2015 issued on 29.04.2019 will be applicable for both the land of major port trust and the township area subject to the condition mentioned in the letter dated 29.04.2019.”*

- (iii). As per the PGLM-2015, the Land Allotment Committee is required to consider the following factors for determining the market value of the Port land:
- I).
 - a) *State Government's Ready Reckoner of land values in the area, if available for similar classification/ activities.*
 - b) *Highest rate of actual relevant transactions registered in the last 3 years in the ports vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards) with an appropriate annual escalation rate to be approved by the Port Trust Board.*
 - c) *Highest accepted tender-cum-auction rate of Port land for similar transaction updated on the basis of the annual escalation rate approved by the Port Trust Board.*
 - d) *Rate arrived at by an approved valuer appointed for the purpose by the Port.*
 - e) *Other relevant factor as may be identified by the Port.*
 - II) The Land Allotment Committee shall, while recommending the latest market value for any land would normally take into account the highest of the factors mentioned in Para 13(a) above. Reserve price in terms of the annual lease rent would be latest SoR determined in accordance with Para 13 (a) and 13 (c) and would in no case be less than 6% of the latest value recommended by the Port trust.
 - III). The Port trust would make a proposal as outlined in Para 13 (a) to TAMP for fixing the latest SoR of the land. The TAMP would notify the latest SoR of the land after following due process of consultation with stake holders within 45 days of the receipt of the proposal. The Port trust board will fix a rate of annual escalation which would not be less than 2 %. SoR would be refixed once in every 5 years by TAMP”.

C. Legal Issues :

- (i). TAMP had vide notification No. TAMP/10/98-Misc of 28.03.2000 issued orders dated 15.03.2000 on its jurisdiction for framing scale of rates and statement of condition on the issue of applicability of SOR to all lands of all Major Ports. The said notification was challenged by the Mumbai Port by Writ Petition 1153 of 2000. In the writ petition, by interim order dated 02.05.2000, the Bombay High Court had stayed the applicability of TAMP's order to areas not falling within Port limit and Port approaches. The issue of withdrawal of Writ Petition and necessary advice for the same was been taken up with the Ministry in the light of PGLM 2015. The Ministry of Shipping, Govt. of India vide letter no.Secy(S)/Visit-Mumbai/land

management/2018(333951) dated 15.05.2019 issued direction to the TAMP that consequent to the Policy Guidelines for Land Management, 2015 (PGLM 2015) read with clarification on PGLM dated 14.05.2018, the SoR with effect from 01.10.2012 onwards be fixed by TAMP for all areas of Mumbai Port including Township Areas. The SoR shall be declared only after the Writ Petition is withdrawn by Mumbai Port Trust. TAMP has since by letter dated 15th July 2019 intimated that TAMP is required to fix the SOR for all areas of Mumbai Port including Township areas with effect from 01.10.2012 onwards in terms of advisory from the Ministry of Shipping and therefore notification dated 28th March 2000 may be seen to have become infructuous.

D. LAC Report:

- (i). In terms of Para 13 of PGLM 2015, Valuers were appointed for carrying out valuation of various plots including vacant plots falling in the Ready Reckoner 19 Zones/Divisions. A statement showing the Ready Reckoner 19 zones indicating SoR value for base unit FSI 1 is enclosed for the SOR for the period from 01.10.2017 to 30.09.2022. Based on the valuation carried out by Valuers, the Land Allotment Committee after deliberations prepared its report recommending the new SOR with effect from 01.10.2017 to 30.09.2022 which has been approved by the Board through various Resolutions i.e. TR 141 dated 24.08.2021, TR 128 dated 24.08.2021, TR 131 dated 24.08.2021, TR 128 dated 24.08.2021, TR 129 dated 24.08.2021, TR 130 dated 24.08.2021, TR 140 dated 24.08.2021, TR 127 dated 24.08.2021, TR 132 dated 24.08.2021, TR 133 dated 24.08.2021, TR 134 dated 24.08.2021, TR 152 dated 24.08.2021, TR 150 dated 24.08.2021, TR 154 dated 24.08.2021, TR 135 dated 24.08.2021, TR 138 dated 24.08.2021, TR 148 dated 24.08.2021 and TR 146 dated 24.08.2021. The zone-wise details of the land values with the rate of return (SOR) in terms of PGLM as recommended by the LAC and approved by the Board are shown in the statement.
- (ii). In each of these cases, the Land Allotment Committee has taken into account the Fair Market Value (FMV) of land based on highest of the 5 factors as per PGLM for base rate for FSI 1.00 for the period from 01.10.2017 and the rate of return adopted for arriving at the SOR is 6% per annum which rate will increase by 4% annually every October over the rate for the previous year. In case the FSI utilization is above 1.00, the said rate will increase proportionately. The SOR as recommended will be applicable to all the expired leases, Fifteen Monthly leases, Monthly tenancies and Licenses along with vacant plots (for calculation of upfront premium for allotment) falling under the respective Ready Reckoner 19 Zones.

E. Application of FSI factor in calculation of actual quantum of compensation.

- (i). The computation of rentals/ compensation based on FSI consumed and areas will be likely to be contentious issue even after base SoR rates for one sq. mtr. of land are approved by TAMP. Linking of SoR rates of land to FSI consumed of the buildings / structures have several repercussions and complexities such as how to compute FSI, exemption of fungible FSI as per DC rules and permissible FSI, etc. To study these aspects in detail, vide TR 122 of 2021 the Board has accorded approval for formation of a committee of experts consisting of a retired Chief Engineer / Director of Planning of MCGM, Retired High Court Judge and a group of MbPT officials comprising Advisor (Planning), Chief Engineer, CLO, FA&CAO, Secretary and Estate Manager (I/C) alongwith Govt. registered Valuers on MbPT panel. Committee will give its recommendations on above issues and the matter

will be brought before the LAC and Board for computation of actual rents/compensation on factors recommended by the Committee.

- (ii). Port Trust is billing the monthly tenants with MCGM Property Cesses (WBT, SBT, EGC & ED) @ 55.5% of Annual Rent as per SC Judgement and recovery of the same was MbPT's responsibility.

LAC vide report dated 23.08.2021 recommended that same practice is to be followed in future, however, the MCGM cesses will be reworked out in accordance with the proposed SOR 2017-2022 as may be approved by the TAMP, in respect of all the monthly tenancies and licenses upto 11 months of all the Ready Reckoner zones of Mumbai Port Trust land. The same is approved by the Board vide TR 155 of 2021.

- (iii). All the demand notices of differential arrears as per the revised SoR for 2017-2022 will be issued to all monthly tenancies, fifteen monthly leases, expired leases and licenses as a compensation for wrongful use of the premises without interest and giving time limit of 3 months from the date of receipt of demand notices and interest at the applicable rates will be charged for delayed payments subject to TAMP's approval.

2.3. Thus, MBPT has sought TAMP's approval to the SOR arrived at on the basis of various Board resolutions for the period from 01.10.2017 to 30.09.2022. The said rate shall be applicable for the period from 01.10.2017 to 30.09.2022 with 4% annual increase every October. These rates will be applicable to all the Expired Leases, Fifteen Monthly Leases, Monthly Tenancies and Licenses along with vacant plots (for calculation of upfront premium for allotment) falling under the respective ready reckoner zones. The details of which are as given below :

**Statement Showing Scale of Rates as on 01.10.2017
for Non-Home Occupations for FSI=1**

Sr. No	RR Zone	Unit	Division	Rates for land per Sq. Mtr. 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 ₹.)
1	14/101A	ND – Unit 1	Dadar-Naigaum	1,15,640	578.20
2	11/86	ND/CD/ Bunders Unit 1, 5,13	Parel-Sewree	1,20,200	601.00
3	11/85A	ND- Unit 3	Parel-Sewree	1,78,450	892.25
4	11/85	ND/CD/ Bunders Unit 4, 5,13	Parel-Sewree	1,68,450	842.25
5	11/84	ND- Unit 2	Parel-Sewree	1,71,310	856.55
6	11/84A	ND- Unit 2	Parel-Sewree	1,71,310	856.55
7	10/79A	ND- Unit 3	Mazgaon	1,85,590	927.95
8	10/78A	CD – Unit-6, 8	Mazgaon	1,70,240	851.20
9	10/78B	CD- Unit 8	Mazgaon	1,70,240	851.20

Sr. No	RR Zone	Unit	Division	Rates for land per Sq. Mtr. 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 ₹.)
10	3/36	SD - Unit 9	Princess Dock	1,70,240	851.20
11	3/35	SD/Bunders - Unit 9, 10,14	Princess Dock	1,70,240	851.20
12	3/35B	SD - Unit 9, 10	Princess Dock	1,89,640	948.20
13	2/23	SD/Buners Unit 9, 11, 15	Fort	2,11,500	1057.50
14	2/9	SD - Unit 11	Fort	2,11,500	1057.50
15	2/12	SD - Unit 12	Fort	2,90,640	1453.20
16	1/6A	SD/Bunders Unit 12, 14	Colaba	2,90,640	1453.20
17	1/4	Bunders Unit-14	Colaba (Pilot Bunder)	2,90,640	1453.20
18	1/3	SD - Unit 12	Colaba	2,90,640	1453.20
19	1/3A	SD - Unit 12	Colaba	3,31,600	1658.00

[All the rates for land value has been rounded to the nearest 10s]

NOTES:

1. Actual quantum of Rent will be worked out on the base rent and factor as may be recommended by the committee appointed for the purpose of applicability of FSI.
2. Taxes, service charges, penalties, interest rates are not included in the above rates.
3. Rate for allotment of water bodies is applicable at 50% of the SOR rates.
4. Differential Arrears, liabilities and other dues/charges for a period from 01.10.2017 to 30.9.2022 will be calculated based on above rates.
5. These rates are applicable to all the Expired Leases, Monthly Tenancies, Fifteen Monthly Leases and Licenses along with vacant plots (for calculation of upfront premium for allotment) falling in the respective Ready Reckoner Zones.
6. These rates are not applicable to occupations given on nominal rents to public bodies and for public amenities.
7. Interest would be chargeable beyond permissible period as per Board's policy from time to time.
8. 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.

2.4. The MBPT has stated that the proposal is formulated in terms of the Land Policy Guidelines for Land Management 2015 and clarification no.2 of 2019 and extended the same by Ministry of Shipping, Govt. of India vide letter no. PD/13007/2/2014-PD-IV (PD-III) dated 27.01.2021. Further, the MBPT has stated that under Section 49 of MPT Act, 1963 and para 13 (c) of PGLM-2015, TAMP's approval to the SOR for the period from 01.10.2017 to 30.09.2022 applicable to all the Expired Leases, Fifteen Monthly Leases, Monthly Tenancies and Licenses alongwith vacant plots (for calculation of upfront premium for allotment) falling under the respective Ready Reckoner zones.

2.5. On perusal of the LAC report submitted by the MBPT along with proposal, the following summary of estimation of Land value for FSI 1 based on five factors of Land Policy Guidelines and the land value recommended by the LAC:

SUMMARY OF MARKET VALUE UNDER DIFFERENT FACTORS LAID DOWN IN PGLM, 2014									
Sr. No	RR Zone	Unit	Division	State Govt. ready reckoner rate in year 2018-19	Highest rate of actual relevant transactions in last 3 years in Port's vicinity	Highest accepted tender cum action rate of port land	Rate arrived by Approved Valuer	Any other relevant factor identified by Port	Rate Recommended by LAC
1	14/101 A	ND – Unit 1	Dadar-Naigaum	1. Stall No 2= 65,200 Per Sqm. 2. Shop no 1= 65,200 Per Sqm.	No such transaction	No such transaction	₹. 1,28,482/- per Sqm. For Freehold Land abnd ₹. 1,15,632 per Sqm. for lease hold land	NIL	₹. 1,15,632 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹. 578.16
2	11/86	ND/CD/ Bunders Unit 1, 5,13	Parel-Sewree	₹. 31300 Per Sqm.	No such transaction	No such transaction	₹. 1,30,000 Per Sqm. as on Dec 2019 ₹. 1,20,200 as on Oct 2017	NIL	₹. 1,20,200 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹. 601.00
3	11/85A	ND- Unit 3	Parel-Sewree	₹. 31300 Per Sqm	No such transaction	No such transaction	₹. 1,78,448 per Sqm.	NIL	₹. 1,78,448 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹.892.24
4	11/85	ND/CD/ Bunders Unit 4, 5,13	Parel-Sewree	₹. 31300 Per Sqm	₹. 343085 Per Sqm.	No such transaction	₹. 1,68,454 per Sqm.	NIL	₹. 1,68,454 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹. 842.27
5	11/84	ND- Unit 2	Parel-Sewree	₹. 95,100 Per Sqm	No such transaction	No such transaction	₹. 1,71,310 per Sqm	NIL	₹.1,71,310 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹. 856.55
6	11/84A	ND- Unit 2	Parel-Sewree	₹. 56,400 Per Sqm	No such transaction	No such transaction	₹. 1,71,310 per Sqm	NIL	₹. 1,71,310 per Sqm per

									FSI =1 Lease Rent per Sqm per annum= ₹. 856.55
7	10/79A	ND- Unit 3	Mazgaon	₹. 28,100 Per Sqm	No such transaction	No such transaction	₹.. 1,85,585 per Sqm	NIL	₹. 1,85,585 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹. 928.00
8	10/78A	CD-Unit-6, 8	Mazgaon	₹.51,600 Per Sqm	No such transaction	No such transaction	₹.1,70,240 per Sqm	NIL	₹.1,70,240 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹. 851.20
9	10/78B	CD- Unit 8	Mazgaon	₹. 37,500 Per Sqm	No such transaction	No such transaction	₹.1,70,240 per Sqm	NIL	₹. 1,70,240 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹. 851.20
10	3/36	SD - Unit 9	Princess Dock	₹. 56,400 Per Sqm	No such transaction	No such transaction	₹.1,70,240 per Sqm	NIL	₹. 1,70,240 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹. 851.20
11	3/35	SD/Bunders- Unit 9,10,14	Princess Dock	₹.78,400 Per Sqm	No such transaction	No such transaction	₹.1,70,240 per Sqm	NIL	₹. 1,70,240 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹. 851.20
12	3/35B	SD - Unit 9, 10	Princess Dock	₹. 77,900 Per Sqm	No such transaction	No such transaction	₹.1,89,663 per Sqm	NIL	₹. 1,89,663 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹..948.32
13	2/23	SD/Bunders Unit 9,11,15	Fort	₹. 97,000 Per Sqm	No such transaction	No such transaction	₹..2,11,500 per Sqm.	Nil	₹. 2,11,500 per Sqm per

									FSI =1 Lease Rent per Sqm per annum= ₹1057.50
14	2/9	SD - Unit 11	Fort	₹. 1,50,000 per Sqm.	No such transaction	No such transaction	₹..2,11,500 per Sqm.	Nil	₹. 2,11,500 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹.1057.50
15	2/12	SD-Unit 12	Fort	₹. 2,29,800 per sqm.	No such transaction	No such transaction	₹.2,90,635 per Sqm.	Nil	₹.3,31,600 per Sqm per FSI =1 (Recommended value for the RR Zone1/3A considering prime location being proximity to Gate of India) Lease Rent per Sqm per annum= ₹1658.00
16	1/6A	SD/Bunders Unit 12,14	Colaba	₹. 1,88,600 per Sqm.	No such transaction	No such transaction	₹..2,90,635 per Sqm.	Nil	₹.2,90,635 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹.1453.17
17	1/4	Bunders Unit-14	Colaba (Pilot Bunder)	₹. 1,30,400 per sqm.	No such transaction	No such transaction	₹.2,90,635 per Sqm.	Nil	₹.2,90,635 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹.1453.17
18	1/3	SD - Unit 12	Colaba	₹. 1,88,600 per Sqm.	No such transaction	No such transaction	₹.2,90,635 per Sqm	Nil	₹.2,90,635 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹.1453.17

19	1/3A	SD - Unit 12	Colaba	₹. 2,39,300 per Sqm	No such transaction	No such transaction	₹.3,31,600 per Sqm	Nil.	₹.3,31,600 per Sqm per FSI =1 Lease Rent per Sqm per annum= ₹.1658.00
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3.1. With regard to the proposal of the port, it may be recalled that, this Authority had passed an Order dated 15 March 2000 setting out the legal position about the Authority's jurisdiction in respect of framing scale of Rates and Statement of Conditions for use of port properties.

3.2. The Mumbai Port Trust (MBPT) filed a Writ Petition in the Bombay High Court in April 2000 challenging the Order dated 15 March 2000 and praying, *inter alia*, that the Authority has no power to fix rates of those premises belonging to the MBPT and situated outside the port limits.

3.3. The Hon'ble Division Bench of Bombay High Court passed an interim order on 2 May 2000 restraining the Authority from giving effect to the Order dated 15 March 2000 to the extent that the decision taken therein shall not apply to any property or place not within the limits of the port or port approaches.

3.4. The efforts taken by TAMP in the past with the (then) Department of Shipping, Ministry of Surface Transport suggesting to settle the issue whether or not the Authority has jurisdiction over all the properties of a Port Trust through policy direction of the Government rather than by a judicial review did not yield result. Since the matter was in the final stage of hearing and there was no response from the Government in this regard, TAMP has engaged a legal counsel to defend the order of 15 March 2000 passed by TAMP in the High Court of Bombay based on the advice rendered by the Senior Counsel.

3.5. In this backdrop, the then Ministry of Shipping (MOS) under cover of its letter no. Secy(S)/Visit-Mumbai/Land management/ 2018(333951) dated 25 March 2019 had forwarded a copy of the Minutes of the Meeting held on 21 August 2018 at Mumbai under the Chairmanship of Secretary, MOS with regard to clarifications on the Land Policy Guidelines, 2015. Forwarding the copy of the Minutes, the Way forward forming part of the Minutes indicated that MBPT will withdraw the Writ Petition and Ministry will advise TAMP that consequent to PGLM 2015 read with clarifications dated 14th May 2018, the SOR with effect from 01.10.2012 onwards be fixed by TAMP for all areas of Mumbai Port including Township area.

3.6. In response to the then MOS letter dated 25 March 2019, we had, vide our letter dated 28 March 2019 *inter alia*, communicated to the MOS that TAMP will abide by the directions of the then MOS in the matter in reference, with regard to fixation of lease rent/ license fee for the MBPT lands for the period from 01 October 2012 onwards, subject to MBPT withdrawing the Writ Petition.

3.7. In this backdrop, the then MOS vide its e-mail dated 16 May 2019 had *inter alia*, directed TAMP to fix the SOR for all areas of Mumbai Port including Township Areas with effect from 01.10.2012 onwards, consequent to the Policy Guidelines for Land Management, 2015 (PGLM 2015) read with clarification on PGLM dated 14.05.2018, only after the writ Petition is withdrawn by MBPT. Vide the said letter, the then MOS requested MBPT to withdraw the Writ Petition no. 1153 of 2000 from the Bombay High Court and intimate the same to the MOS and TAMP.

3.8. In this connection, the MBPT has withdrawn the Writ Petition and the Hon'ble Bombay High Court vide its Order dated 08 August 2019 has passed an Order disposing off the Writ Petition as withdrawn.

3.9. Thus, the MBPT has come up with a proposal seeking approval for schedule of rates and revision of rent / compensation for the period 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT. Simultaneously, the MBPT has also filed 6 similar proposals seeking approval for schedule of rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 for non-home occupations/ Home occupations in Township Areas of MBPT, which is being dealt separately under consideration by TAMP.

4.1. Considering the huge list of registered tenant / lessees as suggested by the MBPT, the MBPT was requested vide letter dated 01 October 2021 to upload subject proposal in its website and intimate to all the registered tenant / lessees about hosting of the subject proposal in the MBPT website and give the designated email address of Port as well as TAMP for furnishing comments within 15 days' time.

4.2. Accordingly, the MBPT vide its email dated 07 October 2021 has confirmed that it has informed all Tenants / Lessees about hosting of subject proposal for comments/ opinion of the users on the subject proposal in reference. The MBPT has furnished a copy its Notice No.EM/AS(G)/F-382/1925 dated 06 October 2021, wherein the MBPT has intimated the Tenants/ Lessees about hosting of subject proposal in the website of MBPT and has sought for comments/ opinion of the users on the subject proposal in reference, to be sent to the Authority as well as MBPT.

4.3. In this connection, large numbers of submissions/ comments have been received from various lessees/ tenants. As intimated by MBPT in its Notice, a copy of the said comments have also been forwarded by the lessees/ tenants/ users to MBPT as well. Accordingly, the MBPT was requested vide letter dated 23 October 2021 to furnish its reply on the issues raised by various lessees / tenants. Accordingly, the MBPT vide its email dated 26 October 2021 has responded.

5. 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 will be sent separately to them. These details will also be made available at our website <http://tariffauthority.gov.in>.

6.1. Before going into the analysis of the proposal, it is noteworthy to mention that MBPT in the first week of August 2021 has filed two proposals seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for `non-home occupations in Township Areas of MBPT. The said proposals were taken up on consultation with the relevant users/tenants/lessees. We have received numerous representations from various individual tenants/ lessees strongly objecting to the said proposal, on the ground that there is no provision under the Major Port Trust Act, 1963, permitting MBPT to charge the rent retrospectively. It has also been stated that retrospective revision will be highly destructive for all the occupants and it is likely that the same may be challenged in Court of law. Some lessee/ tenants have also stated that the retrospective revision would act as a financial shock to their business and it will be very difficult for them to sustain it financially. Further, considering the adverse impact that the COVID-19 pandemic had on the business, it has been further stated that the retrospective revision and the payment of arrears thereon, would further strain the financial condition of the lessees/ tenants. Thereafter, a joint hearing was held on 03 September 2021 on the said proposal, wherein, users/tenants/ lessees has raised similar issues no other than issues brought out in written submission. Subsequently, users/tenants/lessees were given an opportunity to submit their writing submission, if any, on the power point presentation of the proposal made by MBPT during the Joint Hearing. We have

received written submission from the various user/ users/tenants/lessees reiterating the submissions made earlier and during the joint hearing, which have been duly brought to the notice of this Authority.

6.2. An action has already been initiated to notify the said order in the Official Gazette of India. Simultaneously, the MBPT has also filed another 6 proposals seeking approval for (i). Schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 for non-home occupations in Township Areas of MBPT, (ii). Schedule of Rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for residential and mixed used occupations (iii). Schedule of Rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for Port Trust structures falling under various RR Zones, (iv). Schedule of rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 for non-home occupations in Township Areas of MBPT, (v), Schedule of Rates and revision of rent / compensation for the period 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT – 19 RR Zones and (vi). Schedule of Rates (SOR) and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 (12 Zones) and 01.10.2017 to 30.09.2022 (09 Zones) for let out land falling under various Ready Reckoner Zones, which are being dealt separately.

6.3. The present proposal seeking approval for fixation of Schedule of Rates and revision of rent / compensation for the period 01.10.2017 to 30.09.2012 for non home occupation in Township areas of MBPT 19 RR zones has already been taken up on consultation, which has been formulated on the similar methodology of adopting State Government Ready Recknor value, 2012 for arriving lease rentals for the period 01.10.2012 to 30.09.2017 and considering highest market value as determined as per PGLM, 2014 for arriving lease rentals for the period 01.10.2017 to 30.09.2018. In other words, the lease rentals proposed by the MBPT for non home occupation is being adopted for the residential and mixed used occupations for the respect quinquennial periods. The users/tenants/lessees have made their submissions similar to that of submission made earlier with regard to proposals of MBPT seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT, which have been forwarded to MBPT for its comments. The response of the MBPT is also similar to the response given in the earlier similar proposals.

6.4. Since, the submissions made by users/ response of MBPT thereon is akin to the earlier proposals of MBPT seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT and given that the proposal in reference has already been taken on consultation with stakeholders, as provided in PGLM, 2014, this Authority has decided not to hold joint hearing on the case in reference.

6.5. In this regard it may be noted that, mere non holding of Joint hearing shall not be construed as this Authority having not followed the consultation process.

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

- (i). The Mumbai Port Trust (MBPT) has large portions of land in the City of Mumbai. It is to state that the lease rentals for the Port estates was last fixed by the MBPT in the year 1982 i.e. more than a decade and a half, before this Authority had come into existence in the year 1997. From the submissions made by MBPT, it is understood that the revision of lease rentals carried out by the MBPT in the year 1982, gave rise to litigations, which eventually culminated in the Supreme Court passing an Order, wherein the lease rentals approved by the Board of Trustees for the lands of MBPT for the period from 1982 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.

It is in this backdrop that the MBPT has come up six separate proposals seeking retrospective fixation of lease rentals for Schedule of Rates and revision of rent/ compensation for non-home occupations/ residential and mixed used occupations/ Port Trust structures in Township Areas of MBPT for the quinquennial period from 01 October 2012 to 30 September 2017 and for the period from 01 October 2017 to 30 September 2022. The present proposal in reference is for fixation of Schedule of Rates and revision of rent / compensation for non-home occupations in township areas of MBPT. The subject proposal deals with the quinquennial period from 01 October 2017 to 30 September 2022.

- (ii). In this connection, we have received numerous representations from various individual tenants/ lessees strongly objecting to the fixation of the lease rentals from 01 October 2017 to 30 September 2022, on the ground that there is no provision under the Major Port Trust Act, 1963, permitting MBPT to charge the rent retrospectively. It has also been stated that retrospective revision will be highly destructive for all the occupants and it is likely that the same may be challenged in Court of law. Some lessee/ tenants have also stated that the retrospective revision would act as a financial shock to their business and it will be very difficult for them to sustain it financially. Further, considering the adverse impact that the COVID-19 pandemic had on the business, it has been stated that the retrospective revision and the payment of arrears thereon, would further strain the financial condition of the lessees/ tenants.

As pointed out by the lessees/ tenants, there is no provision under Major Port Trust Act, 1963, permitting MBPT to charge the rent retrospectively. But, at the same time, it is to be noted that the Major Port Trust Act, 1963, also does not prohibit retrospective revision of rates. In this context, it is noteworthy that this Authority also does not ordinarily give retrospective effect to the Order. But, in cases governed by special circumstances, it does require retrospective application of its Order. There are various instances, where this Authority has fixed the rates retrospectively.

To quote some few instances, 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. Also, based on a proposal received from MBPT, this Authority vide its Order no. TAMP/62/2019-MBPT dated 08 September 2020 has retrospectively approved levy of way leave charges for the pipelines for a period of 5 years from 01 October 2012 and upto 30 September 2017.

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 this context, in the proceedings relating to the case in reference, the MBPT has categorically stated that it had intimated all the stakeholders by way of a Circular issued in December 2012 itself that the way leave charges are due for revision from 01 October 2012 onwards. The MBPT has also stated that even in the bills raised by the MBPT for the tenants/ lessees, it has been indicated by way of a footnote that the bill raised by MBPT is provisional and is subject to revision with effect from 01 October 2012.

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 Lease rentals for the 19 Ready Reckoner Zones for non-home occupations in Township Areas of MBPT for the period 01 October 2017 to 30 September 2022, is taken up for consideration.

- (iii). It has been repeatedly brought out by various tenants/ lessees that the revision as proposed by MBPT is contrary to the guidelines passed by the Hon'ble Supreme Court in the matter of Jamshed Hormusji Wadia vs. The Board of Trustees of the Port of Bombay, on the ground that the Hon'ble Supreme Court had upheld the “Compromise Proposals” mooted by MBPT themselves and considerably reduced the rent and interest burden on the lessees. The lessees have also stated regarding MBPT reportedly not adhering to the Compromise proposal and resultantly some Writ Petitions being still pending before the Hon'ble High Court of Bombay. Considering that the matter is subjudice, the tenants/ lessees are of the

view that the question of proposed revision of SOR for the period of 2012 to 2017 and beyond, does not arise.

In this regard, it is to state that, based on the Order passed by the Hon'ble Supreme Court in the matter of Jamshed Hormusji Wadia vs. The Board of Trustees of the Port of Bombay in January 2004, the compromise proposal covered the revision for two period spans i.e. one for the period from 01 October 1982 to 30 September 1992 and the other for the period from 01 October 1992 to 30 September 2012. Thereafter, as rightly brought by the MBPT, the MBPT has the liberty to fix the lease rentals, albeit based on the Land Policy Guidelines issued by the Government. Infact, it is relevant to mention here that the 'Compromise formula' as upheld by the Hon'ble Supreme Court allowed the port to review and revise the letting rates after 20 years (i.e. from 01 October 1992 to 31 September 2012), for good and sufficient reasons. 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. The MBPT in its proposal has brought out in detail, the chronology of the events, which eventually has led to the submission of the present proposal under reference. Nevertheless, as a measure of abundant caution, it can be presumed that the MBPT, as a statutory body, would have kept in view the pending litigations and would have carried out due diligence on its part, before approaching this Authority with the subject proposal. Thus, the proposal filed by MBPT now for revision of rent / compensation for the period 01 October 2017 to 30 September 2022 for non-home occupations in Township Areas of MBPT, is being treated in isolation, without getting influenced by the past revision of lease rentals or the pending writ petitions.

- (iv). Many of the tenants/ lessees have brought out issues relating to their particular tenancies viz., non-renewal of lease agreements, non-transfer of lease in the name of heirs, non-issuance of bills/ invoices by MBPT to lessees/ tenants etc. Even the MBPT has highlighted issues about the tenants committing breaches in their properties/ sub-letting without knowledge of MBPT and pocketing the sub-let rentals/ depriving MBPT of its rightful share/ encroachments/ carrying unauthorized constructions etc. 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 the lease rentals for the port estates. Matters relating to tenancies are in the domain of the Port. This Authority has no role to play on the said matters. As such, the tenants/ lessees are advised to approach the MBPT in matters relating to their tenancies. The MBPT is also advised to look into the grievances of the tenants/ lessees and take earnest steps to sort out the issues amicably.
- (v). The MBPT has filed its proposal in September 2021. The said proposal alongwith the submissions made by the tenants/ lessees and the information/ clarification furnished by MBPT during the processing of the case, is considered in this analysis.
- (vi). The lessees/ tenants have extensively quoted the observations made by the Hon'ble Supreme Court in the case of Dwarkada Marfatia & Sons v/s Board of Trustees of Port of Bombay, Baburao Shantaram More v/s The Bombay Housing Board, Ratti Ji Kapadia v/s State of Maharashtra etc., so as to put forth their point that the MBPT is not expected to behave like an ordinary landlord with

arbitrariness or capriciousness and indulge in rack renting, profiteering and indulging in whimsical or unreasonable bargains but is expected to behave fairly and in a reasonable manner, so as to determine the rentals.

In this regard, it is to state that 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 subject proposal of MBPT seeking revision of lease rentals for the period from 01 October 2017 to 30 September 2022 is based on the provisions of the amended Land Policy Guidelines for Major Port Trusts, 2015, as issued by the Government of India in the then Ministry of Shipping (MOS).

- (vii). As per clause 13(a) read with clause 11.2(e) of the 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 reported about constitution of a Land Allotment Committee (LAC) headed by the Dy. Chairman of the Port and the Heads of Departments of Finance, Traffic and Estate being the other members.
- (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). In connection with the Valuation as per various methods as stipulated in the Guidelines, the LAC based on the Valuation Report has analysed the market value of the lands based on the factors as listed in the Land Policy Guidelines and has recommended to choose the highest amongst all the market values of land so determined for all the 19 Ready Reckoner (RR) Zones forming part of the subject proposal.
- (c). Clause 13(b) of the guidelines stipulates that Reserve Price in terms of annual lease rent would be arrived, as a percentage of latest market value of land determined based on the five factors in accordance with para 13(a) and that the percentage should not be less than 6% which is to be fixed by the Port Trust Board. Accordingly, the lease rental has been arrived by MBPT at 6% of the market value of the land i.e. highest of the

market value amongst all the factors as for the year 2017 for all the 19 Ready Reckoner (RR) Zones forming part of the subject proposal.

As brought out above, the LAC for the reasons as documented in its Report has recommended to determine the market value of the land, based on the highest of the market value determined based on the various factors as listed in the Land Policy Guidelines and has recommended lease rentals thereon. The Board of Trustees of MBPT has also approved the lease rentals as per the recommendations of the LAC and the same has been proposed by the Port in its proposal.

- (ix). In this connection, all the individual tenants/ lessees who have been taken on consultation in the case in reference have strongly objected to the lease rentals proposed by the port on the ground that the proposed rentals are manifold times higher than the current rentals that are being paid by the tenants/ lessees. The tenants/ lessees have also questioned the Valuation undertaken by the Valuer(s), based on which the subject proposal has been formulated by MBPT. Further, given that the rentals is being fixed retrospectively, the tenants/ lessees fear for the arrears that would get accumulated on account of the proposed revision. Also, given that post the COVID-19 pandemic, the global economy is just struggling back to normalcy, any retrospective revision is stated to cause a huge financial shock to the tenants/ lessees. The tenants/ lessees have also submitted that they have been duly paying their rentals and taxes on time and as such, they should not be subjected to the increase in rentals as proposed by the MBPT. The tenants have also stated that since the land allotted by MBPT lacks basic facilities/ necessities, the MBPT should not go ahead with increasing the rentals and that the port should continue with the rentals based on the 'Compromise formula' as upheld by the Hon'ble Supreme Court.

In this context, it is relevant here to mention that the Land Policy Guidelines issued by the Government, requires the lease rentals to be revised every five years based on the prevailing market value of the land. The 'Compromise formula' as upheld by the Hon'ble Supreme Court allowed the port to review and revise the letting rates after 20 years (i.e. from 01 October 1992 to 31 September 2012), for good and sufficient reasons. The market value of the land is bound to go up particularly in a metropolis, with the passage of time. Moreover, in a city like Mumbai, where land is an extremely scarce resource, the rentals show an increasing trend on a year on year basis. Further, it is noteworthy that the rentals which had been paid by the tenants/ lessees during the years 2017 till date is based on the 'Compromise formula' as upheld by the Hon'ble Supreme Court. This 'Compromise formula' was not based on the then prevailing market value of the land, but was fixed at a lower level. Given that the base of the rentals fixed then was lower, even with the 4% increase in rentals per annum, the resultant rental that prevailed in the year 2017 (and based on which the tenants/ lessees have paid rentals to MBPT) is substantially lower than the rental that has been determined for the year 2017 now based on the market value of the land. Given that the rentals for the estates of MBPT is being determined based on the market value of the land following the stipulations contained in the Land Policy Guidelines, the lease rentals are bound to go up, when compared to the existing lease rentals being paid by the tenants/ lessees, which are not based on market value of the lands. It is noteworthy that the MBPT has framed its proposal following the Land Policy Guidelines and thus, the hike in the lease rentals is inevitable.

As regards objection to the Valuation of the port land as carried out by the Valuer, it is noteworthy that Valuation of the port land is in the domain of the port and as such not within the purview of this Authority. This Authority does not have the technical expertise to delve deep into the Valuation aspects. The Land Policy Guidelines requires this Authority to fix the rentals based on the proposal filed by the port.

As regards the quantum of increase proposed by MBPT, owing to the huge objections made by the tenants/ lessees vide their written submissions as well as during the joint hearing, the MBPT was given an opportunity, subsequent to the joint hearing, to review its proposed rentals. But, the MBPT has expressed its inability to review the rentals.

Given that the proposal of the port for fixation of lease rentals is based on the Fair Market Value (FMV) of land based on highest of the 5 factors (for base rate for FSI 1.00) based on the stipulations contained in the Land Policy Guidelines 2015, and has been recommended by the LAC and also has been approved by the Board of Trustees, and also as this Authority is bound by the Land Policy Guidelines, 2015, this Authority approves prescription of the lease rentals for 19 Ready Reckoner Zones for non-home occupations in Township Areas of MBPT for the period 01 October 2017 to 30 September 2022, as proposed by the port.

Some tenants/ lessees have put forth an argument that given that the MBPT has been increasing the rentals at the rate of 4% per annum, the question of MBPT now proposing increase in rentals does not arise. In this regard, it is to state that, like any other products, increase in rentals per annum is to meet the rising inflationary costs. But in the case in reference, the base of the rental is being reviewed, so as to bring it to the level of market value of land that had prevailed in the year 2017.

Given that the lease rentals are being enhanced for MBPT, the MBPT in consultation with the tenants/ lessees, is advised to look into the requirements of the basic amenities/ infrastructure/ facilities in the leased/ licensed plots, and take steps to make them available to the lessees/ tenants.

Further, considering that the lessees/ tenants will have to pay the arrears for the period 2017 till date and given that the economy is just coming back to normalcy, after it was hit by the COVID-19 pandemic, the MBPT is advised to grant a longer period of time to the lessees/ tenants, to pay the arrears of rent pertaining to the period beginning from the year 2017.

- (x). 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 in its proposal has indicated that the lease rental as fixed for the year 2017-18 will be subject to 4% annual escalation. However, no note is seen to have proposed by the port in the matter. Thus, a note is, therefore, prescribed in the Schedule stating that the lease rent is subject to an increase @ 4% p.a. and that first such increase shall be effective from 01 October 2018.
- (xi). Clause 13 (C) of the amended Land Policy Guidelines, 2014 stipulates that the rates will be revised once in every five years by the Authority. Since the rental is being prescribed with effect from 01 October 2017, accordingly, a note is being prescribed in the Rent Schedule that the annual lease rentals may remain in force for a period of five years thereon.

- (xii). The MBPT has proposed a note to the effect that rent will be worked out on the basis of actual Built- Up Area, subject to minimum of FSI 1.00. Given that the base lease rent approved by the Authority shall remain intact and would be only proportionately increased based on the FSI, this Authority is inclined to approve the note as proposed by MBPT in this regard.
- (xiii). The MBPT has proposed another note to the effect that the rates are exclusive of all Taxes (GST, Municipal Taxes, etc.), Service Charges, Penalties, and Interest etc. and that the same are separately payable by lessees/ tenants/ licensees, as may be applicable. 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 the Authority. In view of this position, the note as proposed by the Port is approved.
- (xiv). The MBPT has proposed notes to the effect that the rates are applicable for non-Home Occupations and are applicable to all the Expired Leases, Monthly Tenancies, Fifteen Monthly Leases and Licenses falling in the respective Ready Reckoner Zones. Since the proposed notes gives clarity on the categories of lessees/ tenants, who would be covered from the lease rentals approved vide the subject proposal, the proposed notes are approved.
- (xv). The MBPT has also proposed notes to the effect that Interest would be chargeable beyond permissible period as per Board's policy from time to time and 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 notes give clarity and would avoid ambiguity and would instill discipline amongst the tenants/ lessees in the payment of rentals, the proposed notes are approved.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the Rent Schedule for MBPT prescribing Lease rentals for the 19 Ready Reckoner Zones for non-home occupations in Township Areas of MBPT for the period 01 October 2017 to 30 September 2022, which has been notified separately vide Gazette No. 554 dated 12 November 2021.

(T.S. Balasubramanian)
Member (Finance)