

मुंबई पोर्ट ट्रस्ट
Mumbai Port Trust

Committee Report dt 13/08/2019

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No. EM/AS-G/HF-361/

Sub: Revision of SoR w.e.f. 01.10.2012 to 30.09.2017

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The Board vide TR 105 of 2018 (**Annexure I**) had accorded sanction to the Estate Manager's proposal based on LAC report dated 02.08.2017 as stated in para 12 of the Board note on revision of SoR w.e.f. 01.10.2012 to 30.09.2017 taking into consideration PGLM 2015. However, the following issues needed clarifications: -

- Approval of the TAMP for the revised SOR for the period 01.10.2012 to 30.09-2017.
- Recovery of Penalty and additional rents etc. for regularization of past breaches.
- Levy of interest on differential arrears due to the revision.
- GST payable on arrears considering the financial position of the port.

The recommendations of the LAC on each of the above are as follows: -

- 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above, Writ Petition No.1153 of 2000 filed by MbPT challenging TAMP order dated 15.03.2000 (**Annexure III**) is being withdrawn and necessary instructions have been issued to the advocates to withdraw the suit.

- 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)

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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 XXI).*
- 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.

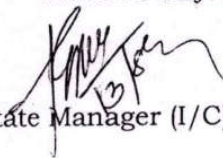
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d. GST payable on arrears considering the financial position of the port.

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' : -

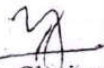
- i. To Issue demand notices as recommended in earlier para c.i.
- ii. To issue proforma invoice pending resolution of GST issue, wherever the parties are clearing the past arrears as per the revised SOR for the period 2012-2017.
- iii. To take up the issue of payment of GST on differential arrears as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


Estate Manager (I/C)


CE&HOD (Estate)


EA&CAO


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Dy. Chairman

Submitted to Chairman

Chairman's approval is requested to place LAC Report before the Board.

CHAIRMAN

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