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TARIFF AUTHORITY FOR MAJOR PORTS

No. TAMP/43/2021-MBPT

Mumbai, 07 December 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 received from Mumbai Port Trust (MBPT) for fixation of Schedule of Rates and revision of rent / compensation for the period 01 October 2012 to 30 September 2017 for non-home occupations in Township Areas of MBPT on 22 October 2021. However, considering the time involved for notifying the Speaking Order along with the Rent Schedule prescribing Lease rentals for the 23 Ready Reckoner Zones for non-home occupations in Township Areas of MBPT for the period 01 October 2012 to 30 September 2017, approved by this Authority, this Authority decided to notify only the Rent Schedule for the 23 Ready Reckoner Zones for non-home occupations in Township Areas of MBPT for the period 01 October 2012 to 30 September 2017 immediately. Accordingly, the Rent Schedule for MBPT prescribing Lease rentals for the 23 Ready Reckoner Zones for non-home occupations in Township Areas of MBPT for the period 01 October 2012 to 30 September 2017, approved by this Authority on 22 October 2021 was notified in the Gazette of India on 28 October 2021 vide Gazette No.521. It was stated in the said Notification that this Authority will notify the Speaking Order, in due course of time. Accordingly, this Authority hereby notifies the Speaking order connected with disposal of the proposal of MBPT for fixation of Schedule of Rates and revision of rent / compensation for the period 01 October 2012 to 30 September 2017 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/43/2021-MBPT

Mumbai Port Trust

Applicant

QUORUM

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

ORDER

(Passed on this 22nd day of October 2021)

This case relates to a proposal received from Mumbai Port Trust (MBPT) vide its letter No. FA/OEA-L/14(17)/Gen/176 dated 06 August 2021 for fixation of 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.

2.1. The submissions made by MBPT in its proposal dated 06 August 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 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 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, LAC has recommended rates for various Ready Reckoner Zones. Same have been approved by the MBPT Board.
- (iii). In this backdrop, the MBPT has come up with the subject proposal for fixation of Schedule of Rates for all the Zones for the period 2012-2017.

2.2. The other main points made by the MBPT in its proposal dated 06 August 2021 are summarized below:

- (i) MbPT owns about 944 Ha of land in Mumbai City, along the eastern coast of Mumbai in A, B, C, E, F (South), F (North), and G (North) wards of MCGM. These land parcels fall under 23 zones in the State Government Ready Reckoner published by the Collector, Mumbai from Colaba, Deonar & Borla and Malabar Hill divisions of Bombay District Collector / Suburban District Collector.
- (ii). The MBPT land falls into 2 categories, viz. (i) lettable land comprising areas let out on long term leases, 15 monthly leases, monthly tenancies and licenses and (ii) non-lettable land, comprising Port's administrative offices, residential quarters, Hospital, etc. Few lettable plots are vacant. There is no provision for sale of Port Land on freehold basis.
- (iii). The Board vide TR No.232 of 1982 revised the letting rates for land with effect from 01.10.1982. The said revision was based on scientific valuation done by M/s. Kirloskar Consultants. The revision of letting rates of Port Trust structures was approved vide TR No.273 of 1987. These revisions gave rise to prolonged litigation, which culminated in the Supreme Court deciding the matter in 2004 & 2006. As per the 'Compromise Proposals' upheld by the Supreme Court judgement with modification in rates of return and interest, the rates of letting were valid till 30.09.2012. There was a provision in the Compromise Proposals upheld by the Supreme Court which provided that notwithstanding the fixation of letting rates for 20 years for good and sufficient reasons, Board may review and revise the letting rates.
- (iv). In terms of the said provision, the rentals were revised vide TR 127 of 2006 in respect of companies having paid up capital above ₹.1 crore. The said revision is under challenge before the Bombay High Court. The issue of period of validity of the rents adjudicated by the Supreme Court was taken-up with the Attorney General who has confirmed that the rents fixed under Compromise Proposals are valid till 30.09.2012.
- (v). 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.

- (vi). 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 for seeking clarification on the issue of the applicability of PGLM 2015 to the Township areas of Mumbai, Kandla and Kolkata Ports.
- (vii). 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.
- (viii). 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.
- (ix). 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.
- (x). 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 at Major Port 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.
- (xi). The Ministry vide Circular No.1 of 2018 dated 14.05.2018 issued clarification circular extending the applicability of the PGLM 2015 to the non-home occupation / commercial area of the township areas of Mumbai, Kolkata and Kandla Port. Thus the PGLM 2015 has become applicable to the commercial occupations of the township areas of Mumbai Port Trust.
- (xii). In terms of the PGLM, 2015, SORs have 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 with effect from 01.10.2012. The recommendations of LAC Report on SOR was accepted by the Board vide TR

222 of 16.01.2015 proposing revisions of SOR at 6% return p.a. on land value as per Stamp Duty Ready Reckoner for the year 2012 with 4% increase every year. The said revision was also applicable to the way leave permission granted.

- (xiii). Certain difficulties were encountered while computing the rents on the basis of SoR approved under TR No.222 of 2015 viz. the FSI to be taken into account for the purpose of billing, the rate to be applied for Home Occupations, the rates to be applied for Port Trust structures and the rates to be levied for Special Way leaves if the same is laid underground or overhead. Clarifications to the decisions under TR 222 of 2015 was approved by the Board vide TR 105 of 2018.
- (xiv). TAMP had vide notification No. TAMP/10/98-Misc of 15.03.2000 issued orders 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. However, subsequently by discussions/ deliberations with the MoS and TAMP, MOS, GOI vide letter dated 15.05.2019 has requested to 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 MbPT'.
- (xv). A DO letter dated 11.06.2019 was issued to Member (Finance), TAMP, by the Dy. Chairman, MbPT. TAMP vide its letter No. TAMP/10/1998- Misc. dated 15.07.2019 replied that, TAMP Notification dated 28.03.2000 has become infructuous so far as MbPT is concerned and it is not applicable for MbPT for the period prior to 01.10.2012 and the same may be treated as withdrawn by TAMP. The Writ Petition was also withdrawn by High Court by order dated 08.08.2019.
- (xvi). There are about 1742 no. of Monthly Tenancies, 237 no. of Fifteen Monthly Leases and 625 no. of Expired Leases includes home occupations, non-home occupations and mixed occupations (home and non-home) falling in all 15 units as on 30.06.2021. Out of which 129 no. of home and mixed home occupations (home and non-home) falling in all 15 units are excluded from this SoR proposal.
- (xvii). Vide TR 222 Of 2015, Board approved the SoR 2012-2017 rates for non-home occupations of lands outside custom bond area. It was stated in the said TR 222 of 2015 is as follows
 - (a) *It was pointed out that several lessees have committed breach of subletting and commercially exploiting the Port's property at very high premiums, depriving MbPT of its rightful share. The instances of such breaches in a sample study undertaken by the Committee were nearly 79%. There is substantial increase in the land value after the Supreme Court judgement leading to substantial profit to the lessees as the land value is directly proportionate to the rent. To elucidate the point, it was informed that while the area in the vicinity command rental value of 237 to 1296 per sq.mtr., the Port is charging 18 to 39 per sq.mtr. The data gathered from the State Government authorities suggest a return of 9 to 12% of the land value. This indicates that the trade can absorb the cost of increased rent and still remain economical in the business.*
 - (b) *Continuing, it was stated that in the background of these facts, the Committee considered it necessary to bring the rent rates to some rational level. To work out a reasonable rate that can stand the legal scrutiny, the*

on-going rate in the surrounding areas was obtained from the Stamp Duty Registrar based on sales transactions, rental rates of office spaces were collected informally from few estate agencies, sales transaction of commercial premises at Bandra Kurla Complex (MMRDA), which are somewhat comparable to Ballard Estate and Apollo Reclamation Estate, were collected from Sub-Registrar's office. Furthermore, the principle pronounced by Supreme Court judgement and the five options set out in the Land Management Policy of 2014 were also considered. After detailed deliberation, the Committee proposed to determine the rates from 1.10.2012 by adopting 6% of Ready Reckoner, 2012 with 4% increase every year for non-home consumption (commercial properties) covered under Supreme Court judgement excluding the running leases and long leases. The new rates are applicable from 1.10.2012 and the arrears will be payable with an interest rate of 9%. However, the payment of arrears will be allowed at 4 quarterly instalments from the date of notification of this SoR. The Committee also recommended that the decision of the Central Government on authority for approval of cases beyond 30 years of occupation may have to be expedited. Alternatively, the cases exceeding 30 years of occupation can be forwarded to the Ministry for approval.

(xviii). **Board vide TR 105 of 2018 approved the LAC report on Grey areas of TR 222 of 2015 under Para 12, which is as under:**

- (a). *The Board by TR No.61 dated 30.5.2018 has approved the Action Plan on clarification received from MoS, GOI on PGLM 2015. In terms of para 5(b) of the Action Plan, the L.A.C. Committee's Report on SoR dated 2.8.2017 on the grey areas of TR No.222 dated 16.1.2015 along with the clarifications received from the MoS, Govt. of India are placed before the Board for approval Annexure 1. In partial modification of LAC report dated 2.8.2017, the EM has proposed that the said SoR will be made effective from 1.10.2012 to 30.9.2017 (5 years) only to commercial (non-home occupations). The list of non-home occupations is at Annexure 11.*
- (b). *In view of the clarification received from the MoS, Govt. of India dated 14.5.2018 in partial modification to LAC report dated 2.8.2017, the EM has 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. The revision of home and mixed user will be dealt separately after the receipt of new township policy.*
- (c). *Presently, all monthly bills of Monthly tenancy, fifteen monthly leases and expired leases are not revised as per SoR in absence of the new policy for Township Area and are still preferred as per rates laid down under Supreme Court Judgement 2004/ in few cases as per TR No. 127 of 2006 / as per the old contractual rents. After the Board's approval, demand notices will be issued for the period from 1.10.2012 to 30.9.2017 to all Non-Home occupations given on Monthly tenancies, fifteen monthly and Expired Leases of non-home (i.e. commercial uses) falling in Renewal as well as Redevelopment areas and where such termination notices served and /or where eviction suits have been filed.*
- (d). *PGLM 2015 Clause No.11.3(h) provides for charging damages at 3 times of the current SoR after expiry of the lease. The new SoR approved under TR No. 222 of 2015 itself is 2 to 3 times higher than present billed amount*

which is at Supreme Court rate. Charging 3 times of current SoR in addition to interest on delayed payment would be impractical and may result into litigation and liability on account of payment of huge amount of GST which is payable on accrual basis. The issue of charging damages at 3 times of SoR will be taken up with MoS, Govt. of India.

- (e). As regards condition of interest on arrears w.e.f 1.10.2012, Shri Buddy Ranganadhan, MbPT Advocate by his opinion dated 8.4.2015 had stated that MbPT has sought to revise rate of rent retrospectively w.e.f 1.10.2012, the levy of interest for this past period is likely to be strongly and severely challenged by the tenants on the anvil of article 14 of the Constitution of India. The tenants/occupants may argue before the Court that the MbPT could not expect them to pay interest on the revised rates which were never in existence in the said past period. In absence of demand notice or bills as per new SoR, no interest thereon can be recovered for past dues/arrears on account of revision of SoR, 2012-17 w.e.f. 1.10.2012 till revised bills of rent/ compensations are sent as per new rates of SoR 2018 and will only lead into additional litigation. However, as per Additional Solicitor General of India's opinion dated 17.8.2015 stating that **"The proposal in T.R.222 of 2015 regarding levying of interest w.e.f. 1.10.2012 is defensible in law in the light of Wadia judgement"**. The LAC's report dated 2.8.2017 on grey areas of TR No.222 of 2015 have recommended interest at 6% p.a. on the past arrears recoverable as per new SoR. Therefore, these aspects need to be looked into and the Board is requested to take decision on the issue of interest to be levied for the principal amount of arrears as per revised SoR (with GST) for the period from 1.10.2012 to be claimed from all non-home occupations of all eligible cases.
- (f). For further period of 5 years from 1.10.2017 to 30.9.2022, new SoR will be placed before L.A.C and will be brought before the Board for eligible Non Home occupation. Till the intervening period billing will be continued as per the present practice and rates as rent/ compensation. The bills will have a footnote that **"This bill is provisional and without prejudice to the Board's rights and contentions to revise the monthly bills as per Boards policy"**. After resolving of GST issue, differential bills for compensation will be issued to all MT/FML and expired leases, leases terminated for the period from 1.10.2012 to 30.9.2017."
- (xix). Further the issue of seeking approval of TAMP to the SoR 2012-17 and other connected pending issues, therefore, the matter was resubmitted to LAC and the LAC report dated 13.08.2019 was submitted on 20.08.2019 to the Board. The same was deferred by the Board under TRs 114, 149 and 169 of 2019. Finally, Board has accorded approval to 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 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 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, unauthorized 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.
- (iii). Estate Manager to bring out a separate policy before the Board for regularization of past major breaches such as subletting, unauthorised assignment, unauthorized 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.
 - (iv). 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:-

- (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.
 - (iv). 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.
- (e). It was further directed 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.
- (f). 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 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 FSI as per permissible or consumed. 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.

- (g). 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 TAMP with the approval of Board.
- (h). 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 brought before the TAMP with the approval of Board.

2.3. Thus, MBPT has sought TAMP's approval to the SOR for base rates of one sq.m. approved by the Board vide various resolutions for the period from 01.10.2012 to 30.09.2017, as given below:

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Revision of SOR For the period from 01.10.2012 to 30.09.2017

A	B	C	D	E	F	G	H	I	J
Sr. No.	RR Zone	Unit	Description as per Ready Reckoner	Land value of open land as per State Govern-ment Ready Reckoner 2012 Per SqM for FSI-1.00	Proposed base rates per sqm per month for FSI 1.00 (as per 6 % return p.a. in terms of Land policy) on land Values as per RR 2012 TO 01.10.12 TO 30.9.13 (6% return on Col 'E')	Rate per sq.m per month for FSI-1.00 01.10.13 TO 30.9.14 (4% increase on Col 'F')	Rate per sqm per month for FSI-1.00 01.10.14 TO 30.9.15 (4% increase on Col 'G')	Rate per sqm per month for FSI-1.00 01.10.15 TO 30.9.16 (4% increase on Col 'H')	Rate per sqm per month for FSI-1.00 01.10.16 TO 30.9.17 (4% increase on Col 'I')
1	14/101	1	All the Portion on East of Harbour Railway Line.	24000	120	124.8	129.79	134.98	140.38
2	16/110	1	North, East & South boundary of Division, on West Harbour Railway Line (Part) and boundary of the Division.	51800	259	269.36	280.13	291.34	302.99
3	11/86	1, Bunder s	Portion towards East of Harbour Line, On South Acharya Dondemarg (King	13800	69	71.76	74.63	77.62	80.72

A	B	C	D	E	F	G	H	I	J
			Edward Road) upto Sewri Railway Station, on East sea, on North boundary of ward and on West Harbour Railway Line. All the portion surrounded						
4	11/84	2	On East Barister Nath Pal Marg, T. Jeevraj Marg, Rafi Ahmed Kidwai Marg, on West G.D. Ambedkar Marg, on North Jerbai Wadia Marg. All the portion surrounded.	66500	332.5	345.8	359.63	374.02	388.98
5	11/85A	3	On East B. P. T. railway line, on West Harbour railway line, on South Division boundary (First Avenue Road).	20600	103	107.12	111.4	115.86	120.49
6	11/85	4,5, Bunders	On East Division boundary, from Sewri Station toward south Hindustan Level Company's East side Road, on West B.P.T. Railway Line, on South Division boundary.	17300	86.5	89.96	93.56	97.3	101.19
7	10/79	2,6	On East division boundary (portion of Harbour Railway line and G.D. Ambedkar Marg) on West central railway line, division boundary, on North division boundary, Dattaram Laud Marg, on South Sant Savatmali marg.	33600	168	174.72	181.71	188.98	196.54

A	B	C	D	E	F	G	H	I	J
8	10/79 A	8	On East B.P.T. railway line, on West central railway harbour line, on North Division boundary upto First Avenue Road, trangular portion of all the land.	16700	83.5	86.84	90.31	93.92	97.68
9	10/80	4,7,8, 9, Bund ers	On West B.P.T. Railway Line (East Oilfield Freeway) on East sea on South Jijabhai Mulji Rathod Marg (Wadi Bunder Road) and on North B.P.T. Railway line and first Avenue Road. All the portion Surrounded	16900	84.5	87.88	91.4	95.06	98.86
10	10/78B	8	On East B.P.T. Railway line, on West Central railway harbour line, on south Jeenabai Rathod Marg (Wadi Bunder Road) trangular portion of all the land.	21500	107.5	111.8	116.27	120.92	125.76
11	3/36	8, Docks	All portion of B Ward on Eastside of P.D' Mello Road upto sea shore (Victoria Dock & Princess Dock).	26800	134	139.36	144.93	150.73	156.76
12	3/35	10	Area Between North Boundary of B Ward (Ramchandra Bhatt Marg,2013), South Boundary of B Ward(Lokmanya Tilak Marg,2013), Central Railway Line and P.D'Mello Road.	48900	244.5	254.28	264.45	275.03	286.03

A	B	C	D	E	F	G	H	I	J
13	2/23	9, 11, 15 Docks	Indira Dock land Portion towards East of P.D'Mello Road upto sea and from G.P.O. to North boundary of Ward.	53000	265	275.6	286.62	298.08	310
14	2/9	11	Shahid Bhagat Singh Marg from Regal Cinema to General Post Office.	93300	466.5	485.16	504.57	524.75	545.74
15	2/22	11	Ballard Estate part. Portion towards East of Shahid Bhagat Singh Marg from Mint to General Post Office upto Indira Dock Portion and Dock railway and portion upto division boundary.	54700	273.5	284.44	295.82	307.65	319.96
16	2/12	12	Madam Cama Road between Regal Cinema and Gateway of India.	133500	667.5	694.2	721.97	750.85	780.88
17	1/6	12, Bund ers	Colaba portion: East portion of Prakash Pethe Marg and Jagannath Bhosale Marg and South portion of Madam Cama Road, except portion of Sub-zone 1/3 above.	106800	534	555.36	577.57	600.67	624.70
18	1/6A	12	On East Sea, on West Shahid Bhagat Singh Road, on South Homi Bhabha Road on North division boundary. (Refer Note No.9)	98900	494.5	514.28	534.85	556.24	578.49
19	1/3	12	Shahid Bhagat Singh Marg from Colaba to Regal Cinema	253200	1266	1316.6 4	1369.3 1	1424.0 8	1481.0 4
20	90/419	1	All the properties of Mahul village	13700	68.5	71.24	74.09	77.05	80.13

A	B	C	D	E	F	G	H	I	J
21	96/436	1	All the properties of Aanik village, except Bhakti Park Complex	23000	115	119.6	124.38	129.36	134.53
22	26/81	5	Zone 2A. Division Manda (34)(A) Manda West - All properties on West of Central Railway Line	6900	34.5	35.88	37.32	38.81	40.36
23	17/119	14	on South Sitladevi Temple Road, on East Western Railway Line and on North and West Mahim Creek. All the portion surrounded.	60100	300.5	312.52	325.02	338.02	351.54

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. Special Way Leave charges are calculated based on above rates as per MBPT regulations.
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. Rate for let out structures constructed / owned by MBPT i.e. P.T.Structures is not included in the above rates.
6. Differential Arrears, liabilities and other dues/charges for a period from 01.10.2012 to 30.9.2017 are calculated based on above rates.
7. These rates are applicable for Non-Home Occupations and Special Way Leave.
8. These rates are not applicable to the lettings of PT Structures, BDD Chawls, Fish based occupations / lettings of Old Sassoon Dock, Home Occupations, Mixed users i.e. Home & Non-Home will be made applicable as per prevailing MBPT regulations
9. Estate lands of Old Sassoon Dock, Ferry Wharf and Jawahar Dweep are excluded from the above rates.
10. Rent of Monthly Tenancies and Leave Licenses for a period upto 11 months is 1.5 times of above rates.
11. These rates are not applicable to occupations given on nominal rents to public bodies and for public amenities.
12. Board shall adopt the above methodology for arriving base rate for calculation of rent in case of any missing zone/s.
13. Interest would be chargeable beyond permissible period as per Board's policy from time to time.
14. 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 revised Scale of Rates for base rate for one Sq. Mtr. 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 will be worked out for each plot on the basis of factor

approved by the Committee constituted by Board and the Board for higher or lower FSI as per permissible or consumed as may be applicable.

2.5. The MBPT has also stated that till such time these rates are notified by TAMP, the Board may be permitted to make demands of the past dues in terms of SOR for the period from 01.10.2012 to 30.09.2017.

2.6. The MBPT has also stated that the proposal has been formulated in terms of the Land Policy Guidelines for Land Management 2015.

2.7. Subsequently, on a request, the MBPT vide its letter No. FA/OEA-L/14(17)/Gen/201 dated 26 August 2021 has furnished zone wise comparative statement of prevailing/ existing lease rent that is being levied by the MBPT vis-à-vis the proposed lease rent. The comparative position as given by MBPT in this regard is given below:

COMPARATIVE STATEMENT OF SUPREME COURT RATES AND SOR 2012-17						
S. No.	RR ZONE	Unit	Letting rate p.sq.p.m. as per Supreme Court judgment as on 01.10.2012	Proposed letting rates p.sq.p.m. (as per 6% return p.a. in terms of Land Policy) on Land Values as per Ready Reckoner 2012 as on 01.10.2012	% increase of Rates compared with SC Judgment & TR 105/2018	Increase in Rates compared with SC Judgment & TR 105/2018 (No. of time)
1	14/101	1	18.49	120	549.00	5.5
2	11/86	1, Bunders	18.49	69	273.17	2.7
3	16/110	1	18.49	259	1300.76	13
4	11/84	2	18.49	332.5	1698.27	17
5	10/79	2,6	18.49	168	808.60	8.1
6	11/85A	3	18.49	103	457.06	4.6
7	10/79A	8	18.49	83.5	351.60	3.5
8	10/80	4,7,8,9, Bunders	18.49	84.5	357.00	3.6
9	11/85	4,5, Bunders	18.49	86.5	367.82	3.7
10	10/788B	8	18.49	107.5	481.40	4.8
11	3/36	8, Docks	18.49	134	624.72	6.2
12	2/23	9,11, Docks	21.09	265	1156.52	11.6
13	3/35	10	21.09	244.5	1059.32	10.6
14	2/9	11	35.6	466.5	1230.58	12.3
15	2/22	11	35.6	273.5	680.09	6.8
16	1/6	12, Bunders	32.18	534	1559.42	15.6
17	1/6A	12	32.18	494.5	1436.67	14.4
18	1/3	12	39.30	1266	3121.37	31.2
19	2/12	12	39.30	667.5	1598.47	16
20	90/419	1	18.49	68.5	270.47	2.7
21	96/436	1	18.49	115	521.96	5.2
22	26/81	5	18.49	34.5	86.59	0.9
23	17/119	14	31.22	300.5	862.52	8.6

3.1. With regard to the proposal of the port, it may be recalled that, this Authority has passed an Order dated 15 March 2000 setting out the legal position about this 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, *interalia*, 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 this 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. This Authority 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 *interalia*, communicated to the then 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 *interalia*, 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 01.10.2012 to 30.09.2017 for non-home occupations in Township Areas of MBPT.

4.1. Considering the huge list of registered tenant / lessees as suggested by the MBPT, the MBPT was requested vide letter dated 12 August 2021 to upload subject proposal in its website and intimate to all the registered tenants/ lessees about hosting of the subject proposal in the MBPT website and give the designated email address of Port as well as TAMP for comments of relevant registered tenant / lessees within 15 days' time.

4.2. Accordingly, the MBPT vide its email dated 23 August 2021 has forwarded a copy of the notice No.EM/AS(G)/F-361 dated 14 August 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.

5. 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 30 August 2021 to furnish its reply on the issues raised by various lessees / tenants. The MBPT has responded.

6. On a preliminary scrutiny of the proposal of MBPT, it was seen that some information/ clarification are required from MBPT. Accordingly, additional information/ clarification was sought from MBPT vide letter dated 20 August 2021. The MBPT vide its letter No. FA/OEA-L/14(17)/Gen/201 dated 31 August 2021 has responded. The information/ clarification sought and the response of the MBPT thereon is tabulated below:

Sl. No.	information/ clarification sought by us	Response of MBPT
(i).	From the proposal of MBPT, it is seen that the MBPT has decided to adopt the Ready Reckoner Rate as prevailing in the year 2012 as base as the market value of the land, so as to determine the lease rentals for the various Zones. In this regard, the MBPT is requested to furnish the Extract of the Ready Reckoner for the year 2012, based on which it has determined the market value of the land for the various Zones forming part of its subject proposal.	The requisite extracts of Ready Reckoner for the year 2012 for 23 Nos. of RR zones covering MbPT area are furnished.
(ii)	The reason for not exploring the other factors as listed in the Land Policy Guidelines to determine the market value of the various Zones, to be explained.	In the LAC report dated 23.12.2014, the LAC has explored and proposed following options as shown in Annexure A-1 of LAC Report: <u>Option 1:</u> Letting rate per sq. mtr. per month w.e.f 01.10.2012, as per the rates of Wadia Judgement (Supreme Court Judgement, 2004). <u>Option 2:</u> Proposed letting rate as per TR 127 of 2006 with 4% increase every year. <u>Option 3:</u> Proposed letting rates as per the 6% returns per annum in terms of land policy of Kirloskar land value as on

		<p>1980s. As on 30.09.2012 increase by Cost Inflation Index (CII).</p> <p>Option 4: Average market letting rate per sq. mtr. per month as on 01.10.2012 based on Index 2 within and outside MbPT property which were obtained from BKC areas or other estate agents or from Index 2 transactions from Registrar's office.</p> <p>Option 5: Proposed letting rate as per 6% return per annum on land policy as per Ready Reckoner 2012.</p> <p>Port Trust land was divided into 22 Ready Reckoner zones (36 Kirloskar zones) and all the above 5 options were evaluated by LAC and their findings re-recorded in page Nos.5, 6 & 7, para (e) and final conclusion of the LAC are recorded on Committee's report page Nos.8, 9, 10 & 11, para (a), (b), (c), (d), (e) & (f). The said LAC report was approved by Board vide TR 222 of 2015. However, implementation remained pending on following issues:</p> <p>The SoR 2012-2017 proposal for non-home occupations was proposed by LAC in its first meeting dated 23.12.2014 and said LAC report was approved by the Board under TR 222 of 2015. However, pending clarifications from Ministry regarding the issue of extending SoR to township areas which were excluded by PGLM 2015 and also the issue of seeking TAMP's approval remained unresolved. Therefore, the matter was re-submitted to the Board and Board accorded approval to the said SoR vide TR 122 of 2021 on receipt of necessary clarifications and directions from MoS, Gol, in the matter.</p>
(iii)	<p>From the proposal of the port, it is seen that the LAC has furnished its Report in December 2014 and the Board of MBPT has approved the recommendations of the LAC in its meeting held on January 2015. In this context, the reason for substantial delay in the submission of proposal to TAMP to be justified</p>	<p>The reasons for delay have been explained in the para 1, 2 & 3 of TR 122 of 2021 and also background note and Legal Status of the Proposal. The same are summarized as below:</p> <p>(i). Opinions were sought on the grey areas in TR 222 of 2015.</p> <p>(ii). PGLM 2014-15 was not applicable to Township areas of MbPT.</p> <p>(iii). Ministry vide Clarification Circular no. 1 of 2018 dated 14.05.2018 extended the applicability of PGLM 2015 to Non-Home Occupations / commercial area of the township area.</p> <p>(iv). Vide TR 61 of 2018 the Board approved the action Plan for implementation of PGLM 2015 with clarification Circular No.1</p> <p>(v). Vide TR 105 of 2018 sanction was accorded to revision of SOR 2012-2017.</p> <p>(vi). MoS, Gol informed TAMP vide letter no. Secy(S)/Visit-Mumbi/Land management/2018(333951) dated 15.05.2019 to notify the SOR w.e.f. 01.10.2012 for MbPT including Township area and the SOR shall be declared only after the WP withdrawn by MBPT.</p> <p>(vii). TAMP informed that the notification dated 28.03.2000 may be treated as withdrawn.</p> <p>(viii) Writ Petition filed by MbPT withdrawn vide HC order dated 08.08.2019.</p>

		<p>(ix). Proposal for revision of SOR submitted to the Board in 2019 and was deferred 3 times due to various reasons.</p> <p>(x). Ministry vide letter dated 27.01.2021 conveyed the extension of validity of Clarification circulars.</p>
(iv)	<p>The MBPT has proposed revision of rentals for the period from 01.10.2012 to 30.09.2017 in respect of all the expired leases, 15 monthly leases, monthly tenancies and licenses falling under the respective Ready Reckoner Zones. In this regard, the MBPT is requested to confirm that the concerned lease / licence agreements entered into by MBPT with the respective lessees / licensees permit/ authorize revision of lease / licence fees with retrospective effect.</p> <p>It is also be confirmed that the lessees / licensees had been well aware that the lease rent / licence fees for the period 2012-2017 was due for revision retrospectively.</p>	<p>The proposed revision of rentals w.e.f. 01.10.2012 to 30.09.2017 will be made applicable to only monthly tenancies, 15 monthly leases, expired leases and licenses, with retrospective effect. These parties were made aware by Circular No.EM/ASG/F-361/5873 dated 28.12.2012 whereby it was informed to all the lessees, tenants and occupants that revision of compensation / rent in respect of all the leases / tenancies excepting subsisting long term leases of Port Trust premises is due from 01.10.2012 onwards. They were also informed that the lessees, tenants and occupants will be informed about the revised letting rates, rates of compensation, in due course of time. Also, all the lessees and tenants are billed as provisional compensation rates with footnote clearly indicating as follows –</p> <p>“THIS BILL IS PROVISIONAL AND WITHOUT PREJUDICE TO THE BOARD’S RIGHTS AND CONTENTIONS TO REVISE RENT/COMPENSATION w.e.f. 01/10/2012”</p> <p>However, since all the running leases, i.e. leases which are not yet expired, are excluded from the application of proposed revision of SoR for rental / compensation since the existing agreement / rentals do not permit such revision. In case of monthly tenancies, 15 monthly leases, expired leases and licenses, since the original lease term has already been expired and the parties have unauthorisedly occupied Port Trust land without any valid extension of their occupation, all such parties are liable to pay compensation for renewal use of the premises as per the letting rates / compensation rates as determined by the Port or as per the applicable policy laid down by the Ministry of Shipping, GoI for the Ports, i.e., PGLM 2015, in this case. Therefore, this revision has been effected to all the monthly tenancies, 15 monthly leases, expired leases and licenses.</p>
(v)	<p>The MBPT has proposed a note to the effect that the rent of monthly tenancies and leave licences for a period upto 11 months is 1.5 times of the proposed rates. The rationale behind proposing higher rentals to be explained.</p>	<p>In the TR 105 of 2018, LAC’s recommendation of proposing the SOR 1.5 times for monthly tenancies and leave & licnese were approved by the Board for the reason that the burden of Property Tax and Cess were borne by the Port Trust, in terms of BMC Act, Section 54 and as the tenancy of this allotment was for a period of less than one year. However, there is no such provision of charging 1.5 times of the SoR under PGLM 2015. Also, in view of the change in the formula of computation of Property Tax based on revised rateable value, as per the new SoR, the burden of Property Tax could not be borne by the Port Trust and therefore LAC recommended its contention of this method of comparing the Property Tax by MbPT and SoR for base rate which per unit will be levied even in case of monthly tenancies and licenses and therefore note no.</p>

		10 of SOR Table annexed as IIA, with the Proposal for revision of SOR 2012-2017 approved vide TR No.122 of 2021 stands modified, accordingly. TR No.122 of 2021 is further reviewed and revised by the Board in its meeting on 24.08.2021. The applicable MCGM cesses will be billed separately over & above the SOR rates for monthly tenants & licenses for less than 1 year.
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7.1. In view of outbreak of COVID-19 and in pursuance of the then Ministry of Shipping (MOS) letter no.11053/30/2020-Coord dated 16 April 2020 to hold virtual meetings, a joint hearing on the case in reference was held on 03 September 2021 through Video Conferencing. At the joint hearing, the MBPT makes a power point presentation and then the MBPT, users/ Tenants lessees have made their submissions.

7.2. As decided during the Joint Hearing, the MBPT was requested vide letter dated 9 September 2021 to host the powerpoint presentation in its website and inform all the concerned tenants/ lessees/ users about hosting of power point presentation in its website and also request them to furnish their comments/ submissions/ additional submissions on MBPT proposal/ presentations in reference, to TAMP as well as to MBPT.

7.3 The MBPT has hosted its presentation in its website on 08 September 2021 and has also intimated to all the concerned tenants / lessees/ users about hosting of power point presentation in its website.

7.4 In this connection, we have received large numbers of submissions/ comments from various lessees/ tenants/ users on the subject proposals/ power point presentations. As intimated by MBPT in its Notice, a copy of the said comments have also been forwarded by the users to MBPT as well. In the instances, where the comments were sent to TAMP only, the said comments were forwarded to MBPT for its feedback information vide our letters dated 13 September 2021.

7.5. As such, the MBPT was requested vide letter dated 24 September 2021 to furnish its comments on the comments received from the lessees/ tenants/ users directly. The MBPT was intimated that where the individual lessees/ tenants/ users have made same / similar comments and raised similar issues, a common reply on such similar issues may be furnished by MBPT. However, in the instances, where the users/ tenants/ lessees have given specific comments, then such comments are to be specifically addressed by MBPT. Thus, the MBPT was requested to ensure that none of the users/ tenants/ lessees comments remain unaddressed.

7.6. In response, the MBPT vide its email dated 13 October 2021 has furnished its reply on the comments/ observations received form the lessees/ tenants/ users. While giving the response, the MBPT has stated that the replies are without prejudice to the MbPT's rights and contentions in the pending litigation and terminations notices served and MbPT's rights to take legal action against breaches /violations under the applicable laws/lease/Tenancy terms and to take further action as per applicable laws stipulated under PGLM Guidelines / directives issued by Ministry and as may be decided by the Board of Trustees of Port of Mumbai from time to time.

8. 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>.

9. 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 with a proposal for retrospective fixation of lease rentals for Schedule of Rates and revision of rent/ compensation in 23 Ready Reckoner Zones for non-home occupations in Township Areas of MBPT for the quinquennial period from 01 October 2012 to 30 September 2017.
- (ii). In this connection, we have received numerous representations from various individual tenants/ lessees strongly objecting to the retrospective fixation of the lease rentals from 01 October 2012 to 30 September 2017, 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.

In this connection, it is relevant here to mention that the lease rentals approved by the Board of Trustees for the lands of MBPT for the period from 01 October 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.

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.

Under these circumstances and for the reasons given in the earlier paragraphs, the proposal of the MBPT for recovery of Lease rentals for the 23 Ready Reckoner Zones for non-home occupations in Township Areas of MBPT for the period 01 October 2012 to 30 September 2017, 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 30 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 2012 to 30 September 2017 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). During the proceedings, numerous requests have been received from the various tenants/ lessees seeking more time for submitting the comments. In this regard, it is to state that Clause 18(c) of the land policy guidelines of 2014 stipulates a time period of 45 days for notifying the market value of land based on the proposal filed by the concerned port trust after following the usual consultation process. Considering the timeline as stipulated in the Land Policy Guidelines, a time period of two weeks was given to all the lessees/ tenants to submit their comments. Also, even after the joint hearing, keeping the interest of lessees/ tenants, they were again given two weeks time to make their submissions. In this backdrop, it is to state that sufficient time has been given to the users/ tenants to make their submissions/ give their comments.
- (v). A joint hearing on the case in reference was held on 03 September 2021. Subsequent to the joint hearing, we have received numerous references wherein the tenants/ lessees have made a request for another personal hearing to be accorded to them, on the ground that they were not able to make their submissions during the joint hearing. In this regard, as already stated above, Clause 18(c) of the land policy guidelines of 2014 stipulates a time period of 45 days for notifying the market value of land based on the proposal filed by the concerned port trust after following the usual consultation process. Considering the timeline as stipulated in the Land Policy Guidelines, it needs to be appreciated that it was not feasible to grant individual personal hearing to all the large number of lessees/ tenants, as requested by them. Nevertheless, even after the joint hearing, an additional opportunity was given to all the lessees to make their written submissions within two weeks, during which numerous lessees/ tenants have given their written submissions and which have been duly brought to the notice of the Authority. Thus, it is to state that the proposal of MBPT has not been dealt in a hasty manner and is being decided by this Authority is after following the due consultation process and after following the principles of natural justice.

- (vi). 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.
- (vii). The MBPT has filed its proposal in August 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.
- (viii). 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 2012 to 30 September 2017 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).

- (ix). 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.
- (x). (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 for the reasons as documented in its Report has decided to determine the market value of the land, based on the State Government Ready Reckoner as applicable for the year 2012 for all the 23 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. the market value of the land based on the State Government Ready Reckoner as applicable for the year 2012 for all the 23 Ready Reckoner (RR) Zones forming part of the subject proposal.
- (d). A summary of the State Government Ready Reckoner value as applicable for the year 2012 for all the 23 Ready Reckoner (RR) Zones and the lease rentals at the rate of 6% per annum as proposed by the MBPT thereon is tabulated below:

Sr. No.	RR Zone	Unit	Description as per Ready Reckoner (as given by MBPT)	Land value of open land as per State Government Ready Reckoner 2012 Per SqM for FSI-1.00	Proposed base rates per sqm per month for FSI 1.00 (as per 6 % return p.a. in terms of Land policy) on land Values as per RR 2012
1	14/101	1	All the Portion on East of Harbour Railway Line.	24000	120
2	16/110	1	North, East & South boundary of Division, on West Harbour Railway Line (Part) and boundary of the Division.	51800	259
3	11/86	1, Bunders	Portion towards East of Harbour Line, On South Acharya Dondemarg (King Edward Road) upto Sewri Railway Station, on East sea, on North boundary of ward and on West Harbour Railway Line. All the	13800	69

			portion surrounded		
4	11/84	2	On East Barister Nath Pal Marg, T. Jeevraj Marg, Rafi Ahmed Kidwai Marg, on West G.D. Ambedkar Marg, on North Jerbai Wadia Marg. All the portion surrounded.	66500	332.5
5	11/85A	3	On East B. P. T. railway line, on West Harbour railway line, on South Division boundary (First Avenue Road).	20600	103
6	11/85	4,5, Bunders	On East Division boundary, from Sewri Station toward south Hindustan Level Company's East side Road, on West B.P.T. Railway Line, on South Division boundary.	17300	86.5
7	10/79	2,6	On East division boundary (portion of Harbour Railway line and G.D. Ambedkar Marg) on West central railway line, division boundary, on North division boundary, Dattaram Laud Marg, on South Sant Savatmali marg.	33600	168
8	10/79 A	8	On East B.P.T. railway line, on West central railway harbour line, on North Division boundary upto First Avenue Road, trangular portion of all the land.	16700	83.5
9	10/80	4,7,8,9, Bunders	On West B.P.T. Railway Line (East Oilfield Freeway) on East sea on South Jijabhai Mulji Rathod Marg (Wadi Bunder Road) and on North B.P.T. Railway line and first Avenue Road. All the portion Surrounded	16900	84.5
10	10/78B	8	On East B.P.T. Railway line, on West Central railway harbour line, on south Jeenabai Rathod Marg (Wadi Bunder Road) trangular portion of all the land.	21500	107.5
11	3/36	8, Docks	All portion of B Ward on Eastside of P.D' Mello Road upto sea shore (Victoria Dock & Princess Dock).	26800	134
12	3/35	10	Area Between North Boundary of B Ward (Ramchandra Bhatt Marg,2013), South Boundary of B Ward(Lokmanya Tilak Marg,2013), Central Railway Line and P.D'Mello Road.	48900	244.5
13	2/23	9, 11, 15 Docks	Indira Dock land Portion towards East of P.D'Mello Road upto sea and from G.P.O. to North boundary of Ward.	53000	265
14	2/9	11	Shahid Bhagat Singh Marg from Regal Cinema to General Post	93300	466.5

			Office.		
15	2/22	11	Ballard Estate part. Portion towards East of Shahid Bhagat Singh Marg from Mint to General Post Office upto Indira Dock Portion and Dock railway and portion upto division boundary.	54700	273.5
16	2/12	12	Madam Cama Road between Regal Cinema and Gateway of India.	133500	667.5
17	1/6	12, Bunders	Colaba portion: East portion of Prakash Pethe Marg and Jagannath Bhosale Marg and South portion of Madam Cama Road, except portion of Sub-zone 1/3 above.	106800	534
18	1/6A	12	On East Sea, on West Shahid Bhagat Singh Road, on South Homi Bhabha Road on North division boundary. (Refer Note No.9)	98900	494.5
19	1/3	12	Shahid Bhagat Singh Marg from Colaba to Regal Cinema	253200	1266
20	90/419	1	All the properties of Mahul village	13700	68.5
21	96/436	1	All the properties of Aanik village, except Bhakti Park Complex	23000	115
22	26/81	5	Zone 2A. Division Manda (34)(A) Manda West - All properties on West of Central Railway Line	6900	34.5
23	17/119	14	on South Sitladevi Temple Road, on East Western Railway Line and on North and West Mahim Creek. All the portion surrounded.	60100	300.5

- (xi). As brought out above, the LAC for the reasons as documented in its Report has decided to determine the market value of the land, based on the State Government Ready Reckoner as applicable for the year 2012 for all the 23 Ready Reckoner (RR) Zones forming part of the subject proposal. As seen in the LAC, though the LAC has looked into some other factors to arrive at the rentals, the said factors are not the factors as listed in the Land Policy Guidelines. In other words, the LAC has determined the lease rentals for the various Zones based on only one of the factor i.e. State Government Ready Reckoner, as stipulated in the Land Policy Guidelines.

Land being a valuable resource, a port must strive to ensure the maximum income from its landed estates. Though the MBPT is seen to have adopted the rates based on the single factor of Stamp Duty Ready Reckoner amongst the five factors mentioned in para 13 (a), determining the market value of land based only on a single approach may not always reflect the correct position. Nevertheless, taking into account the position that the market value of the land based on the State Government Ready Reckoner has been recommended by the LAC and given that the Board of Trustees of MBPT has approved the recommendation of the LAC, this Authority is inclined to prescribe the Lease Rent for the 23 RR Zones, as proposed by the MBPT.

- (xii). 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 based on the State Government Ready Reckoner on the ground that the proposed rentals are manifold times higher than the current rentals that are being paid by the tenants/ lessees. 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.

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. Incidentally, 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 30 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 2012-2017 was 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 2012 (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 2012 now based on the market value of the land. Given that the rentals for the estates of MBPT is being determined for the first time 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, which are not based on market value of the lands, as seen from the Comparative statement given at para 2.7 of this order. However, 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. Moreover, the MBPT is entitled to protect itself against erosion of rentals as a result of inflationary trends and in this case, the MBPT itself has decided to revise the rentals for the period from 01 October 2012 to 30 September 2017 based on the market value of the land determined by the State Government Ready Reckoner. By doing this, the MBPT has tried to strike a balance by ensuring some return on its estates and at the same time not increasing the rentals drastically.

Given that the proposal of the port for fixation of lease rentals based on the State Government Ready Reckoner is based on the stipulations contained in the Land Policy Guidelines, has been recommended by the LAC and has been approved by the Board of Trustees, this Authority is inclined to approve the rentals 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 2012.

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, the MBPT in its proposal had initially stated that till such time the rates are notified by the Authority, the MBPT may be permitted to make demands of the past dues in terms of SOR for the period from 01 October 2012 to 30 September 2017. However, subsequently, during the joint hearing, the MBPT had stated that it will not take any coercive action till the Authority notifies the revised lease rentals and that after approval by the Authority, 3 months' time would be given to tenants to pay the arrears. In this regard, considering that the lessees/ tenants will have to pay the arrears for the period 2012-2017 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 from 2012-2017.

Likewise, in its proposal, the MBPT has indicated that the quantum of interest that is to be levied by the Port on the lessees/ tenants on arrears, after the issue of demand notice, may be decided by the Authority. In this regard, it is relevant here to mention that the Land Policy Guidelines mandates this Authority to fix the lease rentals. It does not mandate this Authority to fix the rate of interest to be levied by the port. The fixation of rate of interest is in the domain of the port. As such, the MBPT is advised to decide the quantum of interest, keeping in view a considerate approach.

- (xiii). 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 by considering a 4% annual escalation, has prescribed rentals for all the years forming part of the quinquennial period from 01 October 2012 to 30 September 2017. Since the lease rent to be approved is for the period beginning 01 October 2012, the said lease will be subject to its first annual escalation on 01 October 2013. However, instead of prescribing the rentals for all the five years, rent is prescribed for the period from 01 October 2012 to 30 September 2013. In addition, 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 2013.
- (xiv). Clause 13 (C) of the amended Land Policy Guidelines, 2014 stipulates that the rates will be revised once in every five years by this Authority. Since the rental is being prescribed with effect from 01 October 2012, accordingly, a note is being prescribed in the Rent Schedule that the annual lease rentals shall remain in force for a period of five years thereon.
- (xv). The MBPT has proposed a note to the effect that 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.

- (xvi). The MBPT has proposed a note to the effect that Special Way Leave charges are calculated based on above rates as per MBPT regulations. In this connection, it may be recalled that based on a proposal filed by MBPT, this Authority vide its Order no. TAMP/62/2019-MBPT dated 08 September 2020 had fixed the way leave charges applicable for 13 RR Zones for a period of 5 years from 01 October 2012 and upto 30 September 2017, based on the Stamp Duty Ready Reckoner (RR) for the year 2012 for the respective area. Out of which 12 RR Zones are covered in the proposal under reference. In the proceedings relating to another case filed by MBPT for fixation of way leave charges or special way leave charges for the period from 01 October 2017 to 30 September 2022, while furnishing the information/ clarification sought, the MBPT has clarified that no new permission for way leave for non-cargo/ cargo use was granted during the period 2012-2017. Nevertheless, given that for the way leave charges, the MBPT has proposed to levy Special Way Leave charges based on the rates approved hereinabove on Ready Reckoner rates, the incorporation of the proposed note is approved.
- (xvii). The MBPT has proposed another note to the effect that Taxes, service charges, penalties, interest rates are not included in the above 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.
- (xviii). The MBPT has proposed a note to the effect that rate for allotment of water bodies is applicable at 50% of the SOR rates as per Clause 12 (A) (I) of the amended Land Policy Guidelines, Licence fee for water area would be 50% of licence fee of abutting land. Resultantly, this Authority is inclined to approve the note, as proposed by the Port.
- (xix). The MBPT has proposed notes to the effect that Rate for let out structures constructed/ owned by MBPT i.e. P.T. Structures is not included in the above rates, the rates are not applicable to the lettings of PT Structures, BDD Chawls, Fish based occupations / lettings of Old Sassoon Dock, Home Occupations, Mixed users i.e. Home & Non-Home will be made applicable as per prevailing MBPT regulations, Estate lands of Old Sassoon Dock, Ferry Wharf and Jawahar Dweep are excluded from the above rates, the rates are not applicable to occupations given on nominal rents to public bodies and for public amenities. 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.
- (xx). The MBPT has also proposed notes to the effect that differential Arrears, liabilities and other dues/ charges for a period from 01.10.2012 to 30.9.2017 are to be calculated based on rates approved and that the said rates are applicable for Non-Home Occupations and Special Way Leave. Since the proposed notes gives clarity on the categories of lessees/ tenants, who would be covered by the revised lease rentals approved, the proposed notes are approved.
- (xxi). The MBPT has also proposed a note to the effect that rent of Monthly Tenancies and Leave Licenses for a period upto 11 months is 1.5 times of above rates, on the ground that the burden of Property Tax and Cess were borne by the Port Trust when the allotment was for a period of less than one year. However, considering

that there is no such provision of charging 1.5 times of the SOR under Land Policy Guidelines and also due to the change in the formula of computation of Property Tax and wherein the burden of Property Tax could not be borne by the Port Trust, the port has proposed a modification to the said proposed note. The Port has now proposed a note to the effect that the applicable MCGM cesses will be billed separately over and above the SOR rates for monthly tenants and licenses for less than 1 year, which is approved.

- (xxii). The MBPT has also proposed a note to the effect that Board shall adopt the above methodology for arriving base rate for calculation of rent in case of any missing zone/s. In this regard, it is to state that this Authority is mandated under Section 49 of the Major Port Trusts Act, 1963, to frame Scale of Rates [SOR] at which, and the statement of conditions under which any property belonging to, or in possession or occupation of the Board or any place within the limits of the port approaches may be used for the purposes specified u/s 49 of the Act. As such, this Authority is required by the Act to fix and notify the lease rentals for the port estates. As a result, a blanket approval cannot be given to MBPT to determine the rentals and adopt the same on its own, without specifically seeking TAMP's approval. The proposed note is, therefore deleted.
- (xxiii). 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.

10. 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 23 Ready Reckoner Zones for non-home occupations in Township Areas of MBPT for the period 01 October 2012 to 30 September 2017 which has been notified separately vide Gazette no.521 dated 28 October 2021.

(T.S. Balasubramanian)
Member (Finance)