

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

G. No. 47

New Delhi, 8th March 2011

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal from the Kolkata Port Trust for revision of the Schedule of Rent for Land and Buildings at Kolkata and Haldia as in the Order appended hereto.

(Rani Jadhav)
Chairperson

Tariff Authority for Major Ports
Case No. TAMP/7/2010-KOPT

Kolkata Port Trust

Applicant

ORDER

(Passed on this 19th day of January 2011)

This case relates to a proposal received from the Kolkata Port Trust (KOPT) for revision of Schedule of Rent for Land and Buildings at Kolkata and at Haldia.

2.1. The existing Rent Schedule for the Land & Buildings of KOPT at Haldia was approved by this Authority in October 1999 vide Order dated 29 October 1999. This Rent Schedule was approved as an interim arrangement for a period of two years, pending receipt of certain information from KOPT. The KOPT stated that any upward revision of the existing rent schedule of the Land and Buildings of HDC would be detrimental to the Port interest and requested for extension of validity of the rent schedule for a period of 1 year. The validity of the Rent Schedule was extended vide Order dated 22 November 2001 for a further period of one year with effect from 2 December 2001. Subsequently, on the request of KOPT, the validity of the Rent Schedule was extended from time to time till 31 December 2005.

2.2. The Land Policy guidelines issued by the Government in March 2004 was made applicable to KOPT in February 2005. Thereafter, the KOPT in September 2005 filed a proposal for review of the Rent Schedule. The proposal of the KOPT was registered as a tariff case and processed following the usual consultative process adopted.

2.3. Subsequently, the KOPT requested to treat the case as closed citing the reason that the port will undertake a fresh valuation of Land and Buildings at Haldia and Kolkata in line with the provisions of the Land Policy guidelines approved by the Central Government and in the light of the observations made by TAMP during the proceedings and file a fresh revised proposal. This Authority, therefore, vide its Order dated 23 April 2006 closed the case as withdrawn and extended the validity of the Rent Schedule by a period of six months and directed the port to file revised proposal within 90 days from the date of notification of the Order.

2.4. The KOPT sought extension of the validity of the existing Rent Schedule and also sought extension of time to file the revised proposal, from time to time. The validity of the existing Rent Schedule was extended till 31 December 2009 and called upon the KOPT to file revised proposal by 30 September 2009. Since we did not hear from the KOPT, the port was reminded vide our letter No. TAMP/56/2005-KOPT dated 8 December 2009 to file the revised proposal immediately for revision of the Rent Schedule for its Land and Buildings at Haldia and Kolkata. The position was also brought to the notice of the Ministry of Shipping vide our letter No. TAMP/56/2005-KOPT, dated 8 December 2009.

3.1 In this backdrop, the KOPT has filed a proposal dated 23 December 2009 for revision of Schedule of Rent for Land and Buildings at Haldia and Kolkata. The main points made by KOPT in its proposal are summarized below:

- (i). The revised Rent Schedule of the KOPT estate under KDS was sanctioned by the Government of India under Section 52 of the MPT Act, 1963 in 1996.
- (ii). For revision of Schedule of Rent for the Estate under KDS and HDC a Committee was formed under the Chairmanship of Chairman, KOPT in terms of the Land Policy Guidelines issued by the Ministry.
- (iii). The said Committee took into account various methodology mentioned in the Land Policy guidelines for preparation of Rent Schedule. Valuation of KOPT estate held under KDS and HDC was carried out by Price Waterhouse Cooper Pvt Ltd (PWC).

The Board of Trustees of the KOPT approved the Report of the Committee in its meeting held on 22 December 2009.

3.2. The KOPT has certified that the revised rental structure for both KDS and HDC has been proposed by adhering to the Land Policy Guidelines for Major Ports.

3.3. The proposed Rent Schedule for KDS, envisages revision of rent for land, buildings and structures under KDS. The proposed Rent Schedule for HDC envisages revision of Schedule of Rent for land, buildings, permission fee, way-leave license, hawker charges, fee for open / covered space inside dock interior zone for storage of import / export cargo.

4. Since the KOPT has already filed its proposal for revision of Schedule of Rent for Land and Buildings at Haldia and Kolkata, the validity of the rent schedule was extended till 30 September 2010 or till the effective date of notification of Order to be passed by this Authority on the proposal received from KOPT, whichever is earlier, vide Order dated 31 March 2010.

5. In accordance with the consultative procedure prescribed, a copy of the proposal from the KOPT was forwarded to the concerned user organizations for their comments. The comments received from the user organizations were forwarded to KOPT as feed back information. The KOPT has responded on the comments of the users.

6. The KOPT drew a reference to an administrative Order issued by it by which the KOPT has stated to have notionally escalated the rates @ 5% per annum from the date of notification of the Rent Schedule in 1999 and had approached this Authority vide its letter dated 28 April 2010 seeking clarification regarding automatic escalation in Scheduled rate of Rent. The position has been clarified to KOPT vide our letter number TAMP/3/2003-Misc dated 9 August 2010, as under:

“ The Land Policy Guidelines issued by the Ministry of Shipping (MOS) in February 2004 for all Major Port Trusts except Kolkata Port Trust (KOPT) and Mumbai Port Trust (MBPT), was made applicable to KOPT vide MOS letter no. PT-17011/32/2000-PT dated 10 February 2005. As per the decision conveyed by the MOS to KOPT, Land Policy for the Major Port Trusts is to be implemented by KOPT with immediate effect.

Clause 5.3(I)(c) of the Land Policy Guidelines stipulates that the Scale of Rates shall be escalated by 2% per annum till such time the Scale of rates is revised with the approval of the Competent Authority. As such, the rates prescribed in the Schedule of Rent for Land and Buildings at HDC requires to be escalated by 2% per annum from the due date of such annual escalation which fell after 10 February 2005, till such time the said Rent Schedule is revised with the approval of this Authority.

As far as the escalation factor pertaining to the period prior to the due date of 2% escalation which fell after 10 February 2005 is concerned, an escalation factor of 5% per annum as already stipulated in the Note no. 8 of the Rent Schedule of Land and Buildings of KOPT at Haldia notified by this Authority vide its Order dated 25 October 1999 is to be applied.”

7. Based on a preliminary scrutiny of the proposal, the KOPT was requested to furnish additional information/ clarification on various points. The KOPT has responded. The queries raised by us and the response of the KOPT are summarised and tabulated below:

| Sl. No. | Queries raised by TAMP | Response of KOPT |
|---------|---|--|
| I. | GENERAL: | |
| (i). | The KOPT to confirm that its proposal is in conformity with the Land Policy for Major Ports approved by the Government of India and Communicated to the ports under letter No. PT-17011/55/87-PT, dated 8 March 2004 and made applicable to KOPT vide MOS letter No. PT-17011/32/2000-PT, dated 10 February 2005. | The KOPT has confirmed that the proposal for revision of Schedule of Rent (SoR) for KDS is in conformity with the Land Policy Guidelines issued by the Ministry for Major Ports which was made applicable to Kolkata Port Trust since 10.2.2005. [Subsequently, KOPT vide its letter dated 5 October 2010 has confirmed that the proposal for revision of rent for HDC has also been made in accordance with Land Policy Guidelines]. |

| (ii). | KOPT to confirm that the rate structure proposed by the KOPT is in accordance with end use as reflected in the Land Policy guidelines referred to above. | The KOPT has confirmed this position. | | | | | | | | | | | | | | | | |
|-------------------------------------|---|--|---------|---------|---------|---------|---------------------|--------|--------|--------|-------------------------------------|--------|---------|---------|-------|---------|---------|---------|
| (iii). | If on any matter the present proposal deviates from the Land Policy Guidelines referred above, KOPT to furnish the details thereof and the reasons therefor. | There is no deviation proposed in the revision of Rent Schedule for KDS submitted to TAMP. However certain issues like fees for approval towards mutation fee, mortgage fee, damages for encroachment etc. have been proposed which were not covered under Land Policy Guidelines are traditionally being covered in the Rent Schedule of KDS. | | | | | | | | | | | | | | | | |
| (iv). | As required at Note no. 3 to Form – 1, KOPT to furnish the details of all the lease granted by the port for commercial and other purposes, zone-wise, separately for the last 3 years viz., 2007-08, 2008-09 and 2009-10. | Details of long term leases granted since November, 2006 to November, 2009 have already been furnished along with the proposal. [It has furnished 3 separate lists covering the leases granted for the financial year 2007-08, 2008-09 and 2009-10 (till the date of submission of proposal). (As can be seen from the details, the KOPT have granted leases in the Dock, Howrah, Kolkata and Budge Budge zones.) | | | | | | | | | | | | | | | | |
| (v). | The KOPT has furnished two separate Form – 1 showing classification/ utilisation of total area available with Kolkata Dock System (KDS) and Haldia Dock Complex. However, the sum of total of the land area utilized for various purposes in a particular zone does not match with the total area available under that zone. For instance, in the Form – 1 pertaining to classification of land at KDS, out of the total area of 2646 acres available under the Dock Zone, the KOPT has shown the utilization in respect of 2623 acres only (1480 acres utilized for port operations, 79.31 acres utilized for port employees residential purpose and 1064 acres allotted for commercial purpose). The KOPT to furnish revised Form – 1 showing the correct utilization of land at KDS, by ensuring that the sum total of the land area utilized for various purposes in a particular zone matches with the total area available under the respective zone. | An apparent mismatch regarding the total area under a zone and that of a total area under KDS, as pointed out by TAMP, is due to the fact that in the total area, roads, drainage, channel etc. are being included whereas in the zone-wise area, only the rental estates are covered. Some area at outstation property is lying vacant too. The KOPT has furnished the revised Form-I. (The revised form stated to have been furnished by KOPT is the same Form 1 earlier submitted by KOPT alongwith its proposal.) | | | | | | | | | | | | | | | | |
| (vi). | The Form – 1 pertaining to classification of land at KDS is incomplete. The details as required in the Part B (Estate related cost) of Form – 1 are not furnished by KOPT. KOPT to furnish the requisite information. | The KOPT has provided the details as required in Part-B in Form-1. <u>Expenditure details in rentable land & buildings for the financial year 2007-08, 2008-09 and 2009-10 for KDS</u> (Rs. In Lakhs) <table border="1" data-bbox="799 1756 1497 1935"> <thead> <tr> <th>Item</th> <th>2007-08</th> <th>2008-09</th> <th>2009-10</th> </tr> </thead> <tbody> <tr> <td>Revenue Expenditure</td> <td>197.98</td> <td>135.87</td> <td>159.75</td> </tr> <tr> <td>Plan & Non-Plan Capital Expenditure</td> <td>965.25</td> <td>1220.26</td> <td>1345.99</td> </tr> <tr> <td>Total</td> <td>1163.23</td> <td>1356.13</td> <td>1505.74</td> </tr> </tbody> </table> | Item | 2007-08 | 2008-09 | 2009-10 | Revenue Expenditure | 197.98 | 135.87 | 159.75 | Plan & Non-Plan Capital Expenditure | 965.25 | 1220.26 | 1345.99 | Total | 1163.23 | 1356.13 | 1505.74 |
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| (vii). | Part 2 of Form – 1 requires the port to furnish the comparison between the Current and the proposed Scale of | (The KOPT has furnished a statement showing the conditionalities in which a change has been effected in the proposal vis-à-vis the relevant existing conditionalities | | | | | | | | | | | | | | | | |

| | Rates. Though the KOPT has furnished the comparison of the existing and proposed rentals at KDS, it has not furnished the comparison with regard to the existing and the proposed conditionalities. The KOPT to furnish a comparison of the conditionalities at KDS highlighting the proposed changes and the justifications therefor. | as prevailing in the Rent Schedule of 1996.) | | | | | | | | | | | | | | | | | | | | |
|-------------------------------------|--|--|---------|---------|---------|---------|---------|--------|--------|--------|-------------|--|--|--|-------------------------------------|--------|---------|---------|-------|---------|---------|---------|
| (viii). | The KOPT to furnish a comparison of the existing and proposed rentals alongwith the existing and the proposed conditionalities at HDC in the prescribed format. | The comparative chart showing the existing and proposed rents in different zones of HDC have already been mentioned in the report of M/s. PWC. The KOPT has furnished the comparative position between the existing and proposed conditionalities. | | | | | | | | | | | | | | | | | | | | |
| (ix). | The KOPT to furnish Form – 2A (Cost statement for Estate Activity) and Form – 2B (Capital employed for Estate Activity) for both KDS and HDC separately and for the port as a whole. | (KOPT has stated to have furnished the Form-2(A) (cost statement for estate activity) and Form-2(B) (capital employed for estate activity) for KDS & HDC separately and Port as a whole. However, it is seen that KOPT has furnished the Form-2(A) and Form-2(B) for KDS alone.) [Subsequently, the KOPT vide its letter dated 5 October 2010 has, inter alia, furnished the cost statements for KDS and HDC]. | | | | | | | | | | | | | | | | | | | | |
| (x). | The KOPT in the Board Note has mentioned that the implementation of the proposed rent schedule will generate additional revenue to the extent of Rs.38.75 crores per annum incase of KDS and Rs.7.00 crores per annum incase of HDC. However, from the Cost statement for the Estate activity for the KOPT as a whole as submitted by KOPT alongwith its general revision proposal, the KOPT has estimated an average additional revenue to the tune of around Rs.36.76 crores only. The KOPT to explain the reason for the difference in the estimated additional revenue generation and the difference may be reconciled. | Apparent discrepancy highlighted by TAMP has been examined and checked and it is observed that with the existing (old) Schedule of Rent, the estate income at KDS in 2010-11 is expected Rs.126.81 crores whereas if the new Schedule of Rent as proposed, was levied from the beginning of the financial year 2010-11, the estate revenue would have Rs.162.83 crores. Thus there will be a rise of Rs.36.01 crores in KDS. Similarly at HDC, the additional revenue of Rs.7 crores per annum is expected. Thus a total rise of additional revenue from estate of Kolkata Port Trust as a whole is expected Rs.43.01 crores. However, as the new Schedule of Rent has not yet been implemented due to want of required notification from TAMP, the aforesaid additional revenue in the current fiscal i.e. 2010-11 will not mature. | | | | | | | | | | | | | | | | | | | | |
| (xi). | Note -4 to Form -1 requires a major port to confirm that Development Cost is allocated to land used by port and each category of rentable land at actuals or on pro-rata basis. The KOPT has not confirmed that Development cost is allocated to each category of rentable land. It has only confirmed that it has allocated the development cost to the land used by port. The KOPT to furnish the original cost and the cost of development incurred subsequently for each category of land. It may also be stated whether the Development cost has been allocated to the rentable land. The basis of allocation, whether at actuals or on pro-rata basis may also be furnished. | <p>The KOPT has furnished the following information about the development cost allocated to land, used by the Port as well as rentable land at actual for the 3 years covering 2007-08, 2008-09 and 2009-10.</p> <p><u>Expenditure details in rentable land & buildings for the financial year 2007-08, 2008-09 and 2009-10 for KDS</u> (Rs. In Lakhs)</p> <table border="1"> <thead> <tr> <th>Item</th> <th>2007-08</th> <th>2008-09</th> <th>2009-10</th> </tr> </thead> <tbody> <tr> <td>Revenue</td> <td>197.98</td> <td>135.87</td> <td>159.75</td> </tr> <tr> <td>Expenditure</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Plan & Non-Plan Capital Expenditure</td> <td>965.25</td> <td>1220.26</td> <td>1345.99</td> </tr> <tr> <td>Total</td> <td>1163.23</td> <td>1356.13</td> <td>1505.74</td> </tr> </tbody> </table> <p>(The information furnished by KOPT does not appear to be in reference to the query raised by us.)</p> | Item | 2007-08 | 2008-09 | 2009-10 | Revenue | 197.98 | 135.87 | 159.75 | Expenditure | | | | Plan & Non-Plan Capital Expenditure | 965.25 | 1220.26 | 1345.99 | Total | 1163.23 | 1356.13 | 1505.74 |
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| (xii). | The KOPT proposal makes a mention about the recommendations of the | [The KOPT has furnished a copy of the recommendation of Public Accounts Committee in their 175 th report (5 th Lok | | | | | | | | | | | | | | | | | | | | |

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| | Public Accounts Committee. The KOPT to furnish a copy of the said recommendations of the Public Accounts Committee. | Sabha). In summary, the recommendations relate to allotment of fresh land either through an advertisement or through sealed tenders instead of making allotment on the merit of individual cases. It has recommended to secure maximum return from the properties. The recommendations also relate to specifically laying down by a Committee, the procedure for the allotment and fixation of rentals of land and buildings of the KOPT. It has also recommended notifying all vacancies of land and buildings to Central & State Governments, PSUs, Statutory Bodies, and Government owned Companies.] |
| II. | <u>Common points pertaining to Kolkata Dock System (KDS) And Haldia Dock Complex (HDC):</u> | |
| A. | <u>Valuation of Land:</u> | |
| (i). | <p>Clause 5.3 (1) of the Land Policy guidelines prescribes the factors to be reckoned with for determination of the market value of the port land. It is seen from the proposal that the KOPT has determined the market value of land based on the rates obtained from the Sub-Registrar's Office (SRO) and tender rates wherever obtained. The KOPT has not considered the State Government's Ready Reckoner of the land value on the ground that the Ready Reckoner was not made available to it. It is not clear why the State Government's Ready Reckoner could not be obtained by the Port Trust.</p> <p>Recently, while finalizing the lease rental revision proposals of some of the Major Port Trusts, this Authority felt that it would be appropriate for a Port Trust to assess the market value under all the options given in the Land Policy guidelines for Major Ports and derive lease rentals based on the one which is most beneficial to it. The KOPT is, therefore, requested to re-assess the market values of its landed estates under all options given in the Land Policy guidelines and derive lease rentals based on the one which is most beneficial to it.</p> | <p>Unlike certain States like Maharashtra, in West Bengal, there is no published Ready Reckoner of land value issued by the Department of Finance, Govt. of West Bengal. Accordingly there is no scope of referring Ready Reckoner of land value while preparing the revised rent schedule of Kolkata Port Trust. This has been duly minuted by the Committee constituted under the chairmanship of Chairman, Kolkata Port Trust in its meeting held on 17.11.2008.</p> <p>As regards the observation of TAMP for consideration of all the options to assess the market value of port land, it may be mentioned that in the proposed Rent Schedule of KDS, we have taken the Sub Registry Office rate which is nothing but the rate of actual transaction. We have also taken accepted tender rate of port land with necessary updation and also taken the valuation proposed by the approved valuer which is M/s. PWC who have been engaged by Kolkata Port Trust. In addition, we have also updated the earlier rent schedule by providing annual escalation of 5.1% (as stipulated in the earlier rent schedule) to arrive at the present rentals. Thereafter comparison of all such rentals have been made and highest of the value which is obviously beneficial to port, has been taken and recommended.</p> |
| (ii). | <p>With reference to assessment of market value of land based on the rates obtained from SRO, the KOPT to furnish / clarify the following:</p> <p>(a). As mentioned by KOPT, the value of the land as obtained from the SRO, has been enhanced by 2% to arrive at the rate for the year 2008. Since revised rates will come into effect prospectively, the reasons for basing the proposal on rates of 2008 are not clear.</p> | <p>The proposal for revised rentals after evaluating the present market value of port land and assessing the rentals, the proposal was placed before the committee in August, 2008. Thereafter the committee took its first meeting in November, 2008, then May, 2009 onwards and finally recommended during its 5th meeting held on 10.11.2009. Accordingly the proposal which was placed in August, 2008, finally approved by the Committee. The proposal was placed before the TAMP in December, 2009</p> |

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| | <p>(b). After the annual enhancement of SRO rate by 2%, the KOPT has discounted the value of land by 10% on the ground that the SRO rate is for free hold land and the value of land by lease rental method for a period of 30 years is around 90% of the value of the land by lease rental method for perpetuity (for 99 years) at an interest rate of 8%. The Annex – 3 furnished by KOPT in this regard may be supported with workings.</p> <p>(c). The value of land is further discounted by 25% so as to make the land rates comparable to the land useable for industrial purpose. In the workings (Annexure – 4) it has been mentioned that the rates of land for Residential and Industrial use have been collected from various development authorities in West Bengal. However, it is seen that the discounting factor of 25% has been arrived at based on the residential and industrial land value only at two places, namely Falta and Haldia Development Authority (HDA) for the purpose of land valuation at KDS and HDC. In this regard, KOPT to confirm as to whether the residential and industrial value of land at these two places alone is representative enough to generalize the difference in the value of land in industrial and residential area.</p> | <p>and since then it is pending there.</p> <p>Detailed working for discounting by 10% is provided at Annexure-3 of the Valuer's report which has been derived graphically for 30 years' lease.</p> <p>(The working to support the rate of 8% as shown in Annexure-3 of the Valuer's report has not been furnished by KOPT. Subsequently, at our request, the port vide its letter dated 5 October 2010 has furnished calculation showing 90% realization of entire land value in case of 30 years lease in order to support its contention that lease of land for 30 years generates 90% value and thus the reason for allowing 10% (100%-90%) discount.</p> <p>The KOPT has stated that according to the Valuer, they have obtained rates from these two places and were cross checked, which showed same result and hence the consultant has taken the average.</p> |
| (iii). | <p>With reference to assessment of market value of land in few cases based on the tender rate, the KOPT to furnish/clarify/confirm the following:</p> <p>(a). The KOPT to confirm whether the tender values considered are the highest accepted tender of port land as stipulated in Clause 5.3 (1) (iii) of the Land Policy guidelines.</p> <p>(b). The tender rates considered in evaluation of land at KDS is reported to be updated tender value. The KOPT to explain with workings showing the original tender values and how these values have been updated. It appears that KOPT has considered the tender rates updated as of the year 2008 by applying the escalation factor at 5.1%. It may be noted that as per Clause 5.3 (1) (iii) of the Land Policy guidelines of Government made applicable to KOPT in February 2005, there is no provision to escalate the highest accepted tender</p> | <p>It is confirmed that the value that has been considered in preparation of the rent schedule, is the highest accepted tender rate for the relevant zone of the port land duly updated which is as per Land Policy Guidelines.</p> <p>In terms of tender condition of lease rentals, all leases are having annual escalation @ 5.1%. When the highest accepted tender rate for port land was taken as one of the methodologies to arrive at the rentals for the proposed rent schedule, the tender rate which was obtained earlier i.e. before 2006 was updated @ 5.1%. If such escalation had not been done then the comparison for present rentals could not be arrived at since the existing long term lessees who came into port land earlier than 2008 are paying escalated rent of 2006. Accordingly it was felt necessary that any tender rate which was prior to 2008 required to be updated @ 5.1% and the same was carried out.</p> <p>In clause 5.3(1) (iii) of the Land Policy Guidelines, it is</p> |

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| | <p>of port land.</p> <p>(c). The updated tender value so obtained by KOPT has been further enhanced by 1.32 times incase of KDS and in case of HDC the existing rates of rent fixed in the year 1999 have been updated and the updated rates have further been enhanced by 1.10 times to factor the loss of upfront premium payment, collected earlier by KOPT. This approach does not appear to be in line with the Land Policy guidelines.</p> | <p>clearly mentioned that the highest accepted tender rate of port land for similar transaction. To make a comparison on a particular year which is 2008 in the instant case, unless the earlier rate obtained in the tender, prior to 2008, is duly updated and brought at the level of 2008, the comparison cannot be stated to be similar transaction. Accordingly the annual escalation has been made on the accepted tender rate for previous year to arrive at the updated tender rate for 2008.</p> <p>In the previous Rent Schedule of 1996, the total revenue from the estates have been computed in 3 different components viz. premium (equivalent to 4 years' rent to be deposited at the beginning of lease), monthly rentals and annual escalation @ 5.1% to the monthly rentals. Accordingly, if any of the aforesaid 3 components are reduced subsequently without considering its effect on the other items, estate revenue will be recovered/ realized less than what has been contemplated in the said notification. Accordingly, the tenders for leasing of port land are being issued keeping the aforesaid 3 components so that there is no reduction of estate rentals. Moreover when a tenderer is successful and a lease is granted, he has to follow the conditionalities of lease agreement because that is a contract between two parties. Accordingly, reduction in annual escalation from 5.1% (which is as per tender condition) to anything less is not permitted under contract. In the proposed rent schedule, this provision of obtaining non-refundable non-adjustable premium has been dispensed with. As the highest accepted tender rate of the port land has been taken into comparison along with other methodologies for obtaining the proposed rentals, unless the premium equivalent to 4 years' rent, paid by the successful tenderer, is distributed over the 15 years lease period, the true value of rentals cannot be arrived at. KOPT has furnished a sample calculation showing the withdrawal of premium and reduction of annual escalation @ 2% from 5.1% vis-à-vis the prevailing practice of obtaining premium, rentals and annual escalation @ 5.1%. As regards the enhancement of 32% i.e. the factor of 1.32, the detailed calculation has been furnished at Annexure-5 of the report of M/s. PWC which was enclosed with the proposals submitted to TAMP. As regards the factor of 1.10 applied in case of tender rates at HDC, the detailed calculation for arriving at such factor of 1.10 has been furnished at Annexure-B of the report of M/s. PWC.</p> <p>(The KOPT has furnished a sample calculation to show that as per prevailing practice at KDS, the total revenue that would be realized in the form of upfront premium and rentals with 5.1% escalation on a plot measuring 1 sq.mtr, would be Rs.30890.02, whereas if the premium is withdrawn and the escalation is restricted to 2%, then the total revenue that would be realized would be Rs.20752.10.)</p> |
| (iv). | <p>This Authority vide its Order dated 23 August 2006 has interalia, directed KOPT to amend the Rent Schedule for allotment of Land and Buildings of</p> | <p>The attention of TAMP is invited to para 5.3 (1) (a) of Land Policy Guidelines wherein it is clearly mentioned that SoR of land "will be recommended" to TAMP by a Committee headed by the Chairman, Port Trust. Under</p> |

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| | <p>KOPT at Haldia and the relevant Scale of Rates for allotment of land at Kolkata to the extent that the conditionalities contained in the Rent Schedule pertaining to Haldia and the Scale of rates pertaining to Kolkata are inconsistent or at variance with the Land Policy Guidelines issued by the Government. As per clause 5.3 (1)(c) of the Land Policy Guidelines of 2004, the Scale of Rates is to be escalated by 2% per annum till such time the Scale of rates is revised with the approval of the Competent Authority (TAMP). As such, the Rent Schedule for allotment of Land and Buildings of KOPT at Haldia and the relevant Scale of Rates for allotment of land at Kolkata, stand amended. In this backdrop, the updation of monthly rent to arrive at the monthly rent as of the year 2008 by applying the escalation factor at 5.1% at KDS [Refer Annexure 6 (a)] and at 5% at HDC [Refer Annexure 9(a)] is not found to be as per the provisions contained in the Land Policy guidelines and prescription made in the Rent Schedules of KOPT. The KOPT is, therefore, to modify the figures in both the Annexures.</p> | <p>the said para, it is mentioned that “such SoR” will be escalated at 2% per annum. Accordingly it is absolutely clear that when the SoR will be recommended to TAMP by a Committee headed by the Chairman, Port Trust, the annual escalation to be considered at 2%. It is relevant to point out that in KDS, the earlier Rent Schedule approved by the Govt. and notified in 1996, has got 3 components viz. premium (equivalent to 4 years’ rent), monthly rentals as per the amount mentioned in the Rent Schedule and annual escalation @ 5.1%. Thus the total revenue from a piece of land will be generated by adding the income from all the aforesaid 3 components namely premium, rent & escalation. If any change is made in any of the aforesaid 3 components without duly adjusting its effect on the other components, the port will stand to lose because of less realization of estate rentals than what has been contemplated in the Gazette notified Rent Schedule of 1996.</p> <p>Accordingly, in all tenders issued, there is a condition of enhancement of rent @ 5.1%. Thus the successful tenderers to whom leases have been granted are bound by the contract which provides escalation @ 5.1%. Moreover the rates (numerical figures) mentioned in such 1996 Rent Schedule are enhanced @ 5.1% every year to arrive at the present updated Schedule of Rent due to the reasons explained above. If such updation is not done, KoPT will be losing substantial revenue on its estate rentals. As regards contention of TAMP for clarification given in 2006, the escalation should be at 2%, it may be mentioned that this is not the correct interpretation of the Land Policy Guidelines as explained above and more so the Port will stand to lose crores of rupees if the annual escalation is reduced to 2% from 5.1% without taking its effects on the other components of monthly rentals and premium. In view of the above, there is no scope of modification of the figure about the updation of the schedule.</p> |
| <p>B.</p> | <p><u>Valuation of Buildings and Structures:</u></p> | |
| <p>(i).</p> | <p>The KOPT to explain / clarify as to how the valuation of buildings and structures of KOPT is covered under the ambit of the Land Policy Guidelines.</p> | <p>The Land Policy Guidelines issued by the Ministry is intended to cover the port estate which is utilized for earning revenue in the form of rentals. In KDS, there are good numbers of buildings comprising of warehouses, godowns, sheds etc. both within the custom bound as well as outside the custom bound areas. These godowns, warehouses are being rented since ages mainly for the purpose of storage of warehousing related to exim traffic and also domestic distribution. Accordingly, unless the rentals/ licence fee for such buildings covering warehouses, godowns, sheds are notified, it will not be possible to realize the rentals in view of provisions of Section 49(1)(c)(d) of the Major Port Trusts Act, 1963. As those buildings covering warehouses, godowns, sheds are contributing major part to estate, its inclusion in the SoR is absolutely necessary.</p> |
| <p>(ii).</p> | <p>In the sample calculation furnished by KOPT for calculation of Building Rent at [Annexure – 6(d)] and (Annexure – 9d), the KOPT has considered the</p> | <p>As confirmed by M/s. PWC for both KDS and HDC, they have referred to CPWD plinth area rates. For KDS, there is no specific plinth area rate for storage buildings in the schedule of CPWD. However there are plinth area rate for</p> |

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| | <p>construction cost at Rs.790/- per square feet and Rs.800/- per square feet for KDS & HDC, respectively to determine the Current Replacement Cost. Further, this cost has been increased by 10% to capture other project expenses. The KOPT to furnish basis and the documentary evidence to justify the construction cost and other project expenses.</p> | <p>non-residential building (load bearing construction) which range from Rs.8250/- per sqm. to Rs.8715/- per sqm. or Rs.766/- per sqft. and Rs.809/- per sqft. Based on physical verification, CPWD plinth area rate and valuer's discretion they have used an average rate of (Rs.766/- + Rs.809/-)/2 per sqft. which is Rs.787.50 per sqft. or Rs.790/- per sqft. (Rounded off).</p> <p>For HDC, there is no specific plinth area rate for storage building in the schedule of CPWD. However there are plinth area rate for non-residential buildings such as school (RCC framed structures) which is Rs.9150/- per sqm. or Rs.850/- per sqft. The construction specification of a warehouse is similar to that of a school. The rate is slashed by Rs.50/- based on valuer's discretion and a rate of Rs.800/- per sqm. for HDC has been used by the valuer.</p> <p>Enhancement of the above rates by 10%, according to PWC, is as follows: 4% for Sales Tax 4% interest during the construction period and 2% as project management expenses.</p> |
| (iii). | <p>Neither the Land Policy guidelines of 2004 (extended to KOPT in 2005) nor tariff guidelines of 2005 permit current cost revaluation of assets. Only in respect of lands, market value based lease rents are to be determined. That being so, the current cost updation of values of buildings and structure may not be in line with the Government guidelines.</p> | <p>While arriving at the rentals for the various building premises, warehouses, godowns under KDS, the principle followed is to arrive at current replacement cost minus depreciation. This is one of the methodologies followed for valuation of useable structures. As the basic purpose of revision of rent schedule is by way of reflecting the current market value of estate, unless the present valuation of the buildings are arrived at, there is no chance of getting present market rate. A building can only stand provided there is a land lying underneath. For such land, market value based lease rents are considered. It is ridiculous to think that the building constructed over the said piece of land will be evaluated on the basis of old book value/ acquisition cost since in that event the port will stand to lose because the basic objective of the Land Policy Guidelines is to garner the present market rate from the estate which comprises both land as well as built up premises.</p> |
| (iv). | <p>Further, in the sample calculation, the KOPT has considered a depreciation rate of 50% incase of KDS and 10% incase of HDC on the Current Replacement Cost (CRC) of Building to arrive at the Revalued Value of Depreciation (RVAD) of building. The KOPT to furnish the basis for the depreciation rate of 50% and 10% considered in the calculations.</p> | <p>According to the valuer for KDS, 50% depreciation has been considered based on their findings during physical verification. The structures in KDS are very old and outlived their lives. For good maintenance of warehouses being carried out by KoPT, the valuer has estimated further 40 years of life for the KDS buildings.</p> <p>10% depreciation has been considered by the Valuer as per their findings from physical verification. HDC structures are almost new and were mostly built around 2000. According to the Valuer those buildings can sustain a further life of 72 years which is around 90% of the total life of a building.</p> <p>According to Valuer, valuation is not a precise science, the conclusions arrived at in many cases will be subjective and depending on exercise of individual judgement. There is, therefore, no indisputable single</p> |

| | | value. | | | | | | | | | | | | |
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| (v). | The KOPT to justify the increase in the value of land in which the building is situated, by 10% on account of circulation area incase of buildings at KDS and HDC each. | According to the Valuer, 15% of the plot area requires to be kept open as per municipal law. In the instant case, the properties of KoPT are constructed on large plots. Hence 10% of land area has been considered as circulation area. | | | | | | | | | | | | |
| (vi). | The basis for considering an additional yield of 4% per annum to cover maintenance expenditure to arrive at the monthly rent from the buildings and warehouses at KDS and HDC may be furnished with justification. Repair and maintenance expenses of the Port exclusively in respect of rented buildings and structures for the last 3 years may be furnished. | The Land Policy Guidelines issued by the Ministry considers arriving at the rent for the valuation @ 6%. However in case of structures owned by the Port and licenced out, it is mentioned that in terms of Section 49(1)(c)(d) of Transport of Property Act, it is the responsibility of the owner to maintain the structures. For the cost of such maintenance, it is necessary that suitable element needs to be incorporated into the rentals otherwise it will be draining of valuable port revenue. Keeping that in view, the committee considered it prudent to take 4% additional yield per annum to cover maintenance expenditure. As regards KDS, the repair and maintenance expenses of Port structures for the last three years covering 2007-08, 2008-09 & 2009-10 are given below: <table border="1" data-bbox="799 869 1492 945"> <thead> <tr> <th>Items</th> <th>2007-08</th> <th>2008-09</th> <th>2009-10</th> </tr> </thead> <tbody> <tr> <td>Revenue</td> <td>1,97,98,231.75</td> <td>1,35,86,831.25</td> <td>1,59,75,297.00</td> </tr> <tr> <td>Expenditure (Rs.)</td> <td></td> <td></td> <td></td> </tr> </tbody> </table> | Items | 2007-08 | 2008-09 | 2009-10 | Revenue | 1,97,98,231.75 | 1,35,86,831.25 | 1,59,75,297.00 | Expenditure (Rs.) | | | |
| Items | 2007-08 | 2008-09 | 2009-10 | | | | | | | | | | | |
| Revenue | 1,97,98,231.75 | 1,35,86,831.25 | 1,59,75,297.00 | | | | | | | | | | | |
| Expenditure (Rs.) | | | | | | | | | | | | | | |
| III. | <u>Points pertaining to Kolkata Dock System (KDS)</u> | | | | | | | | | | | | | |
| A. | <u>Valuation of Land:</u> | | | | | | | | | | | | | |
| (i). | In the documents furnished by KOPT to show the value of land in various places at KDS as obtained from SRO, the KOPT has shown the value of land at Garden Reach Road from Hastings Bridge to Tidal Basin and the value of land at Watgunge at Rs.8 lakhs per Cottah each. However in the Annexure – 6a, showing the workings to arrive at the proposed lease rental, the KOPT has not considered the updated land value to arrive at the lease rental for the above mentioned areas. The reason for not considering the updated SRO value of land in these cases to be furnished. | According to the Valuer, SRO rates were not available for some areas especially in the dock areas since there were no transactions in the vicinity during the last few years. Hence the latest tender rates available for that area has been updated as explained in their report (refer to para 7 of section 3.1 of the report) which is as follows: “We have also considered the highest accepted tender rates for similar transactions. The tender rate has been updated as on 2008 @ 5.1% per annum and further multiplied by a factor 1.32 to arrive at a break-even point since KoPT has decided to abolish the upfront premium in future.’ | | | | | | | | | | | | |
| (ii). | (a). The KOPT has not furnished workings to arrive at the proposed rentals for the use of land at other locations viz., Roychowk, Hoogly Point, Balagarh, Jellinghum, Gangrachar, Diamond Harbour, Khejuri, Shimurali, Durgapur, South Kalichar, Baharampur, Nischintapur, Pyradanga, Saugor and Freshergunj. The KOPT to furnish the requisite workings. (b). Likewise, KOPT to furnish workings for the rate arrived at for the plots without view from main road in Chandmari Ghat, Howrah Station Area. | (a). The KOPT has furnished the workings as forwarded by M/s. PWC. (b) According to the Valuer during site inspection, the plots could not be identified in two groups i.e. plot with view from the main road and plot without view from the main road and hence a single rate for the above 2 groups has been given. | | | | | | | | | | | | |

| B. | Valuation of Buildings: | |
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| (i). | <p>The KOPT has furnished a sample calculation [Refer Annexure – 6(d)] in which the KOPT has considered the land value of Strand Road near Mullick Ghat Pumping station as base to arrive at the rent for Fairlie Warehouse. Though the KOPT has furnished details in Annexure – 6c to arrive at the rent for other Buildings or warehouses. Annexure – 6C could not be verified in the absence of the basis for the land value considered in the calculation. The KOPT is, therefore, to furnish the basis for the land value considered in the calculations.</p> | <p>The clarification given by the Valuer is reproduced below:</p> <p>“The land rate considered in Annexure-6c is mentioned in Annexure-6d, where we have stated to refer to Annexure-6b for the land component. However the calculation is as follows:</p> <p>Land Rate = Rs.2500000/- per cottah (as on 2007) Land Rate = 1.02 x Rs.2500000/- per cottah = Rs.2550000/- per cottah (as on 2008)</p> <p><u>After discount of 10% as explained in Annexure-3</u> Land Rate = 0.9 x 2550000/- per cottah = Rs.2295000/- per cottah. <u>After discount of 25% as explained in Annexure-4</u> Land Rate = 0.75 x Rs.2295000/- per cottah = Rs.1721250/- per cottah OR Land Rate = Rs.{(1721250/720)x 10.764} per sq.m = Rs.25732.69 sqm.</p> |
| (ii). | <p>The KOPT has stated that it has calculated the annual rent for buildings and warehouses @ 10% of the market value considering 4% additional for maintenance. The KOPT does not appear to have factored this maintenance cost in the Rent. Nevertheless, the KOPT to furnish the basis adopted to consider 4% additional increase in the value on account of maintenance charges.</p> | <p>The clarification as requested by TAMP has been comprehensively given at B (vi) above, which may kindly be referred to.</p> |
| (iii). | <p>With reference to Annexure – 6 C, (valuation of Buildings and Structures) the KOPT to furnish / clarify the following:</p> <p>(a). The updation of monthly rent fixed in September 1996, by the Government, with an escalation factor of 5.1% to bring it to the level of 2008 may be reviewed in view of our observation made earlier and the position may be updated as of the year 2010.</p> | <p>The attention of TAMP is invited to para 5.3 (1) (a) of Land Policy Guidelines wherein it is clearly mentioned that SoR of land “will be recommended” to TAMP by a Committee headed by the Chairman, Port Trust. Under the said para, it is mentioned that “such SoR” will be escalated at 2% per annum. Accordingly it is absolutely clear that when the SoR will be recommended to TAMP by a Committee headed by the Chairman, Port Trust, the annual escalation to be considered at 2%. It is relevant to point out that in KDS, the earlier Rent Schedule approved by the Govt. and notified in 1996, has got 3 components viz. premium (equivalent to 4 years’ rent), monthly rentals as per the amount mentioned in the Rent Schedule and annual escalation @ 5.1%. Thus the total revenue from a piece of land will be generated by adding the income from all the aforesaid 3 components namely premium, rent & escalation. If any change is made in any of the aforesaid 3 components without duly adjusting its effect on the other components, the port will stand to lose because of less realization of estate rentals than what has been contemplated in the Gazette notified Rent Schedule of 1996. Accordingly in all tenders issued, there is a condition of enhancement of rent @ 5.1%. Thus the successful tenderers to whom leases have been granted are bound by the contract which provides escalation @ 5.1%. Moreover the rates (numerical figures) mentioned in such 1996 Rent Schedule are enhanced @ 5.1% every year to arrive at the present updated Schedule of Rent due to the reasons explained above. If such updation is not done, KoPT will be losing substantial revenue on its estate rentals. As regards contention of TAMP for</p> |

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| | <p>(b). The value of monthly rent updated from September 1996 applying the escalation factor at 5.1% per annum in respect of Saheb Bazaar godowns shown in Annexure – 6C are found to be higher than the monthly rent calculated based on the total value of land and building and the KOPT has considered the higher value for its proposal. However, in respect of godowns (second floor and top floor) at strand bank road, the KOPT has not considered the higher values but proposed lower values. The reason for difference in approach to be clarified.</p> <p>(c). The details of updated tender value proposed for Kantapukur sheds at Hide Road Godowns to be furnished.</p> <p>(d). The basis for the proposed monthly rent for “other structures” may be furnished.</p> | <p>clarification given in 2006, the escalation should be at 2%, it may be mentioned that this is not the correct interpretation of the Land Policy Guidelines as explained above and more so the Port will stand to lose crores of rupees if the annual escalation is reduced to 2% from 5.1% without taking its effects on the other components of monthly rentals and premium. In view of the above, there is no scope of modification of the figure about the updation of the schedule.</p> <p>(b) In case of multi storied godowns viz. godowns at Strand Bank Road, the methodology was adopted to arrive at total present value of the entire building plus value of the land including circulation area. Such valuation was thereafter utilized to arrive at the rentals @ 10% for the entire building. In case of multi storied warehouses, such rentals were redistributed among all floors giving maximum weightage to the ground floor since utilization/ demand for the ground floor is maximum compared to other floor as the warehouses do not have any cargo lift whereas in case of single storied godown like at Saheb Bazar godown, there is no question of any redistribution of the rentals as there is only one floor.</p> <p>(c) The updated tender value proposed for Kantapukur sheds and Hide Road godowns have been furnished. .</p> <p>(d) The other structures mostly consist of transit sheds inside dock. At present the sheds are being given on licence basis to the exporter/importer for the transit storage of their cargo. To arrive at the rentals for those structures, the value of the land underneath those structures has been considered along with circulation area. Thereafter the present replacement cost of the godown minus depreciation has been added. The rentals have been arrived at by considering 10% of the sum of the two above.</p> |
| C. | <u>Conditionalities governing the Schedule of Rent for KDS:</u> | |
| (i). | The KOPT to explain the basis for considering a discounting rate of 8% to calculate the upfront premium as proposed in note 1(b). | The discounting rate of 8% has been arrived at by following the stipulation no. 5.3(i) of the Land Policy Guidelines wherein it is mentioned the discount rate will be equal to 6% plus actual escalation. Since the annual escalations have been proposed 2% in the proposed SoR, obviously the discount rate is coming 6% plus 2%. |
| (ii). | By way of proposed note 12, the KOPT has envisaged to collect Security Deposit in case of all future allotment of land by way of long-term leases. That being so, the reason for seeking recovery of annual rentals in advance in the form of Post dated Cheques / Bank Guarantee as proposed in Note 4(i) may be explained. | The purpose of obtaining security deposit is to cover any default in rent in future, damage to port property, if any, by the lessee where as the purpose of obtaining post dated cheques/Bank guarantee is to ensure regular flow of rentals in view of the fact that as per Amendment 138 of Negotiable Instrument Act, dishouning of cheque will call for criminal proceedings. Accordingly a lessee who has submitted Post Dated Cheques will generally be afraid of dishouning those cheques and getting the rentals in future is somewhat ensured. |
| (iii). | The KOPT has proposed a provision at Note – 4 (iii) that in case of renewal of | It is clearly mentioned in Clause 5.2.1.2(c) of Land Policy Guidelines that in case of lease where there is no renewal |

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| | <p>existing leases the port would check whether the concerned lessee has observed all the covenants of the lease during the tenure of the existing term of lease. This appears to be a condition associated with renewal of existing leases and not relevant for prescription in the rent Schedule. In case the KOPT desires to incorporate a Note in the rent schedule to govern the renewal of existing leases, the proposed note may be modified considering the stipulations for renewal of existing leases made at Clause 5.2.1.2 of the Land Policy guidelines.</p> | <p>option, Port at its discretion may allow fresh lease in favour of the existing lessees with certain conditions. For the purpose of exercising such discretion, it is felt necessary that those lessees who have faithfully observed the covenant of earlier lease shall be considered for the purpose. This is nothing but to discipline the system of allowing fresh leases to the existing lessees. Accordingly Note No. 4(iii) as appended to the proposed Rent Schedule is absolutely in accordance with the Land Policy Guidelines.</p> |
| (iv). | <p>The KOPT to justify the provision in the proposed Note – 5 to continue the rents / license fees paid by the existing lessees / licensees if such rents / license fees are found to be more than the rates to be prescribed in the Schedule of Rent. It may be clarified whether such a differential treatment, when revised rates are lower than the existing, is permitted by the existing leases.</p> | <p>As the proposed rentals have been arrived at based on figures of 2008 and there may be some time lag between 2008 and notification of the revised Rent Schedule and during such intervening period, if a lease has been granted through tender process wherein the rentals received are more than what has been proposed in 2008 and approved by the TAMP subsequently, in that event, to protect financial interest of the Port, such a provision has been made in Note No.5. We have seen during earlier notification of SoR, such type of dispute arose. Accordingly to cover such situation, the aforesaid Note-5 has been proposed.</p> |
| (v). | <p>(a). In Note -6, the rate of rent is proposed to be governed by the relevant covenants of the lease in respect of the existing long term leases. Instead of incorporating such a provision in the future long term leases also at the port level, the reason for proposing a separate provision at Note No. 7 to enable the port to raise the rate of rent to the level of schedule of rent every 5 years if the rate of rent found in the future long term leases is lower may be clarified.</p> <p>(b). The KOPT has proposed a provision at Note 7 (ii) stating that in 11 monthly licenses, coming up for fresh license after expiry of 11 months, the rate of license fee shall be escalated by 2% subject to the condition that the same shall not be lower than the schedule of rent then in force. It is not clear how the escalated rate of license fee will be lower than the rate prescribed in the Schedule of Rent. The rate of license fee may have to be the rate prescribed in the Schedule of Rent in force updated with 2% escalation per annum. The proposed provision may be reviewed.</p> | <p>The SoR is supposed to remain in force for a period of 5 years as per stipulations of Land Policy Guidelines. In order to protect the financial interest of the Port, the clause mentioned at Note-7 to be incorporated in all future allotments so that whenever new rent schedules notified after every 5 years, there will be an occasion for the Port to revise and review the rents to bring up to the schedule rent.</p> <p>The purpose of such a clause at Note-7 (ii) is to cover a tackling situation wherein during pendency of 11 monthly license a new rent schedule is notified wherein rents are more than license fee paid by the lessee. The reason for having higher rent in the revised SoR may be due to increase in valuation of the land. Accordingly the provision in Note-7(ii) is for the purpose of keeping the financial interest in view.</p> |
| (vi). | <p>The KOPT to refer to the proposed notes 8 and 10 (i) and (ii) prescribing 15% additional rent for the rail served</p> | <p>The valuation of any land depends on many factors, one of the factor is connectivity. If a plot is connected by more than one road, the valuation of which is more than a plot</p> |

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| | and road abutted plots. The basis of and the justification for the 15% additional rent may be furnished keeping in view that the market value of the concerned plots would have taken into account availability of such facilities. | which has only one access. This is a cardinal principle of valuation of land. Similarly if a plot is connected by railway track provided by Port, the lessee of those plots are paying additional charges by way of connectivity for movement of their goods. Moreover whether it is a road or rail, Port has to spend money for their construction and maintenance in order to provide requisite connectivity to those plots. Accordingly charging of 15% have been provided in the rents for the plots having either abutting more than one road or having railway connectivity so that the portion of the expenditure for the basic infrastructure are recovered. It is relevant to point out that in earlier Rent Schedules approved by the Govt., there are such clauses of enhancement of rentals for plots abutting more than one road and also for plot having railway connectivity. |
| (vii). | The KOPT to furnish the basis for prescribing 50% of the rate of rent applicable for land area to water bodies / water area proposed in Note – 9. | The purpose of such Note No.9 is to cover a situation where jetties are proposed to be constructed on the river having land connectivity. As the river conservancy is the Port's responsibility, Port is entitled to recover charges for the purpose. Accordingly the committee decided that in cases of water bodies and water areas, 50% rent will be charged corresponding to the relevant land. |
| (viii). | Municipal tax and Service Tax are not prescribed by this Authority and they are levied by the concerned Authorities. Therefore, the proposed Note – 11 in this regard may not be necessary. | As the Rent Schedule will be notified as public document, the same will be available to all tenants of Kolkata Port Trust. Accordingly if the issues regarding municipal tax and service tax are not mentioned, there may be objection from the lessees for paying the same and also may arise future legal complications, if charging of municipal and service taxes are challenged by the tenants. It is accordingly felt that Note No.11 should continue. |
| (ix). | <p>Clause 5.2.1.1 (h) of the Land Policy guidelines requires a major port to keep 5 years' rent or 25% of rent of the total lease for the duration of lease, whichever is lower, as Security. This clause does not mention about taxes and whether the Security Deposit will bear interest or not. Further, there does not appear to be any provision in the Land Policy guidelines for obtaining Security Deposit in respect of 11 months licenses. In this back drop and with reference to the proposed Note – 12, the following points may be justified / clarified:</p> <p>(a). The proposal to collect lower amount (1 year's rent) as Security Deposit for long term lease than the quantum prescribed in the Land Policy guideline to be justified.</p> | <p>(a). In the proposed Rent Schedule and notes appended to it, it is recommended that in future all long term leases will be for a period of 30 years. Accordingly if a lessee is asked to pay 5 years rent as security deposit, it will become honourous burden on them which may lead to unattractiveness of port land. In the earlier Rent Schedules of KDS, it is seen that one year's rent has been prescribed for security deposit which has been proposed to be continued in the revised Rent Schedule also. It is relevant to point out that the purpose of obtaining security deposit is to cover a situation where a lessee tends to default in paying rentals. These situations</p> |

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| | <p>(b). Reference to the provision in the Land Policy guidelines which enables the KOPT to collect taxes on the Security Deposit may be quoted.</p> <p>(c). Likewise, reference to the provision in the Land Policy guidelines to collect non-interest bearing Security Deposit equal to 1 year's rent and taxes for allotment of land on 11 monthly basis may be quoted.</p> <p>(d). The basis for the proposal to obtain non-interest bearing Security Deposit equal to six months license fee and taxes for allotment of structures on 11 monthly basis may be furnished quoting the relevant clause, if any, in the Land Policy Guidelines.</p> | <p>have been covered by way of obtaining Post Dated Cheques/Bank Guarantee as have been stipulated in Note No. 4(i). In view of the above, it was felt by the committee that the security deposit will be equivalent to 1 year's rent and taxes.</p> <p>(b) & (c). The Land Policy Guidelines issued by the Ministry provided broad guidelines under which port estate can be leased out. In the process of leasing out the port property, the issues like road infrastructure, railway infrastructure, maintenance of building etc. are not specified in the Land Policy Guidelines. However these issues are no less important than the land policy guidelines since without such infrastructural support, there will be no taker of port land. Similarly the issues of incorporating municipal tax along with rent in the calculation of security deposit also to cover a situation where a lessee may default in future or damage port property. To cover those expenditures, it is necessary that port should have security deposit. The security deposit is like a "Caution Money". It is the existing culture in the country that no caution or security deposit bears any interest. Accordingly the same system has been followed over here.</p> <p>(d). This is old practice in earlier schedule wherein the purpose of licencing of port owned structures, the security deposit equal to 6 months licence fee and taxes obtained which is sought to be continued in the revised Rent Schedule also.</p> |
| (x). | <p>(a). As stipulated in Clause 5.2.1.3 of the Land Policy guidelines transfer of lease and subletting of land are applicable for existing and new leases. That being so, the reason for restricting the transfer of lease and sub-letting to the future long term leases alone as proposed in Note 13 (i) and 13 (ii) may be clarified.</p> <p>(b). With reference to the proposed Note 13 (iii) to allow the existing lessee to sub-let the land, the proposed associated condition that the lessee should agree to enhancing the rent to match with the schedule of rent or market rent whichever is higher may be justified quoting the relevant provisions, if any, in the Land Policy guidelines. The reference to "market rent" mentioned in the proposed note may also be explained quoting reference to relevant provision, if any, in the Land Policy guidelines.</p> | <p>(a). There is a purpose of Note No. 12 and the purpose of Note No. 13(i) and 13(ii) is reiterated the stipulations of land policy guidelines and nothing else and for existing leases also, subletting is permitted as per land policy guidelines and accordingly procedure to be followed in such cases as detailed out in Note No. 13(iii). Accordingly the entire Note No. 13 (i to iii) are in accordance with the land policy guidelines.</p> <p>(b). As the land policy guidelines allows creation of sub lessee, for the existing leases also such provision of Note No.13 (iii) has been kept. Kolkata Port Trust being the oldest port in the country, its landholdings is also quite old. There are certain lessees who are enjoying the benefit of very long term leases since decades and as those leases were executed long back, they are beneficiary of paying meagre rent as compared to today's scenario. In such event, if they are allowed to create sublease by charging annually one time fees equivalent to 12 months rent as proposed in the land policy, that will be huge financial benefit to them. As such, to overcome such situation, it was proposed that in such event their rentals required to be enhanced in today's market rate of rent/schedule of rent so that port will also stand financially benefited by allowing them for creation of sublease.</p> |
| (xi). | With reference to the proposed Note – 16 for levy of Mortgage Fee, it may be | The mortgage fee as have been incorporated under Note No.16 is as per the order of the Ministry vide letter no. PT- |

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| | <p>noted that this Authority vide its Order No. TAMP/10/2000-Genl. dated 4 February 2000 and 31 August 2000 has held that this Authority does not have the jurisdiction to approve 'Mortgage Fee' / 'Transfer Fee' in the absence of a specific provision therefor in the Major Port Trusts Act.</p> | <p>17011/55/87-PT dated 24.01.2006. Similarly the transfer fee as have been specified in the land policy guidelines.</p> |
| (xii). | <p>(a). This Authority vide Order No. TAMP/41/2003-JNPT dated 10 August 2004 has prescribed formula for calculating way leave area for pipelines. The proposed provision at Note 19 (i) to prescribe way leave license fee may be modified in line with the formula prescribed by this Authority.</p> <p>(b). As per proposed Note 19 (ii) the KOPT intends to levy way leave charges for the area coming in the alignment of overhead conveyors and high voltage transmission lines and towers. Overhead conveyors and transmission lines may not physically occupy any part of the land of KOPT. If it is so, rationale behind application of market value of land for fixing the way leave charges for overhead lines may be clarified. The KOPT to review the proposed note and justify it.</p> <p>(c). KOPT has proposed a provision at Note 19 (iii) to revise way leave charges in respect of the existing way leave licenses. It may be noted that this Authority may not like to interfere in the covenants of way leave licenses already granted by the KOPT.</p> | <p>(a). As regards the contention of TAMP for adhering to the formula for calculating the area for laying of pipelines in terms of their letter no. TAMP/41/2003-JNPT dated 10.8.2004, where in it is stated that the way leave area has been considered for 50% of the affected area on the presumption that exclusive possession of the land is not given to such authority who will be laying pipelines, cables etc. In this connection, it may be relevant to mention that in case of allowing licence in the port area, Land Policy Guidelines of the Ministry also stipulates that no licensee will be given exclusive right of the area they shall be in use and occupation. In case of way leave also, there is no exclusive right given but such authorities are only given to use the land for occupation of their pipelines and hence this closely resembles a licencing arrangement. In view of the above facts and also keeping in view in case of licence also, we are charging full SoR. There is no scope for allowing 50% fees/licences. Accordingly it is felt that the Note No. 19 appended to the proposed schedule for KDS shall remain intact.</p> <p>(b). In case of overhead conveyors, high voltage transmission lines and towers, though there may not be any involvement of port land in coming in the alignment of overhead conveyors, high voltage transmission lines but there may be cases where due to such overhead structure/high tension cable construction of any other structures may affect rendering the land falling in the alignment and remain unutilized. In order to cover such a situation, the said Note No. 19(ii) has been proposed.</p> <p>(c). Agreed and noted.</p> |
| (xiii). | <p>The basis for the quantum of fee proposed at Note – 20 for granting mutation in case of death of a lessee or mutations consequential to a court order, etc., may be furnished and the proposed fee may be justified.</p> | <p>The charges for mutation as have been proposed in Note No.20 has actually been taken from the earlier notified Rent Schedules wherein a ceiling of Rs.1000/- was prescribed. Since earlier Rent Schedule was nearly 13 years ago, it was enhanced to Rs.10000/-. There is really no justification to arrive at the figure of Rs.10000/-.</p> |
| (xiv). | <p>The KOPT has proposed discount at Note 21 (i) and (ii) on the rates (to be) prescribed for all the existing and future leases allotted for the purpose of</p> | <p>It is true that the rates prescribed in the proposed Schedule of Rent (SoR) are the ceiling levels. However, unless specific quantum of discount is mentioned in the scale of rates, there may be unrest from concerned</p> |

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| | <p>construction and operation of Container Freight Stations (CFS), liquid bulk storage tanks and discount in wharfage rates for those lessees who generate cargo for KDS. Similar provisions have been proposed for HDC. It may be noted that the rates fixed by this Authority are at ceiling levels and the KOPT may charge lower rates based on its commercial considerations, if it so desires. Therefore, no separate provision in this regard for specific tariff item is felt necessary.</p> | <p>quarter for discounts at higher rates which may seriously affect the financial interest of the organization.</p> |
| (xv). | <p>The Land Policy Guidelines do not prescribe collection of Security deposit for allotment of land inside Customs bound area. In this context, reason for proposing collection of Security deposit equivalent to 30 days rent as envisaged in Note 22 may be explained giving justification.</p> | <p>For allotment of land (yards & sheds) inside customs bound area, normally it is being given on monthly licence basis but not exceeding 11 months. The purpose of keeping security deposit in such cases is to cover any damage that may be caused to port property while handling cargo by the shippers or agent. As the licence is granted on monthly basis, it is considered prudent to take one month's licence fee as security deposit to cover any damages that may be caused to port property.</p> |
| (xvi). | <p>The Note – 23 proposing levy of rent at 3.5 times of the base rate for land allotted to shops, refreshment stalls, petrol pumps and weigh bridge may be justified.</p> | <p>The Note No.23 of the proposed Rent Schedule is actually taken from the earlier Rent Schedule wherein such an enhancement of 3.5 times have been prescribed for absolute commercial usage like shops, refreshment stalls, weighbridge (public use). There is no other justification for the same.</p> |
| (xvii). | <p>The provision for levy of interest on delayed payment by the allottees proposed at Note – 24 may be modified in line with Clauses 2.18.1 to 2.18.4 of tariff policy guidelines of March 2005.</p> | <p>It is seen that TAMP is referring clause no. 2.18.1 to 2.18.4 of the Tariff Policy Guidelines of March, 2005 for the purpose of charging interest on delayed rental payment by the allottees. It is relevant to point out that the interest as have been mentioned in the proposed rent schedule @ 15% which is more than the PLR/Bank Rate with the view that in case of a tenant default in payment in time, he has to pay little more than the PLR/Bank rate which is nothing but an agreement of 'penalty'. Unless such provision is kept in the SoR, there will be increased tendency of the tenants/lessees to default in paying rent which will affect seriously the financial interest of the Port. The Tariff Policy Guidelines states that the interest shall be on PLR of SBI plus 2%. It is very difficult to implement because leases are long term contract and during such period PLR may not remain fixed and this may result in tedious calculation if a lessee remains defaulted for a considerable longer period. Moreover at the moment, the PLR of SBI is around 13%. In view of the above, it is felt that the amount of interest proposed in the rent schedule @ 15% is absolutely just and in order.</p> |
| (xviii). | <p>The KOPT to refer to the foot note proposed at the bottom of the Rent Schedule which stipulates that rates for the existing leases which had been granted 15 years long term lease on recovery of premium equivalent to four years rent would be compared with the new schedule, after five years of their date of allotment, reducing the scheduled rent by 32% and then the comparison to be carried out.</p> | <p>In case of existing lease which has already been granted for a period of 15 years of obtaining 4 years' rent as premium, there is a clause that after every 5 years, Port Trust reserves the right to review and refix the lease rent upto the Schedule of Rent (SoR) then in force, if the same is more. As in the proposed Rent Schedule submitted to TAMP, there is one of the methodologies followed to arrive at the rentals from the highest tender rate of port land. In those cases, highest tender rate that has been obtained have been further enhanced by a factor of 1.32 (i.e. 32% rise) to distribute equally over the 15 years</p> |

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| | <p>The proposed note appears to have certain bearing on the covenants of the existing lease agreements entered into between the KOPT and the concerned lessees. The KOPT to clarify the existing leases permitting the proposed provision.</p> | <p>period. The lessees already paid such premium will be doubly-taxed if their rent is revised as per proposed rent schedule wherein 32% enhancement has already been incorporated. To avoid such doubly-taxed cases, such a note has been proposed. However there is a typographical error – the said deduction will be @ 24% i.e. to say that at the time of review and refixation of existing lease rent for existing lessees after 5 years, the comparison will be made with the proposed schedule rent by applying a discount of 24%. The KOPT has given the calculation for arriving at 24% deduction.</p> |
| IV | <u>Points pertaining to Haldia Dock Complex (HDC):</u> | |
| A. | <u>Valuation of Land:</u> | |
| (i). | <p>In the sample calculation furnished by KOPT for calculation of Value of Land at the Industrial Zone of HDC (Annexure –9b), the KOPT has arrived at the average land rate based on the value of land in (5 Mouza) Kanjan Chak, Durga Chak, Dakshin Baishamb Chowk, Hatiberia and Tentuberia. The KOPT to confirm whether average value of land of the above mentioned areas so correctly represents the land value of the entire Industrial Zone of HDC.</p> | <p>As per land policy guidelines (clause 5.3[1]), market value of land can be assessed on the basis of average rate of actual relevant transactions registered in ports vicinity during last 3 years. The mouzas whose rates have been considered are lying in the vicinity of KoPT land at Haldia in the industrial zone. Hence the transactions considered by the Consultant are covered under the land policy guidelines.</p> |
| (ii). | <p>As given in Annexure 9a, the rates of monthly rent proposed for all zones of HDC derived taking the rates prevailing as of December 1999 as base with year on year applicable escalation are found to be on the higher side as compared to the annual yield of 6% on the market value of land in all zones of HDC. The reason for proposing the said escalated rates is stated to protect the financial interest of KOPT. The KOPT is, however, requested to clarify how the approach adopted by the port is covered by the factors stipulated in the Land Policy guidelines to assess the market value of land and fix Schedule of Rent.</p> | <p>The clause 5.3(1) (a) of the land policy guidelines, inter alia, stipulate that apart from factors like State Govt.'s ready reckoner, transaction registered in ports vicinity etc. also cover the following two items:</p> <ul style="list-style-type: none"> • Rate arrived at by an approved Valuer appointed for the purpose by the Port. • Any other relevant factor as may be identified by the Port. <p>The Consultant has calculated the rent from the transactions registered in the ports vicinity. This is covered under land policy guidelines. But later on, they found that the existing escalated rent is a relevant factor important to port and therefore, the same was considered for assessment of the rent. This is also covered under land policy guidelines.</p> |
| B. | <u>Valuation of Structures:</u> | |
| | <p>The KOPT has given a sample calculation to arrive at the value of pucca roofed structure in Industrial Zone of HDC. Though the KOPT has furnished details in Annexure – 9c to arrive at the rent for tower, quarters, shopping centres, township markets, goomtias etc, it does not serve any purpose, as the area or location where the tower, quarters, shopping centres, township markets, goomtias are located is not clear. The KOPT is therefore, requested to consider the value of land based on the location of all such areas</p> | <p>The rate for tower, quarters are located in the Residential Zone and for which land value of Residential Zone has been taken.</p> <p>Shopping Centres, township markets, goomtias etc. are located in the Commercial Zone and for which land value of Commercial Zone has been taken.</p> |

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| | and then arrive at the rates of rent therefrom. | |
| C. | <u>Calculation of Other Rates of Rent at HDC:</u> For some tariff items shown in Annexure 9 (e), the KOPT has proposed the rates shown under the column "Rent Calculated" on the ground that these rates are higher as compared to the updated rates. It is not clear as to how the figures given in the Column "Rent Calculated" have been arrived. The KOPT to justify the proposed rates supported by workings for the proposed rates. | The column "Rent Calculated" has been arrived at by the Consultant by enhancing the scheduled licence fee as notified by TAMP on December 2, 1999 by the same percentage which the scheduled rates notified on 02.12.1999 got escalated from the rates notified on May 21, 1992. The KOPT has furnished the calculation sheet. |
| D. | <u>Conditionalities governing the Schedule of Rent for HDC:</u> | |
| (i). | Many of the proposed conditionalities are found to be common for both KDS and HDC. The additional information / clarification sought on such common conditionalities in the earlier part of this note are, therefore, not repeated again here. However, while furnishing the requisite information, the KOPT to provide all the relevant information, to the extent the same is relevant for HDC / KDS. Additional information / clarification on some of the conditions specific to HDC may be furnished as requested in the following paragraphs. | No remarks. |
| (ii). | The KOPT to refer to the rates of license fee for Quarters / Dormitories proposed at Section 1.2 (d). The KOPT to clarify whether the license fee for the quarters / dormitories is required to be determined based on the Rent Schedule (to be) prescribed by this Authority or such license fee for quarters / dormitories will have to be decided by the Port Trust itself based on the norms in this regard issued by the Government of India. | Consequent on superannuation of port employees and restriction on direct recruitments, a large number of KoPT quarters are getting vacant which are no longer required for the employees. KoPT has been utilizing such quarters earlier constructed for its own employees by licensing the same to the various local industries and other establishments at Haldia against earning of licence fee. Since licence fees as being meant for realization from outside bodies/persons, the same are to be approved under Section-49 of MPT Act. |
| (iii). | In view of the observations made in the earlier part of this note, the KOPT to review its proposal for fixation of way-leave license proposed at Section 11.4 of the draft Schedule of Rent. | The model suggested by TAMP is not acceptable, as it would lead to a substantial fall in the existing rate. Also, as per normal guidelines, a minimum separation is to be kept between the pipelines. Therefore, charging of way leave licence fee only on the basis of diameter of the pipeline will not reflect the true picture. None of the way leave licensee of HDC so far have objected to the way leave licence fee charged at HDC. It is accordingly, stated that the way leave licence fee as proposed by KoPT should be considered from the point of view of revenue potential of HDC. |
| (iv). | The KOPT to justify the proposal to collect overheads at 19.25% proposed at Note A (iii) (1)(b) of actual electricity & water charges. | KoPT at Haldia has been purchasing water and electricity from the concerned agencies/departments of State Govt. KoPT apart from utilizing the said electricity/water for its own purpose is also supplying water/electricity to some of the lessees at Haldia. Through the overheads of 19.25%, |

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| | | <p>KoPT intends to recover the cost being incurred by it in supplying water and electricity to the said lessees. Incidentally, overheads @ 19.25% are recovered by HDC in case of various kinds of deposit works carried out by HDC on behalf of other organizations. In line with the above, recovery of overheads @ 19.25% have been proposed.</p> |
| (v). | <p>The KOPT envisages to collect Security Deposit equivalent to two months license fee for licensing of facilities as proposed at Note B (8). However, the Land Policy Guidelines do not stipulate recovery of any Security Deposit in case of licensing of facilities. The KOPT to justify the proposed note.</p> | <p>As approved by TAMP, the security deposit for licensing of facilities as proposed at Note-B(8) at present is equivalent to one month licence fee. The licenses as covered under Note-B(8) are granted for a very short period. The SD is adjusted in case of dues and damages receivable from the licensee concerned.</p> <p>In the present proposal, KoPT intends to increase the SD to two months to safeguard its interest arising out of dues etc. from such licensees covering a very small licence period. Very often, we have to adjust dues from such licensees from the security deposits.</p> |
| (vi). | <p>The KOPT to justify the penal clause proposed at Note B (9) for levy of penalty at ten times the normal license fee for encroachment or unauthorized occupation of land and railway tracks in the light of the penalty of 3 times prescribed for wrongful use and occupation of facilities as stipulated in Clause 5.2.1.3 (g) of Land Policy Guidelines.</p> | <p>The clause-5.2.1.3 (g) of land policy guidelines stipulates realization of three times a rent in case the lessees continues to occupy the land after expiry of the lease concerned.</p> <p>In the instant case, KoPT intends to levy penal charges for encroachment of additional land by the licensee over and above the quantum of land actually licensed to it. Moreover, the item-B(9) is relating to licensing of land inside the dock interior zone for storage of cargo which is a very valuable land having a very high demand. Therefore, through the said penal charge, KoPT intends to deter the different incenses to encroach into additional valuable land inside the Dock Interior Zone.</p> |
| (vii). | <p>The basis for prescribing minimum area of 1000 Sq. mtrs to be licensed to a single licensee may be furnished.</p> | <p>The short term licensing of land inside Dock Interior Zone for storage of cargo is mainly for storage of dry bulk cargo or break bulk cargo like machineries, bagged cargo etc. which are brought in sizeable quantity in each ship load. KoPT does not grant licence or land for small packages etc. which are stored on free time basis and charged according to Scale of Rates framed under Section-48 of MPT Act.</p> <p>At present, the minimum area allowed by KoPT on licence inside Dock Interior Zone as per approval of TAMP is 2000 sq.m. However, with fall in parcel load and increased handling of bulk cargo by barges, KoPT has proposed to reduce the minimum licensed area to 1000 sqm. from 2000 sqm.</p> |
| (viii). | <p>The text of the note (15) appears to be empowering KOPT to prescribe additional terms and conditions from time to time. Prescription of such a conditionality may tantamount to delegating the statutory power vested in this Authority for setting tariff and prescribing the conditionalities to govern the same to a Port Trust, for which this Authority may not be inclined. If the Port desires to add / modify any of the conditionalities, the KOPT may approach this Authority with</p> | <p>The said note has been proposed only for granting licence of land inside Dock Interior Zone for storage of cargo. Such storages are associated with various operational issues which at times, are required to be mentioned along with the conditionalities of licence prescribed in the SoR. In order to enable the port to include operational related issues while granting licence, the said provision has proposed to be incorporated in Note-15.</p> <p>Incidentally, same note already exist in the Rent Schedule approved by TAMP in December, 1999.</p> |

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| | a suitable proposal, when the need arises. | |
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8.1. A joint hearing in the case in reference was held on 25 August 2010 at the KOPT premises in Kolkata. The KOPT made a power point presentation of its proposal. At the joint hearing, KOPT and the concerned users / organisation bodies have made their submissions.

8.2. Some of the user organisations have furnished their additional written comments during the joint hearing and after joint hearing. The comments received from the user organizations were forwarded to the KOPT as feedback information. The KOPT has furnished its comments on the comments of user organisations.

8.3. At the joint hearing held on 25 August 2010, the KOPT agreed to revise/ update its proposal, if necessary and to make a presentation of its proposal. Accordingly, the KOPT made a presentation of its proposal on 20 September 2010 at the office of this Authority. As a follow-up to the presentation, the KOPT vide its letter dated 5 October 2010 has made written submissions which are summarized below:

- (i). Port has confirmed that the proposal for revision of rent for HDC has also been made in accordance with the Land Policy Guidelines, as have been done for KDS.
- (ii). The KOPT has furnished the cost statements related to the estate activity for KDS & HDC.
- (iii). Regarding applicability of Schedule of Rent for fresh leases to an existing lessee, whose lease has expired, a specific provision has been made in Note No. 4 (ii) of the notes appended to the revised Schedule of Rent for KDS which is in terms of the Clause No. 5.2.1.2 (c) of the Land policy Guidelines. The said Clause of Land Policy guidelines clearly stipulates that the lease rent should not be lower than the SOR duly updated or the market value as the case may be. However, in cases of 11 monthly licenses coming up for fresh license after expiry of 11 months, it has been proposed under Note No. 7 (ii) that the licence fee for the new licence shall be either escalated @ 2% of the earlier licence fee but the same shall not be lower than the Schedule of Rent. This was proposed in order to safeguard the financial interest of the port.
- (iv). Clause No.5.2.2.1 (h) of the Land Policy Guidelines stipulates that land can be leased out by the port only on upfront basis. However, dispensation has also been given in the Land Policy that in case it is not possible, then lease can be granted on annual lease rental basis. Keeping that aforesaid provision of the Land Policy in mind, it has been proposed (in No. 1(b) of the Notes appended to the proposed Schedule of Rent for KDS as well as for HDC) that, if port is able to lease out land on obtaining the entire lease rental as upfront, then the calculation of NPV of lease rental is to be done by taking discount rate as 8%. However, options will be given to the lessees for selection between allotment on either upfront basis or on annual lease rental basis. It is felt that if the lessees are insisted for taking lease on upfront basis only, this may act as a restrictive Clause in tender and many persons may not like to take make payment of entire lease rental as upfront payment before taking possession.
- (v). The Note No. 5 of the notes appended to the Schedule has been made in order to protect the financial interest of the port. There may be a few cases where the existing licensee, may be found paying licence fee more than the proposed scale of rates in view of the fact that the scale of rate that has been proposed is based on rates prevailing in 2008 and there are a few licensees who have been selected by tender process after 2008. In order to protect the financial interest of the port such a Clause at Note No. 5 have been given.
- (vi). The reasons for not considering the particular transaction cost of Rs.8 lakhs per cottah for land in respect of land at Garden Reach Road and Watgunge areas, as have been obtained from SRO, as obtained from M/s. PWC is given below:

'Areas like Watgunge and Garden Reach Road from Hastings Bridge to Tidal Basin, are near the dock area and the utilization of land is mainly commercial in nature. Land in these areas is mostly owned by KOPT. Transactions in this locality are very rare. The one and only rate obtained i.e. Rs.8 lakhs per cottah reflects a very high figure. At times, transactions are made at a higher price due to some advantages of a particular plot. It is felt that the rate of Rs.8 lakhs per cottah has been guided by the same fact. Hence, it would be unfair to consider the value at a large stretch based on a high transaction value for a particular plot. On the other hand, the tender rate which is considered for determination of the Schedule of rate is more authentic since it reflects the willful offer a willing lessee. This also abides by the guidelines specified for this exercise.'

- (vii). As desired, M/s. PWC has forwarded requisite calculation and documents showing 90% realization of entire land value in case of 30 years lease, in order to support their contention that for lease of land on 30 years generates 90% value and thus the reason for allowing 10% (100-90) discount.
- (viii). M/s. PWC has also furnished their comments about the value of land obtained from SRO as bench mark price for land, without having either two road access or railway connectivity. The PWC has commented that the land rate for a particular locality, fixed by the Sub-Registry Office (SRO) is a bench mark price. The actual transaction price of a plot in that locality (between a willing seller and a willing buyer) might be higher or lower than this price based on the locational and utilization advantages and disadvantages of the plot. Thus, the SRO rates mentioned in the calculations are actual transaction cost for bare land only.
- (ix). The contention of KOPT expressing the logic behind evaluation of current replacement cost of buildings minus depreciation to arrive at present value of buildings have already been detailed during the presentation on 20.09.2010.
- (x). As regards the contention of TAMP that after issuance of land policy in 2005, annual escalation cannot be charged @ 5.1% as per earlier rent schedule of 1996, it may be mentioned while granting lease of land to IWAI, Ministry of Shipping allowed, in May 2007, rental on SOR basis plus annual escalation of @ 5.1%. Ministry's stand is also clear regarding charging of premium equivalent to 4 years rent to lessees doing commercial business, which supports the views of KOPT in this regard.

8.4. During the presentation made on 20 September 2010, the KOPT has sought to include a new item in the proposed Schedule of Rent for KDS to prescribe rental for "Dhobitalao Container Park". As such, the KOPT vide its letter dated 4 October 2010 proposed a new entry no. 28(f) in the proposed Schedule of Rent for KDS. The points made by KOPT in its letter are summarized below:

- (i). Dhobitalao Container Park (DCP) is located near N. S Dock and is used since early Nineties for specific purpose of storage and repair of empty containers, which are handled in KDS. However, there was no entry in the name of Dhobitalao Container Park in the notified Rent Schedule for KDS. Invariably, this item was left out to be proposed while submitting the proposal to TAMP. Now, the mistake has been noticed and hence a entry needs to be made in the Rent Schedule for KDS, in the name of Dhobitalao Container Park. The plots under Dhobitalao Container Park are tendered out on licence basis.
- (ii). The procedure adopted towards revision of rent for other areas of KDS has been followed to arrive at the revised rentals for Dhobitalao Container Park. As there was no earlier notified rent for this area, the comparison was made on the basis of actual transaction cost of land of nearby areas, as obtained from SRO and the recent highest tender rate obtained for the area.

8.5. The KOPT forwarded the proposal relating to prescription of rentals for Dhobitalao Container Park to all the existing licensees of the area requesting them to forward their comments to this Authority. The KOPT vide its letter dated 29 November 2010 has furnished its common comments on the points made by the users.

9. During the presentation made by KOPT on 20 September 2010, the port was requested to furnish the Written Down Value (WDV) of the various structures of KOPT. The KOPT has furnished the WDV of structures of KDS as on 31 March 2010. However, WDV of the individual KDS structures have not been linked to the corresponding tariff items as prescribed in the Rent Schedule of KDS. Further, the KOPT has not furnished the WDV of structures at HDC.

10. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received and arguments made by the concerned parties will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>

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

- (i). The KOPT has separate Rent Schedules for levy of rentals for its estates under KDS and HDC. The existing Rent Schedule approved by this Authority for HDC has been in effect from 2 December 1999 and for the reasons brought out in the initial part of this note, this Authority has from time to time extended the validity of the Rent Schedule at HDC, at the request of the Port. With respect to KDS, as brought out by KOPT, the existing Rent Schedule pertaining to its estates under KDS was approved by the Government of India in September 1996. Now, the KOPT in December 2009, has approached this Authority to fix rent to cover its estates under KDS also.
- (ii). As reported by KOPT, the valuation of the estates of KOPT at KDS and HDC has been carried out by a reputed consultant appointed by the KOPT. The KOPT has further stated that the Valuation Report submitted by the consultant has been thoroughly scrutinized and recommended by a high level committee headed by Chairman, KOPT and consisting of representatives from Ministry of Shipping, CPWD, Land Acquisition Collector, Indian Audit & Accounts Department, Life Insurance Corporation, District Administration looking after the land matters etc. Further, this report has been approved by the Board of Trustees of KOPT. As such, the Valuation Report submitted by KOPT is relied upon in this analysis.
- (iii). For the purpose of determining lease rentals for the lands belonging to the Port Trusts, this Authority is mandated to follow the land policy guidelines issued by the Government from time to time vide clause 8 of the tariff guidelines issued by the Government in March 2005. The Land Policy Guidelines issued by the Government in February 2004 for all Major Port Trusts except KOPT and Mumbai Port Trust (MBPT), was made applicable to KOPT vide MOS letter dated 10 February 2005. After the Land Policy guidelines was made applicable to KOPT, this Authority vide its Order dated 23 August 2006 has, inter alia, directed KOPT to amend the Rent Schedule for allotment of Land and Buildings of KOPT under HDC and the relevant Scale of Rates for allotment of land under KDS to the extent that the conditionalities contained in the Rent Schedule pertaining to HDC and the Scale of Rates pertaining to KDS are not inconsistent or at variance with the Land Policy Guidelines issued by the Government.
- (iv). The Land Policy Guidelines clearly lay down the procedure and the methodology to be adopted for determining the market value and the lease rental of the port lands. As per Clause 5.3(I) of the Land Policy Guidelines, the market value of land can be determined taking into consideration any or all of the factors like (i) State Government's ready reckoner value, (ii) the average rate of actual relevant transactions took place in last three years for the lands in the port's vicinity, adding 2% escalation per annum, (iii) highest accepted tender value of port lands for similar transaction, (iv) rate arrived at by an approved valuer and (v) any other relevant factors as may be identified by the port. The lease rent has to be fixed at 6% of the

market value of the land so determined and the rate is to be escalated by 2% per annum till such time the rate is revised with approval of this Authority.

- (v). As stated in the preceding paragraph, one of the methods for determination of value of land is based on State Government's ready reckoner. As clarified by KOPT, there is no published Ready Reckoner of land value issued by the Government of West Bengal. Therefore, the KOPT has not determined the value of land based on State Government's Ready Recknor in respect of KDS and HDC.
- (vi). While according approval to the lease rental proposals of Cochin Port Trust (COPT) and Visakhapatnam Port Trust (VPT) vide Orders dated 4 May 2010 and 29 November 2010 respectively, this Authority had taken the view that it would be appropriate for a Port Trust to assess the market value under all options given in the Land Policy guidelines and derive lease rentals based on the one which is most beneficial to the port. The KOPT was, therefore, advised to re-assess the market values of its landed estates under all options given in the Land Policy guidelines and derive lease rentals based on the one which is most beneficial to it. The response of KOPT is that the lease rentals based on the approaches adopted by it have been worked out and out of the rates so arrived at, the highest of the value which is obviously beneficial to port, has been taken and recommended. The position of KOPT in this regard is relied upon.
- (vii). The lands of the KOPT under KDS are broadly shown under five groups viz., Lands at Dock, Kolkata, Howrah, Budge Budge and Land at other locations. The Schedule of Rent approved by the Government in September 1996 has been used as the primary list of land and buildings under KDS to formulate the revised Schedule of Rent for KDS. The rentals for land at Other locations proposed now were not earlier included in the Schedule of Rent approved by the Government in September 1996. The lands under KDS are categorized, in some cases as First Belt and Second Belt. Reportedly, lands under KDS are presently allotted on lease for a period of 15 years. KOPT has decided that it will allow long term lease of KDS land for a period of 30 years in future. The approaches adopted by KOPT in valuation of its land under KDS are summarized below:
 - (a). Valuation based on average rate of actual transactions in the last three years in the vicinity of the port lands from the Sub-Registry Office:
 - (i). The value of the land as obtained from the Sub-Registry office (SRO), wherever applicable, has been enhanced by 2% per annum to arrive at the rate for the year 2008.
 - (ii). Since the land value so obtained is the value of freehold land, the land value has been discounted by 10% on the ground that value of land by lease rental method for a period of 30 years is around 90% of the value of the land by lease rental method for perpetuity at an interest rate of 8%.
 - (iii). The reduced value of land is further discounted by 25% so as to make the land rates comparable to the industrial land use rate reportedly on the ground that on an average the rate of industrial land is lower than residential land by around 25%.
 - (iv). On the value of the land so arrived at, the prescribed rate of 6% has been applied, to determine the lease rental to be applicable for the said area.
 - (b). Valuation of Land based on highest accepted tender rates for similar transactions:

- (i). For valuing the land based on accepted tender, the KOPT has stated that it has obtained the tender value and updated it to arrive at the updated tender rate as of the year 2008.
 - (ii). The updated tender value so obtained by KOPT has been further enhanced by 1.32 times to factor the loss of upfront premium payment, collected as per 1996 notification.
- (c). Lease Rentals based on the escalated Rent Schedule of 1996:
 - (i). Under this method, the KOPT has updated its existing Rent Schedule applicable for land under KDS by applying the escalation factor of 5.1% annually as per 1996 notification, till the year 2008, and arrived at the revised rentals.
 - (ii). The rates of lease rentals so arrived by KOPT has been further enhanced by 1.32 times to factor the loss of upfront premium payment, collected earlier by KOPT.
- (viii). The lease rentals proposed by the KOPT in respect of its land under KDS, following the approaches adopted by it as mentioned in the preceding paragraph are discussed in the following paragraphs:
 - (a). Valuation based on average rate of actual transactions in the last three years in the vicinity of the port lands from the Sub-Registry Office:
 - (i). The value of the land as obtained from the SRO has been enhanced by 2% per annum to arrive at the rate for the year 2008. Escalating the value of land by 2% per annum is found to be in line with the Land Policy Guidelines. Since the lease rentals approved will come into effect in the year 2011, the value of the land as arrived by KOPT as of 2008 is further updated by allowing escalation at 2% per annum for the years 2009 and 2010 so as to reflect the value of the land that may prevail during the year 2010.
 - (ii). KOPT has furnished workings to show that the value of land by lease rental method for a period of 30 years would be around 90% of the value of the land by lease rental method for perpetuity (freehold land). As such, the value of land as obtained from SRO and updated as stated in the preceding paragraph is discounted by 10%, to arrive at the value of land by lease rental method for a period of 30 years.
 - (iii). A further discounting factor of 25% applied by KOPT to derive the land value for lands used for industrial purpose is based on the proportion of residential and industrial land value at only two places, namely Falta and Haldia Development Authority (HDA) for the purpose of land valuation at KDS. When asked to confirm, as to whether the residential and industrial value of land at these two places alone is representative enough to generalize the difference in the value of land in industrial and residential area, the KOPT has responded stating that the rates for the said two places were cross checked, which showed same result. The KOPT has also stated in its response to the comments made by the VIL that a high level committee headed by Chairman, KOPT has accepted the reasoning given in the report of the professional valuers for discounting the rates to arrive at the values for leasehold industrial land. Relying on the report of the high level Committee in this regard, the discounting factor of 25% applied to make the land rates comparable to the residential land useable for industrial purpose is taken into account.

(iv). Thus, except for the updation of the land values as of the year 2010, no other change is effected in the valuation of lands furnished by KOPT under this option.

(b). Valuation of Land based on highest accepted tender rates for similar transactions:

(i). The KOPT has confirmed that the tender value that has been considered in preparation of the rent schedule for KDS, is the highest accepted tender rate for the relevant zone of the port land. Taking the accepted tender rate as base, the port has updated the base rate by applying the escalation factor at 5.1% to arrive at the rate as of the year 2008.

From the workings furnished by KOPT, it is seen that the base tender rate in few cases pertains to the year 2000, 2001, 2003 and 2004 and in most of the cases the base tender rate pertains to the year 2006 and 2007. One of the factors for determination of market value stipulated in the Land Policy Guidelines is the highest accepted tender of port land and there is no provision in the guidelines to escalate the tender value. At the same time, it is relevant to mention here that tender value is with reference to the basic rate on the date when the tender is finalised. As a result, tender rate would also be subject to annual escalation. Hence the KOPT has updated the tender rate so as to reflect the position as of the year 2008. For the reasons stated earlier, the tender value reported by KOPT as of the year 2008 is updated to arrive at the position as of the year 2010.

(ii). As per note 2(a) of the existing Rent Schedule for land and buildings at KDS approved by the Government in the year 1996, the KOPT is required to collect incase of long term leases for the period of 15 years, non-refundable non-adjustable upfront premium equivalent to 4 years' rent.

The existing Land Policy Guidelines do not stipulate collection of upfront premium incase of annual lease. Therefore, in the proposed Rent Schedule, the KOPT has proposed to dispense with the collection of upfront premium. Thus, as against the existing practice of collecting upfront premium alongwith the monthly rentals, the KOPT as per the revised practice would only earn the monthly rentals. Hence, inorder to facilitate a like to like comparison between the existing and proposed arrangement, the KOPT has envisaged to factor the upfront premium in the present arrangement.

From the workings furnished by KOPT, it is seen that KOPT has worked out the Net Present Value (NPV) of the inflows (Lease rentals and four years rental as premium) that would be realized by it over a period of 15 years based on the stipulation made in the 1996 Rent Schedule for collection of premium and the NPV of inflows (lease rentals alone), by applying a discounting factor of 8%, in terms of Clause 5.3(III) of the Land Policy Guidelines which stipulates that a discount rate equal to the rate of 6% plus actual escalation (2%) on lease rent shall be applied for arriving at the upfront premium from lease rentals. Thus, the KOPT has arrived at a factor of 1.32 and enhanced the updated tender value.

The factor of 1.32 is for a 15 year realization period and the value could be more under NPV method for periods shorter than 15 years.

In the absence of the values of the tenders accepted by the KOPT and the years in which they were accepted, we are not in a position to determine the said factor in respect of all the tenders considered by KOPT in arriving at the rentals. Bearing in mind that the Committee appointed for fixation of the Revised Rent Schedule has recommended this approach and recognising that the Board of Trustees of KOPT has approved the recommendations of the Committee, the approach adopted by KOPT in this regard is relied upon.

(c). Lease Rentals based on the escalated Rent Schedule of 1996:

- (i). As stated earlier, the KOPT has updated its existing Rent Schedule at KDS approved in 1996 by applying the escalation factor of 5.1% annually as of the year 2008, and arrived at the revised rentals.
- (ii). The Land Policy Guidelines, do not prescribe determination of lease rentals based on the existing rates of lease rent. However, with reference to the exercise in finalisation of lease rentals in respect of its land at Haldia, the KOPT has argued that the existing escalated rent is a relevant factor important to the Port and has sought to classify this approach under the residual methodology prescribed in the Land Policy Guidelines, which states that the Committee headed by the Chairman of the Port Trust for valuation of land will take into account any other relevant factor as may be identified by the Port Trust.
- (iii). As stated earlier, the Land Policy Guidelines issued by the Government in February 2004 for all Major Port Trusts except KOPT and MBPT, was made applicable to KOPT vide MOS letter dated 10 February 2005. As per the decision conveyed by the Ministry to KOPT, the Land Policy is to be implemented by KOPT with immediate effect.

Clause 5.3(I)(c) of the Land Policy Guidelines stipulates that the Scale of Rates shall be escalated by 2% per annum till such time the Scale of rates is revised with the approval of the Competent Authority. As brought out earlier, this Authority vide its Order dated 23 August 2006 has, interalia, directed KOPT to amend the Rent Schedule at Haldia and Kolkata to the extent that the conditionalities contained in the Rent Schedule pertaining to Haldia and Kolkata are not inconsistent or at variance with the Land Policy Guidelines issued by the Government.

When a clarification in this regard, was sought by KOPT, we have communicated vide our Letter number TAMP/3/2003-Misc dated 9 August 2010 to KOPT, that the rates prescribed in the Schedule of Rent for Land and Buildings at HDC and KDS require to be escalated by 2% per annum from the due date of such annual escalation which fell after 10 February 2005, till such time the said Rent Schedule is revised with the approval of this Authority. It is also relevant to note here that the Ministry of Shipping vide its letter dated 8 January 2010, a copy of which was furnished to us by Vesuvius India Limited (VIL) under cover of its letter dated 28 September 2010, interalia, has advised KOPT to ensure that the provisions of Land Policy Guidelines of 2004 be strictly complied with.

In line with the clarification furnished to the KOPT in this regard, the lease rentals arrived at by KOPT are modified so as to give effect of

2% escalation, from the year 2005 onwards. The 2% escalation is applied till the year 2010.

- (iv). Based on the justification furnished by KOPT as brought out in the earlier paragraph for factoring the loss of upfront premium payment collected earlier by it and for the reasons adduced earlier for considering the approach adopted by the Port in this regard, a factor of 1.32 is applied on the modified lease rental derived by us based on the modifications mentioned in the preceding paragraph.
- (ix). In case of KDS, as seen in the existing Rent Schedule, for some areas, the land is categorized as First Belt and Second Belt, presumably depending on the yield of rents from such Belt of lands. Higher rates are prescribed for the First belt and lower rates for the Second belt.

The rentals for the First Belt are determined based on the above mentioned methodologies. In respect of the Second Belt, the KOPT has escalated the existing rates of Rent prescribed for the Second Belt by applying an escalation factor of 5.1% per annum till the year 2008. The lease rentals so derived by KOPT is revised so as to give effect of 2% escalation, from the year 2005 onwards. The 2% escalation is applied till the year 2010.

For the Second Belt rentals, the KOPT has not determined the rentals following the SRO Method. Apparently, the KOPT also does not have tender rates for the Second Belt. As such, the KOPT has considered the ratio of existing rentals for both belts and applied the ratio on updated tender value for the First Belt to derive the updated tender value for the Second Belt, which is considered in this analysis.

- (x). The KOPT has sought to include a new item in the proposed Schedule of Rent for KDS to prescribe rental for "Dhobitalao Container Park". KOPT has stated that since there is no notified rent for this area, the comparison has been made on the basis of actual transaction cost of land of nearby areas, as obtained from SRO and the recent highest tender rate obtained for the area. The workings furnished by KOPT have been reworked to effect the moderations carried out to arrive at the rentals for the various areas covered under KDS, as explained in the preceding paragraphs.
- (xi). (a). In its existing Rent Schedule for KDS, under the head 'Land at Dock', rentals are prescribed for 'Mint Place'. In the proposed Rent Schedule, the entry of Mint Place is deleted and as such no rentals are proposed for the same. The reason for deletion of this item from the Rent schedule remains unexplained.
- (b). In the proposed Rent Schedule for KDS, under the head 'Land at Dock', rentals are prescribed for 'Land within Dock premises with hard stand land'. There is no such item in the existing Rent Schedule. In this case, the KOPT after obtaining the SRO value for the land has increased the land value by adding a component relating to cost of hard standing to the tune of Rs.2.40 lakhs. Since the SRO value relates to residential values, valuation of land for hard stand land is considered taking into account the cost of hard standing as considered by KOPT.
- (xii). Subject to the discussions above, the Statement furnished by KOPT showing the lease rentals arrived by the above mentioned three methodologies for KDS lands of KOPT is modified. Based on the view taken by this Authority that it would be appropriate for a Port Trust to assess the market value under all options given in the Government guidelines and derive lease rentals based on the one which is most beneficial to it, as brought out earlier, the highest lease rentals out of the lease rentals determined which will be in the best financial interest of the port are approved.

By comparing the lease rentals worked out based on the above mentioned three approaches, it can be seen that in some cases, the lease rentals derived based on

the SRO approach is higher and in some cases lease rentals derived based on the tender approach is higher. Though the KOPT has also considered the existing lease rentals under the Escalation approach, it does not influence the lease rentals approved by this Authority for lands under KDS except one case relating to Durgapur (old siding area).

As seen from the lease rentals approved by this Authority, there would be an average increase in the lease rentals to the tune of around 116% to the users as compared to the escalated lease rentals being paid by them as of the year 2010. In this context, it will be relevant to mention here that majority of the users have objected to the steep increase in the lease rentals. The Land Policy Guidelines of the Government published in the year 2004, requires the lease rentals to be revised every five years based on the prevailing market value of the land. The market value of the land is bound to go up particularly in a metropolis, with the passage of time. The KOPT has framed the proposal following the Land Policy Guidelines and the hike in the lease rentals is inevitable.

- (xiii). The lands of the KOPT under HDC are grouped into six categories viz., Residential Zone, Industrial Zone, Dock Interior Zone, Commercial Zone, Kukrahati and Panskura. The approaches adopted by KOPT in valuation of its land under HDC are summarized below:
- (a). Valuation based on average rate of actual transactions in the last three years in the vicinity of the port lands from the Sub-Registry Office:
- (i). The value of the land as obtained from the Sub-Registry office (SRO), has been enhanced by 2% per annum to arrive at the rate for the year 2008.
 - (ii). Since the land value so obtained is the value of freehold land, the land value has been discounted by 10%, similar to the methodology adopted by the port for valuation of land under KDS.
 - (iii). The value of land is further discounted by 25% so as to make the land rates comparable to the industrial land use, similar to the methodology adopted by the port for valuation of land under KDS.
 - (iv). On the value of the land so arrived at, the prescribed rate of 6% has been applied, to determine the lease rental to be applicable for the said area.
- (b). Lease Rentals based on the escalated Rent Schedule of 1999:
- (i). Under this method, the KOPT has updated its existing Rent Schedule applicable at HDC by applying the escalation factor of 5% annually, till the year 2008, and arrived at the revised rentals.
 - (ii). The rates of lease rentals so arrived by KOPT has been further enhanced by 1.10 times to factor the loss of upfront premium payment, collected earlier by KOPT.
- (c). The KOPT has not valued its lands under HDC by following the tender values. The KOPT has stated that though tender rates were available for Industrial Zone and Dock Zone, these rates were few in number and had wide variances. As such, KOPT has not determined rentals based on the tender method.
- (xiv). The lease rentals proposed by the KOPT in respect of its lands under HDC are discussed in the following paragraphs:

(a). Valuation based on average rate of actual transactions in the last three years in the vicinity of the port lands from the Sub-Registry Office:

- (i). For the residential zone, the KOPT has stated to have obtained the SRO rates relevant to Sutahata for the valuation purpose. For the Industrial zone, the KOPT has reported to have considered the SRO rates for residential use at Kanjan Chak, Durga Chak, Debhog, Rayranya Chak and Dakshin Baisnab Chak for valuation purpose.
- (ii). The value of the land as obtained from the SRO has been enhanced by 2% per annum to arrive at the rate for the year 2008. Escalating the value of land by 2% per annum is found to be in line with the Guidelines. Since the lease rentals approved will come into effect in the year 2011, the value of the land as arrived by KOPT is updated by escalating it by 2% per annum so as to reflect the value of the land that may prevail during the year 2010.
- (iii). As stated earlier, the KOPT has discounted the value of the land obtained from the SRO in respect of Kolkata by 10% to convert the freehold land to leasehold land and further discounted the value of leasehold land by 25% so as to convert the residential land to industrial land. Following the similar approach, the KOPT has arrived at the land value for the industrial zone in HDC.
- (iv). In the absence of SRO rates in respect of lands at Dock Zone, Proposed Dock Interior Zone and Dock Interior Zone (Bare land and hard stand land), the KOPT has considered the rent for the industrial zone as the benchmark to arrive at the rent for the said zones.

(b). Lease Rentals based on the escalated Rent Schedule of 1999:

- (i). The KOPT has updated its existing Rent Schedule at HDC approved in 1999 by applying the escalation factor of 5% annually as of the year 2008, and arrived at the revised rentals.
- (ii). As stated earlier, the Land Policy Guidelines, do not prescribe determination of lease rentals based on the existing rates of lease rent. While responding to a query raised by TMILL and SAIL, the KOPT has argued that the existing escalated rent is a relevant factor important to the Port and has sought to classify this approach under the residual methodology prescribed in the Land Policy Guidelines, which states that the Committee headed by the Chairman of the Port Trust for valuation of land will take into account any other relevant factor as may be identified by the Port Trust.
- (iii). In line with the clarification given to KOPT vide our Letter number TAMP/3/2003-Misc dated 9 August 2010, as discussed earlier, the lease rentals is revised so as to give effect of 2% escalation, from the year 2005 onwards. The 2% escalation is applied till the year 2010 to maintain uniformity, with that of KDS.
- (iv). The premium of 10% has been arrived at by KOPT by comparing the NPV of the inflows (Lease rentals and two years rental as premium) that would be realized by it over a period of 30 years based on the stipulation made in the 1999 Rent Schedule for collection of premium and the NPV of inflows (lease rentals alone), by applying a discounting factor of 8%. Based on the reasoning as brought out earlier for factoring the loss of upfront premium payment collected earlier by it, a factor of 1.10 is applied on the modified lease rental derived by us.

- (xv). Subject to the discussions above, the Statement furnished by KOPT showing the lease rentals arrived by the above mentioned two methodologies for HDC lands of KOPT is modified. Based on the view taken by this Authority that it would be appropriate for a Port Trust to assess the market value under all options given in the Government guidelines and derive lease rentals based on the one which is most beneficial to it, the highest lease rentals out of the lease rentals determined, which will be in the best financial interest of the port are approved.

Since the lease rentals have not been arrived following the tender approach in respect of the lands under HDC, a comparison is to be made between the lease rentals arrived as per the SRO Method and lease rentals as per the Escalation Method. Even the rentals arrived for the various zones like Dock Zone, Proposed Dock Interior Zone and Dock Interior Zone (Bare land and hard stand land) as per the SRO method is not based on land value for the respective zones. It has been derived from the rent for Industrial Zone, as stated earlier. The lease rentals arrived as per the Escalation approach is inevitably to be considered to prescribe the Rent schedule for HDC as proposed by the port. In other words, from the valuation carried out by KOPT, it is to be inferred that there is no revision in the rentals based on the valuation of land at HDC.

- (xvi). As discussed earlier, higher of the lease rentals derived based on the SRO approach or tender approach is approved in respect of the land at KDS except in case of one zone and lease rentals based on the Escalation approach is approved in respect of the land at HDC, as proposed by the Port. The Land Policy Guidelines stipulates to determine lease rentals based on the market value. In this connection, it is to be noted that accurate market value for individual zones is not categorically assessed due to various constraints. Even in the Tender approach, the rentals have not been based on the latest tender rates and tender values are not available for all the zones. The intention of the Government policy cannot be to charge lease rental in excess of those determined based on market values. In view of these handicaps, the escalation method considered by KOPT is taken into account, wherever necessary. This Authority will not allow the escalation approach in the next review and bearing this mind, the port should take steps to assess values more accurately and comprehensively as prescribed in the policy. During the next revision, the KOPT is advised to frame its proposal based on the market value of its lands at KDS and HDC.

- (xvii). In addition to prescribing rentals for the lands at KDS, the existing Rent Schedule at KDS prescribes rentals for warehouses and buildings, Godowns, other structures used for commercial activities, Office/ shop rooms in the Docks, Sheds and other structures like bathrooms, garages etc.

Likewise, the existing Rent Schedule at HDC apart from prescribing rentals for lands under HDC, prescribes rentals for roofed structures, tower building, Quarters/ Dormitories, markets for perishable goods, retail markets, shopping centre, etc.

- (xviii). (a). For valuation of Buildings and Structures at both HDC and KDS, the KOPT has considered the value of the land component, building component and circulation area component. The methodology adopted by KOPT is summarized below as seen from the sample calculation furnished by KOPT:

- (i). The KOPT has arrived at the Current Replacement Cost (CRC) of buildings by considering the current rate of construction at KDS and HDC. The KOPT has referred to the Central Public Works Department (CPWD) Schedule for plinth area rates. Since plinth area rates for storage buildings are not available in the CPWD Schedule, the port has considered the plinth area rates relating to non-residential building. It is reported that the rate prescribed in the CPWD Schedule is in the range of Rs.766/- to Rs.809/- per sq.ft.

Taking into account the factor that the non-residential building is load bearing construction, a rate of Rs.790/- per sq.ft., which is an average of Rs.766/- to Rs.809/- per sq.ft. has been considered to arrive at the cost of construction.

As far as the valuation of buildings at Haldia is concerned, the plinth area rate of non-residential building like school building at Rs.850/- per sq.ft is taken into account. It is reported that the construction specification of a warehouse is similar to that of a school. The rate of Rs.850/- is slashed by Rs.50/- based on the judgement of the consultant and a rate of Rs.800/- per sq. ft is considered by the port. The plinth area rate so arrived is further enhanced by 10% to capture the elements of sales tax (4%), interest during the construction period (4%) and project management expenses (2%).

The life of the buildings at KDS and HDC is estimated at 80 years. The structures at KDS are reported to have outlived their life period. However, on the ground that the structures at KDS are maintained well, further life of 40 years is estimated for KDS structures as against the total life period of 80 years. This means that the value of KDS structures is depreciated by 50%.

Out of the total life period of 80 years, the remaining life period of structures at Haldia are estimated at 72 years on the ground that those structures are new. This means that the value of HDC structures is depreciated by 10%.

On the ground that Municipal Law requires to keep 15% of the plot area as open area and keeping in view that properties of KOPT are constructed on large plots, the port has scaled down the open area to 10% and 10% of the value of the land derived based on the SRO value has been considered by the port as value for circulation area component.

Thus, the aggregate of the value of the land component, building component and circulation area component is considered by KOPT to calculate the yield from the structures.

- (ii). The Land Policy Guidelines prescribe the yield at 6% of the market value as rent per annum. As against this position, the KOPT has considered an additional yield of 4% per annum to cover maintenance expenditure of the structures to arrive at the annual rent. It is stated by the port that in terms of a provision of Transfer of Property act, it is the responsibility of the owner of the structures to maintain the structures and if maintenance expenditure is not captured in the rentals, it will drain the port resources. However, no basis for the quantum of 4% additional yield is furnished by the port, despite a query in this regard. It is stated to be the prudent decision of the Committee.
 - (iii). For structures which are ground plus one or more, rent for the upper floors have been reduced, since the upper floors are expected not to attract as much tenants as the ground floor. The entire yield of 10% is distributed between the floors in such a manner that the rent of the first floor is 70% of the rent of the ground floor and rent of the second floor is 50% of the rent of the ground floor.
- (b). The Land Policy Guidelines do not cover valuation of buildings and structures. In spite of a specific query in this regard, the KOPT has not explained as to how the valuation of buildings and structures of KOPT is

covered under the ambit of the Land Policy Guidelines. The KOPT has sought to argue that the Land Policy Guidelines is intended to cover the port estate for earning revenue in the form of rentals. The KOPT has further stated that in KDS, there is good number of buildings comprising of warehouses, godowns, sheds etc. Unless the rentals/ licence fee for such buildings are notified, it would not be possible to realize the rentals in view of provisions of Section 49(1)(c)(d) of the Major Port Trusts Act, 1963. Since the buildings are contributing major part to estate, its inclusion in the SOR is absolutely necessary, as stated by the port.

As per Section 49(1) of the Major Port Trusts Act, 1963, fixation of rent for buildings belonging to or in possession of the port is within the purview of this Authority. The Land Policy Guidelines do not cover valuation of buildings. As such, valuation of buildings is to be considered as per the provisions contained in the tariff guidelines of 2005, to fix rates based on cost plus return on investment approach. The WDV of the structures furnished by the KOPT at our request is only with reference to its structures at KDS. The WDV of structures at HDC has not been furnished. Further, even the WDV of the individual structures at KDS furnished by KOPT could not be linked to the group of structures as prescribed in the existing Rent Schedule of KDS, as the port has merely forwarded to us a copy of the concerned Asset Register without giving any cross references to the individual buildings for which the rates are to be revised. Therefore, fixation of rentals for the structures following the cost plus method is not found possible.

As stated earlier, the proposed rates for structures are based on the current replacement cost of structures. Though the West Bengal Premises Tenancy Act, 1997 is not applicable to KOPT, as pointed out by the port, the Act does not prescribe fixation of rent based on replacement cost of structures. The basis of fixation of rent under the said Act is seen to be the historical cost of the structures i.e. actual cost of construction and market value at the date of commencement of construction.

The Fundamental Rule – 45A and 45B of Government of India, interalia, stipulate consideration of cost of acquiring or constructing the residences including cost of site for fixation of Licence fee for residences.

The above references, though not applicable to KOPT, indicate the intention of the Government to prescribe rentals for structures based on the historical cost of the structures. Therefore, this Authority is not inclined to go by the methodology adopted by KOPT for fixation of rentals for structures based on current replacement cost. That being so, we have not gone further into the merits of the methodology adopted by the KOPT in arriving at the current replacement cost of structures, life of the structures, and estimation for value for circulation area component.

If only the rentals for the land is revised based on its market value and the rentals for the structures is left untouched, it may lead to an anomalous position where a lessee for an open land would pay increased rentals on account of the updation of land values whereas a lessee of the structure, who may be enjoying value added services at the structures, as compared to a lessee of an open land, would not be subjected to any increase in his rentals. It has to be recognized that lease rentals for structure will be based not only on the value of the structure but also on the value of land on which it is erected/ constructed. To overcome this anomalous position, it is necessary to increase the rentals for the structures also at KDS and HDC.

The rentals for any structure comprises of rent for the building component and rent for the land component on which the building is erected. From the workings furnished by KOPT for the structures at KDS, it is seen that on an

average, value of land component constitutes around 60% of the aggregate value of the land and structure. It is necessary that the rentals for the structures should factor the increase in the land value on which it is erected, and for the reasons stated earlier, the increase in the rentals related to the structure component based on the methodology adopted by KOPT cannot be acceded to. As such, a maximum increase of 30% in the existing rentals of structures escalated as of the year 2010 or the rates proposed by KOPT, whichever is lower, is approved on ad-hoc basis in respect of rentals for the structures at KDS.

Since the lease rentals for the lands arrived as per the Escalation approach is considered for prescription in the Rent schedule for HDC, the existing rentals escalated as of the year 2010 is prescribed in case of structures at HDC also.

The Rent Schedule for HDC also prescribes license fee recoverable from Quarters allotted to the concerned. For the stated reasons, this Authority is not in a position to recognize the methodology adopted by KOPT for valuation of quarters and fixation of licence fee therefor. As such, the existing licence fee escalated as of the year 2010 is prescribed.

The KOPT is advised to formulate an appropriate proposal in respect of structures at KDS and HDC following proper procedure to protect its financial interest.

- (xix). (a). The existing Schedule of Rent for land and buildings at Haldia was notified by this Authority in the year 1999. Prior to the year 1999, the KOPT was levying charges as per the rates notified in May 1992 with the approval of the Government. The existing Schedule of Rent at Haldia also prescribes some miscellaneous rates as listed below apart from rentals for land and buildings:
- (i). Permission fee for holding function on port's land.
 - (ii). Licence Fee for the rights of Pisciculture in port's Ponds/ water bodies.
 - (iii). Licence fee for erection of hoarding on port's land.
 - (iv). Way leave licence fee for essential utility service lines like telephone lines, water supply lines, sewerage lines etc., for laying pipelines carrying Crude oil, POL products and other Liquid cargo over or under the ground, and for allowing overheads conveyors and high voltage transmission lines and towers.
 - (v). Licence fee for Durgachak Mini Market.
 - (vi). Hawker charges in various bazaars of KOPT.
 - (vii). Licence fee for open and covered space inside Dock Interior Zone for storage of cargo on Ship to Ship basis.
- (b). For the above said miscellaneous tariff items, the KOPT has arrived at the rates following two approaches. Under one approach, the KOPT has applied an escalation factor of 5% per annum till the year 2008, on the rates approved by this Authority in 1999. Under the other approach, the KOPT has enhanced the rates approved in 1999 by the same percentage by which the rates notified in 1999 got enhanced from the rates notified in May 1992. Out of the two rates so derived, the higher of the two rates has been proposed by KOPT in its proposal.
- (c). The tariff items listed above are discussed in the following paragraphs:

- (i). The rates proposed for permission fee, rights of Pisciculture, erection of hoarding, Durgachak Mini Market and open and covered space inside Dock Interior Zone for storage of import/ export cargo are for the use of port's land. As brought out in the earlier part of this note, the Land Policy Guidelines prescribe the methodologies to be followed for arriving at the value of the land and to subsequently arrive at the rentals therefrom. The reason for not following the approach prescribed in the Land Policy Guidelines for arriving at the rentals for the said miscellaneous tariff items remains unexplained. The reason for adopting the approach to propose the rates taking into consideration the rates notified in the year 1992 also remains unexplained. Keeping in view the mandate given to this Authority under Section 49 of the MPT Act to prescribe rates for the use of the port properties, it is necessary to prescribe rates for use of port properties. Therefore, the rates worked out by KOPT based on the first approach are updated to reflect the position as of the year 2010, by applying an escalation factor of 2% from the year 2005 onwards upto the year 2010. The rates so derived are approved.
- (ii). Way leave licence fee:
- (a). As mentioned above, in the existing Rent Schedule for Haldia, the way leave charges are prescribed to cover telephone lines, water supply lines, sewerage lines, electric lines, pipelines, overhead conveyors, high voltage transmission lines etc. For the purpose of analysis, the items are re-grouped, as shown below, based on the similarity in the physical features of the items:
- (i). Utility service lines like telephone lines and electric lines
 - (ii). Utility service lines like water supply lines and sewerage lines.
 - (iii). Pipelines
 - (iv). Overhead conveyors, high voltage transmission lines etc
- (b). Each of the above items is discussed below:
- (i). In the existing Schedule of Rent, the unit for the levy of way leave charges for telephone lines, electric lines is calendar year or part thereof. In the proposed Scale of Rates, the KOPT has proposed to continue with the unit of levy. In this context it is relevant to mention here that this Authority vide its Order dated 16 June 2010 in respect of Cochin Port Trust (COPT) has approved way leave charges for TV cable lines based on per kilometer or part thereof. Therefore, it is not correct to prescribe a lumpsum way leave charges on calendar year basis at KOPT. The KOPT is advised to come up with a suitable proposal to levy charges based on the distance covered by the telephone and electric lines. Till such time the KOPT comes up with a proposal, the existing rates duly escalated till 2010 by applying the relevant escalation factor is allowed to continue.

- (ii). In the existing Schedule of Rent, the unit for the levy of way leave charges for water supply lines and sewerage lines is calendar year or part thereof and the unit for the levy of way leave charges for pipelines carrying petroleum products and other liquid cargo over or under the ground, the unit for the levy of way leave licence fee is per meter per calendar year or part thereof. In this context it is relevant to mention here that this Authority vide its Order dated 10 August 2004 in respect of Jawaharlal Nehru Port Trust (JNPT) has prescribed formula for calculating way leave charges for pipelines, which is reproduced below:

“For the purpose of way leave charges, the area occupied by single pipelines should be calculated based on the diameter and length of those pipelines. In case of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks should be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails, jetties, etc., the respective users should be billed pro-rata for 50% of the concerned area assuming that they do not have exclusive possession of land and what they have is only ‘Right of Way’. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines should be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges.”

When KOPT was asked to prescribe way leave license fee in line with the formula prescribed by this Authority in case of JNPT, the KOPT has stated that by accepting the model suggested by TAMP, there would be a substantial fall in the existing rate. Also, a minimum separation is to be kept between the pipelines. Therefore, charging of way leave licence fee only on the basis of diameter of the pipeline will not reflect the true picture, as stated by the port. The KOPT has added that none of the way leave licensee of HDC has so far objected to the way leave licence fee charged at HDC.

Following the formula prescribed for calculating way leave charges for pipelines in case of JNPT, this Authority vide its Order dated 4 May 2010 in case of COPT and vide Order dated 16 June 2010 in case of New Mangalore Port Trust (NMPT), has prescribed the same formula in the Scale of Rates of the respective Port Trust. The KOPT has not brought out any extraordinary circumstances other than fall in the existing rates, warranting a deviation from the formula already prescribed. Therefore, the formula prescribed in case of JNPT, COPT and NMPT is prescribed in the Rent Schedule of HDC.

- (iii). In the existing Rent Schedule way leave licence fee is leviable on the basis of the scheduled rent for the area coming in the alignment of the overhead conveyors and high voltage transmission lines and towers. In the proposed Rent Schedule, the KOPT has proposed to continue with the existing provision, which is allowed.

- (iii). In the existing Rent Schedule, Hawker charges in various bazaars of KOPT, is prescribed at Re.1/- per person per day. Applying an escalation factor of 5%, the KOPT has proposed to levy Rs.1.55 per person per day. For the reasons stated earlier regarding the escalation aspect, a rate of Rs.1.45 per person per day is approved.
- (xx). The KOPT has proposed conditionalities to govern the application of rates of rentals at Kolkata and Haldia. The Land Policy Guidelines of 2004 prescribes broad guidelines relating to application of lease/ licence fees. Over and above the prescription in the Guidelines, the KOPT has proposed some additional conditionalities to govern the application of rentals. The additional conditionalities are analysed to see that they are not inconsistent with the provisions contained in the Guidelines.
- (xxi). The conditionalities relating to estates of KOPT at KDS are discussed below:
- (a). Incase of allotment of land through leases, the KOPT has proposed that allotment shall be for a period not exceeding 30 years by inviting tender. The proposed note further states that the rates and other terms and conditions are to be specified in the notice inviting tender.
- The land allotment policy prescribed in the Land Policy Guidelines prohibits lease of land inside Custom bound area. However, as per the Guidelines, land can be allotted outside Custom bound area on lease basis upto 30 years by inviting tender as stipulated in Clause 5.2.1.1(b) and (g) of the Guidelines. Therefore, the mention made in the proposed note that the lease shall be granted for a period not exceeding 30 years is as per the guidelines. However, this Authority is not concerned with, what a notice inviting tender should contain. It is for the KOPT to incorporate suitable conditions in the tender document consistent with the Land Policy Guidelines and the notified Scale of Rates in vogue. The proposed note is, therefore, suitably modified.
- (b). Incase of leasing of land on upfront basis, the KOPT has proposed to collect the upfront premium on the basis of Net Present Value (NPV) of lease rentals for the period of lease taking the discount rate of 8%. The KOPT has stated that the discounting rate of 8% has been arrived by following the stipulation made at clause no. 5.3(iii) of the Land Policy Guidelines wherein it is mentioned that the discount rate of 6% plus actual escalation (2%) shall be applied for arriving at the upfront premium from annual rentals. The proposed conditionality is in line with the Land Policy Guidelines. It is also added in the proposed note that incase of lease of land on upfront premium basis, Re.1/- shall be charged as annual rent per calendar year or part thereof, as proposed by the port in respect of a similar condition at HDC.
- (c). The KOPT has proposed a note stating that incase of future long term leases, period of lease shall not exceed 30 years, without any option of renewal. The lease period of 30 years is as per the guidelines. The VIL has argued for a provision for grant of lease with renewal clause mainly on the ground that companies invest in the business on the basis of going concern concept and without a renewal clause, there will not be any certainty at the end of the 30 year period. However, it is to be kept in view that a port trust can lease land only upto 30 years and for lease above 30 years, prior approval of the Government is necessary, as stipulated in the guidelines. Therefore, the proposed note that the period of lease shall not exceed 30 years without any option for renewal is found to be in order.

The proposed note also envisages recovery of annual rentals in advance in the form of Post dated Cheques/ Bank Guarantee. It is relevant to mention here that KOPT has also envisaged to collect Security Deposit in case of all

future allotment of land by way of long-term leases. Collection of Security deposit is discussed in the later part of this analysis. In response to a query in this regard, the KOPT has stated that the purpose of obtaining security deposit is to cover any default in payment of rent in future, damage to port property, if any, by the lessee, whereas the purpose of obtaining post dated cheques/ Bank guarantee is to ensure regular flow of rentals. The KOPT has clarified that since as per Negotiable Instrument Act, dishonouring of cheque will call for criminal proceedings, a lessee who has submitted Post Dated Cheques will generally be afraid of dishonouring those cheques and thus getting the rentals in future is somewhat ensured.

The users have expressed difficulties in giving post dated cheques in advance to cover a long period. At the same time, the reasons put forth by KOPT to safeguard its financial interest and timely realisation of rentals cannot be brushed aside. Further, as can be construed from the comments made by the users, the practice of KOPT collecting post dated cheques from the lessees appears to be in existence for some time now. By way of the proposed note, the KOPT appears to include this as part of the Rent Schedule. The proposed note is, therefore, approved.

- (d). The KOPT has proposed a note so as to enable it to renew the lease in case of existing long term leases coming up for fresh lease after expiry of the term and where no renewal option is available. The proposed note is seen to be incomplete.

Clause 5.2.1.2 of the Land Policy Guidelines enables a port trust to renew the existing lease, if the land is not required by the port for its own use and after examining whether the land is required for the purpose for which it was originally leased or for any other purpose consistent with the Land Use plan. If so, and at its discretion, the port may decide to grant a fresh lease in favour of the existing lessee at the terms to be approved by its Board of Trustees without public auction/ tender, at the prevailing Schedule of Rent duly updated or market value as the case may be.

The note proposed by KOPT is completed in line with the Guideline provision.

- (e). The KOPT has proposed a provision that in case of renewal of existing leases the port would check whether the concerned lessee has observed all the covenants of the lease during the tenure of the existing term of lease. The KOPT has stated that as mentioned in Clause 5.2.1.2(c) of Land Policy Guidelines, in case of lease where there is no renewal option, Port at its discretion may allow fresh lease in favour of the existing lessees with certain conditions. As such, to exercise such discretion, the KOPT has felt necessary that those lessees who have faithfully observed the covenant of earlier lease be considered for the purpose of lease. Such a condition, according to KOPT, shall bring discipline in its system of allowing fresh leases to the existing lessees. Disciplining the system of allowing fresh leases to the existing lessees is an administrative matter of KOPT. There does not appear to be a need for this Authority to prescribe such conditionalities.
- (f). The KOPT has proposed a note to the effect that the Rent Schedule to be notified will be applicable for all the existing lessees/ licensees, if rents/ license fees to be notified are higher than the existing rents/ license fees. If it is the other way round, the KOPT has proposed that the lessees/ licensees shall continue to pay existing rents/ license fees. When KOPT was asked to clarify that whether such a differential treatment is permitted in the existing leases, the KOPT has stated that in an event where till the time the revised Rent Schedule is notified, if a lease has been granted through tender process at higher rentals than the rentals that would be subsequently notified by

TAMP, such a provision would help in protecting the financial interest of the Port.

The response of the KOPT is not categorical to our query whether differential treatment is permitted by the existing leases. If the port has received any offer for higher rentals through tender process than the rentals notified by this Authority, such a situation would be governed by the covenants of the lease agreement entered by the port with the concerned parties. In this circumstance, the proposed note is not approved.

- (g). The KOPT has proposed a note stating that in case of existing long term leases, the rate of rent and annual escalation will be governed by the relevant covenants of the lease. A similar provision exists in the existing Rent Schedule for KDS approved by the Government in the year 1996.
- (h). KOPT has proposed a note to the effect that in case of long term leases granted in future, the rent shall be escalated by 2% per annum. In addition, the KOPT has also included in the proposed note a provision to enable the port to raise the level of rate of rent to the level of schedule of rent every 5 years if the rate of rent found in the future long term leases is lower than the Rent Schedule to be determined every five years. The purpose of incorporating such a provision is stated to protect the financial interest of the Port, as whenever new rent schedule would be notified after every 5 years, there will be an occasion for the Port to revise and review the rents.

As per the Land Policy Guidelines, the Rent Schedule shall be escalated by 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 lease/ licence agreement to be entered by the Port. The Scale of Rates to be framed by this Authority need not contain the clauses to be inserted in the lease agreements to be entered by the port trust with the concerned parties. It is for the Port to enter into Lease Agreement ensuing compliance of the Scale of Rates and Land Policy Guidelines of the Government. The proposed note is, therefore, not approved.

- (i). The KOPT has proposed a provision stating that in 11 monthly licenses coming up for fresh license after expiry of 11 months, the rate of license fee shall be escalated by 2% subject to the condition that the same shall not be lower than the schedule of rent then in force.

From the various correspondence of KOPT, it appears that the KOPT has been applying the escalation factor after completion of a year from the date when the lease/ licence was granted. In this regard, it is relevant to note that the Rent Schedule is a common document and should not be linked to the individual licence/ lease agreement. It is after the completion of an anniversary from the effective date of implementation of the Rent Schedule and on completion of each anniversary thereafter, that the Rent Schedule undergoes an automatic escalation at the prescribed rate. As such, the rate prescribed in the Rent Schedule gets escalated automatically and comes into effect. In such a scenario, a situation where the licence fee is lower than the Scheduled Rent in force, as mentioned by KOPT will not arise. Therefore, there is no need for prescribing such a note in the Rent schedule of KDS and HDC.

- (j). On the ground that the Port has to recover the money spent by it for construction and maintenance of road and railway lines, the KOPT has proposed notes prescribing 15% additional rent for the rail served and road abutted plots. Valuation of a plot which is connected by more than one road

and by rail will always be higher when compared to the valuation of a plot which has only one access, as stated by the port.

In the existing Rent Schedule approved by the Government in 1996, there is a provision to charge 15% extra rent in case of rail served plots. In case of plots abutting on more than one road of equal width will be increased by 20% and in all other cases an additional rent of 15% extra will be charged for plots abutting on more than one road. It is further reported by KOPT that the Rent Schedules approved by Government in the years 1983 and 1998 had similar provisions.

Most of the users like BLCL, EIL, VIL, ITC and BCCI have objected to the proposed provision. With reference to the objections raised by EIL, the KOPT has stated, inter alia, that prescription of a premium of 15% is the considered decision of the Rent Fixation Committee. The KOPT has further stated that when EIL in the past challenged the rent schedules before Hon'ble Calcutta High Court, the Hon'ble High Court has upheld the past rent schedules which were accepted by EIL. Even with reference to our request to justify the proposed 15% premium, the KOPT has not made any reference to the Court Order upholding the levy of premium of 15%. We are not aware of the grounds of challenge of the previous Rent Schedules by EIL and the decision of the Hon'ble Court referred by KOPT above.

In respect of the valuation of land at KDS, valuation has been carried out for an entire zone and not on the individual plot of lands having connectivity by road or rail or both. Therefore, additional charges are proposed to factor the better connectivity facilities enjoyed by the concerned plot of lands. It is notable that in the earlier as well as existing Rent Schedule, similar provisions have been prescribed. Hence, prescription of a 15% premium proposed by KOPT for the rail served and road abutted plots is approved.

- (k). For water bodies/ water areas, the KOPT has proposed to recover 50% of the corresponding rate of rent applicable for land area. According to KOPT, as the river conservancy is the Port's responsibility, the Port is entitled to recover charges for the purpose and as such the proposed note would cover a situation where jetties are proposed to be constructed on the river having land connectivity.

In this context, it is relevant to mention here that while passing an Order disposing the General Revision proposal of Mormugao Port Trust (MOPT), an issue emerged about the fixation of rate for the usage of water area of the port by the users. Since the land policy guidelines is silent in this regard and also since there is no uniformity in application amongst different Major Port Trusts, the matter has been referred to the Government, to examine the matter to evolve necessary guidelines / principles for determination of rates on water area and reclaimed area (where the lessee has reclaimed the land) for common application at all the Major Port Trusts. The response of the Government in this regard is awaited. Pending receipt of clarification from the Government, this Authority approves recovery of 50% of the corresponding rate of rent applicable for land area, as proposed by the port, subject to review in line with the general policy to be evolved by the Government in this regard, in future.

- (l). KOPT has proposed a note to the effect that Municipal tax and Service Tax as applicable shall also be payable by the licensees/ lessees/ tenants, on the ground that if the issues regarding municipal tax and service tax are not mentioned in the Rent Schedule, there may be objection from the lessees for paying the same and there may also arise future legal complications, if charging of municipal and service taxes are challenged by the tenants. The existing Rent Schedule contains such a provision. A note on similar line has

also been approved by this Authority in the Scale of Rates of Chennai Port Trust (CHPT). The proposed note is, therefore, approved.

- (m). KOPT has proposed a note to enable it to collect one year's rent and taxes as non interest bearing Security Deposit incase of future allotment of land by way of long term lease/ 11 monthly licenses. Likewise, the proposed note also envisages to collect six months licence fee and taxes as Security deposit for allotment of structures on 11 monthly licence basis.

Clause 5.2.1.1 (h) of the Land Policy guidelines requires a major port to keep 5 years' rent or 25% of rent of the total lease for the duration of lease, whichever is lower, as Security. While responding to a query in this regard, the KOPT has stated that asking a lessee to pay 5 years rent as security deposit will put a burden on the lessee which may lead to unattractiveness of port land. Also, since in the earlier Rent Schedule of KDS, one year's rent has been prescribed as security deposit, the same has been proposed to be continued in the revised Rent Schedule also, by KOPT.

The proposed provision is a deviation from the Land Policy Guidelines in this regard. It is relevant to mention here that the rates to be approved by this Authority are at ceiling levels and as such, the ports have the liberty to charge lower rates based on its commercial considerations, if it so desires. Therefore, the proposed note is modified in line with the stipulation made in the Land Policy Guidelines.

The Land Policy Guidelines are silent about collection of Security Deposit in respect of letting out port land on License basis for a period of 11 months. Collection of Security deposit is to protect the interest of the port, in the event of default by the licensee. The existing Rent Schedule for KDS prescribe collection of Security deposit at one year rent and taxes incase of lands and six months rent/ licence fee incase of structures. The KOPT has proposed to continue with the existing arrangement. However, collection of one year's rent as Security Deposit for 11 monthly licences does not appear to be rational. Therefore, the provision to collect Security deposit incase of 11 monthly licences for allotment of land is modified to prescribe collection of Security Deposit equivalent to the licence fee for the period for which the licence is granted.

- (n). Clause 5.2.1.3 of the Land Policy guidelines permits transfer of lease, subletting/ partially subletting of land in both the existing and new leases. However, by way of proposed notes, the KOPT has proposed separate notes for the transfer of lease and sub-letting to the future long term leases, on recovery of necessary transfer fee or necessary subletting fee.

As far as recovery of Transfer fee is concerned, it is relevant to mention here that this Authority vide its Order No. TAMP/10/2000-Genl. dated 4 February 2000 and 31 August 2000 has held that this Authority does not have the jurisdiction to approve 'Mortgage Fee' / 'Transfer Fee' in the absence of a specific provision therefor in the Major Port Trusts Act. As such, this Authority is not in a position to approve the proposed note indicating transfer of leases on recovery of necessary transfer fee. The Port may be guided by the Government instructions in this regard.

Incase of sub-letting fee, the Land Policy Guidelines envisage collection of charges for sub-letting and the proposed note reflects the position. The proposed note is approved.

- (o). To allow the existing lessee to sub-let the land where sub-letting is not permitted in the existing leases, the KOPT envisages to allow the existing lessee to sub-let subject to the condition that the existing lessee agrees to

enhance the rent to match with the schedule of rent or market rent whichever is higher. To a query in this regard, the KOPT has sought to argue that certain lessees enjoy the benefit of very long term leases since decades and as such pay meager rent as compared to today's scenario. In such event, if they are allowed to sublease by charging annually one time fees equivalent to 12 months rent as in the land policy, there will be a huge financial benefit to them. To overcome such a situation, the port has proposed to enhance the rentals based on today's market rate of rent/ schedule of rent so that port will also stand financially benefitted by allowing them for creation of sublease.

The proposed provision does not compel an existing lessee, in whose case there is no provision for sub-letting, to pay enhanced rentals. All that the proposed provision requires is that if the existing lessee desires to sub-let the land allotted to him, he has to pay enhanced rentals. Since the proposed provision does not vitiate the Land Policy Guidelines, the proposed note is approved.

- (p). KOPT has proposed a note for levy of Mortgage Fee to mortgage the leasehold interest alongwith the facilities erected by the lessees. For the reasons as brought out earlier, this Authority is not in a position to approve the note proposed by the Port in this regard. The Port may be guided by the instructions of the Government in this regard.
- (q). KOPT has proposed a note prescribing collection of compensation/ damages for wrongful use and occupation of land, in line with the stipulation made in the Land Policy guidelines. However, through the said note, the KOPT also proposes to cover the existing unauthorized occupants. In respect of the existing unauthorized occupants, the compensation is proposed to be levied as per the covenants of the previous agreement, which has been terminated or the compensation at three times the scheduled rent, whichever is higher.

As brought out in the earlier paragraphs, existing leases may have to be governed by the respective covenants of the lease agreement. However, compensation in respect of leases which are entered by the port after the effective date of implementation of the Land Policy Guidelines should be governed by the provisions contained in the Land Policy Guidelines. As such, the proposed note is suitably modified.

- (r). The KOPT has proposed to continue with the existing provision to recover damages for encroachment of its land and structures at 3 times the rate for 1st month of encroachment, 5 times the rate for the 2nd and 3rd month of encroachment and 10 times the rate for encroachment beyond 3 months. Since the levy is penal in nature and also such a levy will deter encroachment, this Authority is inclined to permit KOPT to continue with the penal provision.
- (s). The KOPT has proposed way leave licence fee on the basis of affected area to be calculated taking into account length of pipelines carrying crude oil, POL products and other liquid cargo over or under the ground and the width of the affected area. The fee is proposed to be charged as per the Schedule of Rent applicable for the affected area. For the reasons stated in respect of HDC, the formula approved in respect of the JNPT for levy of way leave charges for pipelines is inserted in the Rent Schedule of KDS also.

With regard to and electric/ telephone lines, as discussed earlier in respect of HDC, the KOPT may come up with a separate proposal for fixation of way leave charges for electric/ telephone lines, based on the unit of per kilometer or part thereof.

For allowing overheads conveyors and high voltage transmission lines and towers, the KOPT has proposed that way leave licence fee shall be charged on the basis of the Schedule of rent for the area coming in the alignment of the structures. The proposed note is similar to the existing arrangement at HDC, and hence is approved.

The KOPT has also proposed that incase of all existing way leave licenses which were granted on token licence fee and where no area has been mentioned, such way leave licence fee shall be revised to Rs.1000 per annum payable annually in advance. It is not clear whether this tariff item relates to pipelines or electric/ telephone lines or for overheads conveyors and high voltage transmission lines and towers. That being so, the KOPT is advised to either follow the formula prescribed for pipelines if the way leave granted on token relates to pipelines or include in its proposal for prescription of way leave licence fee for electric/ telephone lines if the way leave granted on token relates to electric/ telephone lines or follow the arrangement prescribed for overheads conveyors. Therefore, the proposed provision is not approved.

- (t). The KOPT has proposed to recover mutation fee for granting mutation equivalent to 5% of the 12 months rent or Rs.10000/- whichever is higher as compared to the existing provision of levying to 5% of the 12 months rent or Rs.1000/- whichever is higher. The proposed levy is in line with the provisions existing in the Rent Schedule of KDS excepting pruning of the number of cases arising for granting mutation. Since the existing maximum ceiling of Rs.1000/- was prescribed 13 years ago as reported by the Port, the proposed provision is approved with a maximum ceiling of Rs.10000/-.
- (u). The KOPT has proposed notes, wherein it proposes to give concession in rent in respect of some class of users like CFS, liquid bulk storage tanks with pipeline connection to KOPT jetty, lessees who generate cargo. In this regard, it is mentioned that since the rates approved by this Authority are at ceiling levels and as the ports have the liberty to charge lower rates based on its commercial considerations, if it so desires, prescription of a conditionality granting specific reduction in the rates in the Rent Schedule is not found necessary. Therefore, the proposed notes are not approved.
- (v). The note proposed by KOPT for allotment of land/ shed inside Custom bound area for port operations is in line with the guidelines. With regard to KOPT proposing to collect Security deposit equivalent to 30 days rent and taxes, keeping in view the objective behind collecting Security deposit as explained earlier, this Authority is inclined to approve the proposed note.
- (w). The KOPT has proposed to levy penal charges incase of unauthorized occupation of the yard/ shed after expiry of the licence period, in a graded manner.

Clause 5.2.1.3 (g) of the Guidelines prescribes 3 times the lease rent as penalty for unauthorized occupation of leased premises, after the expiry/ termination/ determination of lease or forfeiture of lease. Nothing is mentioned in this regard for licensed premises.

Since the proposed provision is penal in nature and to deter the licensees from the continued unauthorised occupation, this Authority is inclined to approve the stringent penal structure as proposed by the port.

It is relevant to mention here that FIEO had separately forwarded to us a copy of KOPT Circular no. Tfc/GZZY 355/Land/III dated 27 August 2010, intimating the levy of penal rates to be made effective for all licenses to be issued fresh or renewed on or after 1 September 2010, reportedly based on

the approval given by its Board of Trustees. The KOPT was requested to clarify the position vide our letter number TAMP/3/2003-Misc dated 23 September 2010. However, the KOPT did not respond.

In this context, it is relevant to state that the approval to be accorded for the levy of penal rates will have a prospective effect only. Neither the authority under which the Port has introduced the said provision nor any request for retrospective approval for valid reasons, has been advanced by the Port. The penal rates reported to have been levied by KOPT from 1 September 2010 till the effective date of implementation of the revised Rent Schedule at KDS will be at the risk and responsibility of KOPT. This Authority does not like to ratify the action taken by KOPT, for want of requisite clarification from KOPT in this regard.

- (x). The KOPT has proposed to levy rent at 3.5 times the base rate for land allotted to shops, refreshment stalls, petrol pumps and weight bridge to be applicable at all areas of KDS. To a query in this regard to justify the quantum proposed to be levied, the KOPT has responded saying that the said levy of 3.5 times is part of the existing Rent Schedule. The existing Rent Schedule prescribes the levy to be applied in Dock and Howrah areas only. The proposed provision is an extension of the existing provision to cover all areas in KDS, which is approved.
 - (y). The KOPT has proposed a note to prescribe an interest rate of 15% per annum to be levied on the outstanding rent, compensation and other receivables by the port in respect of land pertaining to KDS, within the due date. This Authority, recently while passing the General Revision Order of KOPT has approved an interest rate of 14.25% per annum. Therefore, the port is allowed to levy interest at the rate of 14.25% per annum only.
 - (z). The other conditionalities proposed by KOPT at Sl. No.2 (prescribing 2% escalation per annum), Sl. No.3 (granting of future leases by inviting tenders) and Sl. No.14 (granting permission for change of use of port land) are seen to be in line with the provisions contained in the Land Policy Guidelines and hence are approved.
- (xxii). The proposed conditionalities relating to HDC are discussed below:
- (a). Many of the conditionalities proposed in respect of HDC are found to be similar to the conditionalities proposed in respect of KDS. Thus the conditionalities, approved in respect of KDS for the reasons stated therein are incorporated in the Rent Schedule of HDC. Further, some conditionalities proposed by KOPT for HDC are in line with the provisions contained in the Land Policy Guidelines. Therefore, only such conditionalities which are not covered so far in this analysis are discussed in the following paragraphs.
 - (b). The Land Policy Guidelines provide for allotment of land on lease basis by inviting tenders and on upfront basis as stipulated in Clauses 5.2.1.1(g) and (h). Therefore, conditionality proposed in this regard stating that in case of leases granted through tender procedure, the accepted tender rate of lease rent/ upfront premium shall be applicable, is approved.
 - (c). In a proposed note relating to renewal of the existing long term leases coming up for fresh lease after expiry of the term and where no renewal option is available, the KOPT has also proposed a clause to the effect that the lessees are required to pay applicable security deposit. However, collection of Security Deposit is envisaged under Clause 5.2.1.1 (h) of the Guidelines in respect of fresh leases of land granted on annual lease basis. Keeping in view the objective behind collection of Security deposit, as discussed earlier, the proposed note is approved.

- (d). In addition to levy of licence fee, the KOPT intends to collect overheads at 19.25% of the actual cost of electricity charges/ water charges, if electricity/ water is supplied from KOPT sources. The KOPT collects 19.25% overheads incase of various kinds of deposit works carried out by HDC on behalf of other organisations. Based on this premises, the port has proposed to collect the same quantum of overheads for supply of electricity/ water also. Incidentally, the collection of overheads and same rate of overheads are prescribed in the existing Rent Schedule of HDC. The existing arrangement is permitted to continue.
- (e). The existing Rent Schedule of HDC prescribe payment of present and future rates, taxes, education cess etc., payable in respect of the demised land and or any other structure erected by the licensees or occupiers. The KOPT has proposed to continue with the existing provision, which is approved.
- (f). The KOPT has proposed to continue with the existing note to allow rebate of 2.50% on licence fee incase of timely payment of rent/ licence fee. The rates approved by this Authority are at ceiling levels and the port has the liberty to charge lower rates based on its commercial considerations, if it so desires. Therefore, prescription of conditionality granting specific rebate in the rates is not found necessary. At the same time, this Authority will not recognise the revenue effect of discounts and rebates, if any, granted by the Port Trust.
- (g). As proposed by the port in respect of KDS, the port has proposed notes, wherein KOPT intends to give concession in rent in respect of Port based infrastructure like warehouses for dry cargo, storage terminals for liquid cargo, CFS, lessees who generate cargo etc. As already explained in respect of such a similar provision proposed by KOPT for KDS, the rates to be approved by this Authority for HDC are at ceiling levels and as the port has the liberty to charge lower rates based on its commercial considerations, if it so desires, prescription of conditionality granting specific reduction in the rates in the Rent Schedule is not found necessary. Therefore, the proposed notes are not approved.
- (h). In respect of conditionalities governing licensing of land/ covered space inside Dock Interior Zone (DIZ) for storage of cargo, the KOPT has proposed to reduce the notice period for termination of licence from the existing 15 days to 7 days. The users have not pointedly objected to the proposed change. The proposed change in the existing note is approved.
- (i). KOPT has proposed a note to recover 2 months licence fee for the land to be allotted in terms of licence inside DIZ. In this context, it may be recalled that the KOPT in its current proposal has proposed to collect different quantum of Security Deposit for the allotment of different areas in HDC and KDS. It is not correct to have different provisions for collection of Security Deposit within the same Port. Hence, it is rational to prescribe collection of Security Deposit for licence inside DIZ, similar to the one prescribed incase of licence in KDS. Accordingly, it is prescribed that Security Deposit equivalent to the licence fee for the period for which the licence inside DIZ is granted may be collected. Nevertheless, it is relevant to mention here that the rates approved by this Authority are at ceiling levels and as such, the KOPT has the liberty to charge lower rates based on its commercial considerations, if it so desires.
- (j). The proposed condition prescribing the due dates for payment of licence fee, which is approved.
- (k). There is a condition in the existing Rent Schedule to commence charging of licence fee from the date of handing over of the possession of the land. However, the reason for modifying the existing note so as to commence the

charging of licence fee from the date of use of land remains unexplained. The existing condition may continue without any change.

- (l). KOPT has proposed a note to the effect that the minimum area to be licensed to a single licensee is 1000 Sq. mtrs. To a query to justify the proposed note, the KOPT has stated that with fall in parcel load and increased handling of bulk cargo by barges, it has proposed to reduce the minimum licensed area to 1000 sqm. from the existing minimum area prescribed at 2000 sqm. Based on the justification given by the port, the change in the existing note is approved.
- (m). By way of a note, the KOPT has proposed to empower itself to prescribe additional terms and conditions from time to time. Prescription of such conditionality may tantamount to delegating the statutory power vested in this Authority for setting tariff and prescribing the conditionalities to govern the same to a Port Trust, for which this Authority is not inclined. If the Port desires to add / modify any of the conditionalities, the KOPT may approach this Authority with a suitable proposal, when the need arises. In view of the above, the proposed note is not approved.

12.1. The revised Rent Schedule for allotment of Land, warehouses and buildings under KDS and the revised Schedule of rent for allotment of land and buildings at HDC alongwith the conditionalities are attached as **Annex - I** and **II** respectively.

12.2. The validity of the Rent Schedule in respect of HDC is deemed to have been extended till the effective date of implementation of the revised Rent Schedule notified in the Gazette of India.

12.3. The revised Rent Schedules will become effective after expiry of 30 days from the date of notification of the Order in the Gazette of India and shall be in force for five years thereafter. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

(Rani Jadhav)
Chairperson

Annex - I

SCHEDULE OF RENT FOR LAND, WAREHOUSES AND BUILDINGS OF KOLKATA PORT TRUST AT KOLKATA DOCK SYSTEM.

I. LANDS

| Sl. No. | Description of Land | Rate of Rent Per 100 Sq. mtrs. Per month | |
|----------------------|---|--|-------------------|
| | | First Belt (Rs.) | Second Belt (Rs.) |
| LANDS AT DOCK | | | |
| 1 | Circular Garden Reach Road from Satya Doctor Road to Bascule Bridge. | 3756 | 2972 |
| 2 | Circular Garden Reach Road from Bascule Bridge to Gate No. 5; N.S.D. | 3756 | 2684 |
| 3 | Circular Garden Reach Road from Gate No. 5; N.S.D. upto Gate No. 9, N.S.D. (new diversion portion) including lands on the new roads off the road. | 3756 | 2561 |
| 4a | Garden Reach Road from Hastings Bridge to Tidal Basin | 2239 | NA |
| 4b | Watgunge | 2239 | NA |
| 5a | Garden Reach Road from Tidal Basin to Gate No. 3, N.S.D. | 2407 | 1890 |
| 5b | Brace Bridge Road | 2407 | NA |
| 6 | Satya Doctor Road and Gopal Doctor Road | 2140 | 1732 |
| 7a | Hide Road | 2015 | 1642 |
| 7b | Hide Road Extn. including low level side roads and development roads at Jinjirapole. | 3724 | 3033 |
| 8 | Nimak Mahal Road | 2407 | 1720 |
| 9 | Goragacha Road, Incinerator Road, Transport Depot Road and the adjoining Roads. | 2568 | 1979 |
| 10 | Sonarpur Road. | 4043 | 3232 |
| 11 | Oil Installation Road and other roads in Paharpur area. | 2675 | 2140 |
| 12a | Remount Road (between Diamond Harbour Road & Bhuikailash Road). | 3624 | 2899 |
| 12b | Remount Road (between Bhuikailash Road & Coal Dock Road). | 3624 | 2899 |
| 13 | Dock West Road | 2015 | NA |
| 14 | Eastern Boundary Road | 2140 | NA |
| 15a | Diamond Harbour Road (Western side from Majherhat Bridge to Seamen's House). | 4895 | 3851 |
| 15b | Boat Canal & Diamond Harbour Road (Eastern side). | 6420 | NA |
| 16 | Taratata Road from Diamond Harbour Road to Budge Budge Road and Mint Place | 3344 | 2672 |
| 17 | Taratata Road from Budge Budge Road to Circular Garden Reach Road | 3049 | 1632 |
| 18 | Hari Mohan Ghosh Road. | 6308 | NA |
| 19a | Ramnagar | 1552 | NA |
| 19b | Suriman & Alifnagar Road. | 1338 | NA |
| 20 | Sonai Road | 2015 | NA |
| 21 | Land in KPD, NSD, G.R. Jetty & Coal Dock for purposes other than cargo storage | 3745 | NA |
| 22 | Land within Dock premises with Hard Stand | 4945 | NA |
| 23a | Land inside Kantapukur, Hoboken Depot, Coal Dock Road & R.I.M. Dock Yard. | 2140 | NA |
| 23b | Land at Brooklyn Depot | 2316 | NA |
| 24 | Daighat | 2239 | NA |
| 25 | Chetla Road | 3210 | NA |
| 26 | Chetla Station Back Land | 1605 | NA |
| 27 | Chetla Station Yard plots | 1605 | NA |
| 28a | Sonai (old siding area) | 2407 | NA |
| 28b | Durgapur (old siding area) | 3683 | NA |
| 28c | 20, Coal Berth (old siding area) | 3210 | NA |
| 28d | Old Gravel Siding | 3210 | NA |
| 28e | Hide Shed Dump (old siding area) | 2015 | NA |
| 28f | Dhobitalao Container Park | 6562 | NA |

| Sl. No. | Description of Land | Rate of Rent Per 100 Sq. mtrs. | |
|-------------------------|---|--------------------------------|-------------------|
| | | First Belt (Rs.) | Second Belt (Rs.) |
| LANDS AT KOLKATA | | | |
| 29 | Cossipore area from Gun Foundry Road to Chitpore Lift Bridge From Chitpore Lift Bridge TO Ahiritola Street | 3210 | 2568 |
| 30a | From Chitpore Lift Bridge to Schalch Street (Koomartooly) | 9628 | NA |
| 30b | From to Schalch Street (Koomartooly) to Ahiritola Street From Ahiritola Street To Nimtollah Burning Ghat Road | 8024 | NA |
| 31a | Strand Bank Road from Ahiritola Street to Nimtolla Burning Ghat Road | 9628 | NA |
| 31b | Nimtollah Burning Ghat Road (North side) | 9628 | NA |
| 31c | Strand Road from Ahiritola Street to Nimtollah Burning Ghat Road including Maharshi Debendra Road From Nimtolla Burning Ghat Road To Jorabagan Cross Road | 10698 | 8557 |
| 32a | Strand Road from Nimtollah Burning Ghat Road to Jorabagan Cross Road. | 9628 | 7703 |
| 32b | Jorabagan Cross Road (North side), Cross Road Nos. 13 & 16. | 9094 | NA |
| 32c | Strand Bank Road from Nimtollah Burning Ghat Road to Jorabagan Cross Road. | 10698 | NA |
| 32d | Cross Road Nos. 13/1, 14, 15 & 17. | 9094 | NA |
| 32e | Nimtollah Burning Ghat Road (South side). From Jorabagan Cross Road to Adya Sradhya Ghat Road. | 10698 | NA |
| 33a | Strand Road from Jorabagan Cross Road to P.C. Tagore Ghat Road. | 10698 | 8557 |
| 33b | Strand Road from P.C. Tagore Ghat Road to Adya Sradhya Ghat Road. | 8024 | 6420 |
| 33c | Strand Bank Road from Jorabagan Cross Road to P.C. Tagore Ghat Road. | 8024 | NA |
| 33d | Strand Bank Road from P.C. Tagore Ghat Road to Adya Sradhya Ghat Road. | 8024 | NA |
| 33e | Adya Sradhya Ghat Road (North side). | 8024 | NA |
| 33f | P.C. Tagore Ghat Road. | 8024 | NA |
| 33g | Cross Road No. 8. | 8024 | NA |
| 33h | Cross Road Nos. 9, 10 & 11. | 8024 | NA |
| 33i | Jorabagan Cross Road (South side), Cross Road Nos. 12 | 8024 | NA |
| 33j | Pathuria Ghat Cross Road From Adya Sradhya Ghat Road To Jagannath Ghat Road | 9628 | NA |
| 34a | Strand Road from Adya Sradhya Ghat Road to Jagannath Ghat Road | 7489 | 5993 |
| 34b | Strand Bank Road from Adya Sradhya Ghat Road to Jagannath Ghat Road | 8024 | NA |
| 34c | New C.I.T Road (Cross Road No. 5) | 8559 | 6850 |
| 34d | Adya Sradhya Ghat Road (South side) Jagannath Ghat Road (North side) | 7489 | 5992 |
| 34e | Cross Road No. 6 & 7 Jagannath Ghat Road to Howrah Bridge | 7489 | NA |
| 35a | Strand Road from Jagannath Ghat Road to Mint Garden | 9628 | 7703 |
| 35b | Strand Bank Road from Jagannath Ghat Road to Howrah Bridge | 13373 | NA |
| 35c | Jagannath Ghat Road (South side) From Howrah Bridge. Mullick Ghat & Adjoining Area to Calcutta Jetty No. 9 | 10698 | 8557 |
| 36a | Strand Bank Road from Howrah Bridge to Mullick Ghat | 13373 | |
| 36b | Strand Road near Mullick Ghat Pumping Station | 13373 | 10581 |
| 36c | Old Howrah Bridge Approach Road adjacent to the same | 13373 | 10701 |
| 37 | Land at Chandpal Ghat, Outram Ghat and Babu Ghat | 10698 | NA |
| 38 | Land at Tuckta Ghat. | 2675 | NA |

| Sl. No. | Description of Land | Rate of Rent Per 100 Sq. mtrs. | |
|--|---|--------------------------------|-------------------|
| | | First Belt (Rs.) | Second Belt (Rs.) |
| LANDS AT HOWRAH | | | |
| 39 | Chandmari Ghat, Howrah Station (Shop rents, long term lease will not be granted). | 26745 | 21397 |
| 40 | Nityadhan Mukherjee Road (Telkal Ghat). | 1605 | NA |
| 41 | Strand Road, Howrah. | 2140 | NA |
| 42a | Upper Foreshore Road. | 1873 | NA |
| 42b | Mullick Ghat Road. | 1605 | NA |
| 42c | Cross Road No.1 | 1605 | NA |
| 43 | Cross Road Nos. 2, 3 & 4. | 1605 | NA |
| Grand Foreshore Road River Side | | | |
| 44a | Portion on the north of Banstalla Ghat Road. | 1605 | NA |
| 44b | Portion on the south of Banstalla Ghat Road. | 1605 | NA |
| 45 | Chintamoni Dey Bathing Ghat Road. | 1338 | NA |
| Banstalla Ghat Road | | | |
| 46a | North side. | 1338 | NA |
| 46b | South side. | 1338 | NA |
| Foreshore Road | | | |
| 47a | From Bonbehari Bose Road to Banstalla Ghat Road | 1338 | 1068 |
| 47b | From Banstalla Ghat Road to Jagat Banerjee Gaht Road. | 1774 | 1416 |
| 48 | Jagat Banerjee Ghat Road & Shibpore Ferry Ghat Road. | 4671 | NA |
| Shalimar Yard | | | |
| 49a | Foreshore Road East Side | 2140 | 1713 |
| 49b | Foreshore Road West Side | 1386 | 1111 |
| 50 | Duke Road | 1386 | NA |
| Foreshore Road (Timber Pond) | | | |
| 51a | High Land | 866 | NA |
| 51b | Low Land | 636 | NA |
| LANDS AT BUDGE BUDGE | | | |
| 52 | Nizgarh | 888 | NA |
| 53 | Garbhukta Nandanpur | 888 | NA |
| LANDS AT OTHER LOCATIONS | | | |
| 54 | Roychowk | 752 | NA |
| 55 | Hooghly Point | 310 | NA |
| 56 | Balagarh, | 222 | NA |
| 57 | Jellinghum | 19 | NA |
| 58 | Gangrachar | 19 | NA |
| 59 | Diamond Harbour | 519 | NA |
| 60 | Khejuri | 49 | NA |
| 61 | Shimurali | 268 | NA |
| 62 | Durgapur | 292 | NA |
| 63 | South Khalichar | 19 | NA |
| 64 | Baharampur | 1084 | NA |
| 65 | Nischintapur | 310 | NA |
| 66 | Payaradanga | 11 | NA |
| 67 | Saugor | 60 | NA |
| 68 | Freshergunj | 184 | NA |

II. WAREHOUSES AND BUILDINGS

| Sl. No. | Zone, Location & Other description | Rent in Rs. Per 100 Sq. mtrs per month |
|-----------|--|--|
| 1 | STRAND WAREHOUSES | |
| | i Ground Floor Godowns | 12163 |
| | ii First Floor Godowns | 8514 |
| | iii Second Floor Godowns | 6047 |
| 2 | ARMENIAN GHAT WAREHOUSE | |
| | i Ground Floor Godowns | 12163 |
| | ii First Floor Godowns | 8514 |
| 3 | Calcutta Jetty Shed No. 1 | 12163 |
| 4 | CANNING WAREHOUSE | |
| | i Ground Floor Godowns | 12163 |
| | ii First Floor Godowns | 8514 |
| | iii Second Floor Godowns | 6047 |
| 5 | CLIVE WAREHOUSE | |
| | i Ground Floor Godowns | 12163 |
| | ii First Floor Godowns | 8514 |
| | iii Second Floor Godowns | 6047 |
| 6 | FAIRLIE WAREHOUSE | |
| | i Ground Floor Godowns | 12163 |
| | ii First Floor Godowns | 8514 |
| | iii Second Floor Godowns | 6047 |
| 7 | CANNING WAREHOUSE (ANNEXE) | |
| | i Ground Floor Godowns | 12163 |
| | ii First Floor Godowns | 8514 |
| 8 | Import Warehouse (8 compartments) | 12163 |
| 9 | Import Warehouse South. | 12163 |
| 10 | Calcutta Jetty Shed No. 4 | 12163 |
| 11 | Calcutta Jetty Shed No. 5. (Northernmost Bay). | 12163 |
| 12 | P-221/2, STRAND BANK ROAD | |
| | i Ground Floor (Shops). | 15976 |
| | ii Ground Floor (Godowns). | 12163 |
| | iii Ground Floor Annexe | 6690 |
| | iv Second Floor | 10137 |
| | v Top Floor. | 10137 |
| 13 | "A" SHED JAGANNATH GHAT | |
| | i Ground Floor | 10265 |
| | ii First Floor | 7187 |
| | iii Office space on the Top Floor | 5132 |
| | iv Miscellaneous structure attached to the Warehouse such as Darwans Quarters Cook Houses etc. | 6158 |
| 14 | R.D.F. Godowns at Jagannath Ghat Road. | 11928 |
| 15 | Jagannath Ghat Godowns | 11928 |
| 16 | PATHURIAGHAT WAREHOUSE | |
| | i Ground Floor Godowns (Compartment Nos. 1 to 5) | 9495 |
| | ii First Floor Godowns (Compartment Nos. 6 to 10) | 6648 |
| | iii Ground Floor Pucca Godowns Nos. 12 to 17/2 (C.I.Roof). | 9495 |
| 17 | Nimtallah Station Shed. | 9792 |

| Sl. No. | Zone, Location & Other description | Rent in Rs. Per 100 Sq. mtrs |
|---------|---|------------------------------|
| 18 | SAHEB BAZAR GODOWNS | |
| | i Nos. 3, 3A, 4 & 4A | 8160 |
| | ii Godown No. 5 | 7672 |
| 19 | Ruthtala Station Road | 7237 |
| 20 | BAGHBAZAR WAREHOUSE | |
| | i Ground Floor Godown No. 1 | 6677 |
| | ii First Floor Godown No. 2 & 4, access by two wooden ramps | 4676 |
| 21 | Cossipore Receiving Shed | 4635 |
| 22 | 4 shop rooms with verandah at Armenian Ghat | 12163 |
| 23 | Shed at Outram Ghat | 12163 |
| 24 | OTHER STRUCTURES USED FOR COMMERCIAL ACTIVITIES | |
| | i Building with pucca roof | 7643 |
| | ii Building with R.T. and Asbestos roof | 6175 |
| | iii Building with C.I. roof | 4744 |
| | DOCK | |
| 25 | HIDE ROAD GODOWNS | |
| | i Godowns, enclosed verandah & miscellaneous closed floor space | 6670 |
| | ii Open sided verandah space | 3337 |
| 26 | i Hoboken sheds (including naval transit sheds) | 4635 |
| 26 | ii Brooklyn T.N. Shed | 4120 |
| 26 | iii Brooklyn T.G. Shed | 4294 |
| 27 | Jinjinrapole Sheds | 7128 |
| 28 | OFFICE / SHOP ROOMS IN THE DOCKS | |
| | i Office / Shop Building with Pucca Roof | 7643 |
| | ii Office / Shop Building with R.T. and Asbestos roof | 6175 |
| | iii Office / Shop Building with C.I. roof | 4744 |
| 29 | Kantapukur Sheds | 4635 |
| 30 | TEA WAREHOUSES | |
| | i Hide Road Warehouse | 4120 |
| | ii Sale Tea Warehouse | 5088 |
| | iii Sale Tea Warehouse (Annexe) | 7184 |
| | iv Lybian Depot Warehouse | 6304 |
| | v T.T. Sheds | 4564 |
| | vi T.T. Sheds Extension | 7207 |
| 31 | Import Warehouse "A" N.S.D. | 3316 |
| | HOWRAH | |
| 32 | SHED AT 14 FORESHORE ROAD, RAMKRISTOPUR | |
| | i Ground Floor Space | 3552 |
| | ii First Floor Space | 2490 |
| 33 | Station Shed (North) Ramkristopur | 3640 |
| 34 | Station Shed (South) Ramkristopur | 3640 |
| 35 | New Goods Shed Ramkristopur | 3640 |
| 36 | Structures at 109, Foreshore Road, Ramkristopur | 3687 |
| 37 | Nissen Sheds at 108, Foreshore Road, Ramkristopur | 3606 |
| 38 | Small office Building at Timber Pond | 1626 |
| | BUDGE BUDGE | |
| 39 | Budge Budge Godown / Sheds | 2972 |
| | OTHER STRUCTURE | |
| 40 | Panda Seats | 142 |
| 41 | Bathroom, Waterclosets and like structures | 2180 |
| 42 | Garages | 546 |

III. NOTES:

1. (i) In case of allotment of land through leases, the same shall be granted for a period not exceeding 30 years by inviting tender.

(ii) Land, if leased out on upfront basis, the upfront premium shall be calculated on the basis of Net Present Value (NPV) of lease rentals for the entire period of lease taking discount rate as 8%.

In case of lease of land on upfront basis, Re.1/- shall be charged as annual rent per calendar year or part thereof.
2. All the rates provided in the SOR shall get automatically escalated by 2% per annum after expiry of one year from the effective date of implementation of the revised Rent schedule, and the escalated rates shall be considered as the prevailing Scheduled Rent for the concerned year. The Rent Schedule is subject to revision every five years.
3. In future all leases should be given by inviting tenders except in the following cases:
 - (i). To Government departments in accordance with SOR/ rates approved by the competent authority.
 - (ii). To CPSUs/ SPSUs for commercial purpose at the discretion of the port for port related uses in accordance with the SOR. However, allotment should be for the use by CPSUs/ SPSUs exclusively and not for any joint venture entered by them with private parties.
4. (i) In case of future long term leases, period of lease shall not exceed 30 years, without any option of renewal, on recovery of annual rentals in advance in the form of Post Dated Cheques/ Bank Guarantee as per approved format.

(ii) In case of existing long term leases coming up for fresh lease after expiry of the term and where no renewal option is provided in the lease agreement, the port should identify if the land is required for its own use. If the land is not required by port for its own use, the port should then identify whether land is required for the purpose for which it was originally granted or for any other purpose consistent with the land use plan. Afterwards, the port at its discretion may decide to grant a fresh lease in favour of existing lessees at the terms to be approved by the Board without public auction or tender. The lease rent should not be less than the prevailing schedule of rent (with due escalation) or the market value as the case may be. In addition, the premium amounting to one year's rental as per the prevailing schedule of rent shall be levied. The period of fresh lease shall not exceed 30 years.

(iii) In case of leases, where renewal option is provided in the lease agreement, this will be governed by the relevant covenants of the lease.
5. In case of existing long term leases, the rate of rent and annual escalation will be governed by the relevant covenants of the lease.
6. In cases of all existing monthly leases and existing monthly licences, the rate of rent/ licence fee shall be escalated @ 2% per annum.
7. The rate of rent for a plot of land which is rail served, 15% extra will be charged.
8. (i) The rent for the plot which abuts more than one road, will be increased by 15%.

(ii) In case of a plot which abuts more than one road and the rate of rent applicable corresponding to such roads are different, then higher of the rates will be taken while computing the rent for the plot . Thereafter the enhancement for abutting more than one road i.e. 15% shall be charged.

9. The rate of rent for water bodies/water areas to be taken as 1/2 of the corresponding rate of rent applicable for land area.
10. In addition to rent, municipal tax and service tax as applicable shall also be payable by the lessees/licensees/tenants.
11. In case of all future allotments of land by way of long term leases/ 11 monthly licences, 1 year's rent and taxes shall be obtained as non interest bearing security deposit. In case of all future allotments of land by way of 11 monthly licenses, Security Deposit shall be collected at the rate equivalent to the licence fee for the period for which the licence is granted and taxes. However, in case of allotment of structures on 11 monthly license basis, the non-interest bearing security deposit shall be equal to 6 months license fee and taxes.
12. (i). In case of all future long term leases, subletting shall follow the prevailing Land Policy Guidelines issued by the Central Govt. and if subletting is allowed, the same shall be on recovery of necessary charges thereof.

(ii). In case of an existing lease where subletting is not permitted, the same can be allowed prospectively if the lessee agrees to enhance the rent of the premises to match with the current schedule of rent or market rent, whichever is higher. In such cases, they shall have to pay a subletting fee in accordance with the prevailing Govt. guidelines in this direction.
13. Change of use of leased land may be permitted in case such change being in conformity with the land use plan and subject to payment of higher rates for the new usage as existing in the schedule of rent.
14. In all cases of termination/determination of lease/ license or forfeiture of lease/ license, if the lessee/licensee continues to occupy the premises unauthorisedly, the lessee/ licensee is liable to pay compensation/damages for wrongful use and occupation at 3 times the schedule rent, till vacant possession is obtained. However, in case of existing unauthorized occupations arising out of the lease agreements entered into by the port with the concerned parties prior to the effective date of implementation of Land Policy Guidelines of 2004, the damage/ compensation shall be levied as per covenants of previous agreement, which has been terminated.
15. Damages will be recovered for encroachment of KOPT land and structures at three times the rate mentioned in the Rent Schedule for the first month of encroachment. For the next two months of encroachment, the damages shall be recovered at five times the Schedule Rent and thereafter if the encroachment continues the damages shall be recovered at 10 times the Schedule Rent for the encroached area. This will be without prejudice to the rights and contentions of Kolkata Port Trust to take any other legal action.
16. (i). For the purpose of way leave charges, the area occupied by single pipelines shall be calculated based on the diameter and length of those pipelines. In case of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks shall be considered and the respective users shall be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails, jetties, etc., the respective users shall be billed pro-rata for 50% of the concerned area assuming that they do not have exclusive possession of land and what they have is only 'Right of Way'. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines shall be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges.

(ii). For allowing overhead conveyors and high voltage transmission lines and towers, way-leave licence fee will be charged on the basis of the scheduled rent for the area coming in the alignment of the structures.

17. The following cases will be treated as cases of mutation and for granting such mutation, a fee equivalent to 5% of the 12 month's rent or Rs.10,000/- whichever is higher shall be recovered:
- (i). In case of death of a lessee, mutation to his legal heir or legal successor or representative.
 - (ii). Mutation consequential to the order of the court or as per new certificate of incorporation as per Registrar of companies.
18. In case of allotment of land/shed inside the custom bound area, the same should be allotted only for traffic related purpose on monthly licence basis. For this purpose, the schedule rent shall be recovered. Annual escalation @ 2% per annum shall also be applied in such cases. Security deposit equivalent to 30 days rent and taxes shall be obtained in such cases of allotment of land/ shed inside the custom bound area.
19. After the expiry of the licences of the yard/shed, tenure of which will be for 30 days due to scarcity of land at KDS, or termination or determination or forfeiture of licence, if the licensee continues to occupy it unauthorisedly, the licensee shall be liable to pay compensation for wrongful use and occupation at the following rates till vacant possession is obtained.

| | |
|---|---|
| First 30 days | 3 times the rate as per prevailing SOR |
| Next 30 days. | 5 times the rate as per prevailing SOR |
| Continued unauthorized occupation beyond 60 days. | 10 times the rate as per prevailing SOR |

20. For land allotted to shops, refreshment stalls, petrol pumps and weigh bridge (public use) rent will be charged @ 3.5 times the scheduled rent/base rent as applicable for all the areas in KDS.
21. Interest @ 14.25% per annum on the outstanding rent and compensation/ occupational charge will be recovered, if the rent, compensation/ occupational charge are not paid within the due date. This stipulation of interest would be applicable for all existing short term monthly lease, future long term leases and monthly as well as 11 monthly licenses and also for all compensation bills excepting cases of existing long term leases where otherwise so specified in the lease. However, whether demanded or not rent/ license fee/ compensation charges for a month would have to be paid by the lessees/ licensees/ occupants on or before 15th day of each succeeding month.

Annex - II

SCHEDULE OF RENT FOR LAND AND BUILDINGS OF KOLKATA PORT TRUST AT HALDIA

I. LANDS

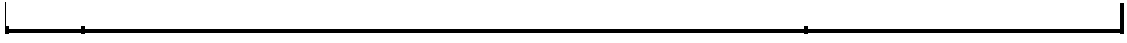
| Sl. No. | Description of Land | Rate of Rent/ Licence fee per 100 sq. mtrs. Per month |
|---------|---|--|
| a | Residential Zone | 1250 |
| b | Industrial Zone | 905 |
| c (i) | Dock Interior (inside Custom bonded area) (Bare Land) | 2202 |
| (ii) | Dock Interior (inside Custom bonded area) (Hard Stand) | 3424 |
| (iii) | Proposed Dock Interior Zone | 1713 |
| d | Dock Zone | 1223 |
| e | Commercial Zone for Offices, Banks, Workshops, Repair Shops (excluding automobiles), cold storage, etc. | 2309 |
| f | Commercial Zone for Shops, Markets, Nursing Homes, Medical Clinics, Hotels & Restaurants (without bar), Service Stations, Repair Shops (automobiles), weighbridge, etc. | 3100 |
| g | Commercial Zone for Cinema House, Hotel & Restaurant (with Bar), etc. | 3162 |
| h | Kukrahati | 412 |
| i | Panskura | 1042 |

II. BUILDINGS

| Sl. No. | Zone, Location & other description | Rate of Rent/ Licence fee per 100 sq. mtrs. Per month |
|---------------------------------------|---|--|
| (a) Pucca Roofed Structure | | |
| (i) | Residential zone | 67 |
| (ii) | Industrial zone | 67 |
| (iii) | Dock Interior zone | 77 |
| (iv) | Dock Zone | 77 |
| (b) AC / CI Roofed Structure | | |
| (i) | Residential zone | 54 |
| (ii) | Industrial zone | 54 |
| (iii) | Dock Interior zone | 62 |
| (iv) | Dock Zone | 62 |
| (c) | Tower Building | 120 |
| (d) Quarters / Dormitories | | |
| (i) | Dormitories (pucca roofed) | 67 |
| (ii) | "A" type quarters | 80 |
| (iii) | Modified "A" type quarters | 80 |
| (iv) | "B" type quarters | 80 |
| (v) | Modified "B" type quarters | 80 |
| (vi) | "C" type quarters | 98 |
| (vii) | "D" type quarters | 133 |
| (viii) | Officer's Hostel | 80 |
| (ix) | Jawahar Tower | 120 |
| (e) | Market for perishable good | 54 |
| (f) | Retail market | 67 |
| (g) | Shopping centres at Durgachak | 54 |
| (h) | Shopping centres at Chiranjibpur | 54 |
| (i) | Township market opposite to Makhan Babu Bazar | 38 |
| (j) | Township marketing centre (near Helipad ground) | 54 |
| (k) | Goomties | 67 |

III. OTHERS

| Sl. No. | Description | Rate in Rs. |
|---------|---|-------------|
| 1 | Permission Fee (To be levied per day or part thereof) | |
| | (i). For holding function on land for area occupied upto 40 Sq.M | 432 |
| | (ii). If above occupation continues beyond 3 days | 863 |
| | (i). For holding function on land for area occupied above 40 Sq.M | 863 |
| | (ii). If above occupation continues beyond 3 days | 1438 |
| 2 | Rate of Licence Fee for the rights of Pisciculture in KoPT's ponds / water bodies (Per 100sq. Mtrs per month) | 29 |
| 3 | Rate of Licence Fee for erection of hoarding on KoPT land : (To be levied per calendar year or part thereof) | |
| | For hoarding upto a maximum size of 10 Sq.M | 1725 |
| | For hoarding of size above 10 Sq.M | 3450 |
| 4 | Way-Leave Licence | |
| (i) | A way-leave licence fee will be charged for essential utility service lines like telephone lines, water supply lines, sewerage lines, low voltage domestic electric lines running on single pole, etc. (To be levied per calendar year or part thereof) | 1438 |
| (ii) | For laying pipelines carrying Crude Oil, POL Products and other Liquid Cargo over or under the ground, way-leave licence fee will be charged as follows: For the purpose of way leave charges, the area occupied by single pipelines shall be calculated based on the diameter and length of those pipelines. In case of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks shall be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails, jetties, etc., the respective users shall be billed pro-rata for 50% of the concerned area assuming that they do not have exclusive possession of land and what they have is only 'Right of Way'. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines shall be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges. For allowing overhead conveyors and high voltage transmission lines and towers, way-leave licence fee will be charged on the basis of the scheduled rent for the area coming in the alignment of the structure | - |
| 5 | For Durgachak Mini Market, licence fee (per month per plot measuring about 13.936 Sq.M) | 633 |
| 6 | Recovery of Hawker charges in various KoPT Bazar (per day per hawker) | 1.45 |
| 7 | For licensing of open / covered space inside Dock Interior Zone for storage of import / export goods, the licence fee will be charged at the following rates per 100 Sq.M per Month. | |
| | Open Space | |
| | Bare Land | 3752 |
| | Hardstand land | 5834 |
| | Covered Space | |
| | Pucca roofed | 12358 |
| | AC / CI roofed | 9197 |



IV. NOTES

(A). For allotment of land / building (other than licensing of land / building inside Dock Interior Zone for storage of import/ export cargo).

I. Lease:

1. Lease of land/ building shall be granted by inviting tender, save and except the following cases:-

Allotment to various Central / State Government Departments, Central / State Government Enterprises, Central / State Public Sector Undertakings. In such cases, the land/building may be leased in accordance with prevailing SOR without recourse to the tender procedure. However, such allotment shall be for exclusive use of the above organizations and not for any joint venture, etc. entered into by them with private parties.

2. The lease shall be granted for a period not exceeding 30 (Thirty) years.
3. In case of leases granted through tender procedure, the accepted tendered rate of lease rent/ upfront premium shall be applicable.
4. The rate of rent, revision of rent etc. of the existing leases shall be governed by the covenants & conditions of the respective leases.
5. The renewal of existing leases having option for the same shall be governed by the covenants and conditions of the respective lease agreements.
6. In case of existing long term leases coming up for fresh lease after expiry of the term and where no renewal option is provided in the lease, the port should identify if the land is required for its own use. If the land is not required by port for its own use, the port should then identify whether land is required for the purpose for which it was originally granted or for any other purpose consistent with the Land use plan. If it is so required, the Port at its discretion, may decide to grant a fresh lease for a period not exceeding 30 (Thirty) years, in favour of existing lessee at the terms to be approved by the Board without public auction / tender procedure, at the following rates.
 - (i). For fresh lease on lease rent basis
Lease rent as per prevailing Schedule of Rent (SOR) or the accepted tendered rate received for similar transaction in the same Zone in the last three years or the rate last payable by the occupier duly escalated by 2%, whichever is highest. In addition, premium equivalent to one year rental as per the prevailing Schedule of Rent (SoR) shall be recovered by the port. Applicable Security Deposit shall also be payable.
The lease rent shall be paid in advance in the form of Post Dated Cheques.
 - (ii). For fresh lease on upfront basis
Upfront premium will be computed on the basis of lease rent as per prevailing Schedule of Rent (SOR) or the accepted tendered rate received for similar transaction in the same zone in the last three years or the rate last payable by the occupier duly escalated by 2%, whichever is highest.
In addition, a premium equivalent to one year rental as, per the prevailing Schedule of Rent (SOR) shall be recovered by the port.
7. In case of existing and new all future leases, subletting [full or partial] may be considered on the basis of the prevailing Land Policy Guidelines issued by the Central Govt. and if subletting is allowed, the same shall be on recovery of necessary charges thereof.
8. The following cases will be treated as cases of mutation and for granting such mutation, a fee equivalent to 5% of the 12 month's rent or Rs. 10,000/- whichever is higher shall be recovered :-

- (i). In case of death of the lessee, transfer to the legal heirs or legal successor or representative.
 - (ii). Transfer consequential to the order of the Court or as per new Certificate of Incorporation as per Registrar of Companies.
 - (iii). Transfer consequential to lessee becoming subject to laws of insolvency or liquidation.
 - (iv). Gratuitous transfer to any of the legal heirs due to old age, infirmity or some other valid reasons.
 - (v). Transfer from one Government Department or Public Sector Undertaking or Government Company to any other Government Department or Public Sector Undertaking or Government Company.
9. Change of use of leased land may be permitted in case such change being in conformity with the land use plan and subject to payment of higher rates for the new usage as existing in the prevailing Schedule of Rent (SOR).
10. In case of allotment on upfront basis, the upfront premium shall be calculated on the basis of Present Value (PV) of lease rentals for the entire period of lease taking discount rate as 8%.

In case of lease of land on upfront basis, Re.1/- shall be charged as annual rent per calendar or part thereof.

II. Licence:

1. Licence of land/ building may be granted for a maximum period of 11 months, in accordance with the prevailing Schedule of Rent (SoR). At the discretion of KoPT, such licence may be given without inviting tenders.
2. In case of future Licences, the rate of licence fee will be enhanced automatically as and when the Schedule of Rent (SoR) will be revised upward as per III(9).
3. In case of existing Licences, if the scheduled rate of license fees is higher than the license fees being paid by the existing licensee the scheduled rate of licence fees will be applicable straightaway.

Further, the rate of licence fee will be enhanced automatically as and when the Schedule of Rent (SoR) will be revised upward as per item III(9).

III. Other Conditions:

1. In addition to rent / license fee, the lessees / licensees will be required to pay the following:
 - (i). Municipal tax etc. as applicable.
 - (ii). Electricity charges / water charges at actuals plus 19.25% on the actual amount as overheads, if electricity/ water is supplied from KOPT Sources.
2. The lessees/licensees will also be required to pay and discharge all present and future rates, Service Taxes, Education Cesses, taxes, duties, charges, assessments, outgoings and premium in respect of policy of insurance against any risk whatsoever which are now or may at any time hereafter be assessed, charged or imposed upon or payable in respect of the demised land and/or any factory and/or building or structure erected by the lessees/licensees thereon or the owners or occupiers in respect thereof except the owners' share of municipal taxes in respect of the demised land.
3. Security Deposit shall be recovered as follows:-
 - (i). In case of lease on upfront basis, no security deposit shall be recovered.

- (ii). In case of lease on lease rent basis, 5 year's rent or 25% of rent of the total lease rent, whichever is lower, shall be kept as non-interest bearing security deposit.
The Security Deposit is refundable after completion of lease/license period (without any interest) subject to adjustment of dues/damages.
 - (iii). In case of allotment on licence basis, non-interest bearing security deposit shall be equivalent to 11 month's licence fees. If the period of licence is less than 11 months, then the non-interest bearing security deposit shall be equivalent to the licence fee for the period for which licence is granted.

The Security Deposit is refundable after completion of lease/ license period (without any interest) subject to adjustment of dues/damages.
4. Without prejudice to other appropriate action being taken, damages at 3 (Three) times the respective zonal rate of rent/license fee as per prevailing Schedule of Rent (SoR), will be recovered for encroachment of KoPT's land/building for the first month of encroachment. For the next two months of encroachment, the damages shall be recovered at 5 (Five) times the respective zonal rate of rent/license fee as per prevailing Schedule of Rent (SoR) and thereafter if the encroachment continues, the damages shall be recovered at 10 (Ten) times the respective zonal rate of rent/license fee as per prevailing Schedule of Rent (SoR) for the encroached area .
5. In case of future leases/licenses, in the event of expiration/ termination/ determination of lease/ licence or forfeiture of lease/licence, if the lessee /licensee continues to occupy the premises unauthorisedly, the lessee or the licensee shall be liable to pay compensation for wrongful use and occupation of the premises at three (3) times the prevailing scheduled rate of rent/license fees for the premises concerned, till the vacant possession is obtained.
However, in case of existing leases/ licenses arising out of the lease agreements entered into by the port with the concerned parties prior to the effective date of implementation of Land Policy Guidelines of 2004, the compensation shall be levied as per covenants of previous lease/licence, which has been terminated.
6. (i). In case of future lease of land/building on lease rent basis, the annual rent will be recovered in advance in the form of Post Dated Cheques.

However, if there be any upward revision of rent due to imposition of new Schedule of Rent (SoR), etc, supplementary amounts shall be required to be deposited by the lessee for which necessary intimation will be given.
- (ii). The rent/licence fee, whether demanded or not, shall be paid by the licensees/ lessees on or before the 15th day of each month succeeding that for which the rent/license fee etc. is due.
 - (iii). In case of way leave licenses, the way-leave licence fees, whether demanded or not, shall be paid by the licensees on or before 15th day of the calendar year succeeding that for which licence fee etc, is due.
 - (iv). Any other dues, shall be paid by the lessee/ licensee within fifteen days from the receipt of payment notice.
7. In case of default in payment of rent/license fee /compensation and other dues within one month from the due date of payment specified above, interest @14.25% will be charged on the outstanding dues from the due date of payment.
8. All the rates provided in the SOR shall get automatically escalated by 2% per annum after expiry of one year from the effective date of implementation of the revised Rent schedule, and the escalated rates shall be considered as the prevailing Scheduled

Rent for the concerned year. The Rent Schedule is subject to revision every five years.

(B) For licensing of land / covered space inside Dock Interior Zone for storage of import / export cargo:

The license of land/covered space inside the Dock Interior Zone for storage of import/export cargo may be done without recourse to tender procedure under the following terms & conditions : --

1. The licence shall be upto a maximum period of 11 months. The period of licence can be renewed at the discretion of KOPT. If the licensee requires renewal of the license, an application for renewal must be made to the authority concerned of KOPT well in advance as per prescribed format.
2. The licensee shall utilize the allotted land /covered space for the purpose for which it is licensed. No change in purpose of utilization will be allowed. The space allotted shall also not be subletted/ assigned/transferred.
3. The license is terminable on 7 days' notice on either side. No claim for any compensation whatsoever for termination of the license will be entertained.
4. The licensee shall agree to comply with all rules and directions issued by KoPT from time to time. If the licensee neglects to comply with such rules or directions, the port may terminate the license.
5. The licensee shall comply with all rules or regulations that may from time to time be issued by the Dock Safety or the Department of Explosives or whomsoever concerned in relation to storage of cargo.
6. (i). Cargo stored under a license shall be at the entire risk and responsibility of the licensee. The licensee shall post his own watchman to safeguard the cargo stored at the allotted space and to prevent any unauthorized occupation of such space by others.
(ii). The licensee shall make his own arrangements to keep the allotted land/ covered space and its surroundings neat, clean and in proper sanitary condition.
7. In addition to payment of license fee as per prevailing SOR [Item No. I(C)], the licensee shall pay municipal tax, if required and as applicable.
8. Security Deposit equivalent to the licence fee for the period for which the licence inside DIZ is granted shall be recovered. The security deposit is refundable after completion of the license period subject to adjustment of dues & damages.
9. Encroachment or unauthorized occupation of land and Railway tracks, etc. by the licensee will involve a liability to pay a penalty at the rate of ten times the scheduled licence fee, in addition to the cost of rectification of damages caused to the Port properties. If the licensee fails to remove the cargo from the encroached area in spite of notice to do so, the cargo will be removed elsewhere by the Port at the risk and cost of the licensee and penal licence fee at the rate of ten times the normal rate will be levied on the space occupied by the cargo so removed.
10. After the expiry/termination/ determination/ forfeiture of the licence, if the licensee continues to occupy it unauthorizdly, the licensee shall be liable to pay compensation for wrongful use and occupation at the following rates till vacant possession is obtained: -

| | |
|--|---|
| First 30 days | 3 times the rate as per prevailing SOR |
| Next 30 days | 5 times the rate as per prevailing SOR |
| Continued unauthorized occupation beyond 60 days | 10 times the rate as per prevailing SOR |

11. (i) The license fee whether demanded or not shall be paid as per the following due dates of payment: -
 - (a). For period of license exceeding 30 days and which is exact multiple of 30 days: Within seven days of expiry of each 30 days.
 - (b). For period of license exceeding 30 days but not exact multiple of 30 days :
 - (i). For the portion of the total license period, which is exact multiple of 30 days : Same as (a) above.
 - (ii). For the balance period of the license which is not exact multiple of 30 days: Within seven days of expiry of the balance period.
 - (c). For period of license less than 30 days: Same as (b)(ii) above.
 - (ii) In case of default in payment of rent / licence fee / compensation and other dues within one month from the due date of payment specified above, interest @ 14.25% will be charged on the outstanding dues from the due date of payment.
12. The licence fee will be charged from the date of handing over possession of the land and occupation of actual area of the land to be found on demarcation by the licensee.
 13. The licensee shall not cause any damage to KOPT properties. If, however, any damage is caused, the licensee shall be liable to make good the damages at his own cost and arrangement to the satisfaction of KOPT.
 14. The minimum area to be licensed to a single licensee will be 1000 square meters.
