

Item No.: 32

Sub: Fixation of Scale of Rates (SoR) and Revision of Rent / Compensation w.e.f. 01.10.2012 to 30.09.2017 for non-home occupations in Township Areas of MBPT

Brief Background:

1. Ministry of shipping, Govt. of India forwarded Policy Guidelines for Land Management 2014 (excluding township areas) for all Major Ports (PGLM 2014) and the same was accepted by Board vide TR 224 of 2014. A Committee (LAC) constituted vide TR 146 of 2014 and submitted its recommendations on SoR w.e.f. 1.10.2012 for Port lands outside custom bond area including Estate let out lands on 29.12.2014. Board Vide TR No. 222 of 2015, accepted the LAC report & proposed SoR for land areas outside custom bound area was approved by the Board on 16.01.2015. Opinion of Attorney General of India (AG) on applicability of Supreme Court Judgment post 30.09.2012 was sought in the matter.

Further, Ministry issued amended PGLM 2015 on 17.07.2015. For the various issues arising from the implementation of PGLM 2015 and SOR framed under TR 222 of 2015, opinion was sought from Law Point and Shri T.L.S.Nirmal, P.T. Advocates along with applicability of Rent Control Act of Maharashtra for letting of structures. Also opinion of AG was sought on revision of rent w.e.f. 01.10.2012 in terms of T.R.222/2015. Detailed chronology of events from 2014 till date is enclosed as Annexure-I.

Meanwhile MBPT prepared Master plan for redevelopment of land outside custom bond port areas. A meeting was held with Hon'ble Prime Minister of India Office on 16.08.2017 with Secretary Shipping and the then Chairman MBPT. In terms of minutes of the meeting chaired by Hon'ble Prime Minister of India it was directed that Ministry of Shipping and MbPT should work on taking possession of land as per rules and procedures, the minutes also contained directives on promoting tourism.

Since, PGLM 2015 was not applicable to Township Areas, clarification of Ministry was sought by DO letter to Joint Secretary (Ports) on 03.04.2018. The grey areas in the TR 222 of 2015 were referred to P.T. Advocate Shri Buddy Ranganadhan and also taken up with Ministry of Shipping, Govt. of India. On seeking clarification on the issue of the applicability of PGLM 2015 to the Township areas of Mumbai, Kandla and Kolkata Ports.

2. Subsequently Ministry of Shipping, Govt. of India issued Clarification Circular No.1 of 2018 extending the PGLM 2015 to township areas of Mumbai, Kolkata and Kandla ports. The Clarification Circular No. 1 of 2018 provided revision of SoR for commercial occupations (non-home) but excluding occupations of residential units (home occupations) and also renewal of expired lease on land not required by port as per Master plan by tender cum auction method. Subject to payment of all past arrears as per applicable SOR and on upfront payment above reserve

price. Based on the said clarifications, Board approved action plan vide TR 61 of 2018. The action plan with present status till date is indicated as below;

- a) Committee of HOD will be constituted consisting of FA&CAO, CE, TM EM, CLO&A and Secretary, MbPT to finalize SoP for grant of fresh leases / renewal by tender cum auction process as per the clarification received and in terms of PGLM, 2015 guidelines.
Status: SoP prepared for grant of fresh leases / renewal of expired leases in renewal areas of Government /PSU occupations and private parties by the Committee was submitted to LAC and Board along with LAC report (enclosure of TR 150 of 2019). Action was taken for renewal of expired leases of oil companies and MDL
- b) Proposal will be placed before the Board for approval of new SoR with effect from 01.10.2012 to 30.9.2017 in accordance with the Land Allotment Committee report on TR No.222 of 2015 for revision of rent / compensation with effect from 1.10.2012 for all expired leases, monthly tenancies/ 15 monthly tenancies and Special Way Leave occupations.
Status: Grey areas in TR 222 of 2015 were placed before the Board and approved by the Board vide TR No.105 of 2018. Subsequently, Boards approval was sought to submit the SoR 2012-17 to TAMP, however, the Board vide TR 114 of 2019, TR 149 of 2019 and TR 169 of 2019 deferred the proposal by noting that “the Govt. is in process of framing New Township Policy for Township areas and it was, thus, decided to wait for the same”.
- c) Proposal will be placed before the Board to approve new SoR with effect from 1.10.2017 for next 5 years since the SoR 2012 is valid only for 5 years i.e. upto 30.9.2017 in terms of PGLM, 2015. TAMP’s approval will be obtained to SoR as per Para 13(C) of PGLM, 2015.
Status: Board approved SoR based on valuation reports received from valuers on panel and as recommended by LAC for the period 2017-2022 for 7 no. of RR zones covering 11 no. of units. The SoR rates approved by the Board are proposed to be submitted to TAMP in terms of para 13 of PGLM 2015 and for balance RR zones (covering 4 no. of units) valuation reports are being submitted to LAC and Board for approval. In case of 2 no. of RR zones TAMP has already accorded approval to the SoR (Govandi and Titwala).
- d) Proposal for regularization of minor and major breaches for computation of premium/ charges for the past period from 10.3.2004 till 30.9.2012 and from 1.10.2012 till date.
Status: Proposal for regularisation of major and minor breaches by levying penalty/charges recoverable for the above period will be brought before the Board after finalisation of SoR rates for 2012-2017 and 2017 to 2022.
- e) Appoint panel of registered Government Valuers for carrying out valuation of existing structures on ‘replacement cost basis’ and prepare SoR in terms of 5 factors under provision of PGLM 2015 para 13(a) and also Valuer may work out market Value of land of the leasehold premises.
Status: Panel of valuers were appointed vide Dy. Chairman’s approval dated 15.05.2018 for SoR of land and valuation of structures. Out of which only 2 valuers are presently remained on panel and their period is extended vide TR 41 of 2021 and TR 79 of 2021.

- f) Proposal will be placed before the Board for revision of existing Special Way Leave fees in terms of new SoR.

Status: Revision of Special Way Leave fees w.e.f. 01.10.2012 to 30.09.2017 and new way leave fee policy, approved by the Board vide TR 109 of 2019. The same was approved and notified by the TAMP and review application to TAMP for certain issues is being forwarded for suitable amendment in TAMP order.

3(A). In accordance with the said action plan of TR 61 of 2018, in respect of Para 5(b), proposal on grey areas of TR 222 of 2015 was submitted to LAC. LAC report dated 2.8.2017 was placed before the Board on 2.8.2018. Vide TR 105 of 2018 Board approved LAC Report dated 2.8.2017 and also accepted the LAC recommendations that TAMP's approval to the said SoR is not necessary, in view of pending Writ Petition no. 1153 of 2000 filed by MbPT challenging the TAMP's jurisdiction. However, the issue of approval of TAMP to the new SoR remained pending for want of instructions from Ministry on withdrawal of Writ Petition and allowing TAMP to approve the SoR retrospectively, i.e. from 1.10.2012 onwards. This issue alongwith other issues such as interest rate on revised arrears, GST, FSI dispute etc. were taken with Ministry of Shipping, Govt. of India. Ministry of Shipping, Govt. of India directed TAMP to fix SoR w.e.f 01.10.2012 onwards for areas of MbPT including township areas vide letter dated 15.05.2019 and TAMP vide letter dated 15.07.2019 issued the clarification on non-applicability of TAMP notification to MbPT for the period prior 01.10.2012 and stated that same is treated as withdrawn by TAMP.

3(B). The various issues on implementation of PGLM 2015 were discussed in the Brain Storming Session of all Chairman, Dy. Chairman, Estate Manager of all Ports with the Ministry on 25th and 26th September 2019 and Ministry of Shipping, Govt. of India issued further clarification no. 2 of 2019 on grey areas of PGLM 2015. Thereafter, the matter was again placed before the Board to seek orders on para 6 of the TR 114 of 2019 along with revised LAC note dated 13.08.2019 (Annexure-III) which includes new issues raised by FA&CAO on issue of charging interest on differential arrears and GST issue in the matter. However, the considerations were deferred by the Board. The said matter was once again placed before the Board, but vide TR 149 of 2019 once again the considerations were deferred on this subject. The matter was again submitted to the Board on 01.11.2019 seeking specific orders on para 5 & 6 of the Board note. However, Board vide TR 169 of 2019 again deferred the consideration by noting that the Government is in the process of framing a new draft policy for township and it was, thus, decided to await the same.

3(C). However, since till date new Township Policy is not received from Ministry of Shipping, Govt. of India and the matter of seeking approval of TAMP to the SoR 2012-2017 has remained pending and the TAMP is likely to cease to function after the notification of Major Port Authorities Act, 2021 comes into effect and it is necessary to obtain approval of TAMP to the SoR for the period 2012-2017 for one sq. mtr. of land for each RR zone with FSI 1.00 as a base rate (Annexure-II-A). Comparative statement of Proposed SOR rates per SqM for non-home

occupations as per ready reckoner zones with the presently billed rates per SqM based on supreme court is enclosed as Annexure II-B.

4. In view of the above facts, the Proposal for revision of SOR 2012-2017 which was differed by the board wide TR 169 of 2019 along with LAC report dated 13.08.2019(Annexure-III) is re-submitted to the Board for approval of the following action plan

a) Approval of the TAMP for the revised SOR for the period 01.10.2012 to 30.09.2017.

Approval of the TAMP is necessary for fixation of latest SoR and which has to be notified before making it applicable.

One of the bone of contention was the TAMP's notification dated 28/03/2000 which was challenged by the Mumbai Port Trust in the High court of Mumbai. The Joint Director, TAMP vide e-mail dated 17.07.2019 has informed about the withdrawal of notification dated 28.03.2000. In view of the above, Writ Petition No.1153 of 2000 filed by MbPT challenging TAMP order dated 15.03.2000 is being withdrawn and necessary instructions have been issued to the advocates to withdraw the suit.

Status: Writ Petition No.1153 of 2000 filed by MbPT challenging TAMP order dated 15.03.2000 is withdrawn vide High Court order dated 08.08.2019.

b) Recovery of Penalty and additional rents etc. for regularization of past breaches.

The Ministry by Clarification no. 2 of 2019 provides the procedure for renewal of existing leases by following tender cum auction method, RoFR to existing lessees but subject to clearance of all past dues, as per applicable prevailing SoR from time to time for the period since the expiry of the lease and date of tender cum auction. Further, it is clearly stated that "When the delay in calling for tender (for renewal) is attributable to Port authorities, no penalty / interest should be charged from the lessee i.e. it should be based on single rate at the prevailing SoR from time to time." However, in the said issue No.1 of Clarification No.2 it is not clarified "whether not to charge additional rent/penalty/premium chargeable for regularization of past breaches, if any,". Therefore, the following is recommended: -

- i. Recover premium/penalty/additional rent, etc. for regularization of all past breaches such as subletting, unauthorised transfer/assignment, unauthorised change of user and unauthorised construction, mortgage, etc. as per applicable policy of the Board.
- ii. It is proposed to issue DO letter to Secretary, Ministry of Shipping, Govt. of India to issue suitable clarification that issue no. 1 of clarification no. 2 of PGLM 2015 "Not to charge penalty and interest for the intervening period", may not be made applicable for MbPT and therefore to issue necessary

clarifications in terms of para 15 (vii), 15(viii) of PGLM 2015. Accordingly, draft letter is enclosed for approval (Annexure-IV).

- iii. Estate Manager to bring out a separate policy before the Board for regularization of past major breaches such as subletting, unauthorised assignment, unauthorised construction, change of user, mortgage, etc. for the period from 10.03.2004 onwards based on the PGLM 2015.

c) Levy of interest on differential arrears due to the revision

In view of the clarifications *ibid*, it is recommended that:

- i. No interest would be chargeable for the amounts of differential arrears for which no demands have been made by way of invoices or by demand notices. The interest on differential arrears as per updated SoR 2012-17 will not be applicable till raising of demand notice. Wherever the invoices of rent/compensation have already been raised interest at applicable rates will be chargeable from the date on which arrears became applicable.
- ii. After approval and Notification by TAMP, the demand will be raised in the form of demand notices. If the party fails to pay as per the demand notice within the stipulated time, i.e. 3 months from the issue of the demand notice, interest will be applicable as may be decided by TAMP.
- iii. The present interest rate @ 18% p.a. for delayed payments will continue to be charged on the past arrears and invoices of monthly bills raised which are being issued as per Supreme Court Judgement dated 13.01.2004 as per TR 31 of 2004 or as per 127 of 2006 as at such rate as may be applicable from time to time.

Status: The interest rate on delayed payment is changed to 15% w.e.f. 01.03.2020 vide TR 296 dated 25.02.2020. The draft of demand notices to be issued to all MT/FML/ Expired leases (Non home occupation) will be vetted by CLO&A and will be issued after TAMP's approval to SoR 2012 to 2017.

d) GST payable on arrears considering the financial position of the port.

In terms of various provisions of the GST laws, once the differential bills are issued, the GST becomes payable immediately. This may have immediate financial implications of Rs. 295.79 Crores. This will have an impact on the cash flows of the Mumbai port. Hence, the LAC recommends the following for issue No. 'd' :-

- i. To Issue demand notices as recommended in earlier para c.i.
- ii. To issue proforma invoice pending resolution of GST issue, wherever the parties are clearing the past arrears as per the revised SOR for the period 2012-2017.

- iii. To take up the issue of payment of GST on differential arrears as per SoR on accrual basis with the GST Council, Govt. of India requesting them to examine the issue in view of existing litigation and non-recovery of rentals bills from existing lessees/tenants which is only 60% of present billed amount.

Status: Estimated Rs.295.79 Crores of GST will be payable on account of differential arrears of about 2409 parties. The issue of payment of GST on accrual basis on differential arrears is being taken up with GST consultant by FA&CAO.

5. The matter was deliberated with Chairman, MbPT and HODs on 15.7.2021 and it was decided to urgently seek TAMP's approval for base rate of one sq. mtr. of land for FSI 1.00. The TAMP's approval needs to be sought on top priority to the said base rate of SOR revision of land as per the RR zone as shown in Annexure-II-A.

It was further decided in the above meeting that 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. Therefore, it is necessary to study these aspects in detail by 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.

The above committee will also examine, the Renewal and Redevelopment classification of the letout lands based on the criteria developed by the Advisor Planning for all the units from 1 to 15 and recommend cases which are falling under Renewal zone and cases which are falling under Redevelopment zone as per MbPT Master Plan for Township areas and Port Allied areas in the outside custom bond area and also finalize the formats for self-declaration by the lessees/tenants, applications for Renewal and documents and plans required to be called from the tenants/lessees/occupants.

6. The about note was routed through CLO and FA&CAO and their observations action taken are as under:

(A) The Chief Law Officer, Legal Division, MbPT's observations:

- i. Regarding withdrawal of TAMP's Notification and directions of Ministry to submit the proposal to TAMP, the same is brought out in Para 4(a).

- ii. Regarding separate proposal of SOR for Home and Mixed Use (Home and Non-Home) occupations, a separate proposal for the same is being prepared and will be submitted for approval of the Board through FA&CAO and CLO, MBPT as per the recommendations of LAC report dated 02.08.2017 and as directed by the Board vide TR 105 of 2018 (Para 12 (b)), to submit a separate proposal. Accordingly, Para 7(b) has been amended.

(B) The FA&CAO, MbPT's observations:

- i. Zones for tenancies of Unit No.15 have not been indicated in the SOR (Annexure III-A) - SOR table is amended.
- ii. "Interest would be chargeable beyond permissible period as per Board's policy from time to time" - Accordingly, remarks accepted, and a note under the SOR table has been incorporated. However, as brought out in Para 4 (c)(ii), LAC recommended that, interest will be as may be finally approved by the TAMP in the matter.
- iii. "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" - Accordingly, remarks accepted and note under the SOR table has been incorporated.

7. (a) The revised Scale of Rates for base rate for one Sqm of land for the period 2012-2017 will be applicable to township areas of all non-home occupations of Monthly tenancies, Fifteen Monthly leases and Expired leases from Unit 1 to Unit 15. The actual rentals/compensation for each plot will be worked out for each plot on the basis of factor approved by the Committee and the Board for higher or lower FSI as may be applicable. However, the SoR 2012-2017 will not be applicable to let out Port Trust structures, BDD chawls, and all home occupations and mixed home occupations.

7(b) In terms of, Para 12(b) of TR 105 of 2018, "it was proposed to exclude all residential occupations (home use) and mixed user occupations home and non-home and occupations given on nominal rents to Public Bodies and for Public amenities from implementation of new SoR." However, for these excluded occupations a separate proposal will be brought before the board as recommended by LAC dated 02.08.2017.

Also, letout P.T. structures, fish based occupations of Ferry Wharf, Sassoon Dock occupations and land at Jawahar Dweep are excluded as they require special consideration on similar user basis by the valuer and LAC. For these occupations, the fixation of SOR rates with effect from 1/10/2012 onwards, a separate proposal will be placed before the Board with recommendations of the LAC.

8. Draft proposal to TAMP for approval of SoR w.e.f. 01.10.2012 to 30.09.2017, is also enclosed as **Annexure-II**.

9. In view of the afore stated facts and on the basis of FA&CAO and CLO's remarks and Chairman's approval in e-office note file no. EM/11/51/2020-EST-Part (1). You are requested to place the matter before the Board for approval of the following

- i. Action proposed in Para 4 (a), (b), (c) and (d).
 - ii. Action proposed in Para 5 to form a Committee and submit recommendations to the Board.
 - iii. Action proposed in Para 7 (A) and (B) to submit a separate proposal for excluded occupations.
 - iv. Action proposed in Para 8 to submit the proposal to TAMP for approval of SoR w.e.f. 01.10.2012 to 30.09.2017
 - v. Approval of the LAC dated 13.08.2019
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Draft proceedings of the Board Meeting No.5 of 2021-22
held on 3rd August 2021

**Item No.32 : Fixation of Scale of Rates (SoR) and Revision of Rent/
Compensation w.e.f. 1.10.2012 to 30.9.2017 for non-home
occupations in Township Areas of MBPT**

Estate Manager explained the proposal in brief.

After some discussions, the Board accorded approval to the proposal.

Resolution No. 122 dated 3.8.2021 :

Board accorded approval to -

- (i) Action proposed in para 4 (a), (b), (c) and (d).*
 - (ii) Action proposed in para 5 to form a Committee and submit recommendations to the Board.*
 - (iii) Action proposed in para 7 (A) and (B) to submit a separate proposal for excluded occupations.*
 - (iv) Action proposed in para 8 to submit the proposal to TAMP for approval of SoR w.e.f. 1.10.2012 to 30.9.2017.*
 - (v) Approval of the LAC dated 13.8.2019.*
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