

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

No. TAMP/51/2021-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 Rate for the period 01.10.2017 to 30.09.2022 for Land/ Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division) 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 period 01 October 2017 to 30 September 2022 for Land / Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division), approved by this Authority, this Authority decided to notify only the Rent Schedule for MBPT prescribing Lease rentals for the period 01 October 2017 to 30 September 2022 for Land / Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division), approved by this Authority on 01 November 2021 which was notified in the Gazette of India on 12 November 2021 vide Gazette no.553. 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 Rate for the period 01.10.2017 to 30.09.2022 for Land/ Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division), as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/51/2021-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/21(88)/U-8/252 dated 16 September 2021 seeking approval for fixation of Schedule of Rates for the period 01.10.2017 to 30.09.2022 for Land / Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division).

2.1. The MBPT vide its letter dated 16 September 2021 has made the following submissions:

- (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.
- (ii). As provided in Clause 13 of PGLM, Land Allotment Committee (LAC) has recommended rates for four plots of land / water area leased to Mazagaon Dock Shipbuilders Ltd., (MDSL) falling in RR Zone 10/80 (Mazgaon Division). Same has been approved by MBPT Board.
- (iii). In this backdrop, the MBPT has come up with the subject proposal seeking approval for fixation of Schedule of Rates (SOR) for the period 01.10.2017 to 30.09.2022 for Land / Water area leased to Mazagaon Dock Shipbuilders Limited 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 16 September 2021 are summarized below:

A. BACKGROUND :

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, 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 for Land / Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division).

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 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 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 conditions mentioned in the letter dated 29.04.2019.”

- (iii). In terms of the PGLM, 2015, SOR has to be recommended by LAC and approved by the Board and notified by the TAMP. The Board vide TR 146 of 2014 had constituted Land Allotment Committee headed by Dy. Chairman and comprising of Traffic Manager, FA&CAO, and Estate Manager as members to recommend new Schedule of Rates for estate lettings.

C. LEGAL ISSUES:

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. 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). 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”.*
- (ii). MBPT land bearing i) Plot No. 355 (20801640), ii) Expansion Phase in North Yard (20801642) iii) Extension of Slipway in South Yard(20801650) and iv) Additional water area for extra Slipway (20801652) were leased to Mazagon Dock Shipbuilders Ltd. which leases have expired. These plot falls in Stamp Duty Ready Reckoner Zone 10/80 (Mazgaon Division)
- (iii). In the instant case, the LAC and subsequently the Board vide TR No.46 of 2019 had decided that the rate as per valuation report submitted by M/s.Patwardhan Consultants Pvt. Ltd. in respect of MBPT Workshop which is falling in the same Ready Reckoner Zone 10/80 which worked out to ₹.1,87,696/- per sq. mtr for FSI-1 should be adopted for the period from 01.10.2017 to 30.09.2022 for the four expired leases to be renewed in the case of Mazagaon Dock Shipbuilders Ltd. (MDSL) and fresh lease of 30 years offered. The LAC and subsequently the Board, while considering the valuation report in respect of plots falling under Unit No.7 and 8, vide TR No.289 of 2019 and 287 of 2019 respectively, has also accorded sanction for adopting the said rate for all lettings falling under Ready Reckoner Zone 10/80. The Fair Market Value (FMR) of land accordingly worked out to ₹.1,87,696/- per sq.mtr. for FSI 1 as on 01.10.2017 and the SOR @ 6% return per annum worked out to ₹.11261.76 per sq.mtr. per annum w.e.f. 01.10.2017 with 4% annual increase every October. The rate in respect of workshop land has been approved by the TAMP vide Notification No. 06 dated. 04/01/2019 in Case No.TAMP/72/2018-MBPT.
- (iv). The dues recoverable from MDSL in terms of the above decision including the revision applicable from 01.10.2012 was conveyed to MDSL with the offer for renewal. The MDSL has conveyed that the rates effective from 01.10.2017 are not acceptable to MDSL. They have also conveyed that the said rates were about 10 times the rates being paid by them and that their business cannot cater to such rates. They have further conveyed that most of the plots to be renewed are water area and therefore there is a need to review the rates. In the meeting held with the Chairman, they had shown their willingness to pay at the rate as per Ready Reckoner with applicable concessions in terms of PGLM.
- (v). The matter was submitted to the LAC when it was decided to carry out independent valuation in respect of the expired leases of MDSL. The same has also been approved by the Board vide TR No.82 of 2021 and for the said purpose to carry out valuation of one plot with water area and the other with land area. In accordance with the said TR the work of valuation of land value of subject plot of land was allocated to Shri Avinash Pendse, Architect, Designer & Valuer, Valuer on MBPT's panel. The Valuer has submitted his valuation report dated 26.07.2021 considering 5 methods/ five factors as per PGLM 2015 guidelines. As per the said valuation report the rate per sq.m. and value of subject plots for the year 2017-18 for fixation of SOR are shown in tabular form which is as follows :

Factor	FSI	Rate per Sq.mtr for land for FSI 1	Plot detail	Value of Premises	6% rate per sq.mt per year (SOR)
I) State government ready reckoner of land value in the area, if available for similar classification/ activities	1	₹. 27100/- (RR Zone.10/80	i) Expansion Phase in North Yard (20801642) ii) Additional water area for extra slipway (20801652)	₹. 5,31,41,203/- ₹. 2,50,67,500/-	₹. 1626/-
II) Highest rate of actual relevant transaction registered in the last three years in the port's vicinity.	1	-No-		-----	Nil
III) Highest Accepted Tender cum Auction Rate of Port land for Similar transaction.	1	No such transactions of land in the vicinity have occurred.			Nil
IV) Rate arrived at by an approved valuer appointed for the purpose by the Port	1	Fair market rate of land based on existing infrastructure facilities/ valuers analysis ₹.1,70,240/- per sq.meter for open plot ₹.85,120/- fper sq.meter for basin.	i) Expansion Phase in North Yard(2080164 2) ii) Additional water area for extra Slipway (20801652)	Fair Market Value of land ₹.33,38,28,723 ₹.15,74,72,000	₹ 10,214.40 ₹.5,107.20
V) Factors identified by the Port	1	No other factors have been identified by the port.		Nil	Nil

(vi). The Land Allotment Committee met on 29.07.2021 and submitted report in respect of MBPT leasehold plot of land /water area viz., i) Expansion Phase in North Yard (20801642) & ii) Additional water area for extra Slipway (20801652) with following recommendations :

(a). To adopt the Fair Market Value of land as derived based on the report of Shri Avinash Pendse for the year 01.10.2017 to 30.09.2018 as ₹.1,70,240/- for fixation of Schedule of Rate (SoR) being on the higher side. Similarly as recommended by Shri Avinash Pendse, the Fair Market Value for basin / water area will be ₹. 85,120/- per sq. mtr.

- (b). Based on the land / basin rate the SoR at 6 % p.a. return on land value would be ₹.10,214.40 per sq.mtr p.a. for FSI 1 and ₹.5107.20 per sq. mtr. per annum for basin/water area;
- (c). The above SOR shall be applicable for the period from 01.10.2017 to 30.09.2022 with 4 % annual increase every October;
- (d). This rate will be applicable only for the 4 plots of expired leases of MDSL bearing billing Code Nos.20801640, 20801642, 20801650 & 20801652 which falls under the Ready Reckoner Zone 10/80 of Mazgaon Division;
- (e). After approval of LAC, the matter was placed before the Board in terms of TR 61 of 2018 & TR 105 of 2018 for the approval of the LAC report. Thereafter proposal is being sent to TAMP for obtaining their approval
- (f). The dues at the revised rates would accordingly be conveyed to MDSL towards offer for renewal of lease in amendment to the rate conveyed consequent to TR. No. 46 of 2019.

The same was approved by the Board vide Resolution No. 123 of 2021.

2.3. Thus, MBPT has sought TAMP's approval to the SOR as recommended by the LAC constituted for the purpose and approved by its Board vide its Resolution No. 123 of 2021 in respect of 4 plots of expired leases of MDSL bearing billing Code Nos.20801640, 20801642, 20801650 & 20801652 which falls under the Ready Reckoner Zone 10/80 Mazgaon Division for the land /water area at Mazgaon Reclamation Estate i.e. ₹.10,214.40 per sq.mtr. per annum for FSI 1 for land area and ₹.5,107.20 per sq.mtr. per annum for basin/water area. The said rate shall be applicable for the period from 01/10/2017 to 30/09/2022 with 4% annual increase every October. The details of which is given below :

**SCHEDULE OF RATE FOR PLOT OF LAND AT MAZGAON RECLAMATION
(RR ZONE 10/80- MAZGAON DIVISION)**

Sr. No.	RR zone	Plot No.	Land Value per sq. mtr. for FSI = 1 (In ₹)	Rate per sq. mtr. per annum as on 1.10.2017 (In ₹)
1.	10/80	Plot bearing i) No. 355 (code no.20801640) ii) Expansion Phase II in North Yard (code no.20801642) iii) Extension of Slipway in South Yard (code no.20801650) iv) Additional Water Area for Extension of Slipway (code no.20801652)	₹1,70,240.00 for land ₹85,120/- for basin / water area.	₹10,214.40 for land ₹5,107.20 for basin / water area

2.4. The MBPT has stated that the proposal is formulated in terms of the Land Policy Guidelines for Land Management 2015. Further, the MBPT has stated that under Section 49 of MPT Act, 1963 and para 13 (c) of PGLM-2015, TAMP's approval is sought to the SOR for the period from 01.10.2017 to 30.09.2022 for four MDSL leasehold plots of land /water area falling in Stamp Duty Ready Reckoner zone 10/80 Mazgaon Division.

3.1. In accordance with the consultative procedure prescribed, a copy of the MBPT letter dated 16 September 2021 was forwarded to the concerned users/ user organizations vide our letter dated 22 September 2021 seeking their comments.

3.2. In response, M/s. Mazagon Dock Shipbuilders Ltd. (MDSL) vide its letter dated 06 October 2021 has furnished its comments. The said comments were forwarded to MBPT vide our letter dated 06 October 2021 as feedback information. The MBPT vide its e-mail dated 9 October 2021 has responded.

4. Based on a preliminary scrutiny of the proposal, the MBPT was requested vide letter dated 06 October 2021 to furnish some additional information/ clarification. The MBPT has responded vide its e-mail dated 14 October 2021. The information sought by us and the response of MBPT thereon is tabulated below:

Sr. No	Information/Clarification sought by us	Response of MBPT																																													
(i)	As already requested vide our letter dated 22 September 2021, the MBPT to furnish a comparative position of the existing lease rent that is being levied by MBPT at present to MDSL for land leased bearing billing code nos. 20801640, 20801642, 20801650 and 20801652 vis-à-vis the lease rent that has been proposed by the port in its subject proposal.	<p>The comparative statement of rates of the existing lease rent and the proposed lease rent in respect of the four expired lease of MDSL bearing billing code No. 20801640,20201642, 20801650 & 20801652 as approved by the Board as applicable to the subject four expired leases of MDSL falling under RR Zone 10/80 is as follows:</p> <table border="1" data-bbox="726 853 1388 1594"> <thead> <tr> <th data-bbox="726 853 917 1272" rowspan="2">Period</th> <th data-bbox="917 853 1000 1272" rowspan="2">Rate per sq.m per month as per present billing</th> <th colspan="2" data-bbox="1000 853 1193 1205">Rate per sq.m per month as per revised SOR for the period from 01.10.2012 to 30.09.2017 with 4% annual increase (proposal submitted to TAMP)</th> <th colspan="2" data-bbox="1193 853 1388 1205">Rate per sq.m per month applicable as per revised SOR for the period from 01.10.2017 to 30.09.2022 with 4% annual increase</th> </tr> <tr> <th data-bbox="1000 1205 1099 1272">Land area rate</th> <th data-bbox="1099 1205 1193 1272">Water area rate</th> <th data-bbox="1193 1205 1292 1272">Land area rate</th> <th data-bbox="1292 1205 1388 1272">Water area rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="726 1272 917 1339">01.10.17 to 30.09.2018</td> <td data-bbox="917 1272 1000 1339">83.25</td> <td data-bbox="1000 1272 1099 1339">102.81</td> <td data-bbox="1099 1272 1193 1339">51.41</td> <td data-bbox="1193 1272 1292 1339">351.20</td> <td data-bbox="1292 1272 1388 1339">425.60</td> </tr> <tr> <td data-bbox="726 1339 917 1406">01.10.18 to 30.09.2019</td> <td data-bbox="917 1339 1000 1406">86.58</td> <td data-bbox="1000 1339 1099 1406">106.92</td> <td data-bbox="1099 1339 1193 1406">53.46</td> <td data-bbox="1193 1339 1292 1406">885.25</td> <td data-bbox="1292 1339 1388 1406">442.62</td> </tr> <tr> <td data-bbox="726 1406 917 1473">01.10.19 to 30.09.2020</td> <td data-bbox="917 1406 1000 1473">90.05</td> <td data-bbox="1000 1406 1099 1473">111.20</td> <td data-bbox="1099 1406 1193 1473">55.60</td> <td data-bbox="1193 1406 1292 1473">920.66</td> <td data-bbox="1292 1406 1388 1473">460.33</td> </tr> <tr> <td data-bbox="726 1473 917 1541">01.10.20 to 30.09.2021</td> <td data-bbox="917 1473 1000 1541">93.65</td> <td data-bbox="1000 1473 1099 1541">115.64</td> <td data-bbox="1099 1473 1193 1541">57.82</td> <td data-bbox="1193 1473 1292 1541">957.48</td> <td data-bbox="1292 1473 1388 1541">478.74</td> </tr> <tr> <td data-bbox="726 1541 917 1594">01.10.21 to 30.09.2022</td> <td data-bbox="917 1541 1000 1594">97.40</td> <td data-bbox="1000 1541 1099 1594">120.27</td> <td data-bbox="1099 1541 1193 1594">60.14</td> <td data-bbox="1193 1541 1292 1594">995.78</td> <td data-bbox="1292 1541 1388 1594">497.89</td> </tr> </tbody> </table>						Period	Rate per sq.m per month as per present billing	Rate per sq.m per month as per revised SOR for the period from 01.10.2012 to 30.09.2017 with 4% annual increase (proposal submitted to TAMP)		Rate per sq.m per month applicable as per revised SOR for the period from 01.10.2017 to 30.09.2022 with 4% annual increase		Land area rate	Water area rate	Land area rate	Water area rate	01.10.17 to 30.09.2018	83.25	102.81	51.41	351.20	425.60	01.10.18 to 30.09.2019	86.58	106.92	53.46	885.25	442.62	01.10.19 to 30.09.2020	90.05	111.20	55.60	920.66	460.33	01.10.20 to 30.09.2021	93.65	115.64	57.82	957.48	478.74	01.10.21 to 30.09.2022	97.40	120.27	60.14	995.78	497.89
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(ii)	The draft Scale of Rates (SoR) as furnished by MBPT incorporates only the proposed Lease rent. The conditionalities governing the proposed lease rental has not been proposed by MBPT. A revised Scale of Rates incorporating the lease rentals as well as the conditionalities governing the proposed lease rental to be	<p>The amended draft Scale of Rates (SoR) incorporating the following conditionalities governing the proposed lease rentals for the period 01.10.2017 to 30.09.2022 has been furnished by MBPT –</p> <p>Notes :</p> <ol style="list-style-type: none"> <li data-bbox="774 1760 1396 1850">1. The SoR mentioned above would increase by 4 % annually every October and would be valid till 30.09.2022 <li data-bbox="774 1854 1396 1946">2. Actual quantum of Rent will be worked out on the base rent and factor as may be recommended by the committee appointed for 																																													

	furnished	<p>the purpose of applicability of FSI.</p> <ol style="list-style-type: none"> 3. Taxes, service charges, penalties, interest rates are not included in the above rates. 4. Rate for allotment of water bodies is applicable at 50 % of the SOR rates 5. Differential Arrears, liabilities and other dues/charges for a period from 1.10.2017 to 30.09.2022 will be calculated based on above rates. 6. These rates are applicable to only the four Expired Leases of MDL as brought out above. 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.
(iii)	<p>In the subject proposal, the Valuer in his Report of November 2019 has determined the market value of the land at RR Zone no.10/80 at ₹1,70,240/- per sq.m. for the period 2017-18.</p> <p>However, in another proposal recently filed by MBPT for revision of lease rentals for non-home occupations for the period from 2017-2022, the market value of the land at RR Zone no.10/80, based on the Valuer's Report has been considered at ₹1,87,696/- per sq.m. for the period 2017-18.</p> <p>The rationale behind having two separate market value of land for the same RR Zone and for the same period, may be justified. The MBPT may consider reviewing the rentals for RR Zone 10/80 either in the subject proposal or in another proposal recently filed by MBPT for revision of lease rentals for non-home occupations for the period from 2017-2022.</p>	<p>With regard to the SoR in general for RR Zone 10/80, the LAC had recommended the adoption of SoR on the basis of Fair Market Value of ₹1,87,696 per sq. mtr. (by reducing by 4% on the land value of ₹1,95,204/-) with 4% annual increase every October effective from 01.10.2017 to 30.09.2022 which has been approved by the Board vide TR No.287 of 2020 & 289 of 2020. This rate was based on the SoR approved by TAMP for MBPT workshop under its order dated 19.12.2018 and notified under G.No.06 dated 04th January 2019 (₹11,712.20 per sq.mtr. per annum @ 6% return on land value of ₹1,95,204/- per sq. mtr. and Rs.8198/- per sq. mtr. per annum for water area @ 6% return on ₹1,36,643/- per sq. mtr.). With regard to the subject four expired leases of MDSL also, the Board had vide TR No.46 of 2019 decided to adopt the said rate as the same also falls in RR Zone 10/80. In accordance with the said SoR an offer was made for renewal of lease to MDSL in respect of the subject 4 plots. MDSL however raised objection to the high rate applicable for the period from 01.10.2017 onwards and also brought up the issue of water areas in the plots. The representation was considered by the LAC and the Board and vide TR No.82 of 2021, it was decided to carry out independent valuation in respect of the subject plots. The valuer carried out independent valuation and has recommended the rate of ₹1,70,240/- per sq.mtr. for land area and ₹85,120/- per sq. mtr. as on 01.10.2017. The SoR at 6% return per annum on the same works out to ₹851.20 per sq.mtr. per month for land area and ₹425.60 per sq.mtr. per month for water area effective from 01.10.2017 to 30.09.2018 with 4% annual increase. The same was recommended by LAC for adoption and approved by the Board vide TR No.123 of 2021 as being applicable to only the four expired leases mentioned in the subject proposal.</p>

		Thus the SoR applicable to the subject four plots have been proposed after review by the LAC and the Board and pursuant to the virtual meeting held on 28.06.2021 under the Chairmanship of the Secretary, Ministry of Port, Shipping & Waterways in the presence of Chairman, MBPT, CMD, MDSL, and Jt. Secretary, Ministry of Defence, wherein all the issues raised in the representation were brought up by the MDSL representatives.
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5. A joint hearing on the case in reference was held on 11 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 submission during the joint hearing:

6.1. During the joint hearing, the MDSL has stated that the proposed Lease rates of MBPT are very high and would adversely impact the business viability of MDSL. Since MDSL being a Public Sector Undertaking (PSU) and an integral part of Ministry of Defence involved in building highly critical / strategic platform like destroyers, Frigates and submarines of the Indian Navy, it has requested for a pragmatic approach in the matter. In light of the above, the MBPT was requested vide letter dated 12 October 2021 to review the proposed lease rentals and convey its decision on the matter immediately.

6.2. In this regard, the MBPT vide its letter dated 14 October 2021 has conveyed that due to paucity of time and delay in taking approval of the Board of MBPT, it is difficult for MBPT to take a further reasoned review of the proposal submitted to TAMP. Accordingly, the MBPT has conveyed that the TAMP is at liberty to take appropriate decision on the matter.

7. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received 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>.

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

- (i). The Mumbai Port Trust (MBPT) has allotted four plots of land and water area falling in Stamp Duty Ready Reckoner (RR) Zone 10/80 to Mazagon Dock Shipbuilders Limited (MDSL). The lease of the said plots have expired. In this backdrop, the MBPT has come up with a proposal for fixation of lease rent for the land and the water area for the four plots falling in RR Zone 10/80 for the period from 01 October 2017 to 30 September 2022, based on the provisions of the Policy Guidelines of Land Management 2015 (PGLM 2015). The proposal of the port has the approval of the Board of Trustees of MBPT.
- (ii). In the subject proposal, the MBPT has sought approval for the lease rentals to be levied on MDSL for a period of 5 years from 01 October 2017 and upto 30 September 2022.

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. 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 (NMPT) 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 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 RR Zone 10/80 for the period from 01 October 2017 to 30 September 2022, is taken up for consideration.

- (iii). 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.
- (iv). 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 PGLM 2015 for implementation with effect from 17 July 2015. The MBPT has, come up with a proposal for fixing SOR for fixation of lease rent for the land and the water area for the four plots falling in RR Zone 10/80 based on the provisions of the PGLM 2015. The proposal of MBPT has the approval of its Board of Trustees.
- (v). 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 LAC headed by the Dy. Chairman of the Port and the Heads of Departments of Finance, Traffic and Estate being the other members.
- (vi). (a). Para 13(a) of the PGLM 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 PGLM 2015, 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 PGLM 2015 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 this connection, the LAC has observed that there are no actual relevant transactions and tenders in the past three years in the vicinity of the area under reference. The value of the land as reflected in the Stamp Duty Ready Reckoner 2017-18 is reported at ₹27,100/- per sq.m. The Valuer has also determined the market value of the land at ₹1,70,240/- per sq.m. and for the water area at ₹85,120/- per sq.m., as brought out in the earlier part of the Order. Therefore, the LAC in its Report has recommended to

take into account the value of the land as well as the water areas, as determined by the Valuer in the Valuation Report.

- (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 for the land as well as the water area has been arrived by MBPT at 6% of the market value of the land and water area at ₹10,214.40 per sq.m per annum and ₹5,107.20 per sq.m. per annum respectively.
- (vii). The MDSL has objected to the lease rentals as proposed by the MBPT on the ground that they are highly unreasonable and would adversely impact the business viability of MDSL. The MDSL has also stated that taking into consideration the likely cash out flows for lease renewal, the rentals proposed by MBPT would not be sustainable to them. Considering that the MDSL is building highly critical/ strategic platforms like destroyers, frigates and submarines for the Indian Navy and since MDSL is an integral part of Ministry of Defence, the MDSL during the joint hearing held on the matter in reference, had requested for review of the lease rentals proposed by MBPT. Accordingly, an opportunity was given to MBPT to review the rentals.

However, the MBPT has expressed its inability to review the rentals and instead has left the matter at the discretion of this Authority. Further, the MBPT in the joint hearing has categorically stated that the Ready Reckoner rates do not reflect correct market value of the land and are very low.

The proposal of the port for fixation of lease rentals is based on valuation taking into account the Fair Market Value of land based on highest of the 5 factors as per PGLM 2015 and which is based on the stipulations contained in the PGLM 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 PGLM 2015, this Authority approves the lease rental as proposed by the MBPT for the Ready Reckoner Zone 10/80 - Mazgaon Division, for the period 01 October 2017 to 30 September 2022.

Further, considering that the lessees 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 to pay the arrears of rent pertaining to the period beginning from the year 2017.

- (viii). As per Clause 12 (A) (I) of the PGLM 2015, Licence fee for water area would be 50% of licence fee of abutting land. Accordingly, the rental for the water area is ₹5,107.20 per sq.m. per annum, as proposed by MBPT. Incidentally, the MBPT has proposed a note to the effect that rate for allotment of water bodies is applicable at 50% of the SOR rates, which is approved with slight modification to state that rate for allotment of water bodies is applicable at 50% of the SOR rates for the abutting land to avoid ambiguity.
- (ix). 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%. Also, Clause 13 (c) of the PGLM 2015 stipulates that the rates will be revised once in every five years by the Authority. Accordingly, the MBPT has proposed a note to the effect that the SOR

would increase by 4 % annually every October and would be valid till 30.09.2022. The proposed note is approved.

- (x). The MBPT is seen to have proposed a note to the effect that the 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. Given that the base lease rent approved by this 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.
- (xi). The MBPT has proposed another note to the effect that the Taxes, service charges, penalties, interest rates are not included in the rates. 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.
- (xii). The MBPT has proposed notes to the effect that differential arrears, liabilities and other dues/ charges for a period from 1.10.2017 to 30.09.2022 will be calculated based on the rates and another note to the effect that these rates are applicable to only the four Expired Leases of MDSL. Since the proposed notes gives clarity and removes any ambiguity, the proposed notes is approved.
- (xiii). 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.

9. 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 Ready Reckoner Zone 10/80 - Mazgaon Division, for the period 01 October 2017 to 30 September 2022, which has already been notified separately vide Gazette .No.553 dated 12 November 2021.

(T.S. Balasubramanian)
Member (Finance)