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TARIFF AUTHORITY FOR MAJOR PORTS

G No. 210

New Delhi

25 October 2007

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the TM International Logistics Limited for fixation of tariff for the services rendered at Berth No. 12 of the Kolkata Port Trust at the Haldia Dock Complex as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/49/2005-TMILL

M/s. TM International Logistics Limited

- - -

Applicant

ORDER

(Passed on this 12th day of October 2007)

This case relates to a proposal received from the TM International Logistics Limited (TMILL) for fixation of tariff for the services rendered at Berth No. 12 of the Kolkata Port Trust (KOPT) at the Haldia Dock Complex (HDC).

2.1. In December 2003, the TMILL informed that it is entitled to levy all kinds of cargo related charges as per the Scale of Rates of KOPT in line with the License Agreement entered into between TMILL and KOPT; and, sought confirmation from this Authority in this regard. It was made clear to the TMILL that Section 42 (4) read of with Section 48 of the MPT Act requires rates to be notified by this Authority in respect of identified services provided by persons authorized under Section 42(3) of the MPT Act. The TMILL was further informed that a specific authorization is to be given by this Authority even if the TMILL operates the facilities at the rates approved for KOPT.

2.2. Simultaneously, the KOPT was requested to furnish its comments on the position maintained by TMILL. The KOPT, *inter alia*, confirmed that the Scale of Rates of TMILL is required to be approved by this Authority.

2.3. In this backdrop, the TMILL in November 2004 submitted its proposal for fixation of tariff for the services rendered at Berth No. 12 of KOPT at HDC. The proposal was registered as a tariff case and processed following the usual consultative process.

2.4. In the meanwhile, after the notification of the revised tariff fixation guidelines, the TMILL informed that it would like to resubmit its proposal in the light of the revised tariff guidelines and requested time upto 30 June 2005 to file its revised proposal.

2.5. As a result, this Authority vide its Order dated 6 May 2005, closed the tariff case of TMILL and directed TMILL to file its revised proposal before 31 May 2005. Subsequently and at its request, this Authority granted time upto 31 July 2005 to file the revised tariff proposal.

3.1. The TMILL filed its revised tariff proposal dated 16 August 2005. The main points made by TMILL in its proposal are summarised below:

- (i). The TMILL, a joint venture between TISCO Limited and IQ Martrade Management and Holding GmbH, is a company engaged in providing various logistics services to its clients including port operations at all the major ports in India, chartering, steamer agency, shipping and clearing and freight forwarding service.
- (ii). The TMILL has entered into a concession agreement with the Kolkata Port Trust for equipping, constructing, financing, operating, managing and maintaining the Multi Purpose Berth No. 12 of Haldia Dock Complex, on 29 January 2002 for a period of 30 years as a common user basis.
- (iii). The Concession Agreement allows TMILL to handle all types of dry bulk, break-bulk and containerized cargo except for:
 - Thermal coal in bulk
 - Coking coal in bulk
 - Various types of coke and other black cargo in bulk
 - Various types of liquid cargo handled through pipelines

TMILL is also obliged to handle a minimum guaranteed throughput ranging from 450,000 tonnes from the 4th year to 600,000 MT in the 26 to 30th year of the concession.

- (iv). The Concession Agreement allows TMILL to collect only the cargo related charges as per the licensor's scale of rates framed/ revised from time to time as per the provisions of MPT Act, 1963. All vessels related charges for vessels handled at Berth No. 12 are to be collected by the Licensor.
- (v). The TMILL has handled the following quantum of cargo at Berth No. 12 since inception of its operations:

	2002-03	2003-04	2004-05	2005-06	2006-07
Dry Bulk (MT)	353,140	277,618	214,238	506,825	270,000
Break Bulk (MT)	359,953	328,793	489,293	659,674	630,459
Total (MT)	713,093	606,411	703,531	1166499*	900,459*
Containers (TEU)	0	0	0	-	-

(* Note: Data for 2005-06 and 2006-07 are as per TMILL revised proposal dated 14 February 2007.)

- (vi). The TMILL scores over HDC on operational efficiency parameters, as a result of which it has significantly exceeded the minimum guaranteed throughput specified in the Concession Agreement within the first few years of operation.
- (vii). The following assets were handed over to TMILL by KOPT for operation and maintenance: -
- Berth No. 12
 - Back up area of 14,000 square meters besides the quay length
 - Electrical facilities
- (viii). The Concession Agreement required TMILL to invest Rs.30.07 crores within 36 months of the concession agreement and abide by the year-wise investment plan. Till date, the TMILL has deployed the equipments at Berth No. 12 amounting to Rs.35.62 crores.
- (ix). Considering the available berth length, storage area and the equipments provided, the terminal is capable of handling 7.5 lakhs tonnes of cargo annually based on present cargo mix.
- (x). The cost statement for two main sub-activities viz On-board and Wharfage service including lashing/ unlashng of cargo and Shore handling service, reflect the following:

Year	Net Surplus/ deficit after ROCE and before Tax (Rs. In lakhs)	Net Surplus/ deficit as % of Operating Income
2004-05	(172)	-8.54%
2005-06	133	5.27%
2006-07	22	0.84%
2007-08	-45	-1.75%
2008-09	-111	-4.33%

This indicates that the proposed tariffs are just adequate to meet the cost and the permissible return on the capital employed.

- (xi). Royalty / revenue sharing has been computed at the rates specified in the concession agreement. As per the agreement the TMILL has guaranteed the KOPT to pay royalty at the following percentage:

Sl. No.	Year	% of revenue sharing
1.	1 st to 5 th year	10.511
2.	6 th to 10 th year	10.565
3.	11 th to 15 th year	10.585
4.	16 th to 20 th year	10.655
5.	21 st to 25 th year	10.711
6.	26 th to 30 th year	10.855

Since the concession agreement of TMILL was entered before July 2003, and as per the latest guidelines notified on 31st March 2003, TAMP is requested to allow the royalty as an admissible item of cost.

- (xii). As per the concession agreement, TMILL will receive a sum of Rs.2.30 crores being the terminal value at the end of the licence period. We have discounted the said value @ 6% and the present value of Rs.47.69 lakhs has been evenly distributed over the remaining concession period.

3.2. The percentage increase sought by TMILL over the (then) existing rates at HDC of KOPT are as follows:

Sr. No.	Category	Then Existing Rate at HDC	Proposed Rate by TMILL	% increase
1	On Board charges (Rs. per MT)	90/-	50/- to 140/-	In the range of 11% to 138%
2	Wharfage (Rs. per MT)		50/- to 75/-	
3	Storage (Rs. per MT per day)	100/-	40/- to 100/-	NIL

4.1. In accordance with the consultative procedure prescribed, the proposal from the TMILL was forwarded to KOPT and also to the concerned user organisations for their comments. Form I to IV and the proposed Scale of Rates were circulated to KOPT and the users.

4.2. The comments received from the Merchants' Chamber of Commerce was forwarded to TMILL as feed back information. However, the TMILL has not responded to the comments of the users.

4.3. Despite reminders we have not received the comments from other concerned user organisations.

5. The KOPT was requested to furnish additional information / clarification on the proposal. KOPT was also furnished a list of points for specific comments. After reminders KOPT responded. A summary of queries raised by us and response of KOPT are tabulated below:

Sr. No.	Our query	KOPT Response
(i).	The TMILL has requested to consider the revenue share payable by it to KOPT as an admissible item of cost for tariff computation. Clause 2.8.1 of the revised tariff guidelines stipulates that the tariff computation will take into account royalty / revenue share as cost for tariff fixation, subject to the maximum of the amount	As per the guidelines of the Central Government for private sector projects at major ports, the price bids of the technically qualified bidders in respect of the allotment of berth No. 12 of HDC was evaluated on the basis of highest percentage of revenue sharing quoted by the technically qualified bidders.

	quoted by the next lowest bidder, in those BOT cases where bidding process was finalised before 29 July 2003. The KOPT is requested to furnish the bidding values relevant to the next lowest bidder in the bidding process of allotment of Berth No.12 of HDC and the NPV analysis based on which the successful bidder was chosen.	TMILL had quoted the highest percentage of revenue sharing. The next highest bidder quoted 8.126% as the percentage of revenue sharing. No NPV analysis was done because the best bidder was chosen on the basis of quoted percentage of revenue sharing, following the Central Government guidelines on private sector participation.
(ii).	KOPT to confirm the designed capacity of berth no.12 with reference to the investments made and proposed to be made by TMILL and furnish its specific comments on the traffic forecast made by TMILL.	(a). TMILL handles various general cargo of varying output at Berth No 12 such as Steel, Limestone, Logs, Fertilizers etc., With deployment of various cargo handling equipments including the Mobile Harbour Crane, it may be estimated that for 248 days of berth occupancy with 4303 tonnes output per ship day TMILL will be able to handle about 1.07 million tonne of cargo per annum at Berth No. 12. This computation is as per extant guidelines issued by MSRTH in respect of updating of port capacity. This may be considered as annual handling capacity of Berth No. 12. (b). KOPT vide letter No. Fin/135B, dated 15 June 2006 had earlier communicated the following traffic forecast for Berth No. 12: 2007-08 - 0.90 MMT 2008-09 - 0.95 MMT
(iii).	The Licence Agreement between TMILL and KOPT does not mention about the upfront fees payable by TMILL. In its proposal, the TMILL has stated to have paid Rs.7.10 crores as upfront payment to KOPT.	It is confirmed that TMILL has paid Rs.7.10 Crores as upfront premium.
(iv).	The TMILL has stated that it proposes to takeover additional 54000 sq. mtrs of bare land from KOPT in the year 2006-07 and develop it for storage of cargo at a rent of Rs.13.92 per sq. mtr per month payable to KOPT.	Additional 54,000 sq. mtr bare land has been handed over to TMILL on 11 January 2007. TMILL has deposited Premium amounting to Rs.1,80,40,320 and Security Deposit amounting to Rs.90,20,160. The yearly rent is Rs.90,20,160 which will be escalated by 5% every year.
(v).	In its computation of working capital, the TMILL has considered the Security deposit on the leased land paid/ payable by TMILL to KOPT, as an item of current asset. The amount considered for the computation is 39.95 lakhs for the years 2004-05 and 2005-06 and Rs.130.15 lakhs for the years 2006-07 to 2008-09. The KOPT to confirm the Security deposit on the leased land paid/ payable by TMILL	TMILL has paid the following Security Deposits against allotment of land: (a). Rs.36,37,200 for allotment of 14,000 sq. mtrs of land behind Berth No. 12 (b). Rs.90,20,160 for allotment of 54,000 sq. mtrs of additional land. The Security Deposit of Rs.36,37,200 was paid by TMILL on 4 January 2002, before award of license. The Security Deposit of Rs.90,20,160 has been paid by them on 9 January 2007 prior to allotment of 54,000 sq. mtrs land.
(vi).	The TMILL has stated that the requirement of minimum installation/ deployment of equipment/ infrastructure as indicated in the License Agreement has been revised	KOPT has approved subject to sanction of Central Government, certain changes in the specifications of the equipments and other infrastructure with revised total investment of

	by an independent engineer appointed by the KOPT. KOPT to confirm whether it had concurred with the revision in quantity and revision in capacity of the various equipments installed in Berth no.12 of HDC. KOPT also to comment on the reasonableness of investments made by TMILL.	Rs.25.80 Crores instead of Rs.30.07 Crores. The sanction of the Central Government is awaited.
(vii).	Comments of KOPT on the projected traffic of 0.95 million tonnes in the year 2009-10 estimated by TMILL.	Considering the premise followed for determining the traffic forecast for berth No. 12, for the years 2006-07, 2007-08 and 2008-09, the traffic projections for the year 2009-10 for Berth No. 12 should be 1.00 MMT.
(viii).	Apart from 54,000 sq. mtrs of additional bare land and 14,000 sq. mtrs. of hard stand plot for back-up area, TMILL has considered 9000 sq. mtrs. of additional land and 5000 sq. mtrs. of bare land for calculation of plot rentals for costing purpose for the years 2007-08 to 2009-10. KOPT to confirm the status of allotment of additional 14000 sq. mtrs. bare land to TMILL.	(a). TMILL has requested KOPT on 9 January 2007 for allotment of additional 9000 sq. mtrs. of bare land. Required documents for the same along with clarifications have been submitted by TMILL on 16 March 2007. The application is under active consideration. (b). Regarding another 5000 sq. mtrs. as mentioned, no such requisition of TMILL is presently lying with KOPT.

6.1 Based on a preliminary scrutiny of the proposal, the TMILL was requested to furnish additional information/ clarifications on various points. The TMILL has responded to these queries. A summary of the queries raised by us and the replies furnished by TMILL are tabulated below:

Sl. No.	Queries raised by TAMP	Reply furnished by TMILL
1.	<p>A. Financial / Cost Statements</p> <p>(a). Despite several requests, cost details for 2002-03, and 2003-04 are not furnished. Since the basic documents of transactions are expected to be available, it may not be impossible for culling out such details and present in the prescribed format. It may be noted that unless these details are furnished, the Authority will be constrained to declare that the tariff levied for that period does not have its approval and hence not levied according to the MPT Act.</p> <p>(b). The TMILL is once again requested to furnish:</p> <p>(i). Cost statement for the years 2002-03 and 2003-04 duly certified by its Auditors.</p> <p>(ii). Actuals for the period from April 2005 to September 2005 duly certified by the Auditor. Consequently, the cost statement for 2005-06 may be updated, if necessary and projections / estimates for the subsequent 3 years may be reviewed.</p>	<p>We have been maintaining the consolidated accounts of the entire company's operations. Therefore, we were not maintaining separate financial data for operations at Berth No. 12. We have since compiled the information for the years 2002-03 & 2003-04 from the original records and it has been incorporated in the form 3 in the financial statements. The actuals for the first half of the current financial year i.e. 2005-06 has also been indicated therein. In the year 2002-03 and 2003-04, the company was in the stage of planning their investments as per the Licence Agreement. Accordingly due to low capital employed, the quantum of ROCE allowable was very low leading to higher net surplus.</p>

<p>2.</p> <p>(i).</p> <p>(ii).</p>	<p><u>Capacity</u></p> <p>Please furnish workings for computation of capacity of the terminal with reference to the investment made and proposed to be made and the levels of productivity.</p> <p>As stated by TMILL the capacity of the terminal is dependent on the cargo mix. The TMILL may estimate the percentage of variation in the capacity based on change in cargo mix, if any, for each of the years from 2005-06 to 2008-09.</p>	<p>As per the tender document the port has defined the capacity of general cargo terminal at berth no. 12 to be 0.5 Million Tonnes per annum. But by investing in a various equipments and infrastructure we have been able to increase the berth capacity. As has been mentioned in our original proposal the capacity of the berth was 0.75 million tonnes per annum. By taking equipments on hire from outside for on-board operation for handling steel cargo and storing the cargo at customer's premises outside berth no. 12, the actual throughput for the current year has surpassed the defined capacity of the berth. Also Haldia Dock Complex faced a sudden upsurge in iron ore handling at many berths because of the demand from China. This resulted into increased pre-berthing delays upto an average of 10 days and as result many unplanned vessels were diverted to berth no.12. Therefore we have been able to handle more than the defined capacity of berth no. 12 which is not sustainable over a long period of time.</p> <p>Further on account of increase in imports this year we have been able to increase our throughput by giving delivery of a substantial quantity at hook-point itself which does not require the use of the on-shore equipments. (We collected only on-board and wharfage charges for such cargo).</p> <p>With the cargo mix which we are experiencing we feel the terminal capacity ranges from 0.60 million tonnes for export-centric break bulk cargo to 1 million for import-centric cargo. However, the exact percentage variation in the capacity based on change in the cargo mix cannot be defined accurately.</p>
<p>3.</p> <p>(i).</p>	<p><u>Traffic Forecast</u></p> <p>The traffic of iron and steel, logs, tubes and pipes (less than 20 MT) for the year 2005-06 is estimated to be less by around 22% as compared to the actual traffic for the year 2004-05. Likewise, traffic for the years 2006-07 to 2008-09 is estimated around 41% less than the actual traffic for the year 2004-05. Reasons for the anticipated decline in traffic for the cargo in reference.</p>	<p>There has been increase in throughput at Haldia Dock System which resulted in diversion of many import vessels, particularly carrying steel cargo, at berth no. 12. However, this is a one time phenomenon which is not likely to continue even in the next year. Also, port is planning to construct two additional general cargo berths to take care of such sudden increased demand. We have, therefore, revised our cargo projections for the current financial year (2005-06). Major change has been increase in the throughput of steel cargo by 2 lakhs MT, which includes 50000 MT of cargo delivered at hook point wherein no shore handling charges are collected. But for the future years i.e. 2006-07 to 2008-09, our projections remain unchanged.</p>

(ii).	(a). The basis of estimation of coastal cargo relating to iron and steel, logs, tubes and pipes (less than 20MT). (b). Apparently, TMILL does not anticipate traffic of coastal cargo other than iron, steel, logs, tubes and pipes (less than 20 MT).	We have estimated coastal cargo traffic on the basis of our market intelligence about possible parties likely to offer the traffic. We do not foresee, at this stage, coastal traffic in other commodities.
(iii).	The reasons for reduction in project cargo traffic at around 52% for the years 2005-06 to 2008-09 as compared to actuals for the year 2004-05.	Project cargoes are not regular phenomena in Haldia Dock Complex. Not many projects are coming up in West Bengal which can utilize Haldia Dock Complex. Therefore, this assumption. Moreover, our objective at terminal is to handle more of break-bulk items rather than project items. We will handle project cargo only in case we find our terminal is idle.
(iv).	Various cargo like cement, newsprint, food grain, sulphur, sugar, etc., do not find a place in traffic estimates. It is not clear why should the Scale of Rates contain rates for such cargo, when the traffic is not at all anticipated for the next 3 years.	We have not handled such cargo till date; nor do we expect to handle the same in the years to come. However, if we find any opportunity in future, we do not want to miss the opportunity and that is why the rates for such cargo have also been proposed.
4. (i).	<u>Operating Income</u> Detailed working for income estimated for each item of tariff considered under "operating income – OBC" and "operating Income – Shore handling charges", labour charges and equipment hire charges for all the years under consideration.	A separate statement showing income computation for each item of tariff considered under operating income has been furnished. Because the revenue generation from labour charges is nominal it has been considered on adhoc basis. Income from equipment hire charges during 2004-05 was Rs.16 Lakhs. For the current year, considering the higher number of equipments, we have estimated equipment hire income of Rs.21 Lakhs on ad-hoc basis in the light of actuals of 2004-05. <i>(Note: Inadvertent error while computing the revenue for the years from 2006-07 to 2008-09 has been corrected in the financial statements submitted)</i>
(ii).	KOPT has allotted back-up area of 14000 sq. mtrs to TMILL. TMILL also proposes to take over additional bare land measuring 54000 sq. mtrs during the year 2006-07 and use it for storage of cargo handled at the terminal. In this context, please clarify the following:	---
	(a). Reason for estimation of income from lease rentals only for 10000 sq. mtrs of land (7000 sq. mtr hard stand plot and 3000 sq. mtrs of covered sheds) out of the total area of 14000 sq. mtrs allotted to TMILL for all the years under consideration. The manner of utilisation of remaining area of 4000 sq. mtrs of bakup area may be brought out.	Out of 14,000 sq.m. the actual working area available for storage of cargo is not more than 10,000 sq. mtrs. (excluding office area at terminal, canteen facility, parking of equipments including mobile harbor crane, drainage and maneuverability of mobile equipments, etc.). Out of the 10000 sq. mtrs area, 7000 sq. mtrs. is towards hardstand open space and the balance 3000 sq. mtrs. is a covered shed.
	(b). The reason for estimating lease rentals of hardstand plot only for 6 months for each year under consideration.	We cannot have full occupancy throughout the year for 7000 sq. mtrs open space. Based on our past experience we have estimated 50% occupancy on let out basis

		<p>which itself is on a very high side. We are also required to give free time wherein we do not earn any plot rent. But for the balance covered space of 3000 sq. mtrs we have estimated income for the entire 12 months.</p>
	<p>(c). The reasons for estimating lease rental of bare land for only 34000 sq mtrs out of 54000 sq. mtrs proposed to be taken over from KOPT. The manner of utilisation of remaining area may be brought out for all the years under consideration. The TMILL estimates lease rentals from bare land only for six months for each year instead of whole year.</p>	<p>At present the entire bulk imports are kept at receiver's premises outside berth no. 12. The port is levying receiving and delivery charges @ Rs.50 per MT in addition to the lease rentals payable for the plot. The existing lease of plot is valid till May 2007. We therefore have to be prepared for an additional storage area to take care of this eventuality and have planned to take the 54000 sq. mtrs of bare land from the port. Initially it has been proposed to be used for storage of bulk cargo only on an area of 35,000 sq. mtrs. where the investments of Rs.500 Lakhs have been envisaged. At a later stage, on the balance area of 19000 sq. mtrs. we also plan to develop it further for the storage of break-bulk cargo by providing the railway siding and the covered warehousing facility. This will call for heavy investments, which has not been considered in the present financial statements.</p> <p>Full utilization of space (excluding the area for movement of mobile equipments and non operational purposes) will be possible only after further heavy investments are made for storage of break bulk cargo. The rentals charges in the future may have to be revised taking into account the future additional investments.</p>
	<p>(d). TMILL has proposed to add warehousing facilities during the period under consideration. The capacity of these facilities and the anticipated utilisation may be furnished. Further, the relevant heads of income do not show any increase. Please confirm whether such facilities are going to be availed by users free of cost.</p>	<p>The income from the increase in warehousing facility has been considered. In our cost statement we have taken income from the 3000 sq. mtrs covered shed for the entire year.</p>
	<p>(e). (i). The purpose and utilisation of the proposed leasing of additional 54000 sq. mt. Of land from HDC may be explained. The income estimates does not capture incremental revenue flowing from this facility.</p> <p>(ii). Also furnish an analysis of capacity utilisation of this plot of land and whether the charges leviable for utilisation of this land will atleast cover the licence fee payable to HDC.</p>	<p>Reply given at (ii) (c) above.</p>
	<p>(f). Please furnish a cargowise storage time analysis duly including the actuals for the years 2002-03, 2003-04 and 2004-05.</p>	<p>All the bulk imports are stored at receiver's premises outside berth no.12 and not in the back up storage area. For break-bulk items we have allotted the entire covered space of 3000 sq. mtrs. to our major user. For the</p>

		other users, the average period of stay would be approximately 15 to 30 days at the backup area of berth no.12.
5. (i).	<p><u>Operating Cost:</u></p> <p>(a). It appears that various operations like stevedoring, lashing, intra port transportation, etc., are outsourced and some equipments are hired. TMILL has furnished copies of some bills relating to these items. TMILL should furnish copies of the relevant contract agreements.</p> <p>(b). It must be certified and confirmed that such outsourcing contractors / suppliers are selected through a competitive bidding and the charges payable to them are fair and reasonable in relation to the market rates. In case of associated entities, if any, it should be certified that arms length relationship is maintained.</p>	<p>[TMILL has furnished copies of work orders with annexes vide its letter dated 25 August 2006.]</p> <p>We hereby confirm that the selection of the suppliers is through competitive bidding process and the charges payable to them are fair and reasonable considering the local market conditions.</p>
(ii).	The cost of providing stevedoring services for the years 2005-06 to 2008-09 is estimated based on a contract valid till June 2004. The renewed contract, if any, for providing stevedoring services beyond June 2004 may be furnished.	The contract is yet to be renewed. The supplier is asking for an abnormal hike which is still under negotiation. However, considering the hike asked for by the supplier we have revised our cost estimates for the current year (2005-06) as Rs.25 Lakhs per month against our earlier projection of Rs.22.33 lakhs per month. For future years a general inflation of 5.55% has been considered. [TMILL has furnished vide its letter dated 25 August 2006 a copy of contract for providing stevedoring services valid till March 2006. The contract copy indicates a rate of Rs.35 per MT upto 7 lakh MT and Rs.33 per MT over 7 lakh MT for onward stevedoring at Berth No. 12 for all types of cargo. TMILL has also furnished a copy of contract for contract period April 2006 to March 2009 which shows a rate of Rs.38 per MT upto 10 lakh MT. This rate of Rs.38 per MT is valid upto 31 March 2007].
(iii).	Though there is a downward trend estimated in the traffic of iron and steel (less than 20 MT) from the year 2005-06 to 2008-09, the estimated cost of slings and gears is on the increasing trend for the years 2005-06 to 2008-09 at around 8 to 10%. Further, the expenditure projection should be in line with Clause 2.5.1. of the revised tariff guidelines.	The actual expenditure on slings and gears for the first half of the current financial year (2005-06) has been Rs.18 Lakhs. The projections for the current year are being revised at Rs.25 Lakhs on this basis. This has been mainly due to an upsurge in steel imports at berth no.12 as has already been explained at point no.2 and 3 above. However for the future years we have kept the expenditure under this head as per our original projections.
(iv).	(a). The workings furnished by TMILL towards cost of intra port transportation through third parties include cost of intra port transportation of containers. The computation of cost of intraport transportation of containers does not appear to be correct. Please modify the estimates for cost of intra port	<p>The computation of intraport transportation cost for container is indicated below:</p> <ul style="list-style-type: none"> • No. of containers to be transported = 25% of container traffic (500 TEU's) = 125 TEU's. • Rate of transportaion during 2006-07 = 105.55% of present rate of Rs.900/- per TEU = Rs.950 per TEU.

	<p>transportation shown in the cost statement suitably.</p> <p>(b). Please furnish working for estimated cost of intra port transportation by TMILL's own trailers for the year 2004-05 (actuals) and 2005-06 to 2008-09 (estimates).</p>	<ul style="list-style-type: none"> Total transportation cost = 125 x 950 = Rs.118750/- <p>The present market rate for transportation of breakbulk item inside Haldia Dock Complex is Rs.34 per MT as of 2004-2005 i.e valid till March 2005 (to be revised in the year 2005-06 in the light of increased diesel price) which is very competitive. We have taken the same cost in our projections. We give below estimated cost per tonne for operating our own trailers:</p> <table border="1" data-bbox="858 591 1359 987"> <thead> <tr> <th>Total number of Trailers</th> <th>6 nos.</th> </tr> </thead> <tbody> <tr> <td>Capital Cost</td> <td>Rupees 9,600,000</td> </tr> <tr> <td>Depriciation</td> <td>640,000</td> </tr> <tr> <td>Labour cost for operation 7 Driver + 7 Helper</td> <td>1,225,000</td> </tr> <tr> <td>Maintenance (Spare + Labour)</td> <td>1,000,000</td> </tr> <tr> <td>Fuel Cost</td> <td>792,000</td> </tr> <tr> <td>Insurance @ 1%</td> <td>96,000</td> </tr> <tr> <td>Rates & Taxes on actuals</td> <td>272,910</td> </tr> <tr> <td>Total Direct Cost</td> <td>4,025,910</td> </tr> <tr> <td>Total Qty Transport (Per annum)</td> <td>119,000</td> </tr> <tr> <td>Cost of Transportation with Own Trailer</td> <td>Rs.34 per MT</td> </tr> </tbody> </table>	Total number of Trailers	6 nos.	Capital Cost	Rupees 9,600,000	Depriciation	640,000	Labour cost for operation 7 Driver + 7 Helper	1,225,000	Maintenance (Spare + Labour)	1,000,000	Fuel Cost	792,000	Insurance @ 1%	96,000	Rates & Taxes on actuals	272,910	Total Direct Cost	4,025,910	Total Qty Transport (Per annum)	119,000	Cost of Transportation with Own Trailer	Rs.34 per MT
Total number of Trailers	6 nos.																							
Capital Cost	Rupees 9,600,000																							
Depriciation	640,000																							
Labour cost for operation 7 Driver + 7 Helper	1,225,000																							
Maintenance (Spare + Labour)	1,000,000																							
Fuel Cost	792,000																							
Insurance @ 1%	96,000																							
Rates & Taxes on actuals	272,910																							
Total Direct Cost	4,025,910																							
Total Qty Transport (Per annum)	119,000																							
Cost of Transportation with Own Trailer	Rs.34 per MT																							
(v).	<p>Container loading operation is also stated to have been outsourced. The estimated cost towards container loading charges for the years 2004-05 to 2008-09 may be validated with documentary proof. Reason for not estimating container loading expenditure for the year 2008-09 may be furnished. Please furnish workings for estimated cost of container loading carried-out by TMILL itself.</p>	<p>There has been a clerical mistake in not considering the container loading expenses during 2008-09 in our original submission. This has been rectified in our revised financial statements</p>																						
(vi).	<p>The estimated equipment hire charges for handling lime stone for the year 2005-06 to 2008-09 may be validated with documentary proof, since, TMILL has outsourced this activity. The list of equipments taken on hire, may be furnished.</p>	<p>Our own equipment fleet is just enough to take care of onshore handling requirements for bulk cargo vessels. For on-board requirements we hire equipments from outside. On an average for handling one bulk cargo vessel 15 equipment shifts are required. The average rate is Rs.8000 per equipment-shift (mix of HM 2021, Caterpillar 966E and HM 2071 or its equivalent).</p>																						
(vii).	<p>(a). The TMILL has estimated the maintenance cost of equipments on the basis of average cost per equipment per annum for various equipments installed and proposed to be installed. The basis of arriving at the average annual maintenance cost per equipment may be brought out for various equipments with workings.</p>	<p>For imported equipments like Harbour Mobile Crane and Liebherr Loaders, as the equipments are very new and we do not have past experience it is difficult for us to provide any working. The spare parts of such equipments are very costly. We have accordingly considered the average maintenance cost on a broad estimate basis. Also we have acquired age old equipments from our parent company at nil value.</p> <p>Further during current financial year we have undertaken major civil repairs of our backup area at an estimate of Rs.36 lakhs which will</p>																						

		not recur for next 3 years. If we exclude the one time expense of Rs.36 Lakhs and include the notional capital value of age old equipments at Rs.1.50 crores the maintenance cost as a percentage cost of the capital cost works out to 4% for the current year (2005-06). This is considered to be reasonable.
	(b). The maintenance cost of equipment also includes levelling and resurfacing of the backup land at a cost of Rs.36 lakhs during the 2005-06. The benefits arising on account of levelling and resurfacing of the backup land may not be restricted to one year. That being so, the reason for loading the entire cost of levelling and resurfacing of backup land in one year (2005-06) may be justified. TMILL may consider spreading the cost of levelling and resurfacing of backup land for a suitable period. The present status of work relating to levelling and resurfacing of backup land may be indicated.	The back up area of Berth no. 12 requires regular maintenance which costs us around Rs.5 Lakhs per annum. For the type of operation in which TMILL is, the storage area needs to be revamped after every 3 years of operation as lots of heavy steel materials and equipments are stored. Hence the cost of resurfacing of berth no. 12, if required can either be treated as regular maintenance or may be spread over three years. We have considered it as a part of regular maintenance cost for current year (2005-06). Since the tariff will be decided on the basis of the projection for 2006-07 to 2008-09 we have no objection to consider the expenses being spread over for these 3 years.
	(c). The estimated maintenance cost of equipments includes cost of spares for 2 numbers of Liebherr Loader. Please justify the hike of around 955% in the cost of spares estimated for the year 2005-06 as compared to the year 2004-05.	The Liebherr Loaders are imported loaders which were installed during Jan-04. As the loaders were under warranty for one year, we did not incur major maintenance cost on the same during first year of operation i.e 2004-05. From 2005-06 onwards the maintenance is to be borne by us and hence the projection includes the normal maintenance cost of Liebherr Loaders.
	(d). Increase in cost of spares in respect of fork lift (3 MT) by around 18% for the year 2005-06 as compared to the year 2004-05.	The cost of maintenance of equipment for the initial years is not a correct indicator of the average annual maintenance cost as the equipments were new and the cost of maintenance in the initial years is low. Regular annual maintenance cost are to be estimated considering the age factor (age old forklifts require abnormally high maintenance), cost of spares, tyres, tubes etc. The projected maintenance cost for 2005-06 to 2008-09 are not comparable to that of 2004-05. As has already been explained at (vii) (a) above the average cost of maintenance on an overall basis works out to 4% of the original cost of the equipments which is considered to be reasonable.
	(e). Hike estimated in the cost of spares for forklift (25 MT) for the year 2005-06 at around 217% as compared to the estimated cost for the year 2004-05 may be justified. Likewise, please justify the hike of around 217% in the estimation made for the year 2005-06 as compared to the 2004-05 in respect of fork lift (16MT)	
	(f). Please justify 1061% increase in the estimated maintenance cost in respect of fork lift (12 MT) for the year 2005-06 as compared to the year 2004-05.	
	(g). The TMILL has estimated average annual cost of maintenance in respect of Kalmar fork lift at around Rs.98000/-. The reason for estimating the maintenance cost at 153% for the year 2004-05 may be justified. It is noteworthy that the estimated maintenance cost for the subsequent years is comparable with the estimated average cost.	
(viii).	(a). Cost of diesel and lubricants for handling per tonne of cargo for the period	

	<p>April 2005 to September 2005 may be furnished.</p>	<p>first half of current financial year. As explained above for the current financial year the on shore equipments were not used for entire cargo throughput (not used for hook point deliveries and cargo handled by hired equipment). Therefore dividing the total fuel cost by the entire berth throughput will not give an indication of accurate per tonne fuel cost. To justify this, for the year 2004-05, our fuel cost per metric tonne works out to Rs.16.20 which, after taking into account the actual inflation of 26.65% in fuel prices, works out to Rs.20.53 per Mt for 2005-06. Therefore the actual fuel cost per metric tonne for 2004-05 would be a better indicator than that for 2005-06.</p> <p>The mobile harbour crane came into operation during mid 2004. The cost of fuel for 2004-05 includes the element of mobile harbour crane for a part of the year only. During 2005-06 and later years we have considered the operation of the crane for the entire year. Therefore the total fuel cost for these years are bound to be on a higher side.</p>
	<p>(b). Justification for the escalation assumed in estimation of diesel and lubricant cost at around 10% for the years 2006-07 to 2008-09 over the estimated cost for the year 2005-06 on account of increase in price of petroleum products.</p>	<p>The diesel price during Nov-04 was Rs.24.05 per ltr. whereas during Nov-05 it was Rs.30.46 per ltr i.e. 26.65% higher. The actual increase over a period of 3 years was 80% (Rs.18 per ltr in June 2002 against the present rate of Rs.32 per litre). In spite of this we have considered an escalation factor of 10% only.</p>
	<p>(c). The basis of operating hours estimated for various equipments with workings.</p>	<p>The total running time of equipment is based on our past and practical experience. If we consider the berth occupancy of 240 days in a year the average running of the equipment comes out to 10-12 hours a day which is reasonable. Further equipment running time does not mean that for the entire time it is used in actual cargo handling operation but it will also include some idle time and travel time when the engine is on.</p>
	<p>(d). The basis considered for estimating the fuel consumption for various equipments.</p>	<p>The fuel consumption norms are based on our past records/ experience/ history of the equipment and the specifications given by the manufacturer.</p>
	<p>(e). The oil and lubricant cost in respect of harbour mobile crane is shown to increase by 205% for the year 2005-06 as compared to the relevant expenditure for the year 2004-05.</p>	<p>Harbour Mobile Crane was installed during June-04. It commenced normal operation from mid 2004 –05 onwards. Hence the cost during 2004-05 is only for half year whereas for 2005-06, 12 months operation is considered.</p>
	<p>(f). The TMILL has applied a consolidated rate of Rs.10,000 per month per trailer to estimate the oil and lubricant cost. Explain the basis for considering the amount of Rs.10,000/- for estimation.</p>	<p>This is based on average consumption of oil and lubricants by the trailer experienced by us since its purchase.</p>

(ix).	The basis for assuming 4000 running hours in a year and power consumption rate of 45 KW/hr for operating the EOT crane may be brought out. The cost per unit of power for operating the EOT crane assumed in the working may be furnished and the projections for the next 3 years may be justified with reference to actuals for the period April 2005 to September 2005.	The EOT crane is installed in the warehouse, which has been let out on yearly basis to our major user. The running hour of 4000 hrs per year works out to 12 hours a day, which is considered to be reasonable. The rated power consumption of the EOT crane is 45 KW /hr. The actual expense @ Rs.5.84 per KW hr works out to Rs.10 Lakhs whereas we have projected the cost of only Rs.5 lakhs per year.																												
(x).	<p>(a). Furnish working for the estimated contract labour cost for the years under consideration with details like number of labourers, rate of wages, etc. Confirm that the contract labour cost is not included in the equipment maintenance cost since TMILL has stated that all equipments are maintained by its own staff including labour taken on contract.</p> <p>(b). The steep hike in contract labour cost in the year 2005-06 as compared to the year 2004-05 may be justified.</p>	<p>This is to confirm that the maintenance cost considered does not include contract labour cost. The computation of the contract labour cost is as follows:</p> <table border="1" data-bbox="858 622 1362 815"> <thead> <tr> <th></th> <th>No of persons</th> <th>CTC (Rs. P.A.</th> <th>Total cost P.A</th> </tr> </thead> <tbody> <tr> <td>Trailer Driver</td> <td>7</td> <td>100,000.00</td> <td>700,000.00</td> </tr> <tr> <td>Trailer Helper</td> <td>7</td> <td>75,000.00</td> <td>525,000.00</td> </tr> <tr> <td>Maintenance unskilled @ 60000/- for 14 labourers</td> <td></td> <td></td> <td>720,000.00</td> </tr> <tr> <td>Operators for equipments</td> <td>25</td> <td>125,000.00</td> <td>3,125,000.00</td> </tr> <tr> <td>Pilot Maintenance (inc. HMC)</td> <td>18</td> <td>50,000.00</td> <td>900,000.00</td> </tr> <tr> <td>Total</td> <td>57</td> <td></td> <td>5,970,000.00</td> </tr> </tbody> </table> <p>This is on account of increase in equipment fleet during 2005-06 compared to 2004-05.</p>		No of persons	CTC (Rs. P.A.	Total cost P.A	Trailer Driver	7	100,000.00	700,000.00	Trailer Helper	7	75,000.00	525,000.00	Maintenance unskilled @ 60000/- for 14 labourers			720,000.00	Operators for equipments	25	125,000.00	3,125,000.00	Pilot Maintenance (inc. HMC)	18	50,000.00	900,000.00	Total	57		5,970,000.00
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(xi).	<p>(a). The rates applied for cargo survey cost may be validated with documentary proof as TMILL has outsourced this work.</p> <p>(b). There appears to be mistakes in the workings furnished by TMILL in the estimation of cargo survey cost. The workings may be revised and furnished.</p>	<p>TMILL has furnished a copy of the order, wherein the survey cost ranges from Re.1/- per MT to Rs.16/- per MT depending on type of cargo.</p> <p>The survey contract is on PMT basis and it has to be multiplied with the respective tonnage handled during the year. We have checked the computation and found it to be correct.</p>																												
(xii).	<p>(a). Furnish copy of the insurance policy with respect to the following assets:</p> <p>(i). Fixed jetty. (ii). Harbour Mobile Crane. (iii). Equipments.</p>	<p>TMILL has furnished the requisite details. The premium in respect of the assets are as follows:</p> <p>(i). Fixed jetty - 28.11 lakhs (ii). Harbour Mobile Crane - 24.60 lakhs (iii). Equipments - 5.45 lakhs</p>																												
	<p>(b). Indicate the value of stevedoring element considered for the purpose of estimating insurance cost.</p>	<p>We have insured ourselves for a stevedoring liability of Rs.12 Crores (AOY) for material damage and for Rs.4.0 Crores (AOY) for consequential losses.</p>																												
(xiii).	<p>TMILL has estimated royalty/ revenue share payable to KOPT on the basis of Scale of Rates applicable for KOPT. It may be noted that admissibility of the royalty / revenue share as an item of cost in tariff computation will be in line with Clause 2.8.1. of the revised tariff guidelines. The royalty / revenue share may be estimated on the basis of the likely loss to the TMILL on account of royalty / revenue share not being taken in to account for tariff fixation subject to maximum of the amount quoted by the next lowest bidder.</p>	<p>In case tariff is determined without considering royalty / revenue share as an admissible expenditure and consequently lower tariff than proposed by us is approved the resultant income will not be adequate to cover the costs and 15% ROCE. Since Royalty / Revenue share will in any case have to be paid, TMILL will incur loss to the extent of an amount of Royalty actually payable to the Port Authorities. The concession was granted to TMILL on a competitive bid basis wherein the next lowest bidder had quoted a revenue share of 9.611%.</p>																												
(xiv).	<p>Clause 2.7.1. of the revised tariff guidelines stipulates specific method to be followed in</p>	<p>In the regular books of accounts we have considered depreciation for all the</p>																												

	<p>computation of depreciation of assets in respect of private terminals. It appears that TMILL has adopted life norms for assets which are different from those life norms prescribed in the Companies Act, 1956. The estimated depreciation cost of assets may be revised suitably in line with the revised tariff guidelines.</p>	<p>equipments on SLM basis @ 4.75 % which is applicable to the heavy earth moving equipments on single shift usage basis. The schedule of the Companies Act doesn't provide depreciation rates for port handling equipments probably because there were no private companies engaged in port operations business until recently. It may be noted that port-handling equipments have an economic life of 14-15 years. Therefore, in our application we have taken depreciation on this basis.</p> <p>In case depreciation is computed for the tariff purpose also on the basis of existing general provisions of the Companies Act, after the first set of equipments are replaced, the second set of replaced equipment will have to be depreciated over the remaining 8-9 years residual period of the licence agreement and the tariff based on that would be much higher for those years. It would therefore be equitable to consider economic life of 14-15 years for tariff determination. Otherwise the applicant would be at a great loss if the equipment is required to be replaced earlier and the shortfall in depreciation provision is not considered.</p>
(xv).	<p>The basis of apportionment of maintenance cost of equipments, cost of diesel / lubricants, cost of contract labour, cargo survey cost, insurance cost and revenue share/ royalty between the activity of on board stevedoring and shore handling may be explained.</p>	<p>It is very difficult to apportion the exact costs between the two sub activities. We have tried to identify the items of cost / assets, which can be directly attributed to either of the activities and apportioned it accordingly. Where the items of cost /assets are used for both the sub activities we have tried to apportion it on some rational basis.</p>
(xvi).	<p>With reference to the overheads considered in the cost statement, please furnish / clarify the following:</p> <p>(a). TMILL has activities other than operations of berth No. 12 at HDC. It appears that "Management and other expenses" and "SAP expenses" have been allocated to Berth No. 12 from the relevant expenses of TMILL as a whole. Please furnish detailed workings for allocation of "Management and other expenses" and "SAP expenses" to berth No. 12 for all the years under consideration.</p> <p>(b). List of items of expenditure considered under general overheads – direct expenses and allocated management and other expenses indicating the estimated expenditure under each item.</p> <p>(c). The basis of allocation of general overheads – direct expenses to "on board stevedoring" and "shore handling".</p> <p>(d). Likewise, basis of allocation of management and other expenses and SAP expenses to "onboard stevedoring" and "shore handling".</p>	<p>All the expenses directly attributable to berth # 12 are taken in full whereas the common expenses, head office expenses and SAP expenses are allocated on turnover basis.</p> <p>The allocations between onboard and shore handling sub-activities has been made on the basis of operating cost.</p>

(xvii).	The basis of discounting the terminal value receivable at 6%, considered as Financial & Miscellaneous income may be brought out.	This is on the basis of the prevailing interest rates on bank deposits.
6.	<p><u>Capital Employed</u></p> <p>(a). The proposal in reference indicates that the TMILL operates the terminal No. 12 involving activities viz. onboard stevedoring, cargo handling and delivery, storage facilities and other miscellaneous services. However, the cost statement furnished by the TMILL does not identify the assets with reference to the individual items of service. The TMILL may furnish activity wise details of assets deployed in the facilities.</p> <p>(b). The Licence Agreement, <i>inter alia</i>, stipulates that warehouse of 1500 sq. mtr should be developed by TMILL as the minimum infrastructure. TMILL has also estimated an expenditure of Rs.2.94 Crores towards warehouse initially. However, it further envisages an investment of Rs.500 lakhs for warehouse during the year 2006-07. The proposed investment of Rs.500 lakhs during the 2006-07 may be justified in the light of traffic growth.</p> <p>(c). The cost statement for the year 2004-05 reveals that TMILL has added mobile harbour crane and other handling equipments during the year 2004-05. TMILL is requested to furnish documentary evidence in respect of the capital value of various assets already installed. Please confirm whether such additions to the fixed assets will enhance the capacity of the terminal.</p>	<p>All the equipments deployed at berth no.12 are required for both the on-board and shore handling operations. We have allocated the individual assets to both the sub-activities on the basis of their estimated utilization for such operations e.g. Harbour Mobile crane has been considered as 90% for on-board activity and the balance 10% for shore handling activity.</p> <p>At the time of submission of the tender, cargo projection of our major user was mostly of HR Steel Products (and less of C.R. Steel Products) which are generally stored in open yard. But due to change in the market conditions, the ratio of C.R. Steel products has increased which has to be stored in the covered space. Therefore, TMILL has gone for larger covered space of 3000 sq. mtrs than stipulated in the licence agreement. As regards the further investment of Rs.500 Lakhs is concerned the point has been briefly explained at 4(ii) c above. However we once again reiterate that the investment of 500 lakhs will be towards the development of the bare land capable for storage of bulk cargo items only.</p> <p>The certificate issued by the independent engineer, M/s. Stup Consultants P. Ltd. indicating details of equipments, with total of Rs.34.55 crores as on 28.3.2004 has been furnished.</p>
	<p>(d). As admitted by TMILL there is a difference between the quantity of equipments indicated in the License Agreement and the number of various equipments that are installed in berth No. 12. In this context, the capacity utilisation of these equipments and the increase in the capacity of the terminal achieved due to the introduction of more equipments may be indicated.</p>	<p>The quantity of the equipments indicated in the license agreement and the number of various equipments installed at berth no. 12 varies as the cargo mix envisaged at the time of submission of tender document has changed (more of C.R. Steel Products than H.R. Steel products). Moreover, the unit weight of C.R. steel Products ranges from 1 MT to 16 MT which calls for investments in cargo handling equipments of various capacities. Therefore the actual deployment is in variation with the stipulation in the licence agreement. This has been duly certified by the independent engineer and duly accepted by the port. The capacity of the terminal has been assessed taking into consideration the equipments installed upto</p>

		2004-05. At berth no. 12 we are handling cargo ranging from 1 MT to 65 MT, which implies that we have to have equipments to handle most of our cargoes requirements.
(e). The computation of maintenance cost of equipment indicates that the TMILL has already procured 9 forklifts. The remaining 2 forklifts are proposed to be installed in February 2005. Please confirm whether the 2 forklifts have been installed in February 2005, supported by documentary proof. Likewise, please confirm whether the EOT crane has been installed in February 2005.		The certificate enclosed by the independent engineer confirms that 2 forklifts and EOT crane have already been installed. Kindly ignore the words "proposed to be installed" mentioned in the assumption sheet against these items.
(f). The revised tariff guidelines limit the sundry debtors to 2 months of estate income and Railway terminal charges while computing working capital. The estimation of Sundry Debtors at one month of operating income is not in line with revised tariff guidelines.		Unlike in the major ports, TMILL is not recovering charges in advance but rendering monthly bills to the users. You will appreciate that the revised guidelines refer to railway terminal charges in the context of assessing sundry debtors. TMILL is not operating any railway. In these circumstances the assessment of sundry debtors may not be considered strictly on the basis of the revised guidelines. Sundry debtors equal to one month's operating income considered by us may please be allowed being reasonable.
(g). TMILL has computed stores inventory equivalent to 12 months of spares consumption and one month of fuel consumption for the year 2004-05. In this regard please confirm whether the stores inventory mentioned in the cost statement relates to capital spares. If it is so, computation of inventory for capital spares for the year 2004-05 is not in line with the Clause 2.9.9. of the revised tariff guidelines because computation includes one month fuel consumption also. If the inventory is for capital spares please revise the estimates in line with the revised tariff guidelines for all the years under consideration.		Out of the total equipment spares consumption, 50% comprises of capital spares. The projected inventory figures have now been revised in line with the revised tariff guidelines. We have considered 6 months of normal spares consumption, 1 year of capital spares consumption and 1 month of fuel consumption as the total inventory carried by us.
(h). The revised tariff guidelines limit the cash balance to one month's cash expenses. It appears that cash and bank balance has been computed as one month's operating cost including royalty / revenue share payable to KOPT and overheads. The inclusion of royalty / revenue share and overheads in the operating cost for computation of cash and bank balance may be justified.		Royalty/revenue share payable to KOPT and overheads are also items of cash expenses and hence these have also been included while computing one month's cash expenses for assessing Working Capital. This is reasonable and may please be considered while determining the tariff.
(i). TMILL has considered a residual entry of "Others" in the "Current Assets" for computation of capital employed under working capital. It appears that "others" refer to security deposit payable to KOPT for allotment of land. Please confirm whether payment of security deposit to		Security Deposit equal to 12 months' plot rental is payable in accordance with the KOPT SOR for allotment of land. As per the tender document this amount was required to be paid for the allotment of backup area measuring 14000 sq. mtrs. The amount increases during the years 2006-07 to 2008-

	KOPT for allotment of land is governed by the license agreement entered into between TMILL and KOPT. The details and workings for computation of amount under "others" may be furnished. The reason for projecting 325% increase in the Security deposit for the year 2006-07 to 2008-09 may be explained.	09 in view of the SD payable for the additional 54000 sq. mt bare land proposed to be taken over during that year.
B	<u>Scale of Rates:</u>	
1.	Please furnish detailed working with cost elements considered, to arrive at the rates for each tariff item under onboard charges and wharfage, shore handling charges, storage charges and charges for rendering miscellaneous services.	It is not possible to work out detailed cost statements in support of each and every item of the SOR. Broad costing exercise has been attempted for the two main sub-activities- 'onboard stevedoring including wharfage' & 'shore handling' on a rough and ready basis and has been indicated in separate statements in the financial model submitted
2.	The basis for prescription of demurrage for various cargo may be brought out with justification.	The rates for demurrage have been prescribed on the lines of the rates prevailing in the KOPT Scale of Rates.
3.	<u>Onboard Stevedoring:</u>	On-board charges (including lashing/unlashing) and wharfage have now been separately prescribed in the revised draft SOR. However, further segregation of costs under these sub-heads is not possible and practicable at this stage.
(i).	It has already been held by TAMP in a case relating to HDC that on-board charges and wharfage should be separately prescribed. The proposed rates may be modified accordingly.	
(ii).	(a). Rate for onboard stevedoring in respect of ships bunker and other liquid cargo handled other than through pipeline has been proposed, whereas traffic of liquid cargo is not at all anticipated in the next three years. This entry may be deleted being redundant. (b). The stevedoring services and lashing / unlashing to be provided for ship bunkers may be explained.	Rate for ships bunker has been provided to take care of the contingency, if any, arising in future to handle bunkering at a very short notice. The words and phrases "other liquid cargo" have been deleted from the proposed scale of rates. It has been mentioned in the SOR that the rate for on-board stevedoring and lashing/unlashing services includes lashing/unlashing charges wherever required. It may please be noted that in case of ship's bunkering, lashing and securing is not required and accordingly the charge proposed for this item does not include any lashing/unlashing element.
(iii).	Likewise, rate for heavy lift articles / packages other than iron ore and steel weighing above 20 tonne up to 35 tonne has been proposed, whereas no traffic is projected. This item of rate may also be deleted.	Rate for heavy lift articles/packages other than iron and steel weighing above 20 tonnes and upto 35 tonnes has been proposed to take care of the contingency of having to handle such cargo in future at short notice.
(iv).	Clause 4.2.1. of the revised tariff guidelines stipulate prescription of rates on per unit of either weight or volume of cargo handled rather than value thereof. So, unit of levy of tariff item No. 9 may be modified suitably.	For residual items we have now prescribed wharfage as a fixed rate on PMT basis. However, for on-board stevedoring the charge is prescribed on ad-valorem basis. The logic being that certain project items are very sophisticated but have unit weight less than 20 MT. Such cargoes require special arrangement for unloading/loading from/to the ship which calls for additional cost. Hence, the rate has been prescribed on

		advalorem basis to take care of such additional costs. However, at the time of the next revision we plan to prescribe rate on volume/weight basis in the light of experience gained.
(v).	The proposal for charging 70% of the proposed rates for cargo discharged / shipped over side may be justified with reference to cost of such operation.	Since we are operating in the same port the provision is in line with the provision existing in KOPT tariff.
(vi).	The prescription of levy of 1.5 times of the proposed rates for transshipment of cargo or shifting of cargo on board may be justified with cost details.	
(vii).	The proposal to levy receiving / delivery charge at Rs.25 per tonne per operation in respect of shutout cargo may be justified with reference to the services provided and the cost incurred therefor. The description "per operation" is not clear.	These charges have been prescribed on the lines of the provision existing in the KOPT tariff. The term per operation means - receiving or delivering the cargo. The same has been clearly spelt out in the SOR now submitted at clause 4.4.
(viii).	On board service includes lashing, securing, dunnaging / unlashng of cargo inside hatch as stated by TMILL. That being so, the necessity for prescribing additional charge at Rs.90 per metric tonne for lashing, securing, dunnaging on export cargo inside holds may be explained with cost justification.	The additional charge of Rs.90 PMT is leviable in case materials for lashing/securing/dunnaging are provided by TMILL in the case of export cargoes. The activity is being outsourced and the cost payable to the supplier is Rs.80 PMT for the year 2004-05 (valid till March 2005) pending revision.
(ix).	In case of containers, separate rates for loaded and empties should be prescribed.	According to the clause 5.3 of the revised tariff guidelines rates for the loaded and empty containers have to be same. We therefore feel that there is no need to prescribe separate entries.
4.	<u>Shore handling:</u>	
(i).	TMILL has proposed rate for "all other cargo". The items of cargo proposed to be covered under " all other cargo" may be listed. While the rate for " all other cargo" is proposed, income arising out of handling "all other cargo" has not been considered in the cost statement.	'All other cargo' is a residual entry to cover cargo not specifically mentioned in the SOR. It is provided to take care of the contingency of requiring to handle the cargo any time in future at short notice, though at present no estimate thereof can be made.
(ii).	The basis for allowing 3 free days and 7 free days for import cargo and Nepal / Bhutan imports respectively may be brought out.	Three free days have been allowed for import cargo on the lines of the provision made by KOPT and some other ports. Seven free days have been allowed for Nepal and Bhutan cargo in view of their geographical location as has been done by KOPT.
(iii).	The License Agreement entered into between KOPT and TMILL does not permit TMILL to handle coal. That being so, reason for mentioning about coal (and iron ore) at Clause 6.4 of the proposed Scale of Rates may be explained. The License Agreement does not explicitly authorise TMILL to handle Ore also.	It is agreed that the cargo permitted to be handled by TMILL is governed by the license agreement and accordingly coal is specifically not permitted to be handled. Inadvertent mention thereof in the erstwhile clause 6.4 is being deleted (please refer clause 7.4 of the enclosed SOR). However, TMILL is not specifically prohibited under the license agreement from handling iron ore and it can be deemed to be covered by the terms 'Dry bulk/Break bulk/containerized cargo'.

(iv).	The basis for the proposed levy of Rs.25 per tonne as receiving / delivery charge when lashing / unlashng is not done by TMILL, may be brought out with cost justification. It may be clarified whether the proposed rate of Rs.25 per tonne is for both the operations, receiving and delivery. It is noteworthy that TMILL has proposed a rate of Rs.25 per metric tonne for receiving/delivery per operation under onboard services.	Receiving and delivery charges are leviable in case the cargo is neither imported nor exported from Berth # 12 and for which we have not collected any charges under any other provisions of SOR. Accordingly, the clause 6.6 of the previous SOR has been deleted and more clarity has been brought in clause 4.4 of the revised Scale of Rates.
5. (i).	<u>Storage:</u> The proposed lease rent of Rs.40.60 per sq. mtr per month for short term allotment of hard stand plot to the users may be justified in the light of the license fee of Rs.21.65 per sq. mtr per month payable by TMILL to KOPT as per the License Agreement.	The proposed rates for the allotment of land and covered sheds are based on the prevailing rates of KOPT at Haldia Dock Complex.
(ii).	Likewise, the proposed lease rent of Rs.64 per sq. mtr per month for short term allotment of hard stand covered sheds may be justified with cost details.	
(iii).	The proposed lease rent for short term allotment of bare land at Rs.26.10 per sq. mtr per month may be justified in the light of license fee proposed to be paid to KOPT in the year 2006-07 at Rs.13. 92 per sq. mtr per month.	
(iv).	With reference to the proposed equipment hire charges for various equipments, the following may be furnished:	The rates for hire of equipments (forklifts & front-end loaders) have been proposed on the basis of range of capacity (below 10 tonnes, 10-20 tonnes and above 20 tonnes). The rates proposed are market based as indicated in Form I of the financial statements. You will appreciate that in case we have to hire similar equipments from the market, we are also paying at the same rates which can be verified from the copy of the contract. Moreover, the earning from hire of equipments is not significant.
	(a). A detailed cost sheet for each equipment for which a tariff has been proposed needs to be prepared on the basis of the capital cost, operating and maintenance cost with detailed breakup such as material cost, fuel cost, labour cost etc.,	
	(b). The TMILL has proposed hire charges for forklifts based on the capacity of the forklifts. The forklifts are of different capacity. Forklift hire charges may be proposed with detailed cost sheet on the basis of range of capacity of the fork lifts reckoning with the average cost of operations of such fork lifts.	
	(c). Likewise, front end loaders' hire charges may be proposed with detailed cost sheet on the basis of range of capacity of the front end loaders reckoning with the average cost of operations of such front end loaders.	
6.	As per the License Agreement the berth hire charges for vessels handled at berth No. 12 are to be collected by the KOPT. TMILL may consider to incorporate a conditionality in the Scale of Rates to allow refund of berth hire charges leviable by	As suggested by you we agree that in case ship idles at berth no. 12 for more than 20% of the total ship's stay, because of reasons entirely attributable to TMILL, we would refund the berth hire charges for the idling period in excess of 20%. The specific clause

	KOPT for the period when a vessel idles at Berth No. 12 and when the operations cannot take place at Berth No. 12 due to breakdown of the facilities or for any reasons attributable to TMILL.	9.1 has been included in the proposed draft SOR
7.	Each of the tariff items is for providing a set of services. It is, therefore, necessary to prescribe rebates in such composite charges when one or more of such constituent services are not provided.	We agree to your suggestion of providing such rebates. In our case, rebates can be granted only in case of on-shore handling charges where two or more constituent services are not provided by TMILL. In the case of on-board charges we do not intend to allow users to make their own arrangements for any constituent services. The specific clause 9.2 has been included in the proposed draft Scale of Rates.
8.	The penal interest rate should be quantified with reference to the prevailing PLR and included in the Scale of Rates in a definite manner.	The penal interest rate has been prescribed at 12 % per annum and the clause has been modified accordingly.

6.2. The TMILL was requested to furnish additional information / clarifications on some points vide our letter dated 14 July 2006 arising out of its response dated 22 December 2005. TMILL has responded vide its letter dated 25 August 2006. Our queries and the response of TMILL are tabulated below:

Sr. No.	Our queries	TMILL Response												
(i).	(a). With reference to a query regarding the workings furnished by TMILL towards cost of Intra Port Transportation (IPT) through 3 rd parties, the TMILL had furnished computation of IPT cost of containers. The workings towards cost of IPT through 3 rd parties may be reviewed to exclude cost of IPT of containers in the light of the above observation made by KOPT that TMILL is not authorised to handle containers at Berth No. 12 in terms of the provisions of Licence Agreement. (b). Likewise, the estimated operating cost towards container loading may be excluded in the light of the observation made by KOPT.	There is no bar on our handling containers as explained by us in our reply to the observations of KOPT. Therefore, we feel that there will be no need to modify the intra port transportation cost projections.												
(ii).	With reference to the proposed equipment hire charges for various equipments, the TMILL was requested to furnish detailed cost sheet for each equipment for which a tariff has been proposed. TMILL has responded stating that the rates proposed are market based and the rates proposed are the rates at which TMILL also hires such equipments. A comparative position bringing out the equipment-wise rates proposed by it and the rates at which TMILL hires similar equipments may be furnished.	The comparative position of hire charges of equipments and rates proposed by TMILL is tabulated below: (in Rs.) <table border="1"> <thead> <tr> <th>Particulars</th> <th>Rates proposed by TMILL (Rs. Per shift)</th> <th>Hire rates (Rs. Per shift)</th> </tr> </thead> <tbody> <tr> <td>Front end loaders > 3.5 cbm Buckets (CP2071)</td> <td>12,000</td> <td>12,000</td> </tr> <tr> <td>Front end loaders upto 3.5 cbm Buckets (CP2021)</td> <td>6,500</td> <td>6,000</td> </tr> <tr> <td>Forklifts < 10 Tonne</td> <td>2,500</td> <td>2,500</td> </tr> </tbody> </table>	Particulars	Rates proposed by TMILL (Rs. Per shift)	Hire rates (Rs. Per shift)	Front end loaders > 3.5 cbm Buckets (CP2071)	12,000	12,000	Front end loaders upto 3.5 cbm Buckets (CP2021)	6,500	6,000	Forklifts < 10 Tonne	2,500	2,500
Particulars	Rates proposed by TMILL (Rs. Per shift)	Hire rates (Rs. Per shift)												
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		<table border="1"> <tr> <td>Forlifts 10 Tonne – 20 Tonne</td> <td>12,000</td> <td>For 10/12 T = 6000 For 16 T = 14,408*</td> </tr> </table> <p>* Hire rate (without fuel) from M/s. NK= Rs.2,50,000 p.m. = Rs.9,615 per day (@26 days/m) = Rs.4,808 per shift (@12 hrs/shift) *Fuel consumption : Approx 20 lts/ hr = 240 ltrs/shift = Rs.9,600 per shift (@ Rs.40 / ltr) Therefore, total cost of hired forklift = Rs.4,808 + Rs.9,600 = Rs.14,408 per shift.</p>	Forlifts 10 Tonne – 20 Tonne	12,000	For 10/12 T = 6000 For 16 T = 14,408*
Forlifts 10 Tonne – 20 Tonne	12,000	For 10/12 T = 6000 For 16 T = 14,408*			
(iii).	TMILL to modify the cost statements and draft Scale of Rates in the light of the observations made by us and the comments of KOPT and furnish the revised cost statements along with modified draft Scale of Rates and segregated annual accounts pertaining to Berth No. 12 for the years 2002-03 to 2005-06	After incorporating the final royalty figures and segregated accounts for Berth No. 12 we shall submit the revised application for the proposed Scale of Rates.			

7. A joint hearing in this case was held on 29 March 2006 in the premises of KOPT. The TMILL made a slide presentation of its proposal.

8.1. As agreed at the joint hearing, the KOPT and TMILL were to sort out the issues raised by KOPT in the context of its Licence Agreement like formation of Special Purpose Vehicle (SPV), proposed handling of containers, accuracy of the traffic projections, etc. After reminder, the KOPT furnished a report in this regard. A copy of the KOPT report was furnished to TMILL and the TMILL was requested to furnish its specific comments on the comments made by KOPT. The TMILL has responded. The report of the KOPT and response of TMILL are summarised below in the following table:

Sr. No.	Report of KOPT	Response of TMILL
(i).	In view of Article 4 and 5 of the Licence Agreement, TMILL has certain obligations vis-à-vis KOPT's Scale of Rates. Therefore, it is imperative that consequent to notification of Scale of Rates for Berth No. 12 by TAMP, there would be a need for reconciliation between the above said articles 4 and 5 and the Scale of Rates approved for TMILL by TAMP. (TMILL quoted article 4.1.(a) of the Licence Agreement to say that the TMILL shall be entitled to collect all kinds of cargo related charges as per KOPT's Scale of Rates revised from time to time as per provisions of MPT Act for carrying out various services to fulfil the scope of the project as per provisions of Licence Agreement. It was already made clear to KOPT vide our letter No. TAMP/11/2004-KOPT, dated 23 March 2004 that the rates in respect of identified services provided by persons authorised under Section 42(3) are required to be notified by the Authority. KOPT was also in agreement with this statutory provision, conveyed to us vide its letter No. Admn/7415/A/119/3/PA-I, dated 27 September 2004. The position was reiterated to KOPT vide our letter dated 14 July 2006)	Once the Scale of Rates is approved by TAMP, we shall discuss the subject with KOPT.
(ii).	In terms of Article 3.9.(a)(i)(k) of the Licence Agreement, TMILL shall provide all services in	The Licence Agreement does not contain any limiting clause. No

	<p>connection with the project which the KOPT is authorised to provide under the provisions of Section 42 of MPT Act. TMILL is authorised by KOPT to undertake only such activities as are covered under Section 42(1) of the MPT Act. KOPT has not authorized TMILL to undertake any activities to provide services beyond the jurisdiction of the project (Berth No. 12) and the allotted back up area. But, as per the Audit Reports of the Independent Auditor, TMILL apparently undertook certain activities beyond the provision of Licence Agreement. For example, TMILL is operating as Steamer Agent. These activities are beyond the scope of Section 42 of MPT Act and thus are beyond the scope of Licence Agreement. Even the KOPT is not authorised to perform such activities under Section 42(1) of MPT Act. Accordingly, TMILL is not entitled to perform such services in terms of Licence Agreement. Therefore, no tariff should be framed for the same. Expenditure and income for such operations should be excluded from tariff calculation.</p>	<p>income and expenditure for activities other than which TMILL is authorised to undertake has been taken in calculation.</p>
(iii).	<p>As per the Audit Report of the Independent Auditor, TMILL has not maintained segregated accounts for activities being performed by them within the project jurisdiction of Berth No. 12 and its back up area as per Licence Agreement. It is not possible to verify the correctness of TMILL's operating income and expenditure without the segregated accounts. These details have direct bearing on the allowable Scale of Rates for TMILL. It is essential that TMILL furnish such detailed audited figures immediately so that KOPT can verify these data and offer its comments.</p>	<p>[It is seen from a copy of TMILL letter dated 11 January 2007 that the operator has furnished copies of segregated accounts relating to Berth No. 12 for the years 2002-03 to 2005-06 duly audited]</p>
(iv).	<p>TAMP has not forwarded the computations sheet of the proposal. It would be appropriate if the tariff proposal, alongwith all related documents of the Licensee, is forwarded through the Licensor, which will enable the port to offer objective and meaningful comments as such proposals.</p>	<p>[Complete set of proposal received from TMILL and further clarifications given by TMILL vide their letter No. TMILL/477/05-06, dated 22 December 2005 was furnished to KOPT under cover of our letter dated 14 July 2006 for comments of KOPT, if any. With respect to suggestion of KOPT that the private operator forward the tariff proposal to TAMP through the Licensor, Clause 3.1.3 of the revised tariff guidelines provides that the private operator can submit their tariff proposal directly to TAMP with a copy to the land lord port trust for information. This position was also conveyed to KOPT vide our letter dated 14 July 2006.]</p>
(v).	<p>For some time, TMILL had been collecting special rate and was paying royalty on special rate so collected. But, special rate is a special purpose levy allowed by TAMP for recovery of arrear pension related to dues of KOPT. Hence, TMILL is not entitled to retain any part of the</p>	<p>The matter is between TMILL and KOPT and shall be sorted out mutually. We shall not charge this rate and hence it will not have any impact on TAMP's calculations based on "cost model".</p>

	<p>special rate. It is, therefore, essential that TMILL furnish the detailed break-up so that the special rate collected by TMILL can be transferred to KOPT. The magnitude of special rate collected by TMILL will have bearing on the tariff calculation.</p>									
<p>(vi).</p>	<p>TMILL has handled the following cargo throughput at Berth No. 12:</p> <table border="1" data-bbox="327 443 890 600"> <thead> <tr> <th>Year</th> <th>Cargo Throughput (in tonnes)</th> </tr> </thead> <tbody> <tr> <td>2003-04</td> <td>6,11,531</td> </tr> <tr> <td>2004-05</td> <td>6,82,329</td> </tr> <tr> <td>2005-06</td> <td>11,67,146</td> </tr> </tbody> </table> <p>In response to a query by KOPT, TMILL furnished the following justifications for projecting 7,50,000 tonnes of cargo in their proposal to TAMP:</p> <p>(a). The trend of cargo handled at Berth No. 12 during preceding years would show that till 2004-05, only about, 7,00,000 tonnes of cargo was handled at Berth No. 12 that suddenly shot upto 11,70,000 tonnes during the year 2005-06. Hence, 11,70,000 tonnes is an outer limit and cannot be considered as a basis for further projections.</p> <p>(b). During 2005-06, there had been substantial increase in cargo throughput at HDC, which resulted in queuing of a large number of vessels. This led to sudden spurt of handling of different commodities particularly imported steel at Berth No. 12 during 2005-06, which is not likely to continue in future.</p> <p>(c). Handling of imported project cargo is not a regular phenomenon at HDC. No new projects are coming up in West Bengal, which would necessitate HDC to handle such cargo on a sustained basis. Further, TMILL handles project import only when the berth is idle.</p> <p>(d). HDC is already constructing two berths, which will compete with Berth No. 12 and are likely to have an adverse impact on TMILL traffic.</p> <p>(e). The export of steel is on the wane as domestic demand is peaking up, which will have an adverse impact on the TMILL's handling of steel cargo in the coming years.</p> <p>Considering the submissions made by TMILL with regard to traffic projections, it may be considered to project the likely traffic at Berth No. 12 on the basis of average handling at Berth No. 12 during the previous three years, which may be escalated by 10%. On this basis, the projected traffic at Berth No. 12 during 2006-07 works out to 9,00,000 tonnes approximately.</p>	Year	Cargo Throughput (in tonnes)	2003-04	6,11,531	2004-05	6,82,329	2005-06	11,67,146	<p>We accept KOPT's views in principle. However, cargo projection is based on estimation, which may vary in future based on the completion schedule of various projects under implementation by KOPT, namely, Berth No. 2 and 13, and equipping of Berth No. 4A , 2 and 13 and market situations.</p>
Year	Cargo Throughput (in tonnes)									
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2005-06	11,67,146									

	<p>Thereafter, the additional two berths of HDC are expected to be commissioned during 2007-08, which may, to an extent absorb a part of traffic at TMILL. In this premise, the projected volume of 9,00,000 tonnes of cargo at Berth No. 12 during 2006-07 is also likely to continue during 2007-08. However, during 2008-09, the cargo at berth No. 12 is expected to increase by 5%, about 9,50,000 tonnes. Thus, the yearwise traffic projections at Berth No. 12 during the period from 2006-07 to 2008-09 may be considered as outlined:</p> <p>2006-07 9,00,000 tonnes. 2007-08 9,00,000 tonnes. 2008-09 9,50,000 tonnes.</p>	
(vii).	<p>HDC has not allotted any covered space to TMILL outside Berth No. 12 for storage of steel. Therefore, TMILL has not incurred any cost of storage for such cargo. Accordingly, TMILL cannot consider the same as expenditure in their cost statement.</p>	<p>No cost of any covered shed outside Berth No. 12 has been considered by us. Hence, KOPT's comments are not relevant.</p>
(viii).	<p>KOPT has not allotted any land to TMILL outside Berth No. 12 for storage and evacuation of limestone. Initially, to facilitate the operations of limestone at Berth No. 12, KOPT had permitted for some limited period, as a stop gap measure, to transfer the limestone unloaded at Berth No. 12 to TISCO's leased plot behind Berth No. 8, on the condition of payment of applicable charges by TISCO (and not by TMILL) to KOPT. As this cost was not incurred by TMILL, such cost of transportation of materials to / fro outside the limits of Berth No. 12 should not be taken into account for the purpose of tariff fixation.</p>	<p>TMILL does not have sufficient storage space for limestone and hence has to deliver it to customer's plot. As wharfage includes this transportation KOPT's comment is not relevant.</p>
(ix).	<p>TMILL is currently paying license fee of Rs.2631.57 per 100 sq. mtrs per month for 14,000 sq. mtrs of hardstand backup area falling within the project. The license fee is escalated every year by 5% of the license fee payable in the preceding year or the scheduled rent then in force, whichever is higher.</p> <p>Based on the request made by TMILL, KOPT had, in the year 2004, offered allotment of additional bare land measuring about 54,000 sq. mtrs for the purpose of creating storage area with railway handling facilities. Since there was no response from TMILL to this offer, the said offer had to be cancelled.</p> <p>However, in May 2006, TMILL desired to submit firm proposal to KOPT for taking the 54,000 sq. mtrs additional land. KOPT will consider TMILL's proposal, if and when received. It appears that TMILL has included cost of the said land and development thereof in the cost statement. Such cost may be allowed for fixing tariff only after TMILL will actually take this land.</p>	<p>TMILL has applied for allotment of land measuring approximately 54,000 sq. mtrs. It is under active consideration of KOPT. It is expected that the additional land would be allotted by KOPT within 2 – 3 months and we will start developing the land immediately, thereafter. Additional land as mentioned above is required by TMILL for handling increased quantity of limestone as well as project and other miscellaneous cargoes to optimally utilise the capacity of Berth No. 12. Future years calculations are based on projections on rational business considerations. Hence, all costs on this account should be considered.</p>

(x).	<p>TMILL has stated that 80% of steel intra port transportation is outsourced. This requires close scrutiny by TAMP for determining its admissibility for tariff purpose, particularly because TMILL undertakes such transportation operation of steel to areas beyond its licenced area of operations (Berth No. 12 including its backup area). Further, this cost of additional transportation could have been avoided if they had taken the 54,000 sq. mtrs plot contiguous to their berth. Extra cost of transportation should not be considered for fixation of tariff.</p>	<p>We have already reapplied for allotment of land. We have been given to understand by KOPT that no land adjacent to Berth No. 12 or its back-up area is available. Hence, land to be allotted would be at some distance. Even the land offered earlier by KOPT was at a distance from Berth No. 12. Hence, intra-port transportations would necessarily be incurred and this cost should justifiably be considered by TAMP.</p>																											
(xi).	<p>TMILL, in their bid for Berth No. 12 on BOT basis, furnished a list of cargo they proposed to handle at Berth No. 12. The said list did not include containers. The work plan submitted by the TMILL along with technical bid also did not take into account container handling. It is important to note that the evaluation of their bid was done on the basis of their cargo projections, which did not include containers. KOPT had informed TMILL that the operator would not be permitted to handle containers at Berth No. 12 in response to the request made by TMILL in the year 2003 in this regard.</p> <p>TMILL has stated during the meeting held on 24 May 2006 that it would not handle containers at Berth No. 12</p> <p>The income and expenditure in respect of container handling may not be considered and no rate for handling of containers at Berth No. 12 should be prescribed in the Scale of Rates of TMILL.</p>	<p>As per serial no. (iii) of Appendix – 1 of the Licence Agreement it is clearly mentioned that TMILL is entitled to handle containerized cargo. However, till date no containers have been handled in Berth No. 12.</p>																											
(xii).	<p>The expenditure on account of Royalty / Revenue Share considered in the cost statement does not tally with the income shown. The revenue sharing ratio as per Licence Agreement is 10.511% for the first five years (from 29.1.2002) and 10.565% from 6th to 10th year. From scrutiny of the activitiwise cost statements, following position emerges.</p> <table border="1" data-bbox="325 1473 906 1637"> <thead> <tr> <th>Revenue sharing ratio</th> <th>2004 -05</th> <th>2005 -06</th> <th>2006 -07</th> <th>2007 -08</th> <th>2008 - 09</th> </tr> </thead> <tbody> <tr> <td>On-board & wharfage</td> <td>7.06%</td> <td>6.01%</td> <td>5.52%</td> <td>5.59%</td> <td>5.59%</td> </tr> <tr> <td>Shore handling charge</td> <td>13.37%</td> <td>10.82%</td> <td>10.04%</td> <td>10.13%</td> <td>10.13%</td> </tr> </tbody> </table> <p>The apparent conflict of information provided in cost statement with the provision of Licence Agreement needs to be explained by TMILL.</p> <p>Further, the expenditure on account of Royalty / Revenue Share shown for the year 2004-05 and 2005-06 is not matching with our records. The position is tabulated below:</p> <p style="text-align: right;">(In Lakhs)</p> <table border="1" data-bbox="325 1883 890 1995"> <thead> <tr> <th>Particulars</th> <th>2004-05</th> <th>2005-06</th> </tr> </thead> <tbody> <tr> <td>Royalty exp. Shown by TMILL in the cost statement</td> <td>195</td> <td>204</td> </tr> <tr> <td>Royalty income as per KOPT's accounts</td> <td>200.89</td> <td>316.93</td> </tr> </tbody> </table>	Revenue sharing ratio	2004 -05	2005 -06	2006 -07	2007 -08	2008 - 09	On-board & wharfage	7.06%	6.01%	5.52%	5.59%	5.59%	Shore handling charge	13.37%	10.82%	10.04%	10.13%	10.13%	Particulars	2004-05	2005-06	Royalty exp. Shown by TMILL in the cost statement	195	204	Royalty income as per KOPT's accounts	200.89	316.93	<p>Based on the scope of services at Berth No. 12, provisional royalty was calculated by the independent auditor. The same will be reviewed in view of KOPT's observation.</p>
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(xiii).	<p>The definition of services should be uniform for both KOPT and TMILL. The rates of TMILL and KOPT should be structurally similar. In the absence of such uniformity, the charges levied by TMILL cannot be compared with the charges of KOPT, which is essential to enforce Licence Agreement. This is because, as per Licence Agreement, for any services on which TMILL gives any discount, the royalty to be paid to KOPT would be equivalent to the full charges as per KOPT's Scale of rates. In accordance with this principle, services such as lashing, securing, dunnaging / unlashng of cargo, etc., for which there is no specific charge in the present Scale of Rates of KOPT should also be separately identified and specific charges for each of such activities should be indicated so that it is possible to ascertain if any discount or otherwise has been given by TMILL in their rates. This is important because, as per Licence Agreement, TMILL is liable to pay royalty equivalent to full charges as per KOPT's Scale of Rates, even in cases where it offers discount to its customers.</p>	
(xiv).	<p>The following definition of the word "TMILL" may be considered : "TMILL shall mean TM International Logistics Limited , a special purpose company, formed by the consortium of Tata Iron & Steel Company Ltd., and IQ Martrade Management and Holding ambh, i.e., a company registered under the Companies Act, 1956. and having its registered office at TATA Centre, 43, Jawaharlal Nehru Road, Kolkata – 700 071.</p>	<p>TMILL has proposed the following definition: "With respect to this Scale of Rates, TMILL means and constitutes the "ports' division of TM International Logistics Limited, a company registered under the Companies Act, 1956 and having its registered office at TATA Centre, 43, Jawaharlal Nehru Road, Kolkata – 700 071, which is involved in the execution of this License Agreement and whose functional office is situated at Finger Jetty Road, Haldia.</p>
(xv).	<p>(a). The "Licensee's premises" should be clearly indicated to specify the limits within which the Scale of Rates of licensee shall apply. The insertion of following provision may be considered: "The Licensee's premises shall mean the area licensed to TMILL including the backup area allotted to them under the License Agreement". (b). The phrase "port premises" used in various places may be replaced by the phrase "Licensee's Premises" so that the area under license to TMILL can be clearly demarcated.</p>	<p>Subject to definition of TMILL above, we have no objection to KOPT's suggestion.</p>
(xvi).	<p>The same definition as proposed in the Scale of Rates of KOPT may also be adopted in case of TMILL for definition of "Coastal Cargo" and "foreign Cargo" as vessel related charges are leviable as per KOPT's Scale of Rates. This will help avoid confusion that may be otherwise be caused if multiple definitions are adopted within the same port premises. This will also help in avoiding complications that may otherwise arise in computation of royalty payable by TMILL to KOPT.</p>	<p>We have no objection to port's suggestions.</p>

(xvii).	The charges may be split into “on-board charges” and “wharfage charge as per TAMP’s directive to KOPT. KOPT has followed this directive of TAMP while framing its Scale of Rates. It will facilitate comparison with KOPT charges which is necessary for computation of royalty payable by TMILL to KOPT.	It has already been done.
(xviii)	<p>As per the Licence Agreement, TMILL is entitled to charge not exceeding the rates provided in the Scale of Rates of KOPT. While agreeing to this arrangement, TMILL must have taken into account the cost of providing services, including sharing of revenue with KOPT. It has not been explained by the TMILL as to what factor have since developed that have resulted in cost escalation to such an extent that TMILL is praying for such a steep hike in rates. This issue requires close scrutiny, particularly because TMILL has not created assets beyond what has been stipulated in the Licence Agreement. On the contrary, their investments (Rs. 25.80 Crores) have been less than what they had projected during the tender stage (Rs. 30.07 Crores). Moreover, if TMILL’s charges are fixed above the levels as per Scale of Rates of KOPT, it is not understood how would TMILL carry out their obligation as per Licence Agreement which requires TMILL to levy charges not exceeding the rates as per Scale of Rates KOPT. The claim of TMILL for higher charges does not, prima facie, stand to reason. If KOPT with huge overhead and major historic burden can offer services at a lower price, then, TMILL, as a private berth operator, operating with much less overhead, should be able to offer their services at least at the same price, if not at a lower rate.</p> <p>If TMILL charges rates higher than the tariff prescribed for KOPT, the basic premise of the Licence Agreement would fail. Further, it would not be fair that the licensee would levy higher rates but share revenue on the basis of lower rates as per Scale of Rates of KOPT.</p>	<p>We are unable to appreciate KOPT’s contention that TMILL’s proposed charges do not stand to reason. Our costs are open to scrutiny by TAMP. Once the Scale of Rates is finalised by TAMP, we shall discuss the subject with KOPT.</p> <p>[With reference to the quantum of investments, KOPT in a subsequent communication dated 11 May 2007 has, inter alia, stated that its Board has approved, subject to sanction of the Government of India, certain changes in the specifications of the equipments and other infrastructure with revised total investment of Rs.25.80 Crores instead of Rs.30.07 Crores. Port awaits sanction of the Government.]</p>
(xix).	The rates of individual operations of loading / unloading / lashing/ unlashng should not be same as the rates for the shore handling charges. In all these instances, TMILL should justify its rates in terms of the cost involved in each such operations	We agree with KOPT’s contention and the same shall be included in the revised Scale of rates.
(xx).	<p>TMILL has solicited sanctions for licence fee (termed as lease rental) for short term allotment of hardstand / bare land as well as covered space. The backup area has been allotted to TMILL on license basis as per Licence Agreement. TMILL has constructed a shed on this land.</p> <p>KOPT allots land in respect of import and export cargo, inside dock area, at HDC, for transit storage only on short term license basis at the rates and terms approved by TAMP. Accordingly, TMILL’s proposal for separate rate</p>	TMILL has charged ground rent on short term license basis from some of its customers and copies of agreements are furnished. We confirm that wherever demurrage is applicable, we shall pay the due royalty as has been done in the past. (copies of agreements are not seen to have been attached).

	<p>for short term allotment of land or covered shed for storage of import / export cargo within their allotted area should be for transit storage purpose only and may have conditionalities similar to such allotment as in case of HDC / KOPT. Otherwise, such short term rates may be applied even in the cases where demurrage charges would be more appropriate. This may have major impact on their royalty payable to KOPT.</p> <p>It has been pointed out by Independent Auditors that, in some cases, TMILL has realised charges on short-term license basis although there was no agreement on record between TMILL and such party for any short-term license. The Auditors are of the view that the applicable rates in such cases should be demurrage charges and not short term license fee. Accordingly, the royalty payable by TMILL to KOPT would be considerably higher in these cases. Since the actual amount payable in such situations have direct bearing on the tariff calculations, TAMP may ascertain the exact amount payable in such cases, while determining tariff of TMILL.</p>	
(xxi).	<p>The Licensee has been granted an exclusive license to operate the berth and backup area under Section 42(3) of the MPT Act, 1963 further as per terms and conditions approved by the Central Government. As per Licence Agreement (item (g), page 2) as also as per the MOU entered into by the members of the consortium (Appendix 2, page 67 of Licence Agreement), the members of the consortium declared that they incorporated the licensee as a special purpose company to implement the project. But, in reality, they formed a general purpose company contrary to their declarations. This was also pointed out to TMILL during the meeting held with them on 24 May 2006. The matter has significant implications and, therefore, calls for close scrutiny.</p>	<p>The activities of TMILL are governed by the "objects" as described in its Memorandum of Association, a copy of which had been furnished to the port while tendering its bid for Berth No. 12. Moreover, no terms of the Licence Agreement prohibits TMILL from performing only other activity. In any case, it may be appreciated that this aspect should not have any bearing on the proposed Scale of Rates calculations by TAMP.</p>

8.2. The KOPT vide its communication dated 15 June 2006 reported that TMILL has agreed to segregate the accounts pertaining to Berth No. 12 for all the previous years and furnish the Audited Accounts. The TMILL after repeatedly seeking extension of time furnished copies of segregated audited annual accounts for the years 2002-03 to 2005-06 to us and to KOPT and made the following further written submission:

- (i). We had sought clarification from the Authority regarding applicability of received and delivery charges on cargoes handled in Berth No. 12, but stored in a port plot. In view of a difference of opinion on this issue with KOPT, the port has refused storage of cargo handled in Berth No. 12 in the port plot to the importer. As such, from May 2006, we have not handled a single lime-stone vessel in Berth No. 12. This has a severe impact on the cargo mix handled in Berth No. 12. The Authority may clarify on this issue.

- (ii). Following are the special rates that have been calculated and audited by the Independent Auditors:

Year	Rs.
2002-03	808,996
2003-04	324,115
2004-05	721,881
2005-06	2,485,673
Total	43,40,665

We shall initiate discussions with KOPT regarding the modalities of treatment of this amount.

- (iii). KOPT has offered to TMILL a plot of 54,000 sq. mtrs for which TMILL has already deposited Rs.2.71 Crores towards NRNA and Security Deposit. The detailed project report is under preparation and will be submitted to KOPT shortly. Hence, the cost towards this project should rightly be taken into account while calculating cost for the purpose of determining Scale of Rates.

8.3. As reported by KOPT, the segregated accounts for the years 2002-03 to 2005-06 furnished to the port by TMILL were not acceptable to KOPT since all the income realised by TMILL at Berth No. 12 have not been reflected in the accounts. The income from plant and machinery, which TMILL had procured for Berth No. 12 although used outside Berth No. 12, was not reflected in the said segregated accounts.

8.4. At the request of the KOPT, TMILL was advised to submit the segregated annual accounts for the year 2002-03 to 2005-06 to KOPT in the manner as desired by KOPT by 4 June 2007. In this connection, TMILL has reported the following:

- (i). TMILL held a meeting on 17 May 2007 with KOPT on the issue of segregated accounts.
- (ii). TMILL was asked to submit the Accounting Principles and Practices to KOPT and to the independent auditors for their consideration.
- (iii). TMILL would draw the segregated accounts from the first year onwards only after KOPT, TMILL and independent auditor agree to such principles and practices for the purpose of administering the Licence Agreement for Berth No. 12.
- (iv). Accounting Principles and Practice have been submitted to KOPT on 3 May 2007 and the response of KOPT is awaited.

8.5. The TMILL informed that it has furnished the segregated accounts for the period 18.1.2002 to 31.3.2003 and for the years 2003-04 to 2005-06 duly certified by its statutory auditors to KOPT. TMILL also furnished to us the copies of the segregated accounts submitted to KOPT.

8.6. After seeking extension of time, KOPT has furnished its comments on the segregated accounts of TMILL. The comments of KOPT on the segregated accounts of TMILL are summarised below:

- (i). TMILL has mentioned that the segregated accounts certified by M/s. Ray & Ray were drawn up considering only such activities as are covered under the KOPT's Scale of Rates, while the Accounts identified by M/s. Billimoria include pertaining to all income at actual from activities undertaken at Berth No.12. Such activities include, interalia, activities like lashing, unlashng and dunnaging of cargo etc., which are not covered in KOPT's Scale of Rates. The difference between the two accounts has primarily arisen out of this. TAMP may, therefore, appropriately consider the segregated accounts identified by M/s. Billimoria & Co for the purpose of tariff setting.

It may, however, be pointed out that based on the accounts identified by M/s. Billimoria, submitted by TMILL, the royalty payable to Kolkata Port Trust for the previous years would have to be recalculated and to be shown properly in the accounts of TMILL. It may be noted in this regard that substantially higher income from Berth No-12 has been reported in their latest accounting statements. For determination of the actual amount of royalty payable by them to KoPT, the Accounts have since been forwarded to the Independent Auditor M/s. Ray & Ray on 14th September, 2007 for examination and reporting. The report of the independent Auditor is awaited.

In the light of the above, it may be noted that the Balance Sheet of Berth No.12 will not show the true and fair view till the royalty actually payable is ascertained and certified by M/s.Ray & Ray. TMILL vide their letter dated September 14, 2007, has intimated that they have requested M/s. Ray & Ray to complete the royalty audit in one month's time and that all relevant documents would be produced by TMILL to M/s. Ray & Ray for the purpose. As the report from the independent Auditor is yet to be received, KOPT is not in a position to give its final view in regard to the actual amount of royalty payable by M/s. TMILL to KOPT.

- (ii). TMILL has since submitted on 12th September, 2007 unaudited Balance Sheets of Berth No-12 of the previous years till 2006-07 (copy enclosed – Annexure - IV) and the same are not reflecting the true and fair view as their Statutory Auditors are yet to identify the said Balance Sheets. The Balance Sheet for Berth No-12 pertaining to the previous years should, therefore, be identified by the Statutory Auditors of TMILL at the earliest.
- (iii). It is emphasized that there is a genuine and urgent requirement for adoption of Accounting Standard-17 by TMILL to draw up reliable Accounts of Berth No-12 at HDC, which should form a part of their audited Annual Accounts every year. TAMP also requires a correctly drawn up Balance Sheets, duly certified by their Statutory Auditors, to allow 15% ROCE.

TMILL has since confirmed vide their letter dated September 14, 2007 that from the current financial year onwards, they will consider Berth No.12 as a separate business segment and, accordingly, relevant financial information as per the requirement of AS-17 would be disclosed by them in the annual accounts of the Company as per the advice of Kolkata Port Trust.

- (iv). Kolkata Port Trust has advised TMILL to take suitable action to operate as a "Special Purpose Vehicle" only for the purpose of the license agreement for Berth No.12. TMILL has informed that they are considering the issue appropriately.

9.1 It may be recalled that the TMILL had, inter alia, stated that it would submit the revised application for the proposed Scale of Rates after segregating the Annual Accounts for the Berth No. 12. The TMILL has filed a revised proposal for fixation of tariff for services rendered at Berth No. 12. The revised proposal is reported to be based on the revised tariff guidelines and in the revised format for tariff filing forms for private terminals. Incidentally, it is stated that the initial proposal filed by TMILL was with projections upto the year 2008-09. The revised application is with the projections upto the year 2009-10. The salient features of the revised proposal, as stated by TMILL, are summarised below:

- (i). The financial figures for the year 2006-07 are computed based on actuals upto January 2007 and estimates for the remaining two months.
- (ii). The projections for the future three years (2007-08 to 2009-10) have been revised based on the estimates of 2006-07.
- (iii). Inflation factor of 4.5% has been considered. But it has requested if the current year inflation in the range of 5.5% to 6.5% is considered while deciding the proposal.

- (iv). The traffic projections have been made on the assumption that no charge is applicable for gate delivery/ wagon loading in view of the KOPT General Revision Order dated 29 December 2006. It has also assumed that there will be no restriction in the movement of cargo as has been imposed by KOPT presently.
- (v). A decline in the imports of steel is on account of production of the same material in the country itself and decline in the exports is due to high domestic demand.
- (vi). Income & Expenditure as furnished in the Cost statements for the years 2004-05 and 2005-06 is different from the Annual Accounts for the years 2004-05 and 2005-06, because the annual accounts takes into account only the income & expenditure arising out of the activities notified in the Scale of Rates of KOPT. Income from services provided at berth no. 12 viz. lashing, securing, dunnaging of cargo, providing slings and gears and unlashings of import cargo etc, which do not feature in the Scale of Rates of KOPT have been included in the Income & Expenditure calculations as furnished in the Cost statements.
- (vii). On account of the restriction imposed by KOPT during 2006-07 for transfer of cargo between TMILL's licensed area and port area outside the licensed area, TMILL could not handle limestone (which requires huge storage space). This has resulted in the reduction of the assessed capacity from 9 lakhs to 5 lakhs metric tonnes per annum.
- (viii). TMILL proposes to increase the capacity of the terminal to 10 lakh MT by 2009-10 by taking on lease and developing additional 63,000 sq. mtrs of land with railway siding. By this process TMILL will perform the entire handling operation (loading / unloading from ship, shore handling and storage). In this connection, it is stated that TMILL has already taken over 54,000 sq. mtrs of land on lease expiring in January 2032. Additional expenditure of approximately Rs.25.50 Crores is envisaged for this purpose over and above the minimum investment obligation as per the Licence Agreement.
- (ix). Royalty has been calculated based on the KOPT's revised tariff. Since the LA was signed in July 2003, royalty/ revenue share is considered as an item of cost.
- (x). The results as shown by the cost statements are:

(Rs. in crores)

Particulars	2006-07	2007-08	2008-09	2009-10
Op. Income	19.79	30.35	31.57	31.57
Surplus/ Deficit after ROCE	-0.98	0.75	-1.32	-0.95
Surplus/ Deficit as a % of Income	-5%	2%	-4%	-3%

9.2. The TMILL has revised the proposed Scale of Rates and the governing conditionalities as compared to its earlier proposal. The major changes made by TMILL are summarised below:

- (i). **Wharfage:**
- (a). The wharfage on items viz. Fertilisers, Containers, Logs and Timber has been increased in the range of 45% to 80%.
- (b). The wharfage on Limestone has been reduced by 20%.
- (c). A new rate has been prescribed for Iron Ore.
- (d). The wharfage levy on Other Cargo has been changed from per tonne basis to an advalorem basis.
- (ii). **On Board Charges:**

The earlier proposed rate for On Board handling charges has been bifurcated into On Board Charges and On Board Supervision. The proposed rates if added works

to a higher rate than the earlier proposed rates. Incase of Fertilisers and Logs etc, the proposed increase works to more than 100%.

(iii). **Loading/ Unloading/ Restacking:**

The proposed rate for all the items is less than the earlier proposed rates.

(iv). **Demurrage:**

In the revised proposal, no free days is allowed to the users as against 3 free days proposed earlier. However, the rates of demurrage have been reduced.

(v). **Transportation:**

The TMILL has introduced a new charge for transportation undertaken by it.

(vi). **Miscellaneous Charges:**

The TMILL has introduced some miscellaneous new rates/ levy under Section 10 of its proposed Scale of Rates for rendering miscellaneous services.

9.3. In September 2007, the TMILL furnished the cost statement with the revised figures for previous years reportedly on the basis of segregated accounts of TMILL stated to have been certified by their statutory auditors. The TMILL made the following submissions:

- (i). The previous years' figures for all proposed activities performed at Haldia were submitted earlier irrespective of the fact whether the same were performed within Berth no.12 or outside Berth no.12. This was done to present the financials in a way that a like-to-like comparison for all proposed activities could be made.

We are now submitting the financials in Form-3 for the years 2002-03 to 2005-06 for the activities performed **only within Berth no.12 falling under MPT Act, 1963**. These figures are as per segregated accounts duly certified by our Statutory Auditors.

- (ii). The allowable surplus for previous years (i.e. for the year 2002-03 to 2005-06) have been considered at 18% of the Capital Employed.
- (iii). The proposed figures for the coming years are also included with certain corrections which were intimated to you vide our letter no. TMILL / 64 / 2007-08 dated 11th May-07. The allowable surplus for the years 2006-07 to 2009-10 have been revised to 16% of Business Assets as per revised norms. In our original submission they were considered at 15%.
- (iv). The expected financials for the coming years at existing rates are also included. The corrections as intimated to you vide our letter dated 11th May 07 have been made in the cost of labour.
- (v). The surplus indicated at Sl. no. IX of Form-3 for the years 2002-03 to 2005-06 are surplus before interest and tax. In the certified segregated accounts the interest costs have been allocated between Berth no.12 and Haldia (other than berth no.12) on an appropriation basis. The interest figures submitted to you earlier vide our mail of 21-08-07 were the total interest incurred for loan taken for acquisition of Harbour Mobile Crane.

10. A copy of the revised proposal was furnished to the licensor and the relevant users for their comments. The comments received from KOPT and the users were forwarded to TMILL as feed back information. However, the TMILL has not responded to the comments of the users.

11. Additional information / clarifications were required from the TMILL and KOPT on certain issues arising out of the revised proposal filed by TMILL. Accordingly, TMILL was requested to furnish the requisite details. The TMILL has responded. The additional information / clarifications sought by us and the response of TMILL / KOPT are tabulated below:

Additional information / clarifications sought from TMILL and the response of TMILL:

Sr. No.	Our queries	Response of TMILL
A.	TMILL has stated that income and expenditure as furnished in the cost statements for the years 2004-05 and 2005-06 is different from the Annual Accounts for the years 2004-05 and 2005-06. In this regard, the TMILL is requested to explain the rationale behind not including the income arising out of lashing / securing / dunnaging of cargo, providing slings and gears and unlashng of import cargo etc., in the Annual Accounts. The TMILL is requested to furnish an Audited statement furnishing the income and expenditure arising out of above mentioned activities.	The Auditors have clarified in their Audit Report dated 10 January 2007 that the financial statements of TMILL have been prepared considering only those activities which are performed by KOPT. Since lashing, securing and dunnaging of cargo, providing slings and gears, etc., are not included in the Scale of Rates of KOPT, these are not taken into account in preparation of financial statements for royalty purposes. However, as these activities are being performed by TMILL, we have furnished the same to you for fixation of our tariff. We are in the process of getting these costs audited and will be furnishing to you at the earliest.
(ii).	The TMILL is also requested to furnish the present rates at which these services are provided to the users.	<p>TMILL has furnished the rates of on-board supervision that it has charged in the past from its customers other than its major customer (TATA Steel) The TMILL has charged different rates from different customers on the ground that some customers had their own LSD contractors who performed those activities and hence, discount was given by TMILL. The TMILL did not have any fixed schedule of rates and it levied the rates after negotiation with the customers. The statement furnished by TMILL shows that the on-board supervision charges (including LSD) ranges from Rs.119 per tonne to Rs.235 per tonne. The on-board supervision charges (excluding LSD) ranges from Rs.70 per tonne to Rs.250 per tonne.</p> <p>TMILL has further stated that the on-board supervision rate for steel export, as far as TATA Steel is concerned, is Rs.119/- per tonne including LSD component. This rate was negotiated in 2002 and is still valid. Similarly, the on-board supervision for lime stone for TATA Steel is a negotiated rate of Rs.16.50 per tonne.</p>
(iii).	The TMILL has furnished cost statements for the year 2004-05 to 2009-10. The TMILL is requested to furnish cost statements for the years 2002-03 and 2003-04 duly capturing the actual income and expenditure for all activities undertaken by it at Berth No. 12.	Audited financial statements for the years 2002-03 and 2003-04 have already been furnished. The fresh financial statements taking into account all activities undertaken by TMILL at Berth No. 12 are under preparation and will be sent shortly duly audited. (We have not received the fresh audited financial statements till finalization of this case).
1.	<u>Operating Income</u>	
(i).	Apart from showing the actual cargo handling income for the years 2004-05 and 2005-06 in the cost statement,	The other income comprising of plot rental and equipment hire income is included in the Annual Accounts in the following manner:

	<p>TMILL has shown Rs.12 lakhs and Rs.72 lakhs as income for the respective two years under "others". This other income is not found to have been included in the audited annual accounts relating to the respective two years, though it is shown in the reconciliation statement stating that it is as per accounts. It appears that this other income pertains to lease rentals for allotment of plot for storage of cargo at TMILL and equipment hire charges. The reason for not considering this income in the annual accounts of the years 2004-05 and 2005-06 may be explained.</p>	<p>(a). Schedule 6 of the Annual Accounts shows an item of expenditure termed as "Rent (including plot rent)". The value shown against this item is total expenditure net of plot rent income earned during the period.</p> <p>(b). Equipment hire income is included in Schedule 5 under the head "Equipment".</p>
(ii).	<p>The workings for the actual other income considered in the cost statement for the years 2004-05, to 2009-10 may be furnished.</p>	<p>The working for the years 2007-08 to 2009-10 are given in the income calculation sheet. The income for earlier years is given at actuals in Form 2B.</p>
(iii).	<p>It has been allotted by KOPT backup area of 14,000 sq. mtrs. TMILL has also reported that it has taken over additional bare land measuring 54,000 sq. mtrs for storage of cargo handled at the berth No. 12. In this context, please clarify / furnish the following:</p> <p>(a). A copy each of the allotment letter relating to 14,000 sq. mtrs backup area and 54,000 sq. mtrs additional bare land may be furnished.</p> <p>(b). Apart from lease rental payable, for 14,000 sq. mtrs for backup area and 54,000 sq. mtrs additional bare land, TMILL has considered in the estimated expenditure towards plot rentals for the years 2007-08 to 2009-10 the lease rental for 9000 sq. mtrs additional bare land and 5000 sq. mtrs additional bare land separately. However, TMILL has not estimated storage income arising out of the said additional bare land of 14,000 sq. mtrs for the years 2007-08 to 2009-10. The manner of utilisation of the additional bare land of 14,000 sq. mtrs may be explained.</p> <p>(c). A copy of allotment letter relating to allotment of 14,000 sq. mtrs additional bare land may be furnished.</p>	<p>TMILL has furnished a copy of allotment letter dated 28 December 2006 for 54,000 sq. mtrs land.</p> <p>The rental income arising out of 9000 sq. mtrs has been considered in the proposal.</p> <p>(i). TMILL has furnished a copy of letter dated 13 October 2006 which states that allotment of 5000 sq. mtrs of bare land behind berth No. 12 has been extended on short term license basis for storage of cargo from 1 October 2006 to 31 August 2007.</p> <p>(ii). Copy of application for allotment of 9000 sq. mtrs stated to have been furnished is not found with TMILL letter dated 11 May 2007. However,</p>

		KOPT in its letter dated 11 May 2007 has, inter alia, confirmed that TMILL has submitted application for allotment of additional 9000 sq. mtrs of bare land and it is reported to be under active consideration of KOPT.
(iv).	<p>In the estimations of income from handling iron ore for the years 2007-08 to 2009-10, TMILL has considered, inter alia, income arising out of unloading of iron ore from rake and transportation of iron ore from siding to plot. In this context, please furnish/clarify the following:</p> <p>(a). The reason for considering only 50% of the iron ore traffic for the purpose of estimation of income arising out of unloading from rake and transportation from siding to plot for the years 2008-09 and 2009-10.</p> <p>(b). The reason for not estimating income arising out of the above said two activities for the year 2007-08.</p> <p>(c). The subsequent activities carried out at the plot viz., unloading and stacking at plot, high heaping of cargo at plot, loading onto dumper at the time of shipment, transportation to hook point and heaping at hook point taking into account the entire cargo of iron ore. That being so, the mode of receipt of balance 50% iron ore cargo at the plot may be explained; and, the income, if any, on account of handling the balance 50% iron ore cargo during receipt other than by rake may be estimated and furnished to us with workings.</p>	<p>TMILL is expecting 50% of the total iron ore traffic by rail mode and the balance 50% by road.</p> <p>During 2007-08 TMILL will not handle any railway siding facility at Berth No. 12. So, no income is estimated on cargo received by rail. Railway siding facility will be constructed in 2008-09.</p> <p>As only 50% of the cargo will be received by road, the income on this quantity on account of handling has been considered in the cost statement. Cell No. g14 of the income calculation sheet may be referred.</p>
2	<u>Operating Cost:</u>	
(i).	Please furnish workings for all items of operating cost as per form – 3 B for the years 2004-05 to 2006-07	We are not in a position to provide details of all operating costs within the prescribed Form 3B. We have modified the form to provide details of all calculations.
(ii).	The basis for apportionment of 80% of the estimated cost of maintenance labour to berth No. 12 may be explained.	All equipments at Haldia except 3 Nos. CAT loaders and 1 No. IT-12, are attached to Berth No. 12. These equipments work out to 80% of our fleet capacity. Therefore, only 80% of the maintenance labour cost has been taken in our calculations.
(iii).	<p>TMILL has estimated operator and maintenance labour cost for equipments for the years 2007-08 to 2009-10. In this context, please furnish/clarify the following:</p> <p>(a). Please justify sub-contracting maintenance labour in addition to operator and maintenance labour for equipments.</p>	The operator cost is only towards engaging operators whereas maintenance labour is considered engaged in maintenance job.

	<p>(b). Please justify the rates of Rs.332 and Rs.330 per man shift towards operator cost & trailer Driver cost and Trailer Helper Cost, respectively, in estimating operator and maintenance labour for equipments.</p>	<p>We regret for typographical error in the rate for Trailer Helper Cost. It may be read as Rs.270 per man-shift instead of Rs.330. The cost statement will change accordingly.</p>															
<p>(iv).</p>	<p>In respect of the estimated equipment running cost, please furnish / clarify the following:</p> <p>(a). Please furnish the actuals for the year 2006-07 towards cost of oil and lubricants, repairs and maintenance and equipment registration cost with break-up as furnished for the estimated expenditures of these items for the years 2007-08 to 2009-10.</p> <p>(b). The basis for considering 25% lubricant cost as a proportion of Diesel Cost in estimations of oil and lubricant cost may be furnished.</p> <p>(c). The reason for considering hour of operations of various equipments at the uniform level for all the three years under consideration when the estimated traffic is not uniform. TMILL may consider to adjust the hours of operation in relation to the estimated traffic and revise the estimated oil & lubricant cost for the years 2007-08 to 2009-10.</p> <p>(d). The basis for estimating the repairs & maintenance cost in respect of each equipment for the year 2007-08 to 2009-10 may be furnished.</p> <p>(e). The estimated equipment hire charges of small loader for limestone may be supported by workings with copies of relevant contract agreement.</p> <p>(f). TMILL has estimated plot rental, inter alia, for 5000 sq. mtrs bare land payable to KOPT for the year 2007-08. The reason for not estimating plot rental for this 5000 sq. mtrs bare land for the subsequent two years may be intimated.</p>	<p>TMILL has furnished the following actual cost for the year 2006-07:</p> <p style="text-align: right;">(Rs. in lakhs)</p> <table border="1" data-bbox="826 591 1442 734"> <tr> <td>Oil & Lubricants</td> <td></td> <td>55.44</td> </tr> <tr> <td>Repairs & Maintenance</td> <td></td> <td>27.55</td> </tr> <tr> <td>Equipment Registration</td> <td></td> <td>27.55</td> </tr> <tr> <td>Port Permit</td> <td>1,48,500</td> <td>4.56</td> </tr> <tr> <td>Road Tax & Fitness</td> <td>3,07,150</td> <td></td> </tr> </table> <p>It is a generally accepted principle in case of material handling equipments that lubricant cost would be approximately 25% of the diesel cost.</p> <p>As the traffic estimated between 0.9 and 0.95 million tonnes is almost uniform, the hour of operations of equipment has also been considered as uniform. We request that the same may kindly be considered as submitted by us.</p> <p>The equipment warranty of various machines, primarily the Harbour Mobile Crane which is the most expensive is expiring. Spares of such imported machines are very costly. This has been reflected in our estimates for repair and maintenance cost.</p> <p>Copy of contract dated 1 February 2007 valid for the period 1 December 2006 to 31 March 2007 is produced by TMILL. The contract rate is Rs.6000 per shift. To complete a vessel carrying 25,000 tonnes of limestone, 20 equipment shifts of small loaders inside holds are required. This is based on our past experience. The hire charge of such loader is Rs.6000 per shift</p> <p>It is planned to surrender 5000 sq. mtrs bare land after commencing operations in 54,000 sq. mtrs plot from October 2007.</p>	Oil & Lubricants		55.44	Repairs & Maintenance		27.55	Equipment Registration		27.55	Port Permit	1,48,500	4.56	Road Tax & Fitness	3,07,150	
Oil & Lubricants		55.44															
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Port Permit	1,48,500	4.56															
Road Tax & Fitness	3,07,150																

<p>(g). Please furnish the latest copies of contracts to support the estimated insurance cost in respect of the following assets:</p> <ul style="list-style-type: none">(i). Mobile harbour crane.(ii). Equipments.(iii). Fixed jetty. <p>(iv). The details of assets at Berth No. 12 considered towards cost of insurance at Rs.33.55 lakhs for the year 2007-08 may be furnished with a copy of insurance contract to support the estimated amount of Rs.33.55 lakhs. The basis for considering hike of 12% on this account in the estimation of insurance cost for the year 2008-09 over the year 2007-08 may also be furnished.</p> <p>(h).With reference to the estimated expenditure towards lashing, securing, dunnaging (LSD) / unlash activity for the year 2007-08 in respect of steel shipment TMILL has considered a rate of Rs.84 per metric tonne. But, Annex-I to copy of steel shipment (A/c Tata Steel) contract dated 28 January 2005 contains two rates at Rs.80 per metric tonne and Rs.37 per metric tonne. Please clarify.</p> <p>(i). (i). The basis for adopting Rs.5 per metric tonne to estimate expenses towards sticker / tag writing & colour coding and dispatch related services may be furnished.</p> <p>(ii). TMILL has adopted various rates for estimating expenditure towards intraport transportation of different cargo items. The adopted rates range from Rs.35 per metric tonne to Rs.48 per metric tonne. But, the copy of document (Appendix III (A) to TMILL letter dated 25 August 2006) furnished by TMILL indicates a rate of Rs.34 per metric tonne. Please clarify and furnish the basis for adopting various rates. It is noteworthy that the cost of transportation by TMILL's own trailer is Rs.34 per metric tonne, as conveyed by TMILL.</p>	<p>TMILL has furnished copies of insurance contracts which show that the insurance contract relates to the year 2006-07 for some equipments and 2007-08 for some other equipments.</p> <p>As the new stockyard equipped with railway sidings, covered warehouse and electrical fittings etc., would be commissioned during 2008-09, the insurance expenditure indicated in our proposal has accordingly gone up.</p> <p>The TATA Steel's contract was finalized in 2002-03 which shows the old rate for LSD. The sub-contractor has been pursuing for a hike of at least Rs.10 per tonne which is still under negotiation and will be effective retrospectively when finalized.</p> <p>This is as per contract with the sub-vendor. A copy of service contract dated 01-09-06 attached. The rate is Rs.4.50 for 2006-07 with inflation at 4.50%, the rate is Rs.5.00.</p> <p>Rs.35 to Rs.48 is based on the figures appearing in cell nos. G 320 and G 316 of Form No. 3B. It is clarified that these figures are in lakhs for those categories of cargo.</p> <p>The rate considered is Rs.40 per tonne which is based on our contract with vendor, having a fuel price escalation clause. Diesel price at the time of entering into contract in 2004-05 was Rs.25.95 per litre at Haldia on the basis of which the rate of Rs.35 per tonne was negotiated. The diesel rate as on March 2006 was Rs.33 per litre at which the revised rate for intra-port transportation works out to Rs.36.80 per tonne and to which 4.50% inflation is applied for 2006-07 and again 4.50% for the year 2007-08. This makes the cost of intra-port transportation as Rs.40 per tonne.</p>
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<p>(iii). The rates adopted for estimated survey expenses may be validated with latest copies of contract .</p> <p>(j). KOPT vide its report dated 15 June 2006 has, inter alia, stated that TMILL is operating as steamer agent which is reportedly beyond the provision of the Licence Agreement and beyond the scope of Section 42 of Major Port Trusts Act, 1963. TMILL has estimated clearing and forwarding expenses at Rs.4 per metric tonne and has proposed to levy a rate of Rs.10 per metric tonne towards this activity. It may be noted that this Authority may not be in a position to notify the tariff for services which are beyond the scope of the provision of Major Port Trusts Act, 1963.</p> <p>(k). Please furnish actual expenses for the year 2004-05 to 2006-07 in respect of the various items considered under "miscellaneous operational expenses" in the category of other expenses. It is further requested to clarify the following:</p> <p>(i). No expenditure has been estimated for the year 2007-08 in respect of the activity of unloading of cargo at siding and transportation to plot / hook point. The estimated expenditure of Rs.99 lakh for the year 2008-09 may be justified with cost details.</p> <p>(ii). The estimated expenditure of Rs.30 lakhs, Rs.110 lakhs and Rs.50 lakhs towards civil maintenance of plots for the year 2007-08 to 2009-10 respectively may be justified with cost details with reasons for higher amount (Rs.110 lakhs) estimated for the year 2008-09.</p> <p>(l). (i). TMILL is requested to justify the hike of about 28% in</p>	<p>TMILL has produced a copy of service contract dated 18-08-2006 valid for the period 1-4-06 to 30-06-07 for a total value of Rs.22.06 lakhs for lime stone survey for a quantity of 7.50 lakh tonnes of lime stone. TMILL has produced a copy of service contract dated 16-11-2006 for stock accounting of various types of steel. The contract is for a value of Rs.61 lakhs having validity period from 1-8-2006 to 30-6-2007.</p> <p>TMILL provides a range of services to its customers. C& F activity consists of processing of documents through Customs. Instead of looking for and appointing a Custom House Agent themselves, several customers look for a one-window agency to take care of all activities related to import or export and request TMILL to render this activity of "Custom Clearance" also.</p> <p>In case C&F activity is considered to be beyond the scope of Section 42 of MPT Act, we may be so advised and the same will be excluded from our proposal.</p> <p>Details of actual expenses will be sent shortly. [We have not received the details till finalisation of this case].</p> <p>As the railway siding in the new plot will not be ready in 2007-08, the cost towards unloading at siding and transportation has not been considered. [TMILL has not furnished cost details to justify Rs.99 lakh for the year 2008-09].</p> <p>The backup area behind berth No. 12 measuring 14000 sq. mtrs is found to be inadequate resulting in operational difficulties. The covered warehouse measuring 3000 sq. mtrs has further reduced the area of the back-up land adding to the operational difficulties, especially in movement of the Harbour Mobile Crane and other mobile equipments. It is, therefore, planned to shift the covered warehouse from the back-up area of berth No. 12 to the newly allotted plot in the year 2008-09. This shifting cost amounting to Rs.75 lakh has been included in the "civil maintenance" during the year 2008-09.</p> <p>The increase of "management and administrative overhead" and "general overhead" in 2007-08 is</p>
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	<p>Management and Administration overhead in its estimate for the year 2007-08 over the actuals for 2006-07.</p> <p>(ii). Likewise, please justify the hike of about 23% considered in the estimate of General Overheads in the year 2007-08 over the actuals for the year 2006-07.</p>	<p>linked to the increase in operations at berth No. 12 which is also reflected in the increase in turnover.</p>																																				
<p>4.</p>	<p>Capital Employed:</p>	<p>---</p>																																				
<p>(i).</p>	<p>The audited Balance Sheets produced by TMILL indicate the capital account as "Head Office Account". Please furnish break-up of the capital account in terms of equity and debt, if any for the years 2002-03 to 2004-05. It is noteworthy that the capital structure of TMILL at Berth No. 12 consists of debt and equity for the years 2006-07 to 2009-10.</p>	<p style="text-align: right;">(Rs. in lakhs)</p> <table border="1" data-bbox="826 591 1442 766"> <thead> <tr> <th>Financial Year</th> <th>Debt</th> <th>Equity</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>2002-03</td> <td>-</td> <td>929.00</td> <td>929.00</td> </tr> <tr> <td>2003-04</td> <td>644.00</td> <td>236.00</td> <td>880.00</td> </tr> <tr> <td>2004-05</td> <td>692.00</td> <td>2335.00</td> <td>3027.00</td> </tr> <tr> <td>2005-06</td> <td>469.52</td> <td>2362.48</td> <td>2832.00</td> </tr> </tbody> </table> <p style="text-align: right;">(Rs. in lakhs)</p> <table border="1" data-bbox="826 824 1442 1330"> <thead> <tr> <th>Financial Year</th> <th>Debt</th> <th>Interest</th> <th>Remarks</th> </tr> </thead> <tbody> <tr> <td>2003-04</td> <td>644.00</td> <td>Nil</td> <td>No interest incurred as loan was taken in end of financial year</td> </tr> <tr> <td>2004-05</td> <td>692.00</td> <td>31.28</td> <td>Rs.5.92 lakhs of the interest was capitalised on account of procurement of harbour mobile crane.</td> </tr> <tr> <td>2005-06</td> <td>469.52</td> <td>38.61</td> <td>Part of loan was repaid during the year. Hence, the debt as on close of the year was low.</td> </tr> </tbody> </table>	Financial Year	Debt	Equity	Total	2002-03	-	929.00	929.00	2003-04	644.00	236.00	880.00	2004-05	692.00	2335.00	3027.00	2005-06	469.52	2362.48	2832.00	Financial Year	Debt	Interest	Remarks	2003-04	644.00	Nil	No interest incurred as loan was taken in end of financial year	2004-05	692.00	31.28	Rs.5.92 lakhs of the interest was capitalised on account of procurement of harbour mobile crane.	2005-06	469.52	38.61	Part of loan was repaid during the year. Hence, the debt as on close of the year was low.
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<p>(ii).</p>	<p>Please furnish capital employed figures of TMILL at berth No. 12 for the years 2004-05 and 2005-06 as per Form 4A.</p>	<p>TMILL has furnished details of capital employed for the year 2004-05 and 2005-06.</p>																																				
<p>(iii).</p>	<p>TMILL has proposed additions to the gross block to the extent of Rs.22.37 Crores in the year 2007-08 which includes Rs.19.53 Crores under "Others". The details of additions to gross block for the years 2007-08 to 2009-10 furnished by TMILL in Form – 4B are found to be inadequate and do not match with the value of proposed additions mentioned in Form – 4A. In this context, please furnish / clarify the following:</p> <p>(a). The status of the assets proposed to be acquired in the year 2007-08.</p>	<p>There has been a small omission in Form 4 A. A sum of Rs.208.00 lakh towards cost of covered shed to be constructed at the new plot (54,000 + 9,000 sq mtrs) has been erroneously omitted in cell No. D. 24. This may kindly be incorporated in the year 2007-08. Hence, the amount towards "additions to building" for the year 2007-08 will read as Rs.224.20 lakh. Further, kindly correct to read the figure in cell F12 of Form 4 B as Rs.150 lakhs instead of Rs.105 lakh which is due to a typographical error.</p> <p>TMILL has furnished the following information regarding status of development of stackyard with covered shed for the year 2007-08:</p> <p>(a). 54,000 sq. mtrs land has been allotted by KOPT for which NRNA and security deposit</p>																																				

	<p>(b). The items of assets considered under "Others".</p> <p>(c). The details of Plant & Machinery proposed to be acquired during the year 2007-08 to 2009-10.</p>	<p>has already been paid.</p> <p>(b). Development of 10,000 sq. mtrs out of the above area has been completed.</p> <p>(c). Allotment of 9000 sq. mtrs is expected to be approved by KOPT Board in July 2007.</p> <p>(d). Development of balance portion of land and construction of boundary fencing will commence after monsoons.</p> <p>(e). Quotations for construction of railing siding in plot have been received and negotiations are in progress. Order is expected to be finalised within June 2007.</p> <p>The following assets have been considered in "others":-</p> <table border="1" data-bbox="826 651 1465 904"> <thead> <tr> <th colspan="2" style="text-align: right;">(Rs. In lakhs)</th> </tr> </thead> <tbody> <tr> <td>Land Development</td> <td style="text-align: right;">1358.20</td> </tr> <tr> <td>Fencing</td> <td style="text-align: right;">375.00</td> </tr> <tr> <td>Non-refundable non-adjustable (NRNA) amount for 54,000 sq. mtrs</td> <td style="text-align: right;">180.40</td> </tr> <tr> <td>NRNA for 9000 sq. mtrs</td> <td style="text-align: right;">30.07</td> </tr> <tr> <td>Land survey</td> <td style="text-align: right;">9.10</td> </tr> <tr> <td>Total</td> <td style="text-align: right;">1952.77</td> </tr> </tbody> </table> <p>The amount indicated for 2007-08 is towards electrical fittings in the newly allotted plot. The amount for the year 2008-09 and 2009-10 are as per Form 4A.</p>	(Rs. In lakhs)		Land Development	1358.20	Fencing	375.00	Non-refundable non-adjustable (NRNA) amount for 54,000 sq. mtrs	180.40	NRNA for 9000 sq. mtrs	30.07	Land survey	9.10	Total	1952.77
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<p>(iv).</p>	<p>The gross block of fixed assets for the year 2005-06 includes cost of heavy earth moving equipment. However, TMILL has excluded depreciation to the extent of Rs.31.29 lakhs on the ground that the operations are performed outside berth No. 12. In that case, the TMILL may intimate the corresponding value of asset for exclusion from the capital employed figure.</p>	<p>Of the mobile equipments installed during 2005-06 as per Licence Agreement for Berth No. 12, harbour mobile crane was primarily used in other berths for a major part of the year. Accordingly, depreciation and other costs were proportionately excluded from Berth No. 12 following matching concept of accounting as revenue from such equipment was also excluded from Berth No. 12 income. However, we do not expect to use this equipment outside Berth No. 12 in the future.</p>														
<p>5.</p>	<p><u>Scale of Rates:</u></p>															
<p>(i).</p>	<p>Clause 4.2.1 of the revised tariff guidelines stipulates fixation of wharfage rates on per unit of either weight or volume of cargo handled than value thereof.</p> <p>Therefore, wharfage rate proposed on ad valorem basis for "other cargo" may be reviewed and revised.</p>	<p>We have noted this observation and we shall send our revised proposal.</p>														
<p>(ii).</p>	<p>In terms of Section 48 of MPT Act, 1963, this Authority is required to frame Scale of Rates and conditionalities governing the Scale of Rates. The proposed charges for transportation of various cargo should be levied subject to the conditionalities in the Scale of Rates. TMILL may, therefore, propose the conditions governing this service.</p>	<p>TMILL has proposed to levy transportation charges, for which TMILL undertakes any transportation within the port limits, including Railway siding and plots within the Dock Exterior zone of HDC.</p>														

12. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received 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>

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

- (i). The KOPT has entered into a License Agreement (LA) with TMILL on 29 January 2002 for equipping, constructing, financing, operating, and managing the Berth No. 12 for a period of 30 years. The KOPT has allotted the multipurpose Berth No. 12 along with its backup area for the said purpose of the LA. The TMILL has been authorised to collect all kinds of cargo related charges. The vessel related charges in respect of the vessels handled at Berth no. 12 would be collected by KOPT.
- (ii).
 - (a). KOPT has followed revenue sharing model for allotment of the facilities to the licensee. The TMILL has to pay revenue share of 10.511% from the first to fifth year and 10.565% from sixth to tenth year, on the actual revenue earned. Since the initial period of five years from the date of signing the LA (29 January 2002) is already over on 28 January 2007, the TMILL has to share its actual revenue at 10.565% with KOPT during the tariff validity cycle upto 2009-10.
 - (b). The LA between TMILL and KOPT does not mention about the upfront fee payable by TMILL. However, TMILL has paid Rs.7.10 Crores as upfront payment to KOPT. The audited annual accounts of TMILL for the year 2002-03 confirms this position. KOPT has also acknowledged receipt of such payment from TMILL.
- (iii). This is the first exercise to fix tariff for the services rendered by TMILL at Berth No. 12 after its signing the Licence Agreement with KOPT in January 2002. The TMILL has been operating the Berth No. 12 applying the tariff approved for KOPT based on a provision in the Licence Agreement. But, it has to be appreciated that the MPT Act requires this Authority to notify the Scale of Rates for the identified services provided by persons authorised by a port trust. It is noteworthy that separate Scale of Rates for private terminals operating at the major ports has been notified by this Authority.

The tariff of KOPT has been framed with reference to its cost of operations and investment made by KOPT. The tariff so fixed will, therefore, be relevant as long as the KOPT itself operates the facilities. Even for the adoption of the tariff approved for KOPT to the operations carried by TMILL, a specific authorization to that effect is to be given by this Authority after taking into account all relevant factors. Significantly, the KOPT has confirmed that the tariff of TMILL is required to be approved by this Authority. The position of TMILL operating the Berth No. 12 at the tariff level approved for KOPT is contrary to the MPT Act provisions. Therefore, the relevant Licence Agreement provision purported to have authorised the operator to levy the tariff approved for KOPT needs to be amended to be in line with statutory provisions.

When this fact came to the notice of this Authority in December 2003, the TMILL was directed to file a detailed tariff proposal in February 2004. The subsequent developments are brought out at the earlier part of this Order. We have proceeded further to fix the tariff for TMILL for its operations at Berth No. 12 as required by the MPT Act provisions.

- (iv). The approach adopted by TMILL to base the revenue share calculations as per the revised tariff of KOPT is not acceptable to the port on the ground that TMILL has to pay revenue share on its actual revenue earned by the operator. The

Licence Agreement provision 5.1(a) stipulates that revenue share is payable on the actual income earned by TMILL as per provisions of 4.1(a). 4.1(a) states that TMILL is entitled to collect all kinds of cargo related charges as per KOPT's Scale of Rates framed from time to time as per the MPT Act provisions. Without going into the dispute between TMILL and KOPT, revenue share computation for the purpose of this analysis is based on the position reported by TMILL. This should not be taken as an incidental approval of the stand taken by TMILL in the dispute with KOPT.

- (v). The Licence Agreement states that the TMILL has been incorporated as a special purpose company to operate the Berth No. 12. But, the operations of TMILL are not restricted to Berth No. 12. It is, therefore, reasonable on the part of KOPT to ask for segregated accounts from TMILL for the operations relating to Berth No. 12 before the port furnishes its comments on the TMILL proposal. Reportedly, TMILL has not maintained segregated accounts for Berth No. 12. After the intervention of this Authority and consequent to the discussions in May 2006 between the KOPT and TMILL, the operator could furnish the segregated accounts to the KOPT in January 2007. The KOPT and TMILL engaged themselves in the exercise of reconciliation of the differences between them with regard to the segregated accounts.

The repeated extensions of time sought by the KOPT and to some extent by the TMILL to furnish the requisite details and receipt of information in piecemeal from the TMILL contributed to the delay in finalising the case within a reasonable time frame. The revised proposal with major changes filed by the operator in February 2007 further added to the delay.

- (vi). Apart from rendering services at Berth No. 12 of HDC, the TMILL is engaged in activities at places other than Berth No. 12 in Haldia and at other ports also. The activities carried out by TMILL at Berth No. 12 fall into two categories, namely activities covered by the provisions of MPT Act and other activities. The segregated accounts certified by the Statutory Auditors of TMILL include, inter alia, the actual income realized and expenditure incurred during the years 2002-03 and 2005-06 in respect of the activities covered by the provisions of MPT Act and other activities at Berth No. 12. It is noteworthy that the KOPT has recommended to consider the accounts segregated and identified by the Statutory Auditors for the purpose of tariff setting. The segregated accounts as identified by the Statutory Auditor of TMILL and furnished by TMILL under cover of its letter dated 24 August 2007 are considered in this analysis.

It is to be noted here that the segregated accounts identified by the Statutory Auditors of TMILL do not segregate the assets into the assets deployed at Berth No. 12 and outside Berth No.12 because the statement of assets identified by the Statutory Auditors is for the Haldia division as a whole. Therefore, the position relating to the assets deployed at Berth No. 12 as reported earlier by the TMILL is considered.

- (vii). Since the tariff levied by the operator for the activities carried out at Berth No. 12 is not the one fixed by this Authority based on the cost and investment levels of the operator, as already explained, the financial performance of TMILL, from the commencement of operations is required to be assessed in order to find out whether any undue advantage has accrued to TMILL by adopting the KOPT rates without any authorisation by this Authority.

The financial year 2006-07 is already over. The Scale of Rates framed now may come into effect in the later part of the year 2007. Therefore, the financial performance of TMILL from the year 2002-03 to September 2007 is analysed based on the actuals upto the year 2006-07 and (moderated) estimates for the period April 2007 to September 2007.

- (viii). The revised proposal dated 14 February 2007 filed by TMILL did not contain the income estimates at the existing level of tariff. Subsequently, TMILL vide its letter dated 3 September 2007 has furnished the revised cost statements capturing the estimates at the existing and proposed level of tariff. This cost statement containing actuals based on the segregated accounts for the years 2002-03 to 2005-06, actuals for the year 2006-07 and estimate for the years 2007-08 to 2009-10, is considered in this analysis.
- (ix). (a). The operator has realized, on account of other activities at Berth No. 12, a revenue of Rs.9.73 lakhs, Rs.15.91 lakhs, Rs.4.42 lakhs and Rs.5.63 lakhs for the years 2002-03 to 2005-06, respectively, as shown in the segregated accounts. TMILL has not considered this income stream in the cost statement submitted by it. Likewise, the actual expenditure incurred towards performance of other activities at Berth No. 12 reported in the segregated accounts is also not taken into account by the operator. Since the other activities are reported to be not covered under provision of MPT Act as seen from the segregated accounts, the approach adopted by TMILL in not considering the income and expenditure towards other activities at Berth No. 12 for the years 2002-03 to 2005-06 is accepted. In this connection, it is to be mentioned that we have not verified the segregation of activities done by TMILL and certified by the Chartered Accountants. We have on good faith relied upon the interpretation of TMILL about certain activities carried on by them at berth No. 12 which may fall outside the ambit of MPT Act and, therefore, do not come under the regulatory purview. If any position contrary to the one relied upon now is brought to the notice of this Authority, a suo motu review of the Scale of Rates of TMILL will be carried out to reflect the correct position.

It has to be noted that assets deployed at Berth No. 12 and used to render both the activities, i.e. those, covered under MPT Act and those not covered under MPT Act, have not been segregated. Further, the permissible return on equity relevant for the assets used for other activities at Berth No. 12 remain not apportioned to other activities. Therefore, there is mismatch to this extent between the cost position relating to the activities under regulation and activities beyond regulation.

- (b). In order to meet the liability on account of arrears of salary, wages and retirement benefits arising out of various Government orders and accrued upto 31 March 2000 at KOPT, this Authority approved 10% special rate on the various charges notified in the Scale of Rates of KOPT in April 2001. The liability is confined to KOPT and therefore, only the operations carried out by KOPT can generate the revenue required to cover this liability. The TMILL has reported that it had collected Rs.43,40,665/- during the years 2002-03 to 2005-06 towards levy of Special Rate and assured in August 2006 that it shall not levy the special rate.

KOPT is aware that only the port is authorized to levy the special rate. The port has reportedly received revenue share from TMILL on the special rate also levied by the operator. KOPT should have instructed its licensee to stop the levy of special rate forthwith. Strangely, KOPT has objected to the retention of amount collected by TMILL and pitched a demand for the transfer of the amount to KOPT. There cannot be any debate on whether TMILL is entitled to retain the amount collected by levying special rate as the collection itself is unauthorized which, therefore, should be set off fully in tariff of TMILL for the future period.

The TMILL has been levying the rates as per the (then) existing Scale of Rates of KOPT. The income generated out of operations performed by TMILL has reference to the (then) prevailing Scale of Rates of KOPT.

That being so, the amount reported by TMILL on account of levy of special rate as the total revenue realized by it is seen substantially less than the amount if the rate of 10% is applied on the entire operating income of TMILL. This casts a doubt on the amount reported by TMILL. We do not have the benefit of the views of KOPT in this regard. The audited segregated accounts for the said four years do not explicitly reveal the income arising out of 10% special levy. The position reported by TMILL in this regard is, therefore, relied upon. If a position different from the one now relied upon emerges at a later point of time, this Authority may suo motu review the tariff of TMILL. The income on this account is excluded from the operating income of the respective years and shown separately in the cost statement which is set off fully in the tariff fixed now.

- (c). The LA authorizes TMILL to provide all services in connection with Berth No. 12, which the KOPT is authorised to provide under the provisions of Section 42 of the MPT Act. The KOPT has objected the TMILL operating as steamer agent. It is, however, seen that the proposal of TMILL does not appear to include rates leviable for agency work relating to vessel related activities. In this regard, the significance of having a proper SPV formed to discharge the functions entrusted by the LA comes into foreground. It is for the KOPT, as the Licensor, to enforce the provisions of LA and take appropriate steps, if any violation is observed. This Authority has, however, noted the assurance given by KOPT that it would take appropriate action in this regard.
- (x). (a). In those BOT cases where the bidding process was finalized before 23 July 2003, the tariff computation will take into account royalty / revenue share as cost for tariff fixation in such a manner as to avoid likely loss to the operator on account of royalty / revenue share not being taken into account, subject to minimum of the amount quoted by the next highest bidder, as stipulated in Clause 2.8.1 of the revised tariff guidelines. Admissibility of royalty as cost in case of TMILL is governed by this guideline from the year 2005-06 onwards as the revised tariff guidelines came into effect from 31 March 2005; and, royalty / revenue share will not be considered as pass through for the years prior to 2005-06 as per the policy prevalent prior to the implementation of revised tariff guidelines. The revenue share payment for the years 2002-03 to 2004-05 are, therefore, not considered as cost for the purpose of this analysis. The stand taken by KOPT that it is yet to firm up the quantum of revenue share payable by TMILL for the past years is not, therefore, an issue relevant for these years in this exercise.
- (b). As brought out earlier, TMILL has to share 10.565% of its actual revenue with KOPT during the period upto 2009-10. TMILL claimed that the next highest bidder had quoted a revenue share of 9.611%. To a query posed, the KOPT has conveyed that the revenue sharing quoted by the next highest bidder was 8.126%. The position reported by KOPT is relied upon. That being so, pass through of revenue share for the years 2005-06 to 2009-10 can only be to the extent of 8.126% of the revenue.

With reference to the dispute regarding quantum of revenue share payment raised by KOPT for the year 2005-06, the operator is stated to have updated the amount to Rs.325.05 lakhs from the earlier provisional amount of Rs.204 lakhs. The updated position is seen to be slightly more than the amount indicated by KOPT. The updated position is considered, subject to restricting it to the level of 8.126%.

The Authority has disposed of the general revision proposal of KOPT in December 2006. The revised cargo related charges have come into effect

at KOPT from March 2007. As brought out earlier, the TMILL has to pay revenue share on all kinds of cargo related charges as per prevailing Scale of Rates of KOPT. The computation of revenue share payment furnished by TMILL for the years 2007-08 to 2009-10 shows that the amount has been calculated based on all kinds of prevailing cargo related charges like wharfage, on board charges, transportation, loading / unloading etc., This estimated revenue share is restricted to 8.126% uniformly for the years 2006-07 to 2009-10, keeping in view the adjustment made by us in the traffic estimate for the year 2009-10, based on the views of KOPT.

By way of abundant caution, it is mentioned that revenue share figures considered in this exercise are only for the tariff fixation purpose and should not be taken as the determination by this Authority of the dispute, if any, between the TMILL and KOPT on the subject payment.

- (xi). (a). The insurance cost at actuals for the years 2002-03 to 2005-06 as furnished by TMILL is considered.
- (b). TMILL has estimated an amount of Rs.45.39 lakhs for the year 2006-07 towards Insurance Cost. The copies of insurance contract entered by TMILL with Insurance Companies in the year 2006-07 show that the total Insurance Cost on actual basis for the year 2006-07 works out to around Rs.40.90 lakhs for Mobile Harbour Crane, equipments, and fixed jetty and Rs.29.63 lakhs towards stevedoring liability. The stevedoring liability insurance premium covers risks of five locations of various places including Haldia. The document does not indicate the break-up for the Insurance premia for various locations. If the stevedoring liability insurance cost is divided equally among the 5 locations, the premium for TMILL at Haldia works out to Rs.5.93 lakhs. Thus the aggregate insurance premium for the facilities at TMILL berth No. 12 works out to Rs.46.83 lakhs, which is more than the estimate given by TMILL. Therefore, the insurance cost for 2006-07 is accepted as given by TMILL without modification.
- (c). (i). The estimated insurance cost for the years 2007-08 to 2009-10 and actual cost for the year 2006-07 is furnished below:

	Actual		Estimates	
	2006-07	2007-08	2008-09	2009-10
On existing Assets	45.39	42.49	42.49	42.49
On additions towards sidings, covered warehouse, electrical fittings (1.5% of Capital Expenditure)	--	33.55	37.54	37.54
Total	45.39	76.04	80.03	80.03

The LA provision 7.1(d) (iii)(a) requires the TMILL to purchase and maintain insurance of the facilities and services at Berth No. 12 at replacement value. While the estimated insurance cost may be with reference to replacement of assets at market value, if any, the value of assets should also take into account depreciation thereon. Looking to the comparison between estimated insurance cost of Rs.42.49 lakhs for the year 2007-08 and actual amount of Rs.45.39 for the year 2006-07 on the existing assets some adjustment appears to have been made in the estimate. However, no confirmation is available in this regard from the documentary evidence furnished by TMILL.

The estimated amount of Rs.42.49 lakhs for the year 2007-08 which is at lower level as compared to the actuals for the year 2006-07 is accepted and maintained for the subsequent two years, as proposed by TMILL.

- (ii). With reference to the estimated insurance cost at 1.50% on the proposed capital expenditure of Rs.2237 lakhs in the year 2007-08, it is necessary to know the nature of proposed investment in order to ascertain the incidence of insurance cost on such assets. The addition to the assets considered in the estimated capital employed include plant and machinery estimated at Rs.60 lakhs and covered shed at Rs.224 lakhs which may have to be insured. The balance amount of Rs.1953 lakhs is proposed to be spent towards land development, fencing, non-refundable non-adjustable amount paid / payable to KOPT and Land Survey cost. Looking into the nature of the expenditure, the estimated insurance cost on these items of expenditure does not appear to be justified. The proposed investment of Rs.60 lakhs towards plant and machinery in the year 2007-08 is shifted to 2008-09 for the reasons given in the later part of this analysis. Therefore, the estimated additional insurance cost of Rs.33.55 lakhs is moderated and insurance cost at 1.50% of Rs.224.20 lakhs is allowed for the year 2007-08. Likewise, insurance cost at 1.50% of the aggregate of the additions proposed for the year 2007-08 and 2008-09 is considered for the year 2008-09. The insurance cost so estimated for the year 2008-09 along with the insurance cost on Rs.42 lakhs proposed in the year 2009-10 towards railway siding is allowed for the year 2009-10.

Insurance cost as estimated by TMILL is allowed because the actual insurance cost reported by TMILL with documentary evidence for the year 2006-07 at Rs.45.39 lakhs works out to 2.00% of the net block of assets (excluding upfront payment) as at the end of the year 2006-07. The insurance cost on the proposed investment of Rs.150 lakhs in the year 2009-10 is not considered since the investment is in replacement of existing forklift.

- (xii). The actual Management & Administration Overheads for the years 2005-06 and 2006-07 are found to be at a very high level as compared to the actuals for the years 2002-03 to 2004-05. TMILL has clarified that it allocates common expenses and Head Office expenses to berth no. 12 on turnover basis apart from fully considering the expenses directly attributable to berth no. 12. Considering the basis of allocation, the Management & Administration Overheads for the years 2005-06 and 2006-07 are considered as furnished by TMILL.
- (xiii). (a). The depreciation for the years 2002-03 to 2005-06 considered by TMILL in the cost statement is the amount relevant for Berth No. 12 as shown in the segregated accounts and has been provided on straight line method at the rates specified in the Companies Act, 1956 as reported in the segregated annual accounts. An error noticed in the depreciation amount shown in the cost statement for the year 2006-07 is rectified based on the amount shown in the working sheet.

The operator was deploying heavy earth moving equipment for operations outside Berth No. 12 to some extent apart from the operations in Berth No. 12. It appears from the segregated accounts that the depreciation relevant for usage of the equipment outside Berth No. 12 has been segregated and shown separately. Therefore, the depreciation for the said four years, relevant for Berth No. 12, reflecting the position of the segregated accounts is accepted.

- (b). From the workings furnished by TMILL, it is seen that it has opted to write off the electrical fittings from the year 2007-08 and railway sidings from the year 2008-09, by adopting longer life norms than prescribed in Companies Act, 1956. With reference to depreciation on covered sheds, TMILL has chosen to depreciate the asset fully in the remaining period of LA, which item would otherwise have to be depreciated over a period of about 30 years. Clause 2.7.1 of the revised tariff guidelines stipulates that depreciation has to be allowed on straight line method with life norms adopted as per the Companies Act, 1956 or based on the life norms prescribed in the Concession Agreement whichever is higher. The LA does not prescribe explicitly restrict the economic life of the concerned assets. That being so, the estimated depreciation in respect of electrical fittings, railway sidings and covered sheds has been modified in line with the depreciation rates prescribed in the Companies Act 1956, which are adopted by TMILL.
- (c). The additional investment of Rs.1953 lakhs envisaged during the year 2007-08 towards land development and other related work has been proposed to be spread over the remaining license period of 24 years from 2007-08. The additional investment includes non-refundable non-adjustable deposit of Rs.30.07 lakhs for the proposed allotment of 9000 sq mtrs of land which is yet to be allotted by KOPT as reported by TMILL. That being so, the proposed payment of Rs.30.07 lakhs as NRNA for 9000 sq. mtrs is not considered. The balance amount of Rs.1922.23 lakhs is spread over the period of 24 years.
- (xiv). The Finance & Miscellaneous Income consists of discounted terminal value receivable by TMILL from KOPT. As per the LA, the terminal value payable by KOPT to TMILL is Rs.2.30 Crores. TMILL has considered the terminal value from the year 2006-07 onwards based on the discounting factor of 6% on the ground that it is as per the prevailing interest rates on bank deposits. Recognizing that the payment would be due after 30 years, the annualized present value for the years 2002-03 to 2005-06 is arrived by applying a discount factor of 12%. For the year 2006-07, the annualized present value is arrived at by applying a discount factor of 12.25%. For the years 2007-08 to 2008-10, a discount factor of 12.75% has been applied. The discount factors are selected bearing in mind the PLR applicable for the respective years.
- (xv). (a). The Finance & Miscellaneous Expenses, comprise contribution to Provident Fund and loss on repayment of foreign currency loans for the years 2004-05. The reported position for the year 2004-05 is considered.
- (b). Loss on repayment of foreign currency loan is considered by TMILL for the years 2005-06 to 2009-10 also. Since source of financing is not very relevant for tariff fixation as return on capital employed in accordance with the Capital Asset Pricing Model as stipulated in the revised tariff guidelines is allowed from March 2005, loss on repayment of foreign currency loan is also not considered as cost. The Finance & Miscellaneous expenses reported at around Rs.7.86 lakhs for the year 2006-07 is relied upon since it is reported to be based on actuals. The estimated Finance & Miscellaneous Expenses around Rs.9 lakhs each during the years 2007-08 to 2009-10 are considered.
- (xvi). (a). In case of private terminal operators the return allowed prior to the year 2005-06 was based on the equity component of capital employed subject to a debt / equity ratio of 1:1. The capital structure of TMILL for berth No. 12 for the year 2002-03 consists of only equity component of Rs.929 lakhs. 50% of this equity component was considered as equity to allow 20% return adjusted for capacity utilisation of around 66%. For the

balance 50% of the capital structure, interest cost calculated applying the rate of interest considered for the year 2004-05 is allowed as pass through. Rate of interest applicable for the year 2004-05 is considered because the operator has not incurred interest cost during the year 2002-03 and 2003-04.

- (b). The debt equity ratio for the year 2003-04 is found to be around 0.73:0.27. The operator has reported that no-interest was paid during the year 2003-04 since the loan was taken in the end of the financial year. 20% return on equity component of capital structure declared by TMILL for the year 2003-04 is allowed adjusting for capacity utilisation of around 57%.
- (c). The debt equity ratio for the year 2004-05 is found to be around 0.23:0.77. As stated above, the 20% return on equity allowable is subject to debt equity ratio of 1:1. Since the equity component is on the higher side, the entire capital structure for the year 2004-05 is assumed at a level of 1:1, in terms of debt & equity for the purpose of allowing return. Out of the total capital of Rs.3027 lakhs for the year 2004-05, return @ 20% is allowed on 50% of the total capital subject to adjustment on account of capacity utilisation of around 64%.
- (d). The TMILL has stated in the cost statement for the years 2004-05 and 2005-06 that the surplus is before meeting interest cost. The segregated accounts are inclusive of interest cost as reported by TMILL. Since no schedule to the accounts is furnished, it could not be verified under which head interest payment is included. The total expenses shown in the cost statement furnished by TMILL tallies with that of the segregated accounts. That being so, the surplus depicted by the cost statement for the years 2004-05 and 2005-06 appears to be after interest payment only.
- (e). As stated earlier, the operator has deployed the harbour mobile crane for activities at places other than Berth No. 12 also. Since the operator has taken loan for acquisition of harbour mobile crane, the interest relevant for usage of the crane at places other than Berth No. 12 needs to be excluded from the total interest amount for the purpose of allowing it as pass through. Since the interest cost between Berth No. 12 and other than Berth No. 12 is stated to have been allocated, on an appropriation basis, it is presumed that the interest relevant for usage of crane at places other than Berth No. 12 stands excluded.
- (f). The segregated accounts do not explicitly show the amount of interest allocated to Berth No. 12. In the absence of this information regarding allocated interest for Berth no. 12, the reported interest of Rs.25.36 lakhs after excluding the capitalised interest of Rs.5.92 lakhs for the year 2004-05 is allowed towards the reported debt component of Rs.692 lakhs. Since 50% of the total capital structure of Rs.3027 lakhs is considered as equity capital as stated above, the remaining 50% is taken as debt. Therefore, the interest on notional debt component over and above the reported actual of Rs.692 lakhs is also allowed in proportion the amount of Rs.25.36 lakhs bears to Rs.692 lakhs.
- (g). The segregated annual accounts do not explicitly show interest payment. Since no schedule to the accounts is furnished, break up of expenditure is not available to verify the head under which interest payment is shown. However, TMILL has declared Rs.38.61 lakhs as interest for the year 2005-06. Return on capital employed at 15% is admissible for the year 2005-06 as per revised tariff guidelines. That being so, the question of allowing interest as pass through does not arise. Therefore, the amount of Rs.38.61 lakhs as declared by operator is not allowed as pass through.

- (xvii). (a). The number of equipments that are installed in berth No. 12 differ from the number of equipments indicated in the LA. In this regard, TMILL has clarified that this position has arisen due to change in the cargo mix envisaged by it earlier. In this context, it is stated that the LA provision 3.9 (a)(i)(f) stipulates to abide by the yearwise investment plan, according to which the TMILL has been required to invest Rs.30.07 crores within 36 months from 29 January 2002, the date of signing the LA. This means that the TMILL should have invested Rs.30.07 crores within 28 January 2005 towards acquisition of equipment and development of other infrastructure. KOPT has reported that it has approved certain changes in the specifications of equipment and other infrastructure and revised the total investment to Rs.25.80 crores instead of Rs.30.07 crores. This revised position of Rs.25.80 crores is found to match with the gross block as on 31 March 2005, when capitalized upfront payment is excluded, as reported by the TMILL earlier.
- (b). The TMILL has not furnished details regarding the computation of Capital Employed for the year 2005-06. The annual accounts (2005-06) reveal that the operator has invested a sum of around Rs.24 lakhs towards Plant & Machinery. As the operator has already made investments in the facility to the extent of Rs.25.80 crores, the investment of Rs.24 lakhs made in the year 2005-06 in Plant & Machinery appears to be an additional investment. Recognising the fact that the list of equipments described in LA is at the minimum level and looking into the actual traffic of around 11 lakh tonnes during 2005-06 the investment of Rs.24 lakhs made by operator in Plant & Machinery during 2005-06 is considered in this analysis. No additions to the Gross Block during 2006-07 is reported.
- (c). The actual working capital for 2005-06 and estimated Working Capital for the years 2006-07 to 2009-10 are moderated in line with clause 2.9.9 of the Revised Tariff Guidelines as explained below:
- (i). The relevant clause of Revised Tariff Guidelines has prescribed a limit on Sundry Debtor balances to 2 months estate income and railway terminal charges payable by Indian Railways. Since these items are not relevant for TMILL, the current asset element Sundry Debtors is considered as nil for 2005-06 to 2009-10.
- (ii). The actual cash & bank balance for 2005-06 and estimated cash and bank balance for 2006-07 to 2009-10 are limited to one month's cash expenses as prescribed in the guideline.
- (iii). TMILL has confirmed that it has projected the inventory value in line with the revised tariff guidelines for the years 2005-06 to 2009-10. 6 months of the repairs and maintenance cost has been considered as inventory under current assets by TMILL. The estimated inventory value is moderated based on the moderation effected in the estimates of repairs & maintenance cost.
- (iv). TMILL has considered the security deposit for the leased land paid to KOPT as an item of current asset, for all the years under consideration. The security deposit is payable to KOPT as per the Scale of Rates of KOPT for allotment of land. The payment of security deposit does not appear to be governed by the LA entered into between operator and KOPT. To a query in this regard, TMILL did not confirm this position. The existing clause 2.9.9 of revised tariff guidelines does not include security deposit as an item of current asset. That being so, this Authority is not in a position to treat security deposit as an item of Current Asset.

- (v). The current liability is considered as NIL as TMILL has not furnished any estimate of current liability.
- (xviii). Initially, TMILL stated that the terminal is capable of handling 7.5 lakh tonnes of cargo annually considering the cargo mix. Subsequently, TMILL has conveyed the capacity of terminal at 6 lakh tonnes for export cargo and 10 lakh tonnes for import cargo. But, in the absence of workings for capacity calculation furnished by TMILL despite a specific requisition in this regard, capacity reported by of TMILL could not be verified. The KOPT has, reportedly based on government guidelines for updating port capacity, has stated that TMILL will be able to handle 10.7 lakh tonnes of cargo per annum at berth No. 12. Significantly, the reported capacity is stated to be based on the various cargo of varying output handled by TMILL and taking into consideration various cargo handling equipments deployed by TMILL. It has to be noted that the TMILL in its revised proposal dated 14 February 2007 has proposed an aggregate investment of Rs.5 crores in plant and machinery and Rs.2.24 crores in building during the years 2007-08 to 2009-10. The proposed investment may add to the capacity of the berth No. 12. TMILL has reported that the handling capacity will increase by 3 lakh tonnes, 1.50 lakh tonnes and 0.50 lakh tonnes during the years 2007-08 to 2009-10, respectively. Since the KOPT has not furnished its comments on this aspect of the revised proposal of TMILL, the increase in the capacity of the terminal due to the proposed investments could not be confirmed. The position reported by KOPT conveying the capacity of the terminal at 10.7 lakh tonnes is relied upon as the assessment is stated to be based on the Government guidelines. This capacity level is considered unaltered for all the years upto 2009-10. Considering the capacity of the terminal at 10.7 lakh tonnes per annum and taking into account the actual traffic of 7.09 lakhs, 6.12 lakhs and 6.82 lakh tonnes for the years 2002-03 to 2004-05, respectively, the capacity utilisation works out at 66.26%, 57.15% and 63.77% for the three years respectively.
- (xix). Return is to be allowed on capital employed, in accordance with Clause 2.9.1 of the revised tariff guidelines from the year 2005-06. The rate so fixed was 15% per annum for the years 2005-06 and 2006-07, subject to capacity utilisation of 60% and above. Considering the capacity of berth No. 12 at 10.70 lakh tonnes and actual traffic of 11.67 lakh tonnes and 9 lakh tonnes for 2005-06 and 2006-07 respectively, the capacity utilisation works out to more than 60%. That being so, the maximum permissible return of 15% is allowed on the capital employed for 2005-06 and 2006-07.
- The return on capital employed fixed for the year 2007-08 is 16%. Considering the capacity of the terminal and the estimated traffic of 9 lakh, 9.5 lakh and 10 lakh tonnes for the years 2007-08 to 2009-10, respectively, the capacity utilisation works out to more than 60%. That being so, the maximum return of 16% is allowed on the (moderated) capital employed for the years 2007-08 to 2009-10.
- (xx). Subject to the above adjustments, the analysis of actual performance of TMILL for the years 2002-03 to September 2007 shows a net surplus to the tune of Rs.2146.93 lakhs after maximum permissible return including 10% special levy during a period of four years from 2002-03 to 2005-06. The analysis further shows a deficit position after admissible return to the extent of Rs.46.36 lakhs in the year 2006-07 and Rs.90.74 lakhs during the first half of the year 2007-08. After adjusting the total deficit of Rs.137.10 lakhs with the net surplus of Rs.2146.93 lakhs, the net surplus will be Rs.2009.83 lakhs. This amount is considered in equal proportion for set off in each of the years 2007-08 (2nd half) to 2009-10.
- (xxi). (a). The cargo handled at berth No. 12 consists of iron ore, limestone, steel, logs, fertilizer, project cargo and containers. The operator has estimated total throughput of 9 lakh, 9.50 lakhs and 9.50 lakh tonnes for the years 2007-08 to 2009-10, respectively. The estimated container traffic is 500

TEUs each for the said three years. The traffic estimate projected by TMILL for the years 2007-08 and 2008-09 is based on the estimates suggested by KOPT in its Report.

- (b). KOPT expects to commission two additional berths at HDC during the year 2007-08. In the view of KOPT, the commissioning of additional berths may absorb a part of traffic at TMILL. In this premise, KOPT expects the traffic at TMILL for the year 2009-10 to increase by 5%. In that case, the traffic estimate of 9.50 lakh tonnes projected by TMILL for the year 2009-10 requires to be modified to the level of 10 lakh tonnes. The individual component of cargo mix of 9.50 lakh tonnes for the year 2009-10 estimated by TMILL is escalated by 5% to arrive at the total traffic of 10 lakh tonnes. Incidentally, TMILL does not anticipate handling of coastal cargo at its terminal.
 - (c). As stated above, TMILL has estimated container traffic at 500 TEUs each for the 3 years under consideration. KOPT has strongly objected to the handling of containers by TMILL on the ground that the operator's bid was evaluated on the basis of the cargo projections given by TMILL, which did not include containers. As brought out by TMILL, the permissible cargo at Berth No. 12 stipulated in the LA includes containerized cargo. That being so, this Authority is not in a position to ignore the container traffic projection, the related estimates of income and expenditure and the proposed rates therefor. It is not for this Authority to go into the basis for evaluation of bids adopted by KOPT. Prescription of tariff for handling containers by TMILL should not be construed as an endorsement by this Authority for the operator's right to handle containers. It is for the Licensor and Licensee to sort out the issues between themselves.
 - (d). The traffic estimates and the cargo mix as furnished by TMILL, subject to the modification in the traffic estimate for the year 2009-10, are relied upon. If any undue advantage is found to have accrued to TMILL due to variation of actual performance in traffic, such undue advantage accrued to TMILL will be set off in the next review of its tariff in terms of revised tariff guidelines.
- (xxii). (a). The cargo related charges are proposed to be levied under various heads of tariff like wharfage charges, on-board charges, on-board supervision, loading/unloading/ restacking, demurrage, transportation and storage & miscellaneous services. TMILL has not considered the income arising out of providing despatch related services to lime stone. This service relates to opening, cleaning & closing of wagons, as seen from the description of the tariff item proposed in the Scale of Rates. The proposed rate of Rs.6 per MT for providing this service is included in estimation of operating income of limestone.

Income from on board supervision for handling containers has not been estimated by TMILL through TMILL has adopted the existing rate of Rs.250 per TEU in the proposed Scale of Rates. We have included an estimated income of Rs.1.25 lakhs each for the year 2007-08 to 2009-10 on account of on-board supervision charges.

Since TMILL has not estimated income on account of loading / unloading / restacking operation in respect of fertilizer, though it has prescribed a specific tariff item in its proposed Scale of Rates, we have estimated this income at Rs.40 per MT reportedly levied by TMILL at present and included in the income estimation.

Likewise, income on account of transportation of fertilizer for which a specific rate has been proposed is also included in the income estimation.

As stated earlier, the cost statement furnished by TMILL for the years 2002-03 to 2006-07 are for the activities covered by the provisions of MPT Act. For the purpose of income estimation for the years 2007-08 to 2009-10, TMILL has considered the rates approved in the Scale of Rates of KOPT. The TMILL has adopted its own rate for despatch related services, clearing & forwarding activity, rate for supply of unskilled labour and rate for high-heaping of cargo. These services are the identified port services and, therefore, the Scale of Rates proposed by TMILL is for the activities covered under MPT Act.

Considering the estimated traffic of various cargo including containers, and the existing rates of tariff as prescribed in the Scale of Rates of KOPT, the income estimation towards the rendering of services under the above mentioned activities are found to be arithmetically correct.

- (b). TMILL has estimated other income of around Rs.149 lakhs, Rs.221 lakhs and Rs.221 lakhs for the years 2007-08 to 2009-10, respectively. It appears from the computation sheet that this other income pertains to income arising out of allotment of plot for storage of cargo.

At the time of signing the LA in 2002, TMILL has been allotted 14000 sq.mtrs of backup area including covered space behind berth No. 12. As clarified by TMILL, the actual area available for storing of cargo is not more than 10,000 sq. mtrs. TMILL has been allotted an additional 54,000 sq. mtrs of land on lease expiring in January 2032. It is also reported that an additional 9000 sq. mtrs of bare land is being allotted for which application has already been made by TMILL in January 2007. However, it is not indicated whether and when the additional land of 9000 sq. mtrs will be allotted to TMILL. Therefore, effectively a total area of 64000 sq. mtrs is available with TMILL. To a query, TMILL has clarified that it has planned to develop 19000 sq. mtrs area to provide Railway siding and covered warehousing facility for storage of cargo. But, TMILL has not indicated as to when this 19000 sq. mtrs area will be used for storage of cargo after development of land. Nevertheless, 45000 sq. mtrs of area is effectively available for storage of cargo. The income estimation arising out of allotment of plot for storage of cargo shows that an area of 32100, 44100 and 44100 sq. mtrs of land including covered space are proposed to be allotted to the users during the three year period from 2007-08 to 2009-10. The reason for allotment of less area during 2007-08 as compared to the years 2008-09 and 2009-10 remains unexplained. It is relevant here to note that the LA provides for an initial allotment of land to the extent of 14000 sq. mtrs with a general provision about allotment of additional lands / utilities etc., Considering the position that the operator is engaged in the services outside Berth No. 12 also, it is not confirmed whether the allotted land are used for the storage of cargo handled at Berth No. 12 only. We also do not have benefit of the views of the licensor in this regard. Nevertheless, the estimated income arising out of 32100 sq. mtrs for the year 2007-08 is considered without any change. The plot rental income estimated by TMILL for the years 2008-09 and 2009-10 is accepted as furnished.

At the time of next review, if it is found that actual income varies widely from the estimates considered now, the additional accrual will be fully set off against future tariff.

- (xxiii). (a). In respect of all the operating expenditure estimates for the years 2008-09 and 2009-10, TMILL has considered an escalation factor of 4.5% per annum over the estimates for the year 2007-08. The annual escalation of the cost estimates is considered in terms of Clause 2.5.1 of the Revised

Tariff Guidelines which requires that the expense projections of the major ports and terminal operators should be in line with traffic adjusted for price fluctuations with reference to current movement of Wholesale Price Index for all commodities as announced by the Government of India. Based on the average inflation rate for the financial year 2006-07, annual escalation factor of 5.4% per annum is considered for the expenditure projections in the cost statement of tariff cases to be decided during the year 2007-08. Accordingly, the expenditure projections are moderated applying the escalation factor of 5.4% per annum.

- (b). Operating and Direct Labour cost consists of "stevedoring expenses" and "operation and maintenance labour expense" for equipments. The TMILL has outsourced its stevedoring activity at Berth No. 12. A copy of the contract furnished by TMILL indicates a rate of Rs.38 per MT applicable for the year 2006-07. However, TMILL has applied the same rate of Rs.38 per MT for the year 2007-08 also. This position is accepted for estimating the expenditure on this account.

Another element in the operating and direct labour cost is operation and maintenance labour cost for equipments. The TMILL has estimated this cost at Rs.62.91 lakhs, Rs.65.74 lakhs and Rs.68.70 lakhs for the years 2007-08 to 2009-10 respectively. TMILL is stated to have incurred an actual expenditure of Rs.61.26 lakhs in the year 2006-07. While the working for estimated expenses for the years 2007-08 to 2009-10 has been furnished, similar working for actuals of 2006-07 has not been furnished by the operator despite a request in this regard. However, it has to be noted that expenditure for the year 2006-07 is reportedly shown at actuals. Therefore, the amount of Rs.61.26 lakhs is considered for the year 2006-07. The estimates for subsequent three years are modified applying the escalation factor of 5.4% per annum.

- (c). The TMILL engages maintenance labour on contract basis for maintenance job. The estimated amount of around Rs.10 lakhs each for the years 2007-08 to 2009-10 has not been supported by documentary proof. The actual expenditure of Rs.10.00 lakhs reported by TMILL for 2006-07 is taken as base and escalated by applying an escalation factor of 5.40% per annum for estimating the expenditure for the year 2007-08 to 2009-10.
- (d) (i). TMILL has estimated oil and lubricant cost at Rs.140.94 lakhs for the year 2007-08 which is projected for subsequent two years by applying an escalation of 4.5% per annum over the respective previous years. The estimated amount of Rs.140.94 lakhs for 2007-08 when compared with the actual expenditure of Rs.55.44 lakhs during 2006-07, as subsequently conveyed by TMILL in June 2007, there is a steep increase of around 154% in 2007-08.

No change in the total number of equipments during the years 2006-07 and 2007-08 is reported by TMILL. While detailed calculation has been furnished for the estimate for the year 2007-08, no such calculation is furnished for the year 2006-07, despite a request made in this regard. In the absence of calculation for the year 2006-07, the reasons for steep increase in the estimate for the year 2007-08 as compared to the actual for 2006-07 could not be ascertained. Therefore, the average cost of diesel and lubricant for handling per tonne of cargo is calculated based on the actual cost of oil and lubricants for the year 2006-07. The average works out to Rs.6.15 per metric tonne. This rate is escalated by applying an escalation factor of 5.4% per annum for the years 2007-08 to 2009-10 over the respective previous years

to arrive at the estimates of oil and lubricant cost for the years 2007-08 to 2009-10.

- (ii). The estimated equipment running cost includes repairs and maintenance cost of equipments deployed at Berth No. 12. The operator has estimated an amount of Rs.96.50 lakhs, Rs.130.84 lakhs and Rs.110.38 lakhs for the years 2007-08 to 2009-10, respectively, against the actual expense of Rs.27.55 lakhs for 2006-07 reported by the operator subsequently in June 2007. The steep hike in the estimate for 2007-08 is attributed to the expiry of equipment warranty of various machines and expensive spares for the machines. This general statement is not supported by any documentary evidence or cost details. The estimates are, therefore, moderated applying the escalation factor of 5.4% per annum over the respective previous year's estimate taking the actual expenditure of Rs.27.55 lakhs for the year 2006-07 as base.
- (iii). The next item of equipment running cost is towards port permit and road tax. An amount of Rs.8.87 lakhs each is estimated for the years 2007-08 to 2009-10 as against the actual expenses of Rs.4.56 lakhs in 2006-07 communicated by operator subsequently in June 2007. The estimates for 2007-08 to 2009-10 are moderated by applying the escalation factor of 5.4% per annum over the respective previous years, taking the actual expenditure of the year 2006-07 as base.
- (e). The estimated equipment hire charges of small loader and forklift are supported by copies of contracts. The estimated expense in this regard is considered in this analysis for the years 2007-08 and 2009-10. Since TMILL has proposed to replace the hired forklift with its own forklift, it has rightly excluded the hire expenses towards forklift in the year 2009-10. Hence, the estimate on this account for the year 2009-10 is substantially less as compared to the estimates of previous two years.
- (f). As stipulated in the LA, TMILL has to pay monthly license fee for 14000 sq. mtrs of hardstand land allotted by KOPT at Rs.21.65 per sq. mtr and escalated by 5% per annum of the amount payable in the previous year.

It appears that 14000 sq. mtrs of land has been allotted to TMILL in January 2002 at the time of signing the LA. Considering the rate of Rs.21.65 for 2002-03, the lease rent per sq. mtr for the year 2007-08 works out to Rs.27.63 per sq. mtr. As against this rate, TMILL has considered a rate of Rs.26.44 per sq. mtr. The lease rent at the rate as estimated by TMILL for 14000 sq. mtrs is considered without any change, the reason for difference in rate remaining unexplained.

TMILL has been allotted 54,000 sq. mtrs of land in December 2006 at Rs.13.92 per month per sq. mtr with an escalation of 5% per annum. The estimated lease rent for the years 2007-08 to 2009-10 is in accordance with the rate specified in the allotment letter and hence considered in this analysis.

With reference to estimated lease rent for the additional 9000 sq. mtrs of land, the land is yet to be allotted by the KOPT as reported by it in May 2007. TMILL has claimed that it has considered the rental income arising out of 9000 sq. mtrs of land. As explained in the earlier part of this analysis regarding estimation of rental income, the estimated rental income is not seen to be inclusive of this 9000 sq. mtrs of land.

Therefore, the lease rent expenditure estimated on additional land of 9000 sq. mtrs amounting to around Rs.16 lakhs per annum is not considered.

It appears that TMILL has taken 5000 sq. mtrs of bare land on short term license basis from KOPT for storage of cargo. The present allotment of this land is upto 31 August 2007, as reported by KOPT. This means, the license fees for this piece of land is payable for a period of 5 months in the year 2007-08. The reason for estimating license fees for the whole year of 2007-08 is not explained by TMILL, though the operator himself has disclosed his intention to surrender this piece of land from October 2007. Since the allotment of land is valid upto August 2007, the estimated license fee is suitably moderated to reflect the license fee payable upto August 2007.

- (g). The estimates of other expenses relate to Lashing, Securing and Dunnaging (LSD), unlashng, sticker, despatch related services, intraport transportation, survey, clearing & forwarding expenses and miscellaneous expenses. Each of these items is discussed below:

- (i). Lashing / Securing / Dunnaging (LSD) and unlashng:

TMILL has outsourced this activity as seen from the copy of the contract furnished. This activity is seen to have been outsourced for the estimated traffic of steel cargo of TATA steel, at the rate of Rs.80/- PMT finalised by TMILL in the year 2004-05 with a private party. The rate of Rs.84 per MT adopted by TMILL for estimation of this expenditure for the year 2007-08 is not supported by documentary evidence. Therefore, the estimated expenditure for this activity for the year 2007-08 to 2009-10 is considered uniformly at the rate of Rs.80 per tonne.

The expenditure towards unlashng service, which has also been outsourced at Rs.8/- per tonne since the year 2004-05. It appears that this activity is being undertaken by the private party @ Rs.8/- finalised in 2004-05 even upto the years 2007-08. TMILL has not furnished documentary evidence for change in the rate, if any. So, the estimates for unlashng activity calculated applying a rate of Rs.8/- PMT for the year 2007-08 to 2009-10 is considered in this analysis.

- (ii). Sticker, Tag writing & color coding services:

From the copy of service contract dated 1 September 2006, it is clear that TMILL has finalised a rate of Rs.4.50 PMT for the year 2006-07, for TATA steel cargo. This rate is escalated by applying an escalation factor of 5.4% per annum for moderating the estimates for the years 2007-08 to 2009-10 taking the rate of 2006-07 as base.

- (iii). Despatch related services

The despatch related services for handling limestone has been outsourced by TMILL for which it has finalised a rate of Rs.4.50 per tonne during 2004-05. TMILL has not produced documentary evidence for change in the rate, if any.

As stated earlier, the income projection estimated by TMILL for handling limestone for the years from 2007-08 to 2009-10 has been modified taking into account the income arising out of despatch related services, bearing in mind that TMILL has proposed a specific rate for rendering despatch related services under 'Miscellaneous Services'. Since the income estimation

includes income arising out of despatch related services for the year 2007-08, the expenditure on account of this activity estimated at Rs.4.5/- PMT is reckoned with for the year 2007-08 though TMILL has not estimated this expenditure for the year 2007-08. The estimates for subsequent two years are modified to reflect the rate of Rs.4.50 per tonne.

(iv). Intra-port Transportation

- (a). The cargo item considered by TMILL for estimation of intra-port transportation includes steel. The objection raised by KOPT against the intra-port transportation of steel is based on two grounds, viz. TMILL undertakes such transportation operation of steel to areas beyond its licensed area of operation and secondly cost of additional transportation could have been avoided if the operator had taken the area of 54000 sq. mtr. plot contiguous to berth no.12. TMILL has clarified that no land adjacent to berth no.12 or its back up area is available. The operator has further claimed that the land of 54000 sq. mtr. offered earlier by KOPT was at some distance from berth no.12.

Significantly, the scope of contract entered by TMILL for handling of steel cargo includes transportation of such cargo from yard to plot or vice versa. Notably, TMILL has identified 3000 sq. mtrs. of covered shed area for the year 2007-08 and 6000 sq. mtrs. area each for the years 2008-09 and 2009-10 apart from 5000 sq. mtrs of hardstand land for storage of steel in the area allotted by KOPT. In this scenario, this Authority places reliance on the statement made by TMILL that cost of intra-port transportation of steel would be necessarily incurred.

Initially, TMILL had estimated to outsource intra-port transportation activity relating to steel cargo handled on account of TATA. The remaining 20% of steel cargo was proposed to be handled by using operator's own equipment. In the revised proposal the quantum of cargo outsourced is estimated at 60% of the total estimated steel traffic. This revised position is relied upon.

The updated contract rate of Rs.36.71, as communicated by TMILL subsequently for the year 2007-08 is considered and estimate for the subsequent two years are modified applying the current escalation factor of 5.4% per annum taking the rate of the year 2007-08 as base.

- (b). The objection raised by KOPT towards cost of transportation of limestone appears to be with reference to such cost of transportation of limestone to and from outside the limits of berth no.12. The copy of the contract document furnished by TMILL shows that the nature of transportation is from jetty to designated plot. It is noteworthy that the operator has earmarked 21000 sq. mtrs. of hardstand land allotted by KOPT for storage of limestone for all the three years.

For the outsourced activity of transportation of limestone, from jetty to stack yard, the operator has adopted a rate of Rs.26 PMT for the year 2007-08 for the entire traffic projected for the year 2007-08. However, the updated contract rate of Rs.23.75 subsequently communicated by TMILL is considered as base. The estimates for subsequent two years are moderated applying

an escalation factor of 5.4% taking into account the moderated rate of the year 2007-08 as base.

- (c). The intra-port transportation cost for the entire estimated traffic of iron ore has been considered at Rs.75 per tonne for the year 2007-08. This is a new cargo item included by TMILL in its revised proposal. TMILL has not furnished documentary evidence to support the rate of Rs.75/- per tonne for the year 2007-08. Since the income from handling iron ore, which includes cost of intra-port transportation is recognised in the income estimates, the estimated expenditure towards intra-port transportation is also considered for the years 2007-08 to 2009-10 subject to verification of actuals during the next review of tariff of TMILL.
- (d). As stated by TMILL, 25% of the container traffic will involve intra-port transportation. The cost of this intraport transportation has not been captured in the expenditure estimate. We have allowed this expenditure at a rate of Rs.917.71 per TEU based on the latest contract copy furnished by TMILL.

(v). Survey Expenses

Other expenses include survey expenses of lime stone, steel and iron ore. One of the activities proposed to be undertaken under 'On board supervision' is survey of cargo. In the revenue estimation, income from 'On board survey' is considered by TMILL. It is noteworthy that survey charges are included in the Scale of Rates of ISHPL, which is another private operator at HDC of KOPT.

The rate of survey expenses considered by TMILL for estimation purpose varies from cargo to cargo. TMILL has furnished documentary evidence for the rate of Rs.14 per MT for TATA Steel cargo finalised in 2005-06. No documentary evidence is furnished to show change, if any, in the rate. Further, no documentary evidence has been furnished for the rates of Rs.3, Rs.2 for other cargo. The rates adopted by TMILL for the estimates of survey expenses for the year 2007-08 is considered for the years 2008-09 and 2009-10 subject to verification of actuals during the next review of tariff of TMILL.

(h). Clearing & forwarding Expenses:

The KOPT has objected to TMILL operating as a steamer agent. TMILL has, however, clarified that it provides clearing and forwarding service consisting of processing of documents relating to import or export of cargo for customs clearance. The actual per tonne expenditure for the year 2006-07 works out to Rs.4.79. However, TMILL has considered a rate of Rs.4.44 per tonne for estimation of this expenditure for 2007-08, which is accepted. The per tonne rate of Rs.4.44 is escalated by 5.4% per annum for estimating Clearing & Forwarding expenditure for the year 2008-09 and 2009-10, taking the respective previous year as base.

(i). Miscellaneous Operational Expenses:

- (i). The estimated miscellaneous operational expenses are in the nature of unloading at siding & transportation to plot/hook point strapping, slings and gear cost etc., The operator has reported an actual expenditure of Rs.65 lakhs for 2006-07 escalating this expenditure by around 7.5% for the years 2007-08 to 2009-10. The estimates for the years 2007-08 to 2009-10 are moderated by applying an escalation factor of 5.4% per annum over the respective previous years taking the amount of the year 2006-07 as base.

- (ii). In addition, TMILL has estimated an expenditure of around Rs.99 lakhs and Rs.103 lakhs during the years 2008-09 and 2009-10 respectively towards unloading of steel cargo at siding and transportation to plot / hook point. The TMILL has not given any documentary evidence to justify the expenditure despite a query in this regard. The estimated expenditure has been calculated by TMILL at Rs.110/- per tonne of rail bound steel cargo. As the railway siding is expected to be operationalized during the year 2008-09, the estimated expenditure is considered subject to verification with actuals during the next review of its tariff.
- (iii). Miscellaneous operational expenses include civil maintenance of plots. TMILL has contemplated to shift the existing covered warehouse in the back-up area behind the Berth No. 12 to the newly allotted plot in the year 2008-09 for the reasons of operational difficulties in the back-up area, at a cost of Rs.75 lakhs. As reported by KOPT, this shed was erected by TMILL in the back up area allotted to it. It is not clear why the operational difficulties projected now by the operator were not foreseen at the planning stage of construction of the shed at the back up area. No cost details to justify the estimate have been furnished inspite of a specific request made by us. In the absence of cost details this Authority is not in a position to consider the estimated expenditure of Rs.75 lakhs in the year 2008-09.
- (j). Management & Administration Overheads:
 - (i). The estimated Management & Administration Overheads for the year 2007-08 is found to be 28% more than the actuals for the year 2006-07. TMILL has sought to justify this increase on the ground of increase in operations at berth No. 12. The Management & Administration Overheads cannot be said to have a linkage to increase in operations arising out of traffic. In fact, the estimated traffic for the year 2007-08 is marginally less than the actual traffic of 2006-07.
 - (ii). The estimated Management overheads for the year 2007-08 to 2009-10 includes a new item of expenditure viz., security charges to the extent of Rs.9.72 lakhs in addition to security charges separately estimated. It appears that this item relates to providing security to plot area allotted to the operator. Though not clearly explained by TMILL, it appears that the new security charges is in the incremental expense arising in the context of the additional land of 54,000 sq. mtrs allotted by KOPT. In any case, the estimated security charges of Rs.9.72 lakhs for the year 2007-08 is considered in this analysis subject to verification at the time of next review of tariff of TMILL. The estimates for the subsequent two years are modified by applying an escalation factor of 5.4% per annum.
 - (iii). The estimate for the year 2007-08 excluding the security charges of Rs.9.72 lakhs is around 23% more than the actuals of 2006-07. The estimates of 2007-08 (excluding security charges of plot) is moderated by applying an escalation factor of 5.4% over 2006-07. The estimates for the subsequent two years are moderated applying the escalation of 5.4% over the respective previous years taking the moderated estimate of 2007-08 as base.
 - (iv). The estimated General Overheads for all the years are also moderated applying the escalation factor of 5.4% over the respective previous years, taking the actuals of 2006-07 as base.

- (xxiv). The TMILL has envisaged an additional investment to the tune of Rs.22.37 Crores in the year 2007-08. As brought out earlier, Rs.60 lakhs is towards Plant and Machinery, Rs.224 lakhs towards Building sheds and other structures and Rs.1953 lakhs towards land development, fencing, land survey and non-refundable deposit towards additional 54,000 sq. mtrs and 9000 sq. mtrs of land.

An investment of Rs.266 lakhs and Rs.192 lakhs has been envisaged towards Plant and Machinery in the year 2008-09 and 2009-10 respectively.

The proposed investments for the years 2007-08 to 2009-10 are analysed below:

- (a). Except stating that the proposed investment of Rs.60 lakhs in Plant and Machinery is for electrical fittings in the newly allotted plot, the TMILL has not brought out the status of the proposed investments despite a specific request. Since, KOPT has confirmed that it has allotted 54,000 sq. mtrs of plot area to TMILL, the incidence of capital expenditure in the reported electrical fittings cannot be ruled out. Since the present status of the investment has not been conveyed and nearly half of the year 2007-08 has already elapsed, the proposed investment of Rs.60 lakhs is considered in the year 2008-09 instead of 2007-08.
- (b). At the time of entering into LA, TMILL has been handed over assets including 14,000 sq. mtrs back up area. The back-up area includes, covered warehouse measuring 3000 sq. mtrs. It appears that TMILL has envisaged development of additional stockyard with covered shed in the year 2007-08 to the tune of Rs.224 lakhs. The additional covered storage yard of 3000 sq. mtrs is proposed to be utilised for storage of steel cargo. With reference to an observation made by KOPT, the operator has categorically stated that it has not considered cost of any covered shed outside berth no. 12. Therefore, the investment of Rs.224 lakhs in the year 2007-08 is considered as proposed by TMILL. Incidentally, the estimated storage income arising out of utilisation of the additional covered shed for storage of steel cargo has been recognised in the year 2008-09, apart from the storage income estimated to accrue from the existing covered shed.
- (c). The next item of additional investment of Rs.1953 lakhs during the year 2007-08 is towards land development and other related work. The TMILL has conveyed the status of the development of 54,000 sq. mtrs of land. An area of 10,000 sq. mtrs is reported to have been developed and the operator has proposed to develop the remaining area after the monsoon. The amount of Rs.1953 lakhs includes Non-Refundable Non-Adjustable (NRNA) deposit of Rs.30.07 lakhs for the proposed allotment of 9000 sq. mtrs of land. This land of 9000 sq.mtrs is yet to be allotted by KOPT as reported by it in May 2007. That being so, the proposed payment of Rs.30.07 lakhs as NRNA for 9000 sq. mtrs is not considered. The balance amount Rs.1922.93 lakhs is considered in this analysis. The approach adopted by TMILL to spread the land development cost over the remaining period of 24 years of LA from 2007-08 is accepted.
- (d). With reference to the proposed investment of Rs.266 lakhs and Rs.42 lakhs in the year 2008-09 and 2009-10 respectively, TMILL appears to have initiated the process for construction of railway siding and the work order in this regard was proposed to be finalised by June 2007. The provision of railway siding is intended for quick movement of rakes to increase cargo throughput and handle multiple rail bound cargo. It is noteworthy that the allotment of additional 54,000 sq. mtrs of land is stated to facilitate railway siding. It is relevant here to note from the allotment letter that the additional infrastructure to be provided by TMILL on the additional 54,000 sq. mtrs of land is over and above the minimum

equipment and infrastructure support prescribed in the Licence Agreement. The proposed investments towards railway siding during 2008-09 and 2009-10 are considered.

- (e). The documentary evidence furnished by TMILL shows that it had taken on hire 16 tonne capacity fork lift truck in the year 2005. The hired forklift is proposed to be replaced with a 25 tonne capacity forklift. Replacement of existing hired forklift truck should result in cost reduction and efficiency improvement in 2009-10. Therefore, the proposed investment of Rs.150 lakhs in the year 2009-10 in this regard is admitted.
- (xxv). Subject to the discussions above, the cost statement has been modified. The modified cost statement is attached as **Annex-I**. The result disclosed by cost statement at the tariff levied at existing KOPT Scale of Rates is summarized as shown in the table given hereinunder:

SUMMARY OF THE RESULTS OF TMILL AT THE EXISTING LEVEL OF TARIFF

Sr. No	Particulars	Operating Income				Net Surplus(+)/ Deficit(-)				Net Surplus(+)/ Deficit(-) as a % of operating Income			Average Surplus/ Deficit %
		(Rs. in crores)				(Rs. in crores)							
		2007-08*	2008-09	2009-10	Total	2007-08*	2008-09	2009-10	Total	2007-08*	2008-09	2009-10	
1	TMILL as a whole	12.30	26.65	27.93	66.88	3.11	6.08	6.29	15.48	25.31%	22.82%	22.51%	23.55%

*For a period of six months from October 07 to March 08.

As can be seen from the above table, the TMILL as a whole will be in a surplus position at the present level of tariff during the period of two and half years from October 2007 to March 2010. Therefore, there is a case for downward moderation in the existing level of tariff leviable by TMILL at Berth No.12.

It is noteworthy that the existing rates at TMILL are the adoption of the rates fixed for KOPT and not determined based on the cost and investment of TMILL. It is to be remembered that this is the first exercise to frame the Scale of Rates of TMILL following the cost plus approach.

A case for downward adjustment in the KOPT level of tariff at Berth No.12 emerges mainly on account of setting off of the additional surplus realized by TMILL from the year 2002-03 to September 2007 after adjustment of the net deficit made by it during the year 2006-07 and the during the period of first half of the year 2007-08 and adjustment of unauthorized levy of special rate of 10%.

During the last exercise of general revision of tariff of KOPT completed in December 2006, the Authority found that at Haldia Dock Complex of KOPT where TMILL operates Berth No. 12, the cargo handling activity heavily subsidizes the deficit making marine activity. This clearly shows that the charges for cargo handling activity prescribed for KOPT has a quotient of cross-subsidization towards the deficit making marine activity. The compulsion of cross subsidization on this account does not arise in the case of TMILL.

It is relevant here to recall that the traffic projection of TMILL has been updated with 5% increase at the suggestion of KOPT. In the view of KOPT, TMILL has not created assets beyond what has been stipulated in the Licence Agreement. On the contrary, the TMILL's investment was less than what it had projected earlier. It appears that the expenditure estimates for the 2½ years is on the higher side even after the moderation effected. A steep hike was noticed in the reported actual expenditure towards labour for the year 2006-07 as compared the actuals for the year 2005-06. The expenditure estimates will be reviewed with reference to the

actuals during the next review of tariff of TMILL and any undue benefit accrued to TMILL will be fully set in future tariff.

In view of the net average surplus of 23.55%, the existing tariff of TMILL may be reduced by 20%, allowing a margin for errors in estimation, if any. The reduction is over the existing level of KOPT Scale of Rates levied at Berth No. 12 by TMILL for cargo related charges except the demurrage rates, equipment hire charges and charges for supply of unskilled labour.

In absolute terms, the effect of the downward revision will be a reduction of revenue of around Rs.13.38 Crores for the relevant period as against the surplus of around Rs.15.48 Crores for the corresponding period as depicted by the modified cost statement.

- (xxvi). The proposed definition of "Ad Valorem" which is in line with the definition approved in the Scale of Rates of KOPT is approved.
- (xxvii). The modifications proposed by KOPT to the definition of "TMILL" includes insertion of the sentence "a special purpose company". Incidentally, the License Agreement provision also states that the TMILL has been incorporated as a special purpose company. The operations of the licensee are not restricted to berth No. 12 of KOPT, noticed from the audited financial statements furnished by TMILL but the Scale of Rates is restricted to operations at Berth No.12. Till such time KOPT enforces the provision of LA relating to formation of SPV, it may not be appropriate to refer TMILL as SPV only for operating berth No. 12.
- (xxviii). As rightly pointed out by KOPT, the Scale of Rates should specify the limits of licensee's premises where the Scale of Rates shall apply. The definition for "TMILL Terminal" proposed by TMILL is replaced with "The TMILL premises shall mean the area licensed to TMILL including the back-up area allotted under the License Agreement". It is noteworthy that a definition on these lines was recently approved by this Authority in the Scale of Rates of the International Sea Ports (Haldia) Pvt. Ltd. (ISHPL), another private operator at KOPT.
- (xxix). The proposed definition of a "Day" is slightly modified to align with the definition of the term "Day" approved in the Scale of Rates of KOPT – relevant at HDC and the definition approved in the Scale of Rates of ISHPL at HDC.
- (xxx). The proposed definition for the term "Demurrage" to mean that it is a charge payable for storage of cargo within TMILL premises beyond free period and shall not include the cargo stored at the area allotted to a port user on license basis for storage of cargo during the license period is approved.
- (xxxii). TMILL has proposed definition for "on-board handling charges". These charges are leviable when TMILL provides man power for on-board handling operations. The definition for "on-board handling charges" for levy of charges for rendering on-board services by TMILL in the form of supply of labour for loading / unloading operations is approved.
- (xxxiii). In order to cover the operation of unloading of cargo from a vessel or loading of cargo into the vessel and when such cargo does not pass through quay, TMILL has proposed a definition for 'overside discharge/shipment." The proposed definition, which is in line with the definition approved for "overside discharge / shipment" in the Scale of Rates of another private terminal operator at KOPT and in the Scale of Rates of KOPT, is approved.
- (xxxiii). The proposed definition for "month", and "shut out" cargo are in line with the definitions approved in the Scale of Rates of the private operator at KOPT and in the Scale of Rates of KOPT.

- (xxxiv). The definitions for “TEU” and “Hazardous 1” are in line with the definitions approved for similar terms in the Scale of Rates of KOPT, and are approved.
- (xxxv). The word ‘Transshipment’ is proposed to mean a cargo not originally manifested for a port / terminal, but landed at the port / terminal, but subsequently reshipped to other ports.

The proposed definition for “Transshipment”, includes transfer of any cargo unloaded from a vessel for some operational reason and subsequently loaded in the same vessel. Unloading of cargo from a vessel at TMILL terminal for some operational reason does not change the character of transshipment cargo and that cargo is subsequently loaded in the same vessel. The proposed definition of “Transshipment” is approved.

- (xxxvi). TMILL has proposed to define the term “Wharfage” as the basic dues recoverable on all cargo / containers handled at the TMILL premises. If this definition of wharfage is accepted as a provision for general facility by TMILL, then prescription of differential rate for different cargo may not be apt. Nevertheless, the KOPT Scale of Rates contains such a provision and TMILL has only based its proposal on such Scale of Rates. The TMILL is, however, advised to initiate the process of rationalizing wharfage schedule. The proposed definition for “Wharfage” which is generally in line with the definition for the similar term appearing in the Scale of Rates of KOPT is approved.
- (xxxvii). For the purpose of levy of demurrage, cargo is categorized into Hazardous – I cargo and non-hazardous cargo. It appears that the categorization of Hazardous – I cargo is done with reference to the list of Hazardous cargo adopted by the KOPT. KOPT has suggested to replace the words “by the Board” in the definition of Hazardous Cargo – I with the words “Kolkata Port Trust” which is approved.
- (xxxviii). “Stock cargo” is defined to mean that it is the cargo received at the port for shipment without export documents, which is approved.
- (xxxix). TMILL has proposed a definition for “On-board supervision”. Looking to the list of services furnished by TMILL proposed to be rendered towards on-board supervision, this activity covers both on-board and shore services. KOPT has suggested to define “On-board supervision” in an exhaustive manner, on the ground that the phrase “certain services” mentioned in the definition of “on-board supervision” does not indicate the elements of services. Since the operator has listed the various services at Section 6 of the draft Scale of Rates proposed to be rendered towards on-board supervision, the proposed definition of “on-board supervision” is allowed.
- (XL). The various clauses proposed under Section 3 (General Principles of Assessment), which are in line with corresponding clauses approved in the Scale of Rates of KOPT, is approved subject to the following:
- (a). Samples, catalogues and other articles for which shipping companies do not collect freight and on which no customs duty is payable, diplomatic mail bags, crew baggage and all goods meant for the operator’s use are proposed to be exempted from payment of all cargo related charges. TMILL is operating in other than Berth No. 12 also, which position has been brought out both by TMILL and KOPT. That being so, there is merit in the suggestion of KOPT that the phrase “goods meant for TMILL’s use” in sub-section V should be replaced by “goods meant for use in the TMILL’s Project Facilities pertaining to Berth No. 12, HDC” and hence is approved.
 - (b). The proposed Clause 3(vii) of the draft Scale of Rates governs the basis for calculation of revenue share. It is a matter between the Licensee and

Licensors which is governed by the provisions of LA. Therefore, the proposed clause is not approved. The stand taken by KOPT in this regard has already been dealt in earlier part of this analysis.

- (c). The rate of penal interest on delayed payments by users and delayed refund by TMILL should be 2% above the PLR of SBI in terms of Clause 2.18.2 of the revised tariff guidelines. TMILL has proposed 13% rate of penal interest taking the PLR of SBI at 11%. The PLR of SBI has changed to 12.75% from 11%. The proposed rate is suitably modified to reflect the prevailing PLR of 12.75%.
- (d). Whenever a specific tariff for a service / cargo is not available in the Scale of Rates of a major port trust or a private terminal operator thereat, a procedure has been prescribed to levy a rate on ad hoc basis simultaneously with submission of proposal before this Authority. In this regard, the operator has proposed the relevant conditionalities to govern the procedure, which are in line with the tariff guidelines and the prescriptions incorporated in the Scale of Rates of major port trusts and other Private Terminal Operators. It has to be recognized that a licensor must be aware of the activities of the licensee in the licensed area to ensure that such activities are in consonance with the License Agreement provisions. Therefore, this Authority is inclined to accede to the request of the KOPT that TMILL should levy a rate, if any, on ad hoc basis with due notice to KOPT about levy of such rate. The conditionality proposed in this regard is suitably modified stating that simultaneously with the submission of proposal, the proposed rate can be levied on ad hoc basis with due notice to KOPT about levy of such rate till the rate is finally notified.
- (XLi). The proposed Scale of Rates prescribes wharfage charges, on-board charges, on-board supervision, Loading / Unloading / restacking, demurrage, transportation, storage and miscellaneous services and Rebates / Refunds. TMILL has also proposed conditionalities to govern the proposed charges. The above mentioned tariff items and the proposed conditionalities governing them are discussed in the following paragraphs.
- (XLii). The permissible cargo which the operator is authorised to handle at Berth No. 12, in terms of LA provision, specifically excludes thermal coal in bulk, coking coal in bulk, various types of coke and other black cargo in bulk and various types of liquid bulk cargo handled through pipelines. The tariff items proposed in the Scale of Rates do not include cargo which are specifically excluded in the LA. The only objection of the KOPT against handling containers by TMILL has been dealt with earlier in paragraph No. [xxi(c)].
- (XLiii). The tariff proposal is not based on itemwise cost for each tariff item. As admitted by TMILL, the tariff proposal is based on broad costing exercise. Since the proposed tariff for individual services is not with reference to the cost of providing the respective services, the surplus making activity cross subsidizing the deficit making activity cannot be ruled out. In this age of advanced technology, it may not be impossible to workout itemwise cost for each tariff item. The TMILL is advised to draw up its proposal supported by cost details for individual activities at the time of next review of its tariff.
- (XLiv). TMILL has proposed wharfage for unspecified cargo at ad valorem rate. The major ports and private terminals thereat do not levy tax; they collect fee for the services provided. That being so, the cost of the services provided may appropriately form the basis for charging. Since the ad valorem rates prescribed in the Scale of Rates of major ports and private terminals are required to phased out gradually, as stipulated in Clause 4.2.2. of the revised tariff guidelines, prescription of ad-valorem wharfage rate in the initial fixation of tariff may not be

desirable. However, considering the assurance given by the TMILL that it will propose unit rate based on weight or volume in the next review of its Scale of Rates, prescription of wharfage for unspecified cargo on ad valorem basis is considered as an interim measure. Since TMILL has adopted the rates fixed for KOPT, the ad valorem wharfage prescribed separately for import cargo and export cargo in the KOPT Scale of Rates can be a reference rate subject to the general reduction ordered.

- (XLv). For the operation of “overside discharge / shipment”, TMILL has proposed to levy wharfage and on-board handling charges at 70% of the proposed rates based on the (then) existing Scale of rates of KOPT. Since TMILL is operating in the same port, the proposed provision is approved.
- (XLvi). TMILL has maintained the structure of the conditionalities governing the levy of wharfage charges on transshipment of cargo and shut-out / stock cargo and levy of on-board charges on transshipment of cargo similar to such conditionalities prescribed in the Scale of Rates of KOPT, which is approved.
- (XLvii). The ratio proposed for prescribing wharfage charges and on-board charges for different sizes of containers is in line with Clause 5.4 of the revised tariff guidelines.
- (XLviii). The conditionality proposed in the case of coastal cargo / containers for levy of wharfage charges, on-board charges, charges towards loading / unloading / re-stacking services and transportation of cargo / containers within the port limits at 60% of the applicable charges is also in line with revised tariff guidelines.
- (XLix). In respect of unspecified cargo, different rates under on-board charges, on-board supervision, loading / unloading / re-stacking activity and transportation have been proposed. As admitted by TMILL, no estimate of income has been made. This is reported to meet the contingency. In order to provide for contingency, the major ports and the private terminals are permitted to levy a tariff on an ad-hoc basis simultaneously with the submission of a proposal to this Authority, as stipulated in the revised tariff guidelines. Therefore, the proposed entries in respect of (unspecified) all other cargo are not approved.
- (L). As per the proposed definition for “on-board charges” the charges are leviable for rendering on-board services by TMILL in the form of supply of man power for loading / unloading operation. This means that on-board charges are leviable for the specific service of loading / unloading operation. Cargo lifting equipment like grab or sling in the form of loop is used in loading / unloading operation. It appears from the observation of KOPT that there is difference in the labour involvement depending on the modes of service and hence cost difference. As rightly observed by KOPT, the charges should have linkage to the modes of service rendered whereas the rates proposed by TMILL are not differential rates segregated into mode of service rendered. It will be difficult at this stage to go into the cost details involved for different modes of service. The TMILL is advised to look into the observation made by KOPT and propose adjustment required, if any, in the next review of its tariff. Till such time the proposed arrangement is approved subject to the general reduction ordered.
- (Li). (i). The list of services proposed to be rendered under on-board supervision includes water sprinkling at berth and cleaning of berth. The said two services do not appear to have any direct linkage with on-board work. In that case, these services should be included in the general facility provided at the Berth. Exclusion of these services from the list of services proposed to be rendered under on-board supervision and their inclusion in other appropriate tariff items will require adjustment in the proposed rates of the respective tariff item. Since the tariff proposal is not based on itemwise cost for each tariff item, it will not be possible to make

adjustment in the proposed rates at this stage. The TMILL should review the position keeping in view the observations of KOPT and revise the list of services, suitably in the next general review of its tariff with suitable adjustment in the rates of the respective services.

- (ii). The KOPT has raised questions whether the element of hooking / unhooking on shore and use of Harbour Mobile Crane are included in wharfage. The proposed definition of On-Board Supervision states that on-board supervision includes certain services rendered on shore also. TMILL should review the position and reclassify the tariff items suitably during the next general review of its tariff.
- (Lii). The proposed rate for on-board services relating to handling project cargo and machinery & spares, rate for on-board supervision charges relating to car, any rubber tyre vehicle, earth moving equipment, rate of transportation charges for containers are modified to reflect rates considered by TMILL in its income estimation of respective cargo item.
- (Liii). (i). The proposed rates for Loading / unloading / restacking for article weighing above 20 tonnes and up 35 tonnes and rate for articles / packages weighing above 35 tonnes have been proposed, whereas no traffic is projected. As stated earlier, TMILL can respond to the market demand, if any, in future, by following the procedure prescribed in the revised tariff guidelines for levy of ad-hoc rates. Hence, the proposed two tariff items are not approved.
- (ii). One of the proposed conditionalities governing the tariff item "loading / unloading / restacking" relates to use of hoppers for unloading of cargo from the vessel and loading of dumpers using the hopper. This activity is proposed to be treated as one operation of loading activity and charges are sought to be levied as proposed under the said tariff item. In this connection, the KOPT has sought to argue that this activity is a part of "on-board service" and separate charge for this operation should not be levied under "loading". However, the use of hoppers for the said activity does not appear to have been included under "on-board handling activity", because on-board handling charges are proposed to be levied towards supply of manpower for loading / unloading operation. The list of services proposed to be rendered towards on-board supervision also does not appear to include use of hoppers for the said operation ship-shore transfer of cargo. Whereas the activity of unloading of cargo from the vessel using hoppers and loading of dumpers using the hopper is prescribed separately only under the tariff item "loading / unloading / restacking". Incidentally, the KOPT has not objected to the proposed definition of "on-board handling charges" or "on-board supervision" excepting its reservation on inclusion of some other services in the list of "on-board supervision" services. The said conditionality may remain under the tariff item "Loading / Unloading / restacking" for time being, as proposed by TMILL.

However, TMILL is advised to review the position keeping in view the observations of KOPT and propose suitable modifications in the tariff item during the next general review of TMILL tariff.

- (Liv). The demurrage prescribed by TMILL is also in ascending scale; and, the proposed rates and conditionalities are structurally similar to the arrangement approved recently in the Scale of Rates of KOPT.

Demurrage, which is in the nature of penalty, cannot have any connotation with the services provided or not provided. Therefore, the proposal of the TMILL in this

regard is approved without any modification in rates, despite the general reduction ordered.

- (Lv). The income estimated by TMILL for transportation of cargo related to estimated income arising out of intra-port transportation of cargo as seen from the workings furnished by the operator. This Authority is mandated not only to fix Scale of Rates but also prescribe conditionalities governing the Scale of Rates. To a query in this regard, TMILL has stated that the rates are proposed to be levied for any transportation which the operator undertakes within the port limits including Railway siding and plots within the Dock Exterior Zone of HDC. It is relevant here to recall that the operator has been handed over back-up area of 14,000 sq. mtrs hard stand land behind Berth No. 12. The later allotment of additional land of 54,000 sq. mtrs are reported to be within the Dock Interior Zone. Railway siding is also proposed to be laid in the additional land area. That being so, the relevant charges shall be levied on cargo for which TMILL undertakes any transportation within the port limits, the transportation being in the nature of intra-port transportation.
- (Lvi). (a). Apart from demurrage, the operator has proposed to levy lease rentals for (short term) allotment of Hard Stand Plot, Hard Stand Covered Sheds and Bare Land at the existing rates prescribed in the Schedule of Rent for Land and Buildings of KOPT at HDC. While KOPT has no objection for the proposal for separate rate for short term allotment of facilities, the port's concern on the possibility of application of short term rates in the cases where demurrage would be more appropriate cannot be brushed aside, since it is reported that this may have major impact on the revenue share receivable by KOPT. The port's concern may have to be addressed by prescription of suitable conditionalities to govern the application of rates for short term allotment of the facilities, as rightly pointed out by KOPT. The response of TMILL to the suggestion of KOPT to prescribe conditionalities is not categorical and TMILL has not proposed conditionalities to govern the proposed rates. The proposed rates for short term allotment of facilities is approved as an interim measure. The TMILL is advised to file a proposal prescribing suitable conditionalities to govern the application of rates for short term allotment of the said facilities within 6 months from the date of notification of the tariff order in consultation with the KOPT. The TMILL should bear in mind the observation made by KOPT that the question of leasing the plot by TMILL does not arise as the operator has been allotted space on license basis.
- (b). (i). The proposed rate of hire charges for front end loaders with bucket capacity exceeding 3.5 cbm and the proposed rate of hire charges for fork lifts of capacity below 10 MT are market based and hence, are approved.
- (ii). The proposed rate of hire charges for front end loaders of bucket capacity not exceeding 3.5 cbm at Rs.6,500/- per shift is moderated to Rs.6,000/- per shift to reflect the market rate.
- (iii). In respect of hire charges for fork lifts, of two different capacities in the capacity range of 10 tonne–20 tonne, the rates adopted for computation of a single rate are market based. The proposed rate of Rs.12,000 per shift is approved.
- (iv). The proposed rate of equipment hire charges for fork lifts of capacity above 20 MT and the proposed rate of harbour mobile crane are not supported either by documentary evidence to reflect the market rate or by prescribed cost statement for fixation of tariff of equipment. Therefore, this Authority is not in a position to approve these two rates.

- (Lvii). As per LA, the berth hire charges for the vessels handled at Berth No. 12 are to be collected by KOPT. In response to our suggestion to prescribe a suitable conditionality in the Scale of Rates to allow refund of berth hire charges leviable by KOPT for the period when a vessel idles at Berth No. 12 and when the operations cannot take place at Berth No. 12, due to break-down of the facilities or for any reasons attributable to TMILL, the operator has incorporated a conditionality to refund the Berth Hire charges when a vessel idles for more than 20% of the total ship's stay because of reasons attributable to TMILL. But, the proposed conditionality is not in line with conditionality prescribed in the Scale of Rates of other major port trusts and private terminals operating thereat. A suitable conditionality is incorporated to this effect at par with the position prevailing in the Scale of Rates of other major port trusts and private terminals.
- (Lviii). The revised tariff guidelines prescribe tariff validity cycle of three years. The financial and traffic position considered for the purpose of this analysis is till 31 March 2010. Therefore, the validity of the revised Scale of Rates will also expire on 31 March 2010.

14.1 In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the Scale of Rates of TMILL which is attached as **Annex-II**. The rates prescribed in the Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The TMILL may, if it so desires, charge lower rates and or allow higher rebates and discounts.

14.2. The revised Scale of Rates and conditionalities of the TMILL will come into effect after expiry of 30 days from the date of Notification in the Gazette of India and shall be in force till 31 March 2010. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

14.3. The tariff of the TMILL has been fixed relying on the information furnished by the operator and based on assumptions made as explained in the analysis. If this Authority, at any time, during the prescribed tariff validity period, finds that the actual position varies substantially from the estimates considered or there is deviation from the assumptions accepted herein, this Authority may require TMILL to file a proposal ahead of the schedule to review its tariff and to set off the advantage as per the revised tariff guidelines accrued on account of such variations in the revised tariff.

14.4. In this regard, the TMILL is required to furnish to this Authority through KOPT its annual accounts and performance report within 60 days of closing of the respective accounting year. If TMILL fails to provide such information within the stipulated time period, the KOPT may initiate appropriate action against TMILL. In the event, this Authority may proceed suo motu to review the tariff of TMILL. This apart, analysis of variation may also be made at the time of the next general review at the end of the usual tariff validity period and adjustment of additional surplus is made in line with the revised tariff guidelines in the tariff to be fixed for the next cycle.

(A.L. Bongirwar)
Chairman

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS

F. No. TAMP/49/2005- TMILL - Proposal from the TM International Logistics Limited for tariff fixation for services rendered at berth No.12 of Haldia Dock Complex, KOPT.

1. The comments received from the port users / representative bodies of port users are summarised below:

Merchants' Chamber of Commerce (MCC)

- (i). Wharfage charges for KOPT at Rs.2,500 per TEU for containers should be brought in line with Chennai Port's wharfage charge of Rs.500 per TEU.
- (ii). Special rate charged by KOPT at 10% should be abolished, as it involves a heavy financial burden for the exporters using Kolkata Port.
[These comments do not appear to be relevant for TMILL proposal]

2. The comments received from the KOPT and users on the revised proposal filed by TMILL are furnished below:

Kolkata Port Trust

- (i). (a). The issues relating to provisions of License Agreement as was indicated in the observation of KoPT forwarded to TAMP earlier continues to hold good and needs to be considered while considering the revised tariff proposal.

(b). It would also perhaps be noteworthy that the selection of best bidder for license of Berth no.12 was done primarily on the basis of % of revenue share quoted by the bidder as per Government Guidelines. Hence, any interpretation of the provisions of license agreement relating Royalty payment to KoPT would have to take these aspects into consideration.
- (ii). Para wise comments on the assumptions made by TMILL while preparing the revised tariff proposal are furnished below:

- (a). As the financial year 2006-2007 has since elapsed figures for the year need to be taken on actual basis.
- (b). Projection should be made for 2008-2009, 2009-2010 and 2010-2011.
- (c). The assumption of TMILL underlying their traffic projection that no charge is applicable for gate delivery/receiving or in any other manner for cargo discharged at TMILL licensed area and subsequently transfer to area within the dock outside the licensed area and vice-versa in case of exports is incorrect. As TMILL is well aware, receiving/delivery charges are payable for such operations. M/s. Tata Steel Ltd., a major customer of TMILL, was permitted to transfer their cargo discharged at Berth No.12 operated by TMILL to other area within the dock. But, they defaulted in payment of necessary receiving delivery charges for the purpose to KoPT. As a result, such movement of cargo was prohibited by KoPT. In this context, it is stated that such movement as aforesaid was allowed by KoPT in the initial stage of Berth No.12 BOT Project.

TMILL has since been allotted 54,000 Sq. Mtr. of additional land for storage purpose, which should be adequate to develop necessary infrastructure.

- (d). The capacity of a berth is calculated as per guidelines issued by the Department of Shipping. Hence, the capacity of the Berth No.12 would continue to be same as determined as per the said guidelines and communicated to TAMP by KoPT. The assumption of TMILL regarding reduction of capacity of their terminal due to alleged restriction imposed by KoPT is not acceptable.
- (e). As per the clause 5.1 (a) of the license agreement, the royalty is payable on the actual income earned by TMILL. Hence, the assumption of payment of royalty on the basis of revised tariff of KoPT is not acceptable. In view of the specific provision of Clause 5.1 (a) of the license agreement that requires the licensee to pay the royalty on their actual income, KoPT does not accept TMILL's stand that Royalty share is to be computed on the KoPT's Scale of Rates, even when TMILL would levy rates higher than what is provided in KoPT's Scale of Rates.

In this context, it may, however, be noted that in terms of Clause 5.1 (b) of the license agreement, TMILL is also required to pay royalty as per KoPT's Scale of Rates wherever its own rates, as approved by TAMP are lower than the corresponding rates of KoPT.

In case TMILL offers any discount on its approved rates, then such discount should not be taken into account for the purpose of computation of royalty.

(iii). Comments on the Scale of Rates are as given below:

(a). Section 2 (Definitions)

Sub section-(v) The name of the Company should be indicated in full. Further the reference of the license agreement should be mentioned as the Company is deriving the authority from the same.

Sub section-(v) The definition of “Day” is incomplete. The ‘Day’ may be defined as:

‘Day’ in respect of TMILL terminal shall mean the period starting from 06:00 AM of a day and ending at 06:00 AM of the next day.

Sub section (xiv) -It is to be clearly mentioned whether or not the element of Hooking/Unhooking on shore is included in the definition of wharfage.

Sub section (xv) – The word ‘Board’ should be replaced by ‘Kolkata Port Trust’.

Sub section (xvii) – Exhaustive & clear definition of “On-board supervision” should be provided. The phrase ‘certain services’ does not indicate the elements of services included.

(b). Section 3 (General Principles of Assessment)

Sub section (iii) - The phrase ‘Section 9.1’ should be replaced by the phrase ‘Section 10.1’. The name ‘tmill’ should be capital case.

Sub section (v) - The phrase ‘goods meant for TMILL’s use’ should be replaced by ‘Goods meant for use in the TMILL’s Project Facilities pertaining to Berth No-12, HDC’. This insertion is necessary as TMILL is not presently operating as SPV for operating at the Berth No-12 only.

Sub section (vii) - The provision cannot be a part of the Scale of Rates. The sharing of revenue is to be done as per the license agreement. Further, as per the clause 5.1 (a) of the license agreement, the royalty is payable on the actual income earned by TMILL. Hence, the assumption of payment

of royalty on the basis of revised tariff of KoPT is not acceptable. In view of the specific provision of Clause 5.1 (a) of the license agreement that requires the licensee to pay the royalty of their actual income, KoPT does not accept TMILL's stand that Royalty share is to be computed on the KoPT's Scale of Rates, even when TMILL would levy rate higher than what is provided in KoPT's Scale of Rates.

In this context, it may, however, be noted that in terms of Clause 5.1 (b) of the license agreement, TMILL is also required to pay royalty as per KoPT's Scale of Rates wherever its own rates, as approved by TAMP are lower than the corresponding rates of KoPT.

In case TMILL offers any discount on its approved rates, then such discount should not be taken into account for the purpose of computation of royalty.

Sub section (viii)(b) The rate should be per annum.

Sub section (viii)(d) The word 'properties' should be replaced by the word 'facilities'.

Sub Section (ix) The word 'port' in the second line to be replaced by 'Cargo Handling'. The section appears to be redundant as no rate for 'unspecified category' has been proposed.

Sub section (xi) (b) The phrase 'with due notice to KoPT about levy of such rate' should be added after the phrase 'on an ad-hoc basis'.

Further, suitable provision for concession for 'coastal cargo' should be indicated.

(c). Section 4 (WHARFAGE):

Section 4.1

- (i) Rates of many commodities are on higher side as compared to KoPT's Scale of Rates. It was earlier pointed out by KoPT in the comments against original tariff proposal submitted by TMILL, that while signing the license agreement, TMILL had agreed to levy rate not exceeding the rate of KoPT. The investments made by TMILL are well within the minimum stipulation of the license agreement. Therefore, there is no revenue as to why their charges should exceed that of KoPT's Scale of Rates.

- (ii). It should be made clear whether 'Wharfage' includes use of Mobile Harbour Crane or not.
 - (iii). KoPT has not authorized handling of Containers by TMILL at berth no.12 The Para- 11 of KoPT's comments against the original proposal may be referred in this regard.
 - (iv). Section 4.4 - The phrase 'port premises' should be replaced by 'TMILL premises'.
- (d). Section 5 (ON-BOARD CHARGE):

Section 5.1

- (i) 'Definition' of 'On-board charge' is not provided in Scale of Rates. The same is to be provided clearly to indicate the elements of services included in the rate.
 - (ii). There should be separate charge for different service mode, i.e. whether by Grab or by sling etc. as the on board labour involvement depends on the mode of service.
 - (iii). For certain commodities, the rates are higher than KoPT's Scale of Rates. It was earlier pointed out by KoPT in the comments against original tariff proposal submitted by TMILL, that while signing the license agreement, TMILL had agreed to levy rate not exceeding the rate of KoPT. The investments made by TMILL are well within the minimum stipulation of the license agreement. Therefore, there is no revenue as to why their charges should exceed that of KoPT's Scale of Rates.
- (e). Section 6 (ON-BOARD SUPERVISION):

Section 6.1:

- (i). The services 'cleaning of berth/jetty', 'water sprinkling at jetty' included in on- board supervision are not linked with on-board work.
 - (ii). Hatch cleaning is part of on-board operation. Further it is not required for all cargo like, steel cargo.
- (f). Section 7 (LOADING/UNLOADING/RESTACKING):

Definition of 'Loading/Unloading/Restacking' is not provided in Scale of Rates. The same needs to be provided clearly. The

service elements need to be mentioned clearly to avoid ambiguity.

(g). Section 7.1:

Proper definition of the service should be given.

In the 'Note', the phrase 'clause 9' should be replaced by the phrase 'section 10'.

Further, this note stipulates that the TMILL would be at liberty to charge different tariff for same service, which in turn would lead to discriminatory practice and would pose difficulty in computation of royalty. There should be one charge for a specific service provided under a pre defined condition.

(h). Section 7.3:

Separate charge for the operation of 'discharge onto dumper through hopper' under 'loading' is not appropriate as the same is part of 'on board service'.

(i). Section 9 (Transportation):

Definition of 'Transportation' is not provided in Scale of Rates. The same needs to be provided clearly.

Transportation is a part of Shore handling service. For certain commodities, the rate of Transportation combined with 'Loading/Unloading/Restacking' are higher than 'Shore handling charge' prescribed in KoPT's Scale of Rates. It was earlier pointed out by KoPT in the comments against original tariff proposal submitted by TMILL, that while signing the license agreement, TMILL had agreed to levy rate not exceeding the rate of KoPT. The investments made by TMILL are well within the minimum stipulation of the license agreement. Therefore, there is no revenue as to why their charges should exceed that of KoPT's Scale of Rates.

(j). Section 10 (STORAGE & MISCELLANEOUS CHARGE):

Section 10.1:

(i). (2), (3) and (4) The phrase 'Lease Rental' should be replaced by 'License Fee'. It may be noted that M/s.TMILL has been allotted space on license basis and, therefore, the question of their leasing it out to others does not arise at all.

- (ii). (12) 'High heaping' does not mean anything clearly and leaves scope for ambiguity.

- (k). Section 11 (REBATE / REFUNDS):
 - (i). The Section No. '10.1' should be replaced by '11.1'.
 - (ii). Berth Hire charge is collected by KoPT from the vessel agent. TMILL has no relationship, as per law, with the vessel agent. The proposition of TMILL is, therefore, unacceptable to the port.

Eastern India Shippers Association (EISA)

While according approval to the proposed tariff of TMILL for services, TAMP may keep in consideration that prescribed rates and charges from users do not exceed the maximum rates for corresponding services as published by KOPT tariff approved by TAMP.
