

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

No. TAMP/59/2021-MBPT

Mumbai, 23 November 2021

NOTIFICATION

This Authority, in exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), has disposed of the proposal received from Mumbai Port Trust (MBPT) seeking approval for schedule of Way Leave charges of MBPT Trestle i.e. Old Pir Pau (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB) for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 on 01 November 2021. However, considering the time involved for notifying the Speaking Order along with the Rent Schedule approved by this Authority, this Authority decided to notify only the Rent Schedule prescribing schedule of Way Leave charges of MBPT Trestle i.e. Old Pir Pau (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB) for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022. Accordingly, the Rent Schedule prescribing schedule of Way Leave charges of MBPT Trestle i.e. Old Pir Pau (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB) for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022, approved by this Authority on 01 November 2021 was notified in the Gazette of India on 12 November 2021 vide Gazette no.558. It was stated in the said Notification that this Authority will notify the Speaking Order, in due course of time. Accordingly, this Authority hereby notifies the Speaking order connected with the disposal of proposal of MBPT seeking approval for schedule of Way Leave charges of MBPT Trestle i.e. Old Pir Pau (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB) for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/59/2021-MBPT

Mumbai Port Trust

Applicant

QUORUM

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

ORDER

(Passed on this 1st day of November 2021)

This case relates to a proposal received from Mumbai Port Trust (MBPT) vide its letter dated 14 October 2021 seeking approval for schedule of Way Leave charges of MBPT Trestle i.e. Old Pir Pau (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB) for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022.

2.1. The main highlights of the MBPT proposal dated 14 October 2021 are as follows:

- (i). Government has issued Policy Guidelines on Land Management for all major ports vide letter No. PD-13017/2/2014/-PD.IV dated 17.07.2015. By Clarification Circular No. 1 of 2018 dated 14.05.2018, and Clarification Circular No.1 of 2019-20 dated 29.04.2019 Ministry has extended the applicability of the PGLM 2015 to

the non-home occupation / commercial areas of the township areas of Mumbai, Kolkata and Kandla Port. Clause 13 (c) of PGLM of 2015 requires the port to refix the SOR once in five years and obtain TAMP's approval thereto.

- (ii). As provided in Clause 13 of PGLM, Land Allotment Committee (LAC) has recommended rates to be charged for Way Leave / Special Way Leave Fees for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022. Same have been approved by MBPT Board vide TR No.540 of 1994, 257 of 2015, 176 of 09.01.2018 and 177 of 13.11.2018.
- (iii). In this backdrop, the MBPT has come up with the subject proposal for incorporation of provisions relating to levy of Way Leave charges of MBPT Trestle i.e. Old Pir Pau (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB) for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 in the existing respective SORs of Special Way Leave Charges which is submitted for approval to the SOR in terms of Clause 13 (c) of PGLM 2015.

2.2 The background and other main points made by the MBPT in its proposal dated 14 October 2021 are summarized below:

- (i). This submission is in furtherance to the proposal for revision of SoR submitted to TAMP under letter No.FA/OEA-L/21(90)/Gen/229 dated 07.09.2021 bringing out details with regard to Revision of SoR for the period 2012-2017 and 2017-2022 in respect of Special Way Leave permission granted on Trestle at Old Pir Pau, First Chemical Berth and Second Chemical Berth.
- (ii). A general proposal for revision of rate with way leave fee for the period from 01.10.2012 to 30.09.2017 both for land and trestle was also submitted to the TAMP for approval. Thereafter hearing was held on 16.1.2020, which was attended by all concerned stakeholders/users/occupants and MbPT had replied to TAMP to observations raised by the said stakeholders/users/occupants vide letter No FA/OEA-L/21(90)/GEN/1826 dated 18.3.2020. TAMP while approving the rates vide its order bearing Case No.TAMP/62/2019-MBPT dated 08.09.2020 for the period from 01.10.2012 to 30.09.2017 has advised MbPT to come up with a well analysed note for levy of way leave rate on the trestle of OPP, FCB and SCB based on the stipulations contained in the Land Policy Guidelines. The proposal with regards to revision of way leave rate for period w.e.f 1.10.2017 to 30.9.2022 has already up loaded by the TAMP which included the rates applicable to trestle. The comments sent by users to TAMP were forwarded to MbPT by TAMP, vide letter dated 30.09.2021. The occupant's/stakeholder/users comments also included comments on rate applicable on trestle. It is therefore felt prudent not to upload the clarification proposal in respect of way leave rate applicable on trestle.
- (iii). Accordingly the present well analysed note is submitted along with comprehensive proposal with regard to revision of SoR for the period 2012-2017 and 2017-2022 in respect of Special Way Leave permission granted on Trestle at Old Pir Pau, First Chemical Berth and Second Chemical Berth

A. Background of the proposal :

- (i). MbPT had commissioned the Old Pir Pau Jetty (the Old Pier) in 1923. The approach to the Pier Head was through the Steel Jetty. After the commissioning of the Marine Oil Terminal Complex at Jawahar Dweep in 1955, the Old Pier was earmarked for handling "Special Grades of POL" and "Bulk Liquid Chemicals".

The old steel jetty had outlived its service life and utility and therefore a new RCC Jetty was constructed in 1989/90 along a new alignment running almost parallel to the Steel Jetty and connecting the Old Pier. The users had laid pipelines on the trestle for transfer of cargo from the Ships to the storage tanks. Pipeline users of the Steel Jetty were allowed to shift to the RCC Jetty/trestle in 1990. The cargo from the ships/tankers to the pipelines are transferred at the Old Pier through hoses.

- (ii). Considering the increase in traffic and the projection of future traffic, MbPT constructed the New Pir Pau Jetty (First Chemical Berth) 2.7 kilometers off the shoreline at Trombay with an RCC Approach Jetty/Trestle in 1994-95 and the same was commissioned in 1996. MbPT subsequently constructed the Second Chemical berth in the year 2015. The First and Second Chemical Berth were constructed at considerable expenditure with state of art firefighting facility and round the clock navigation facility. The approach from land to the Old Pir Pau Pier, First Chemical Berth and the Second Chemical Berth is through approach jetty/trestle forming a continuum from land to Old Pir Pau Pier to First Chemical Berth and Second Chemical Berth. The cargoes handled at these Piers/Berths required numerous pipeline and tank farms to ensure smooth transfer and storage. Thus only users/importers/exporters who had their own tank farm facilities in the vicinity could have been given permission to lay, maintain and operate pipelines from their tank farms to the pier. The transfer of cargo from the ship to the pipeline at First Chemical Berth and Second Chemical Berth is through Marine Loading Arm. The total No. of pipelines laid on trestle is about 25. The particulars of the same are furnished.

B. Policy Guidelines:

- (i). The Ministry, 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. The Ministry vide Circular No.1 of 2018 dated 14.05.2018 issued clarification circular extending the applicability of the PGLM 2015 to the township areas of Mumbai, Kolkata and Kandla Port. A comprehensive compilation of Policy Guidelines for land management 2015 incorporating all clarifications was issued by the Ministry under its letter dated 29.04.2021 bearing Clarification Circular (Land Management) No.1 of 2019-20. 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.
- (ii). The provision with regard to way leave has been covered in para 14 of the guidelines under the head "Right of Way permission" and reads as under:

The Right of Way permission for laying pipelines / conveyors, etc. from jetties to the tank farms within and outside Port area shall be given with approval of the Board. It shall neither be a lease nor a license. As far as possible, the pipeline should be permitted only underground. There shall not be any allotment of land to a party for giving Right of Way permission. As far as possible, these shall be laid on common user basis and if the same pipeline is required by any other party, it shall be spared, on such terms as agreed between the parties and the Port Trust Board. The parties shall have to abide by the conditions specified by the Port. The

Policy for giving the Right of way permission and the terms and conditions shall be formulated by the respective Port Trust Boards. Further, the broad terms and conditions for issuance of Right of Way permission for laying pipelines / conveyors is given in the Annexure to the said guidelines.

- (iii). It has been further clarified under para 14(i) that 'The Right of Way permission for laying pipelines/conveyers, etc., from jetties to tank forms within and outside port area is provided in Para 14. This is only the indicative list. The Right for Way permission shall be extended for other similar purpose such as telegraph cables, OFC lines, telephone towers, electric cables, telegraph lines, etc. Such ROW permission can also be given for roads, railways where no license / lease of the land is involved, infrastructure is build and maintained by the funds of the permission holder and these facilities can also be used by the port, if needed, without levy of the charge. The charge to be levied for the Right of Way permission would be as per the Annexure 2 of PGLM 2015 detailing" Terms and conditions for the issue of Right of Way permission for laying pipelines/conveyers, etc. "However, where there is a specific Central Act/ Statute which govern such Right of Way permission, the provisions under the said specific Central Act/ Statute shall override these guidelines. A case in point is the specific permission for Right of Way permission under the Indian Telegraph Act, 1885 and the Indian Telegraph Right of Way Rules, 2016.

C. Past revision with regard to the pipelines laid on trestle at Pir Pau:

- (i). The Way Leave fee for the pipelines laid on Old Pir Pau Pier and First Chemical Berth was approved by the Board vide TR No.540 of 1994 and was fixed at Rs.80.25 per running meter per month of pipeline upto 30.09.1992 for a pipeline of 300 mm outside (external) dia. with proportionate increase for larger size pipeline. The said rate is to be increased by 4% on 1st October every year till 2011 (i.e. valid till 30.09.2012), where after the rate was to be on the basis of policy to be enunciated at appropriate time. Copy of TR 540 of 1994 is attached as Annexure II. The rate of Rs.80.25 per running meter per month was arrived on the basis of actual costing as recorded in the said TR and as approved by the Chairman with the annual fee for a length of 2.7 km of length being Rs.26 lakhs per annum for a pipeline of 300 mm dia. All the users had accepted the said rate and were/are paying the way leave fee at the said rate

D. Present Submission

- (i). With regard to the revision due from 01.10.2012 in respect of pipelines laid on Old Pir Pau and First Chemical Berth, MbPT has continued to raise the bills at the rates approved vide TR No.540 of 1994 for the period from 01.10.2012 and the Board vide TR No.177 of 2018 and 109 of 2019 has decided to continue the rate approved vide TR No.540 of 1994 with 4% annual increase beyond the period of 30.09.2012. Accordingly, the rate fixed under TR No.540 of 1994 at Rs.80.25 per sq.mtr. per month upto 30.09.1992 with 4% annual increase works out to Rs.182.87 per sq. mtr. per month for 300 mm dia pipeline as on 01.10.2012 and continues with 4% annual increase every October for the period upto 30.09.2017. The Board vide TR No. 109 of 2019 had accorded the approval to continue the said rate with 4% annual increase every October over the rate of Rs.213.93 per sq.mtr. per month as on 30.09.2017 and accordingly the rate works out to Rs.222.49 per sq.mtr. per month for 300 mm dia pipeline as on 01.10.2017 and the said rate with 4% increase every October would continue till 30.09.2022.

- (ii). The way leave fee for the pipelines laid/extended on the Second Chemical Berth has also been worked out on the basis of actual costing. The said rate of 230.64 per sq.mtr. per month for 300 mm dia pipeline as on 01.01.2015 with proportionate increase for larger dia pipeline has been recommended by the LAC under its report dated 20.11.2017 on the basis of calculation sheet forming annexure to the LAC report and approved by the Board vide TR No.176 of 2018. The said rate is based on the cost of construction and return on land value and is Rs.230.64 per meter per month. [The MBPT has furnished a copy of the calculation sheet, the LAC report and TR No.176 of 2018.]. The calculation arriving the way leave charges for the pipelines laid on the Trestle at Pirpau for the period from 1.10.1992 to 30.9.2020, as furnished by MBPT is given below :

(in)

Rate of Trestle of OPP & FCB as per TR 540 dated 12.10.1994			
Sl. No.	Period	Rate per sq m./month for 300 mm dia pipeline laid at Old Pir Pau Jetty & First Chemical Berth with an escalation 4% p.a.	Rate per sq m./month for SCB Trestle as per TR 176 of 2018 fro 01.10.2015 i.e. Rs. 206.00 per sqm/month revoked by LAC to Rs.230.64 per sqm/month
1	Upto 30.09.1992	80.25	--
2	upto 1.10.1992 to 30.09.1993	83.46	--
3	upto 1.10.1993 to 30.09.1994	86.80	--
4	upto 1.10.1994 to 30.09.1995	90.27	--
5	upto 1.10.1995 to 30.09.1996	93.88	--
6	upto 1.10.1996 to 30.09.1997	97.64	--
7	upto 1.10.1997 to 30.09.1998	101.54	--
8	upto 1.10.1998 to 30.09.1999	105.60	--
9	upto 1.10.1999 to 30.09.2000	109.83	--
10	upto 1.10.2000 to 30.09.2001	114.22	--
11	upto 1.10.2001 to 30.09.2002	118.79	--
12	upto 1.10.2002 to 30.09.2003	123.54	--
13	upto 1.10.2003 to 30.09.2004	128.48	--
14	upto 1.10.2004 to 30.09.2005	133.62	--
15	upto 1.10.2005 to 30.09.2006	138.97	--
16	upto 1.10.2006 to 30.09.2007	144.53	--
17	upto 1.10.2007 to 30.09.2008	150.31	--
18	upto 1.10.2008 to 30.09.2009	156.32	--
19	upto 1.10.2009 to 30.09.2010	162.57	--
20	upto 1.10.2010 to 30.09.2011	169.07	--
21	upto 1.10.2011 to 30.09.2012	175.84	--
22	upto 1.10.2012 to 30.09.2013	182.87	--
23	upto 1.10.2013 to 30.09.2014	190.19	--
24	upto 1.10.2014 to 30.09.2015	197.79	230.64

25	upto 1.10.2015 to 30.09.2016	205.71	239.87
26	upto 1.10.2016 to 30.09.2017	213.93	249.46
27	upto 1.10.2017 to 30.09.2018	222.49	259.44
28	upto 1.10.2018 to 30.09.2019	231.39	269.82
29	upto 1.10.2019 to 30.09.2020	240.65	280.61
30	upto 1.10.2020 to 30.09.2021	250.27	291.83
31	upto 1.10.2021 to 30.09.2022	260.28	303.50

- (iii). Some of the pipelines laid on the trestle have loops which project either vertically or horizontally beyond the trestle, the Board vide TR No.257 of 2015 had decided that the rate applicable to loop length of the pipeline on trestle will be charged at 60% of the respective way leave.
- (iv). Thus in accordance with various Board's Resolutions referred above i.e. TR No.540 of 1994, 257 of 2015, 176 of 2018,177 of 2018 and 109 of 2019 (copies enclosed) the way leave fee chargeable for the period from 2012 to 2017 and from 2017 to 2022 at Old Pir Pau Jetty, First Chemical Berth and Second Chemical Berth as recommended by the LAC by its report dated 09.08.2019, approved by the Chairman for placing the matter before the Board and approved by the Board under TR 109 of 2019 are furnished in annexure. Copy of LAC Report forming annexure to TR No.109 of 2019 is enclosed herewith.

2.3. Though the rates of way leave for pipelines laid on Old Pir Pau and First Chemical Berth have been laid down in the year 1994 i.e. Prior to the creation of TAMP and valid till 30.09.2012, the rates need to be got ratified from TAMP for continuing the rates with effect from 01.10.2012 onwards. The rates for Second Chemical Berth has been approved by the Board vide TR No.176 of 2018 and is effective from 01.01.2015 and was subject to the approval of TAMP. Though the users have laid the pipeline and accepted the rate, the approval of TAMP has remained to be sought. The rates are already being billed to the users and being paid by the users.

2.4. Thus, MBPT has sought TAMP's approval for schedule of way leave rates of MBPT Trestle i.e. Old Pir Pau (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB) for the period from 01.10.2012 to 30.09.2017.and 1.10.2017 to 30.9.2022. The details of which are as given below :

SOR for the pipelines laid on Trestle at Pir Pau for the period 01.10.2012 to 30.09.2017

Period to which the rate applies.	Rate per sq m./month for 300 mm dia pipeline laid at Old Pir Pau Jetty & First Chemical Berth	Rate per sq m./month for 300 mm dia pipeline laid at Second Chemical Berth
	₹	₹
01.10.2012 to 30.09.2013	182.87	N.A
01.10.2013 to 30.09.2014	190.19	N.A
01.10.2014 to 30.09.2015	197.79	230.64
01.10.2015 to 30.09.2016	205.71	239.87
01.10.2016 to 30.09.2017	213.93	249.60

SOR for the pipelines laid on Trestle at Pir Pau for the period 01.10.2017 to 30.09.2022

	Rate per sq m./month for 300 mm dia pipeline laid at Old Pir Pau Jetty & First Chemical Berth	Rate per sq m./month for 300 mm dia pipeline laid at Second Chemical Berth
	₹	₹
01.10.2017 to 30.09.2018	222.49	259.44
01.10.2018 to 30.09.2019	231.39	269.81
01.10.2019 to 30.09.2020	240.65	280.60
01.10.2020 to 30.09.2021	250.27	291.83
01.10.2021 to 30.09.2022	260.28	303.50

Note:

i) The formula for calculation of way leave fee on trestle is as follows:

Way leave fee per sq.m per month for pipeline on trestle = $\text{Length} \times \frac{(\text{External dia including insulation})}{300 \text{ mm}} \times \text{Rate applicable}$

- ii) The rate indicated in the table is for 300 mm external dia of pipeline and the rate will increase proportionately for pipelines of higher dia.
- iii) In cases of grant of way leave permission originally or through tender which are at a higher rate than the revised rate, then such higher rate with the annual increase applicable will prevail till such time that the revised rate exceeds the existing rate.
- iv) The rate indicated above will increase by 4% annually every October over the rate/way leave fee for the previous year.
- v) The way leave fee for the loop length of the pipeline on trestle will be charged at 60% of the rate applicable for the way leave fee on trestle.
- vi) The above rates would be the SoR for the pipelines/marine loading arms presently laid on trestle and form the reserve rate for grant of way leave permissions in future.
- vii) Above rates are exclusive of all Taxes (GST, Taxes, etc.), Service Charges, Penalties, and Interest etc. Same are separately payable by lessees, as may be applicable.
- viii) The Special Way Leave fee for Optical Fiber Cable will be applicable as per the above rates but taking the width subject to a minimum of half a meter for computation instead of 1 mtr.
- ix) In the event of failure of achieve Minimum Guarantee Throughput (MGT), the user should compensate the port by paying additional wharf age charges for the shortfall quantity.
- x) Transfer- Right of Way Permission are not transferable. However, any case of specific requirement of the party transfer of the Right of Way may be permitted by the Board in its discretion and subject to payment to all past dues, prevailing SoR and transfer fee equivalent to 12 months' way leave fee as per prevailing SoR and for the unauthorized assignment/transfer of way leave permissions granted in past due to merger, amalgamation, etc.be regularized by levy of 24 months revised way leave fee as per prevailing SoR.

- xi) Other aspects related to Right of Way permission will be dealt with as per Policy approved by the Board.
- xii) Wherever stamp duty RR values are not available, land values obtained by the Valuer will be considered.
- xiii) Way Leave/ Special Way Leave fee, whether demanded or not, shall be paid by the lessees/ tenants/ licensees on or before the 15th day of each month succeeding that for which Way Leave / Special Way Leave fee is due.
- xiv) Earlier for new permission, the return of 15% per annum as per RR value of relevant year was being adopted in accordance with TR 269 of 2014 and these cases will not be reopened. Accordingly, the new permissions granted till TR No. 109 of 2019 will not be reopened.
- xv) Rates for way leave fee on land and trestle (i.e. trestle of OPP, FCB, SCB and TCB) will be applicable for the period from 1.10.2017 to 30.9.2022 as approved by Board TR 109 of 2019 and will be revised every five years or as decided by the Board from time to time.
- xvi) Way leave fees will increase by 4% every October. First such 4% increase will be effected from 1.10.2018.
- xvii) In case, the prevalent way leave fee is higher than the revised rate, the higher prevalent rate will be continued with 4% increase per annum.
- xviii) For the purpose of Right of way leave charges, the area occupied by pipelines other than those on trestle shall be calculated based on the width (subject to minimum of 1 meter) and length of those pipelines.
- xix) The rate of sp. Way leave for the pipelines laid on OPP and FCB was finalized vide TR 540 of 1994 at Rs. 80.25 per sq meter per month upto 30.9.1992 with 4% increase annually and was valid upto 30.9.2012. Accordingly, rate as on 1.10.2012 works out to Rs. 182.87 per sq meter per month. The Board vide TR 176 of 2018 had accorded approval to continue the same rate with 4% increase annual increase every October valid upto 30.9.2017 and accordingly the rate works out to Rs. 213.93 per sq meter per month as on 30.9.2017 which will be continued with 4% increase every October till Sept 2022.
- xx) The rate of sp. Way leave for the pipelines laid on SCB was finalized vide TR 176 of 2018 at Rs. 230.64 per sq meter per month for 300 mm dia pipeline as on 1.1.2015 with 4% increase every October and the same will be continued with 4% increase every October till Sept 2022. The same will be proportionately increased for higher dia pipelines.
- xxi) The rate applicable for loop length of pipeline laid on trestle will be taken at 60% of way leave fee of respective trestle in accordance with TR 257 of 2015.
- xxii) Interest will not be applicable on the differential arrears on account of the revision of the rates till raising of the Demand Notice. However, if party fails to pay as per the Demand Notice or invoice within the time stipulated in the Demand Notice or invoice then interest as approved by the Board from time to time will be applicable.

2.5. The MBPT has stated that its Board has approved the above SOR vide BR No. 540 dated 12.10.1994, 257 dated 27.3.2015, 176 dated 09.01.2018 and 177 dated 13.11.2018.

3.1 The MBPT vide its email dated 18 October 2021 has informed that the subject proposal has already been uploaded in the Website of MBPT on 18.10.2021 seeking comments of

the relevant users given time limit of week days to respond. The MBPT has also furnished the copy of the email intimation forwarded to the relevant users. Subsequently, relevant users/ user organizations (as furnished by MBPT) were requested to furnish their comments granting additional time of 5 days i.e. 29 October 2021 to respond.

3.2. Some of the users / user organisations have furnished their comments with a copy marked to MBPT. The MBPT vide its letter dated 31 October 2021 has responded to the comments of users / user organisations.

4. A joint hearing on the other proposal received from MBPT seeking approval for fixation of Schedule of Rates (SOR) for way leave / special way leave fees for the pipelines for the period from 01.10.2017 to 30.09.2022 was held on 14 October 2021 at 3.30 p.m. through Video Conferencing. At the joint hearing, the matter of Way Leave charges of MBPT Trestle was also discussed. Hence, this Authority has decided to not to hold further joint hearing on the case in reference.

5. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received from the users / user organisations will be sent separately to them. These details will also be made available at our website <http://tariffauthority.gov.in>.

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

- (i). Section 49 of the Major Port Trusts Act, 1963 (MPT Act) mandates this Authority to frame the Scale of Rates and statement of conditions for use of property belonging to a Board. In other words, Section 49 of the MPT Act empowers this Authority to fix the tariff for the use of the port properties. The way leave charges is a levy for the use of the property of the port. Clarification No. 17 of the clarifications on Policy Guidelines for Land Management, 2015 issued by the MOS vide its letter No.PD-13017/2/2014-PD.IV dated 14 May 2018 read with clause 14 of PGLM 2015 provides that Right of Way permission for laying pipelines / conveyors, etc. for purposes such as telegraph cables, OFC Lines, tank farms, telephone towers, electric cables, etc., can be within and outside port area.
- (ii). The Way Charges in respect of the gas or optical fiber cable, railway tracks, electric cables, transmission lines and pipelines passing through various Ready Reckoner (RR) zones was fixed for the first time by this Authority vide Order No. TAMP/62/2019-MBPT dated 8 September 2020 and for the period the period 01 October 2017 to 30 September 2022 vide Order No. TAMP/49/2021-MBPT dated 25 October 2021. For the period prior to 01 October 2012. Also, as regards the period prior to 01 October 2012, the lease rentals are reported to have been governed by the Supreme Court judgment.
- (iii). The MBPT has proposed a note to the effect that the rates for way leave fee on MBPT land and trestles [i.e. trestle of Old Pir Pau Pier (OPP), First Chemical Berth (FCB) and Second chemical berth (SCB)] will be applicable for the period from 01 October 2012 to 30 September 2017 as approved vide Board's TR no. 109 of 2019 and will be revised every five years or as decided by the Board from time to time in its earlier proposal of seeking approval of Schedule of Rates for Special Way Leave charges of MBPT for the period 01 October 2012 to 30 September 2017 in December 2019. This Authority while disposing the said case vide its Order no. TAMP/62/2019-MBPT dated 8 September 2019 has advised the Port to come up with a well analyzed proposal for levy of way leave charges on the trestle of OPP, FCB and SCB, based on the stipulations contained in the Land

Policy Guidelines on the grounds that the proposal of MBPT does not give details of the methodology adopted by MBPT to determine the existing Way leave charges based on return on investment and the proposed SOR also does not categorically bring out the existing way leave fees being levied and the way leave charges proposed to be levied on trestle of OPP, FCB and SCB.

- (iv). In this backdrop, the MBPT has come up with a proposal seeking approval for the Way Leave charges of MBPT Trestle i.e. Old Pir Pau (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB) for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022.
- (v). The MbPT has reported that the Port commissioned the Old Pir Pau Jetty (the Old Pier) in 1923. The approach to the Pier Head was through the Steel Jetty. After the commissioning of the Marine Oil Terminal Complex at Jawahar Dweep in 1955, the Old Pier was earmarked for handling "Special Grades of POL" and "Bulk Liquid Chemicals". The old steel jetty had outlived its service life and utility and therefore a new RCC Jetty was constructed in 1989/90 along a new alignment running almost parallel to the Steel Jetty and connecting the Old Pier. The users had laid pipelines on the trestle for transfer of cargo from the Ships to the storage tanks. Pipeline users of the Steel Jetty were allowed to shift to the RCC Jetty/trestle in 1990. The cargo from the ships/tankers to the pipelines are transferred at the Old Pier through hoses.
- (vi). MbPT constructed the New Pir Pau Jetty (First Chemical Berth) 2.7 kilometers off the shoreline at Trombay with an RCC Approach Jetty/Trestle in 1994-95 and the same was commissioned in 1996. MbPT subsequently constructed the Second Chemical berth in the year 2015. The First and Second Chemical Berth were constructed at considerable expenditure with state of art firefighting facility and round the clock navigation facility. The approach from land to the Old Pir Pau Pier, First Chemical Berth and the Second Chemical Berth is through approach jetty/trestle forming a continuum from land to Old Pir Pau Pier to First Chemical Berth and Second Chemical Berth. The cargoes handed at these Piers/Berths required numerous pipeline and tank farms to ensure smooth transfer and storage. Thus, only users/importers/exporters who had their own tank farm facilities in the vicinity could have been given permission to lay, maintain and operate pipelines from their tank farms to the pier. The transfer of cargo from the ship to the pipeline at First Chemical Berth and Second Chemical Berth is through Marine Loading Arm.
- (vii). The MBPT has filed its proposal in October 2021. The said proposal alongwith the information/ clarification furnished by MBPT during the processing of the case, is considered in this analysis.
- (viii). 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 MBPT has, come up with a proposal for revision of Way Leave Charges of MBPT Trestle i.e. Old Pir Pau (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB) for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022, based on the provisions of the Land Policy Guidelines for Major Port Trusts, 2014, as amended in July 2015.

- (ix). As per clause 13(a) read with clause 11.2(e) of the amended 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 constituted a Land Allotment Committee (LAC) under the chairmanship of the Dy. Chairman of the Port and the Heads of Departments of Finance, Traffic and Estate being the other members of the Committee.
- (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). The MBPT has proposed to continue the existing way leave charges as prevailed as on 30.09.2012 in respect of pipelines laid on Old Pir Pau and First Chemical Berth, as approved by its Boards of Trustees vide TR No.540 of 1994 for the period from 01.10.2012, with 4% annual increase beyond the period of 30.09.2012 upto 30.09.2027 for 300 mm dia pipeline. The MBPT has further proposed to continue the rates with 4% annual increase every October over the rate as on 30.9.2017 till 30.09.2022.
- (c). The MBPT has stated the way leave charges of ₹.80.25 per running meter per month for trestle was arrived in the year 1992 is on the basis of actual costing, which was approved by the then Board of Trustees of MBPT. All the users had accepted the said rate and were/are paying the way leave fee at the said rate.
- (d). With regard to the way leave fee for the pipelines laid/extended on the Second Chemical Berth, the MBPT has stated that the Way leave fees of ₹.230.64 per sqm per month has been worked out on the basis of actual costing for 300 mm dia pipeline as on 01.01.2015 with proportionate increase for larger dia pipeline has been recommended by the LAC under its report dated 20.11.2017. The Board vide TR No.176 of 2018 has approved the recommendation of LAC.
- (e). The Land Policy Guidelines does not prescribe any specific methodology for determination of way leave charges. In the absence of any specific methodology for determining way leave charges in the Land Policy Guidelines, this Authority is inclined to rely upon the approach adopted by the MBPT to determine the way leave charges of MBPT Trestle i.e. Old Pir Pau (OPP), First Chemical Berth (FCB) and Second Chemical Berth

(SCB) for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022, based on actual costing and return of Investment.

- (xi). The MBPT is seen to have proposed a note to the effect that the way leave charges shall increase by 4% every October. In this regard, it is relevant here to mention that 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 has proposed 4% annual escalation. Since the annual escalation rate of 4% is seen to be as per the provision of the Land Policy Guidelines, the proposed rate of 4% annual escalation is approved.
- (xii). The MBPT is seen to have proposed a formula for calculation of way fee on the trestle is seen to be in line with the recommendation of LAC and approval of the Board of Trustees. Hence, Authority is inclined to approve the said notes.
- (xiii). The MBPT has proposed a note to the effect that the rate indicated is for 300 mm external dia of pipeline and the rate will increase proportionately for pipelines of higher diameter is seen to be appropriate. Hence, Authority is inclined to approve the said note.
- (xiv). The MBPT is seen to have proposed a note to the effect that in case of grant of way leave permission originally or through tender which are at a higher rate than the revised rate, then such higher rate with the annual increase applicable will prevail till such time that the revised rate exceeds the existing rate.

The Land Policy Guidelines requires the port to prescribe rentals based on the market value of the land. As per the Land Policy Guidelines, the Rent Schedule shall be escalated by minimum of 2% per annum. The Rent Schedule is subject to revision after every five years. These provisions are reflected in the Rent Schedule by way of conditionalities. The provision proposed by the Port is for the purpose of inclusion in the Way Leave Agreement to be entered by the Port. The Scale of Rates framed by this Authority need not contain the clauses to be inserted in the Way Leave agreements to be entered by the port trust with the concerned parties. It is for the Port to enter into Way Leave Agreement ensuing compliance of the Rent Schedule and Land Policy Guidelines of the Government. Even in the case of Kolkata Port Trust, a similar note proposed by the Port was not included in the Rent Schedule approved by this Authority. Even otherwise, it is seen that the proposed rentals based on the land value as per Ready Reckoner, 2017 as furnished by MBPT for all the areas as on 01 October 2017 is higher than the existing rentals as on 30 September 2017. Therefore, prescription of the note proposed by MBPT is seen to be only theoretical and may not be relevant as it will not serve any purpose. Hence, the proposed note is not included in the Way leave schedule of trestle.

- (xv). Further, a note proposed by the port to the effect that the rate applicable for loop length of pipeline laid on trestle will be taken at 60% of Way Leave rate of respective trestle. In this regard, the MBPT has submitted that some of the pipelines laid on the trestle have loops which project either vertically or horizontally beyond the trestle, the Board vide TR No.257 of 2015 had decided that the rate applicable to loop length of the pipeline on trestle will be charged at 60% of the respective way leave. Relying submission made by the MBPT and given the 60% concession of way leave rate on trestle for loop length line has an approval of the Board of Trustees, the proposed is included in the Way leave schedule of Trestle of MBPT.

- (xvi). The MBPT has proposed another note to the effect that the rates are exclusive of Taxes, service charges, penalties, interest rates and are separately payable by the lessees. 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.
- (xvii). A note has been proposed by the port to the effect that the special way leave fee for Optical Fibre Cable will be at applicable rates but taking the width subject to a minimum of half a meter for computation. A minimum area is stated to have been proposed by the port for safety and maintenance/ repairs purposes. The note as proposed by the port is approved.
- (xviii) A note has been proposed by the port to the effect that in the event of failure to achieve Minimum Guaranteed Throughput (MGT), the user should compensate the port by paying additional wharfage charges for the shortfall quantity. As per the General Terms and Conditions for issuance of Right of Way permission for laying pipelines/ conveyors etc., forming part of the Land Policy Guidelines, for the purpose of Right of way leave charges, each Port Trust Board would formulate and approve their own policy for one time supervision charges, MGT and additional compensation charges if any for granting way leave permission. Prescription of MGT is in the domain of the port. However, the note proposed by the Port is only indicating that failure to achieve MGT will attract payment of additional charges for shortfall quantity, and hence is approved to be incorporated in the Way Leave Schedule approved by this Authority.
- (xix). A note has been proposed by the port to the effect that transfer right of Way Permissions are not transferrable. However, any case of specific requirement of the party transfer of Right of Way is permitted by the Board in its discretion and subject to payment of all past dues, prevailing SoR and transfer fee equivalent to 12 months way leave as per the prevailing SoR and for the unauthorized assignment / transfer of way leave permissions granted in the past due to merger, amalgamation, etc. be regularized by levy of 24 months' revised Way Leave fee as per prevailing SoR. The provision relating to transfer of right of Way Permissions is in the domain of the port. Hence, the proposed note need not form part of the Schedule of Way Leave Charges approved by this Authority.
- (xx). The MBPT has proposed a note to the effect that other aspects related to Right of Way Permission will be dealt with as per policy approved by the Board. The said note is modified to read that other aspects related to Right of Way Permission will be dealt with as per extant Land Policy Guidelines.
- (xxi). A note has been proposed by the port to the effect that whenever the Stamp Duty Ready Reckoner values are not available, land value rate obtained by the valuer will be considered. In this regard, it is to state that the Rent Schedule for the Special Way Leave charges during the period from 01 October 2012 to 30 September 2027 and 01 October 2017 to 30 September 2022 has been proposed by the port taking into actual costing of the trestle. In such a scenario, prescription of the proposed note is not found relevant. Further, 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 is 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 based on Valuer's Report and adopt the same on its own, without specifically seeking TAMP's approval. The proposed note is, therefore deleted.

- (xxii). The MBPT has also proposed note to the effect 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 note give clarity and would avoid ambiguity and would instill discipline amongst the tenants/ lessees in the payment of way leave charges, the proposed note is approved.
- (xxiii). Interest on differential arrears due to Revision – Interest will not be applicable on differential arrears on account of revision of Spl way leave fee as per the updated SOR 2012-17 and SOR 2017-22, till raising of demand notice. If party fails to pay as per the demand notice/ invoice within the stipulated time mentioned in the demand notice/ invoice, interest as approved by the Board from time to time will be applicable. The proposed note is approved.

7. In the result and for the reasons given above, and based on a collective application of mind, this Authority approves the Rent Schedule prescribing Schedule of way leave charges of MBPT Trestle i.e. Old Pir Pau (OPP), First Chemical Berth (FCB) and Second Chemical Berth (SCB) for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022, which has been notified separately vide Gazette No. 558 dated 12 November 2021.

(T.S. Balasubramanian)
Member (Finance)