

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)

**TARIFF AUTHORITY FOR MAJOR PORTS**

G. No. : 46

New Delhi, 22 February 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 International Seaports (Haldia) Private Limited for fixation of Scale of Rates at Berth No.4A, Haldia Dock Complex of Kolkata Port Trust as in the Order appended hereto.

**( A.L. Bongirwar )**  
Chairman

**TARIFF AUTHORITY FOR MAJOR PORTS**  
**Case No. TAMP/37/2005 – ISHPL**

**M/s. International Seaports (Haldia) Pvt. Ltd.**

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**Applicant**

**ORDER**

(Passed on this 25<sup>th</sup> day of January 2007)

This case relates to a proposal received from the International Seaports (Haldia) Private Limited (ISHPL), Kolkata for fixation of Scale of Rates at Berth No.4A, Haldia Dock Complex (HDC) of Kolkata Port Trust (KOPT).

2.1. The ISHPL started operation in the newly constructed Berth No. 4A of Kolkata Port Trust (KOPT) at Haldia Dock Complex (HDC) on 15 January 2004 and requested this Authority on 20 February 2004 to approve the tariff proposed by them in respect of its operations in the berth in reference. The ISHPL quoted a provision in the License Agreement (LA) executed between them and the KOPT permitting the ISHPL to levy and recover tariff as per prevalent Scale of Rates of KOPT. The ISHPL further requested this Authority to permit them to levy the (then) proposed tariff on ad-hoc basis. Since this Authority notifies separate Scale of Rates for private operator only after thorough examination of the tariff proposals with reference to the cost of operations and the investment in facilities, the ISHPL was advised to furnish the detailed tariff proposal along with cost of operations and investment in facilities. Incidentally, the licensor (KOPT) was also requested to clarify the reason for authorizing ISHPL to levy tariff as per the existing Scale of Rates of KOPT. The KOPT, in response, communicated, *inter alia*, that since the LA has been entered in pursuance of Section 42 (3) of the MPT Act, the rates in respect of services provided by ISHPL are required to be notified by the Authority in terms of Section 42(4) of the MPT Act.

2.2. Subsequently, the ISHPL filed a comprehensive proposal for fixation of its tariff for Berth No. 4A. The proposal in reference was registered as tariff case and processed further following the consultative procedure prescribed. In the meanwhile, since the ISHPL wanted to review and revise its proposal in the light of revised guidelines for tariff fixation and file a fresh tariff proposal the Authority closed the tariff case of ISHPL and the ISHPL was directed to file the revised proposal. This Authority also further made it clear that closing of the case should not be construed as an incidental approval to any existing tariff arrangement that may be adopted by ISHPL.

3.1. In this backdrop, the ISHPL has filed its revised proposal dated 27 May 2005. The main points made by ISHPL in its proposal are summarized below:

- (i). The ISHPL is a joint venture company of International Seaports (India) Pvt. Ltd., & Associates and S.S. Global. The KOPT and ISHPL have entered into a LA on 14 May 2002 for Construction, Operation, Management and Maintenance of Berth No: 4A at HDC of KOPT. The LA is for a period of 30 years from 14 May 2002.
- (ii). The ISHPL has developed the Berth No: 4A along with stackyard facilities and fully mechanized handling systems for handling of cargo from vessel till the cargo gets loaded on to the wagons. The cargo operations were started on 15 January 2004. It handles coking coal, fertilizers, fertilizer raw material and soda ash.
- (iii). The KOPT will render the services relating to port dues and pilotage to the vessels entering Berth No: 4A as per its existing Scale of Rates and collect such charges directly from ship owners / vessel agents. However, the berth hire charges will be collected by the ISHPL for the Berth No: 4A.
- (iv). The proposal of the ISHPL is to levy:
  - (a). Berth hire charges and penal berth hire charges.

- (b). On board stevedoring and wharfage charges to render the services of unloading of cargo from vessel to berth or vice versa, movement of cargo from berth and cleaning charges.
- (c). Cargo handling charges to cover the cost of conveying the cargo to the stack yard, staking the cargo in the stack yard with the help of stacker and reclaimers and keeping the cargo, dozing, collection of spillage, system cleaning, keeping the cargo grade wise at different bay, etc.,
- (d). Delivery charges to reclaim cargo from the stackyard by stacker and reclaimers, besides conveying and loading into the wagon through front-end loader.
- (e). Ground rent / storage charges to cover the cost of staking the cargo in the stackyard of ISHPL.
- (f). Dust suppression charges by water based dust suppression for effective pollution control of coking coal from unloading till the cargo is loaded on to railway wagons.
- (g). Miscellaneous / optional charges for services towards supply of equipment inside the hatch, online sampling and moisture analysis, cleaning of wagons, weighing charges, etc.,
- (v). The ISHPL has made a total investment of Rs.127.30 Crores at a debt: equity ratio of 65:35. The rate of interest on the debt component is 9% per annum.
- (vi). It has considered 6% and 9% escalation towards estimation of Repairs & Maintenance and other expenses and employee expenses respectively.
- (vii). The Financial / Cost statements furnished by the ISHPL for the years 2004-05, 2005-06 and 2006-07 reflect deficit of Rs.401 lakhs, Rs.357 lakhs and Rs.679 lakhs respectively after considering 15% return on capital employed. [Later on, the ISHPL in its communication dated 10 June 2005 modified the deficit position from Rs.679 lakhs to Rs.711 lakhs. It also projected a net deficit, (after ROCE) of Rs.745 lakhs for the year 2007-08]
- (viii). The capacity of the terminal has been assessed as 3 million tonnes after considering the available berth length, backup space and mechanized handling equipment provided.
- (ix). As per the revised tariff guidelines, royalty is allowed as an admissible item of cost for computation of tariff for the BOT cases where bid process was finalized before 29 July 2003. In the case of ISHPL, the LA with KOPT was signed on 14 May 2002, more than a year before the policy decision was taken by the Government about the non-admissibility of royalty / revenue share as an item of cost for tariff purpose.
- (x). The quantum of upfront payment (Rs.10.75 crores) and the percentage of revenue share were specified in the bid document by the KOPT and it was not left to the bidders to quote it in their best judgment. The percentage level of cargo handling charges for payment of royalty to KOPT as per the prevailing Scale of Rates of KOPT is given below:

1 <sup>st</sup> year	-	46.88%
2 <sup>nd</sup> year	-	51.31%
3 <sup>rd</sup> year	-	55.05%
4 <sup>th</sup> year	-	58.26%
5 <sup>th</sup> year onwards	-	61.04%

The revenue share is also linked to tariff of the KOPT in force from time to time and not to the tariff that may be approved for the BOT operator. Further, the revenue share is linked to the minimum guaranteed traffic. Even if the actual traffic in any year is less than the minimum guaranteed traffic, the total revenue share payable is still based on the minimum guaranteed traffic and the tariff of KOPT in force. Therefore, revenue share should be considered as an admissible cost for computation of tariff. If this is not so

considered, and lower tariff is approved, it will result in a substantial loss / deficit because quantum of royalty payable to KOPT is fixed.

- (xi). ISHPL gives highly efficient services to the vessel operators, logistic supplier and the users due to the fully mechanized method of handling of cargo by ISHPL and this translates to saving cost.
- (xii). As the revenue share is linked to KOPT Scale of Rates and since KOPT is contemplating general revision of its Scale of Rates, ISHPL may be allowed to modify its proposal in case the KOPT revision affects ISHPL financial results.

3.2. At the request of ISHPL and considering the commercial sensitivity of the information, only the proposed Scale of Rates, cost statements and assumption sheet were circulated to KOPT and users.

3.3. The percentage increase sought by ISHPL over the existing rates at HDC of KOPT are as follows:

Sr. No.	Category	Existing Rate at HDC	Proposed Rates by ISHPL	% Increase
1	Berth Hire	\$ 0.0023 subject to a minimum of \$46.60 for foreign vessels upto 3000 GRT.	\$ 0.0025 subject to a minimum of \$250 for foreign vessels.  (A single slab prescribed)	8%
		\$ 0.002 subject to a minimum of \$69.90 for foreign vessels above 3000 & upto 10000 GRT.		25%
		\$ 0.0016 subject to a minimum of \$200 for foreign vessels above 10000 GRT.		56%
2	On Board charges (Rs. per MT)	90/-	11/- to 20/-	In the range of 12% to 22%
3	Wharfage (Rs. per MT)		90/-	
4	Storage (Rs. per MT per day)	100/-	100/- to 150/- for period beyond 21 days	In the range of 0 to 50%

4.1. In accordance with the consultative procedure prescribed, the proposal filed by the ISHPL was forwarded to the KOPT and also to the concerned user organisations for their comments.

4.2. The comments received from the above user organisations were forwarded to ISHPL as feed back information. However, the ISHPL has not responded to any of the comments of the users.

4.3. The KOPT has furnished its comments vide its letter dated 9 September 2005 on the ISHPL proposal. The comments of the KOPT were forwarded to the ISHPL as feed back information. The ISHPL vide its letter dated 25 January 2006 responded to the comments furnished by the KOPT.

5. The KOPT was requested vide our letter dated 19 September 2005 to furnish some information / clarification. The KOPT has responded vide its letters dated 6 October 2005 and 8 November 2005 to our letter dated 19 September 2005. The clarification sought by us from KOPT and the replies furnished by KOPT are tabulated below:

SI. No.	Queries raised by us	Clarifications furnished by KOPT
(i)	Certificate with reference to the capacity of berth no.4A.	The copy of the certificate of a Chartered Mechanical Engineer certifying the capacity of ISHPL at 3 million tonnes per annum has been furnished.

(ii)	The amount quoted by the next lowest bidder in the bidding process of allotment of Berth No.4A of HDC at KOPT to ISHPL.	With reference to the second lowest bidder, the KOPT has furnished the copies of Financial offers of two joint lowest bidders viz. M/s. SREI International Finance Limited and M/s. Emirates Trading Agency Limited, along with a statement detailing the evaluated offer of second lowest bidders. As per the Tender condition, the offers were evaluated on Net Present Value Basis (discount factor 16%).														
(iii)	Specific comments on the traffic forecast made by ISHPL.	<p>As per the provision of the LA the Licensee, subject to provision of Article 3.8 (b) (l), shall manage and operate the Project facilities and Services on a common user basis, open to any and all shipping lines, importers, exporters, shippers consignees and receivers and refrain from indulging in any unfair or discriminatory practice against any user or potential user thereof.</p> <p>The ISHPL is primarily handling coking coal at Berth No.4A. The coking coal traffic handled at Berth No.4A since its commissioning is given below:</p> <p style="text-align: center;">(in million tonnes)</p> <table border="0" style="margin-left: auto; margin-right: auto;"> <tr> <td>2003 – 2004</td> <td style="text-align: right;">0.62</td> </tr> <tr> <td>2004 – 2005</td> <td style="text-align: right;">3.06</td> </tr> </table> <p>The coking coal traffic at HDC is progressively increasing over the years as given below:</p> <p style="text-align: center;">(In million tonnes)</p> <table border="0" style="margin-left: auto; margin-right: auto;"> <tr> <td>2000 – 2001</td> <td style="text-align: right;">3.99</td> </tr> <tr> <td>2001 – 2002</td> <td style="text-align: right;">3.98</td> </tr> <tr> <td>2002 – 2003</td> <td style="text-align: right;">4.30</td> </tr> <tr> <td>2003 – 2004</td> <td style="text-align: right;">4.47</td> </tr> <tr> <td>2004 – 2005</td> <td style="text-align: right;">5.10</td> </tr> </table> <p>Both SAIL and TISCO have plans for expansion of their steel plants at Durgapur, Bokaro, Rourkella (all a/c SAIL) and Jamshedpur (a/c TISCO) which would result in further increase in import of coking coal at Haldia. Besides, one Coke Oven Plant under private sector has already been set up at Haldia and another large scale Coke Oven Plant by TISCO in joint venture with WBIDC is going to be set up in another two years time at Haldia. As a result of these, the coking coal import through HDC is slated to increase substantially in future.</p> <p>In the above premise, it is felt that berth no.4A would be required to handle coking coal more than what has been projected by ISHPL in their tariff proposal matching with handling capacity of the said berth. As per our estimate, the handling capacity of berth no.4A is around 3 million tonnes at average output of 12,000 tonnes per berth day for 250 days berth occupancy in a year. Accordingly, the traffic forecast for berth no4A may be considered at least 3 million tonnes per annum. This projection is more than the minimum guaranteed throughput for berth no.4A as incorporated in the LA for the said berth.</p>	2003 – 2004	0.62	2004 – 2005	3.06	2000 – 2001	3.99	2001 – 2002	3.98	2002 – 2003	4.30	2003 – 2004	4.47	2004 – 2005	5.10
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6. Based on a preliminary scrutiny of the proposal, the ISHPL was requested to furnish additional information/ clarifications on various points vide our letter dated 19 September 2005. The ISHPL has responded to these queries vide its letter dated 25 January 2006. A summary of the queries raised by us and the replies furnished by ISHPL are tabulated below:

Sl. No.	Queries raised by TAMP	Reply furnished by ISHPL
A. 1.	<b>Financial and Cost Statements</b> The detailed working of capacity	The average discharge rate is 14,000 MT per WWD for coking coal. Considering 330

	calculation along with the basis for the different parameters considered therein.	working days in a year available for actual cargo operations on the basis of 100% berth occupancy the capacity would be 4.620 million (14,000X330). However assuming berth occupancy of 65% as per international standards, the capacity works out to 3.0 million tonnes per annum.
2. (i).	Cargo to be handled by ISHPL as per the Licence Agreement includes fertilizers and fertilizer raw material. It is noteworthy that the ISHPL has proposed Scale of Rates to handle fertilizers and fertilizer raw materials in its draft Scale of Rates. The ISHPL has, however, not furnished any traffic projection for the cargo in reference. If ISHPL does not anticipate handling of fertilizers and fertilizer raw materials for the years 2005-06 to 2007-08, reason for proposing rates for handling fertilizers and fertilizer raw materials for the years may be explained.	Rates for fertilizers and fertilizer raw materials have been provided in the tariff to meet the situation that may arise in case such cargo is offered at short notice in future.
(ii).	The projected traffic for coking coal for the years 2005-06 to 2007-08 is around 75% for each year of the traffic of coking coal for the year 2004-05. The proposal does not adequately explain the reasons for decline in estimated traffic of coking coal for the year 2005-06 to 2007-08 as compared to the year 2004-05. The basis for the estimated traffic for the years in reference may be brought out.	The steel market is cyclical in nature. The demand for steel in China peaked during 2004-05 considering their infrastructure requirement for the Olympic games. The peak demand for this purpose is now over and hence a lower cargo throughput has been considered for the years 2005-06 & 2006-07. However in the light of actuals up to Dec 2005, the projected throughput for 2005-06 has been updated as 3 million tonnes. Accordingly Form III has been amended.
(iii).	The concession agreement between ISHPL and KOPT stipulates that ISHPL shall operate the berth No. 4A, on a common user basis. That being so, the ISHPL may list out the major user wise estimated cargo throughput for the years 2005-06 to 2007-08.	Present traffic projection considers the cargoes of Steel Authority of India only. However ISHPL is ready to handle any other compatible cargo that may be available and offered by other users.
(iv).	The comments furnished by SAIL indicate that they have a specific agreement with ISHPL for handling their cargo. This agreement is long term in nature and contains certain volume assurance from SAIL. Please furnish the volumes offered by SAIL for the years under consideration, as per the bilateral agreement.	Volume of traffic offered by SAIL as per the bilateral agreement during the years 2005-06 to 2007-08 is as follows:  2005-06 - 2.3 million tons. 2006 -07 - 2.3 million tons. 2007 -08 - 2.3 million tons.
3.	Please furnish the breakup for the estimated GRT of vessels in terms of foreign-going vessels and coastal vessels.	The information provided in Form-II is in respect of foreign going vessels only. Under present cargo scenario, no coastal vessel is expected to be handled at the facility. Form-II has accordingly been amended. Average GRT assumed is 35,499.
4. (i).	Clause 6.1.2. of the revised tariff guidelines prescribes concessional rates for coastal vessels for the vessel related charges including berth hire. The income estimation on account of berth hire charges does not appear to take into consideration concessional tariff for coastal vessels. A detailed income computation in this regard indicating the ratio between the	Please refer response at point 3.

	coastal vessels and foreign-going vessels in terms of GRT and the assumptions made for the estimation may be furnished for all the years under consideration.	
(ii).	Estimation of income on account of on-board stevedoring and wharfage appears to have been computed @ Rs.100/- per MT and @ Re.1/- for road cleaning as against the proposed rate of Rs.101/- per MT. Please clarify the reasons for considering breakup for computation.	Initially it was proposed to prescribe separate road cleaning charges. Later on, Composite rate has been proposed.
(iii).	Please furnish break-up for the rate of Rs.21/- per MT considered for computing other income. The linkage between the various components of rates considered for computation of other income and the estimated cargo throughput may be explained.	The ISHPL has estimated income on account of Supply of equipment, dust suppression charges, cleaning charges, Online sampling & moisture analysis etc. It is anticipated that entire traffic may not avail of all of these services; only one third of the total other income may be received. Income computation has been made accordingly, by multiplying by traffic figure by other income per tonne reduced by one third.
(iv).	ISHPL has proposed rates for levy of storage charges. But, income estimation on account of storage charges is not furnished. The ISHPL may estimate and furnish the income from storage of cargo for all the year under consideration. If no income is anticipated to be generated in the next three years on this account, prescription of rates in the Scale of Rates for this purpose may be redundant and hence may be deleted.	We do not want and expect that cargo to remain on our premises for prolonged period after the free period, as this will hamper the smooth operations. Rate for storage charges has however been prescribed so that a deterrent is available to deal with the situation where cargo remains in the transit area after the free period.
(v).	The ISHPL has proposed rates for dust suppression and other miscellaneous services whereas no income has been estimated towards these services. Income on account of dust suppression and miscellaneous services may be estimated and furnished.	Income from Dust suppression and other miscellaneous services has been estimated and shown under item 'other income'. Please refer to item (iii) above.
(vi).	With reference to operating revenue for the year 2004-05, the ISHPL has adjusted an amount of Rs.1728 lakhs towards Incentives, on account of on-board stevedoring and wharfage, cargo handling charges and delivery and wagon loading charges. The nature of the incentive and circumstances of giving such incentives may be explained.	The actual income for 2004-05 was less than that on the basis of rates proposed; the difference has been shown as incentive during 2004-05 being promotional.
5. (i).	(a). With reference to the labour and equipment hire charges for the year 2004-05, the ISHPL has considered on amount of Rs.34.30 per MT of cargo handled. The basis for considering the rate of Rs.34.30 may be explained.	It is a contractual rate with a Local service provider. Copy of the contract for a sum of Rs.33/- per MT payable by ISHPL has been furnished.
	(b). It appears that the labour and equipment hire charges estimated for the year 2005-06 consists of labour component and equipment hire component of Rs.36.40 per MT and Rs.4.50 per MT respectively. If that is so, the basis for considering equipment hire charges at Rs.4.50 per MT may be indicated.	The incurrance of Rs.4.50 for the year 2005-06 is for the deployment of equipments to push the cargo in to the designated back-up area when it spills out. This charge is on actual basis for both equipment and labour hire and is over and above the standing contract as mentioned above.

	<p>(c). The basis of apportioning this expenditure under different activities may be explained.</p>	<p>This expenditure has been apportioned to different sub-activities On-board stevedoring/Cargo handling/Delivery by wagons or rails in the proportion of 45/40/15 %, as mentioned in the Form III, on a broad basis of usage.</p>
	<p>(d). Please clarify whether this head of expenditure and terminal maintenance expenses include cost of any services which are outsourced. If so, the details of individual outsourcing contracts may be furnished along with a certification that the terms of such contracts are decided based on competitive bidding and arms length relationship is maintained incase of associated entities, if any.</p>	<p>The services are out sourced and on a competitive bidding process. The equipment maintenance contract is given to Larsen &amp; Toubro as they are the original manufacturer of the equipments. This facilitates the availability of spares.</p>
(ii).	<p>The ISHPL has included demurrage as an item of expenditure and the demurrage has been assumed on the entire lot of cargo. In this context, please explain / clarify the following:</p> <p>(a). The nature of demurrage estimated to be incurred.</p> <p>(b). Linkage between estimated demurrage and the estimated cargo throughput.</p> <p>(c). The basis for assuming Rs.0.50 per MT in computation of demurrage.</p>	<p>Demurrage payable in case of delay in the ship turn-round beyond agreed norms is to be reimbursed by ISHPL. On the basis of figures for the past years the amount paid averages out to Rs0.5 per tonne of the total traffic handled during the year. For ease of computation, the estimated liability on this account has been worked out accordingly. Demurrage will be payable if any ship is delayed; that is, tariff is indirectly linked to performance.</p>
(iii).	<p>The LA between Kolkata Port Trust (KOPT) and ISHPL stipulates an annual escalation 5.1% of the rent payable in respect of land allotted to the ISHPL. The LA also provides for a rebate of 2.5% on timely payment of lease rent. While the ISHPL has availed the rebate for the year 2002-03, such a rebate has not been availed by the ISHPL for the years 2003-04 and 2004-05. The estimates of lease rentals for the years 2005-06 to 2007-08 also are without the benefit of rebates. Please clarify.</p>	<p>The rebate for timely payment of lease rental has been taken for all the years excluding the year 2004-05, where the actual payment made (after availing the rebate of 2.50% for timely payment) has been shown.</p>
(iv).	<p>Clause 2.8.1. of the revised tariff guidelines stipulates that royalty would be considered as an admissible cost in the tariff computation of BOT operator subject to maximum of the amount quoted by the next lowest bidder provided there is loss. ISHPL should prove that it incurs loss and quantify it before claiming admissible royalty as pass through. The computation of royalty payment should be revised in the light of the revised tariff guidelines and a detailed computation in this regard may be furnished.</p>	<p>The revenue share was fixed by the port trust and was specified in the bid document. Bidder had no choice of quoting the revenue share.</p>
(v).	<p>(a). The operational flow chart furnished by ISHPL shows Importer appoints the surveyor. If that were so, it is not clear how expenditure on survey is relevant to ISHPL.</p>	<p>The operation flow chart shows the draft survey of the vessel, which is carried out by the importer. However, ISHPL is contractually bound to appoint a surveyor (duly approved by the user) to supervise the</p>

	<p>(b). Complete details of survey / testing charges with basis may be furnished for the year 2004-05 to 2007-08.</p> <p>(c). Please furnish the basis for applying Rs.0.75 per MT for computation of survey / testing expenses.</p> <p>(d). The reason and the basis of apportioning the total survey / testing charges to the three activities viz. on-board stevedoring &amp; wharfage, cargo handling and delivery and wagon loading may be furnished.</p>	<p>total operation, right from discharge of the vessel till loading on to the wagon for onward delivery. The above service includes, drawing of on line sample, moisture analysis both at the time of discharge and loading and submission of report.</p> <p>Copy of the contract has been furnished.</p> <p>As per contract the ISHPL has to pay an amount of Rs.0.75 per MT towards survey/testing expenses.</p> <p>The testing expenses have been apportioned amongst the three sub-activities in the proportion of 33/34/33 %.</p>
<p>(vi).</p>	<p>(a). With reference to estimation of terminal maintenance expenses for the year 2005-06 to 2007-08, it appears that the estimation has been done by ISHPL based on the gross block of assets, applying specific percentage assumed by ISHPL of respective capital expenditure. Applying the percentage assumed by ISHPL for calculation of terminal maintenance expenditure, the results do not tally with the figures shown towards terminal maintenance expenditure. The maintenance cost furnished by ISHPL in its working (3.2. of CHP maintenance cost) under operational cost details also do not tally with the figures in the cost statement. A detailed working for computation of terminal maintenance expenditure may be furnished for all the years under consideration and the estimates may be justified with reference to actuals.</p> <p>(b). The reason for estimating mobilisation/ de-mobilisation expenditure under dredging separately may be furnished and the estimated mobilisation / demobilisation expenditure may be justified with reference to actuals / contract.</p> <p>(c). Please furnish the basis for apportionment of terminal maintenance expenditure to berth, on-board stevedoring, cargo handling, delivery and wagon loading details. It may be clarified why maintenance dredging cost should be apportioned to berth hire and maintenance cost of cargo handling equipment etc.</p> <p>(d). The estimated terminal maintenance expenditure for the year 2005-06 is around 57% more than the expenditure of the year 2004-05. The reasons for the steep increase proposed may be explained.</p>	<p>The escalation factor was not applied inadvertently to the item Plant and Machinery under 3.2 CHP maintenance cost. This has been now suitably modified. The revised Form III has been furnished.</p> <p>In addition to maintenance dredging rate as per Cubic Metre of silt dredged or per day mob &amp; demob charges are quoted by and payable to the dredging companies. Hence these are shown separately while estimating the maintenance dredging costs.</p> <p>The maintenance cost has been apportioned in the proportion of 13/30/45/12%. Since dredging is required at the berth, expenses are apportioned to that sub-activity also.</p> <p>In the initial year/s maintenance cost is less as the equipment is new and under warranty while in the later years it is heavy. We have estimated the expenditure on average basis at certain percentage of capital costs over the entire economic life of assets.</p>

(vii).	<p>With reference to estimation of expenses towards water, power and fuel, please furnish / clarifying the following:</p> <p>(a). Detailed working for estimation of expenditure towards water, power and fuel for the years 2004-05 to 2007-08 indicating units consumed and the rate per unit for each of the items (i.e., water, power &amp; fuel)</p> <p>(b). Basis of apportionment of this expenditure to on-board stevedoring, cargo handling and delivery and wagon loading.</p>	<p>The unit cost of Rs.8.50 /MT was arrived at on the basis of actual expenditure incurred on electricity charges and the throughput for the year 2004-05, allowing for some increase.</p> <p>The expenditure on power has been allocated to the three sub-activities mentioned in the proportion of 40/40/20 % on the basis of broad usage pattern.</p>
(viii).	<p>Please furnish detailed working for the year 2004-05 (actuals) and for the years 2005-06 to 2007-08 (estimates) towards Insurance cost for berth, on-board stevedoring, cargo handling and delivery separately. The estimated insurance cost may be justified with reference to actuals and in this regard copy of relevant insurance policies may be furnished.</p>	<p>Insurance cost has been projected on the basis of 1 % of capital cost as indicated in the computation formula in the statement headed 'op. cost'. It has been apportioned in the proportion of 5/40/45/10 %.</p>
(ix).	<p>With reference to General Administration expenses please clarify/ furnish / explain the following:</p> <p>(a). All items of expenditure considered under General Administration expenditure indicating the amount under each item for the years 2004-05 to 2007-08.</p> <p>(b). Detailed working for General Administration expenditure for the years 2004-05 to 2007-08 with justification.</p> <p>(c). Basis of apportionment of this expenditure to Berth, on-board stevedoring, cargo handling and delivery activities.</p> <p>(d). It is found that estimated expenditure for the year 2005-06 is around 70% more than the expenditure for the year 2004-05 and no reason is given for this significant increase.</p>	<p>Expenses on Personnel, Marketing &amp; Promotion, Administrative and Photographs, are grouped under the head General Administration expenditure. The computation of these individual items of expenses has been shown in the statement headed 'Op. cost'. The expenditure has been apportioned in the proportion of 4/42/40/14 %.</p> <p>The projections for 2005-06 include expenses on marketing and promotional activities, which was not there in the earlier year. The expenses on other three items of expenditure for 2005-06 are higher than the corresponding figures for the earlier year due to escalation factor.</p>
(x).	<p>With reference to the debt component in the capital structure, please clarify/furnish/ explain the following:</p> <p>(a). A copy of the Loan Agreement indicating loan amount, terms of allotment of loan, rate of interest, moratorium etc., may be furnished.</p> <p>(b). The interest cost shown in the debt schedule attached with the proposal does not tally with the interest cost shown in the cost statement. Interest cost of Rs.711.00 lakhs, Rs.618 lakhs and Rs.526 lakhs are shown in the cost statement for the year 2005-06 to 2007-08 respectively against Rs.692 lakhs, Rs.600 lakhs and Rs.508 lakhs respectively in the debt schedule.</p>	<p>Copy of the letters from Financial Institutions alongwith the loan agreement has been furnished.</p> <p>The interest cost projections shown in Form-III consist of two elements – interest on term loans and other financing charges. Interest cost projection (row 23 in the statement headed 'P&amp;L') is the same as that shown in the debt schedule viz., Rs.692 lakhs, Rs.600 lakhs and Rs.508 lakhs for the years 2005-06 to 2007-08 respectively. If the figures of Financing charges shown against row 25 of</p>

	<p>The differences may be reconciled and a detailed working for interest liability may be furnished.</p> <p>(c). The Cost statement furnished by ISHPL reveals that its capital structure includes loan funds. While ISHPL has claimed ROCE at 15% it has also considered interest expenses on debt as an item of cost. Thus, the interest component is double counted in the cost statement.</p>	<p>the statement headed 'P&amp;L' are added, we get the projected figures of Rs.711 lakhs, Rs.618 lakhs and Rs.526 lakhs.</p> <p>Though the Form-III indicated interest on Debt as a separate item and also RoCE at 15% of the capital employed, the IRR and RoCE computation in the statement headed IRR of the 30-year financial model, is calculated on the basis of Profit before interest and tax (PBIT). However, the interest on debt indicated as separate item did not go in to the computation of PBT but after ROCE shown in revised Form-III.</p>
(xi).	<p>The quantum of upfront payment of Rs.1121 lakhs shown in depreciation schedule differs with the upfront fee of Rs.1075.32 lakhs indicated in the LA. Please clarify.</p>	<p>As per the original bid document ISHPL is to be allotted 103,000nSq.Mtrs of undeveloped land, which was supposed to be developed at the cost of the successful bidder. However, after award of bid, for realigning the railway line, the Port Trust allotted an additional 5,176 Sq.Mtrs of developed land. ISHPL has paid separately the cost of development of this 5,176 Sq.Mtrs of land to the Port Trust and hence the difference.</p>
(xii).	<p>Clause 2.7.1 of the revised tariff guidelines stipulates that in the case of private terminals, depreciation will be allowed, on straight-line method, with life norms adopted as per the Companies Act or based on the life norms prescribed in the concession agreements whichever is higher. The ISHPL is requested to confirm that the depreciation schedule is in line with the revised tariff guidelines.</p>	<p>Depreciation is taken on the basis of our experience as allowed under the company's act. In the case of lease hold land, that is upfront payment and civil structures, life has been taken as co-terminus with LA.</p>
(xiii).	<p>With reference to the Capital Employed, please furnish / clarify the following:</p> <p>(a). Please furnish the documentary evidence in respect of the capital value of various assets already installed.</p> <p>(b). The ISHPL has estimated an investment of Rs.1060 lakhs during the year 2005-06 and Rs.50 lakhs during the year 2006-07 towards building, jetty, railway siding, computers and motor vehicles. In this context please confirm the following:</p> <p>(i). The proposed additions to the gross block during the years 2005-06 to 2006-07 are in accordance with the terms of licence agreement.</p> <p>(ii). Though the ISHPL has indicated additions to the gross block of assets; no increase in traffic or reduction in operating cost is indicated in its proposal.</p> <p>(iii). The proposal in reference indicates that the ISHPL operates berth</p>	<p>Documents to support capital cost has been furnished. (It appears that the ISHPL has entered into agreement with L &amp; T limited to design, execute &amp; complete the capital works at a cost of Rs.97.25 crore.)</p> <p>The investments proposed for the years of 2005-06 and 2006-07 are in line with the concession agreement for providing the handling facility for smooth operations.</p> <p>The incremental capital expenditure will result in availability of larger back-up area and storage area, which will facilitate smoother operation.</p> <p>We have not attempted scientific allocation of assets to various sub-activities; however, cost</p>

	<p>No. 4A, provides services towards on board stevedoring, cargo handling and delivery, and provides storage facilities apart from rendering other miscellaneous services. However, the cost statement furnished by the ISHPL does not identify the assets with reference to the individual items of service. The ISHPL is requested to furnish activity wise details of assets deployed in the facilities.</p>	<p>has been allocated broadly to the four main sub-activities as indicated in Form-III.</p>
(xiv).	<p>With reference to estimation of working capital please clarify the following:</p> <p>(a). In computation of working capital, loans and advances have been included apart from Inventories and sundry debtors in the Current Assets. The element of Loans and Advances is not considered while estimating the Current Assets as per the revised tariff guidelines.</p> <p>(b). The revised tariff guidelines, limit inventory for capital spares to one year's average consumption and in case of items of inventory, the limit will be six months average consumption of stores excluding fuel. The estimation of inventory for each of the year from 2004-05 to 2007-08 may be justified with reference to annual average consumption.</p> <p>(c). The revised tariff guidelines limit the Sundry Debtors to two months of estate income and terminal handling charges while computing working capital. The estimation of sundry debtors at half a month of operating income (excluding berth hire) is not in line with revised tariff guidelines. Since, the major ports and private operators collect all the charges in advance, except for the two items for which norms are prescribed in revised guidelines, the estimation of sundry debtors at half a month's revenue (excluding berth hire) needs to be justified.</p>	<p>Under the revised guidelines, Working Capital means Current Assets (excluding cash balances of funds) minus Current Liabilities. The balances shown under the head, 'Loans and Advances' represent mainly pre-paid expenses and TDS receivable and are part of the Current Assets and hence have been considered by us.</p> <p>Spares inventory of Rs.3.0 crores for 2005-06 includes insurance spares of 2.5 crores and other mechanical and consumables of 0.50 Crores.</p> <p>Unlike major ports, ISHPL does not operate any railway system as well as does not have large estate to be let out. Hence apparently the estate rentals and terminal charges are not strictly relevant in our case. Though normally cargo and vessel related charges are recovered in advance by major ports, ISHPL recovers only berth hire charges in advance and bills cargo related charges to users. Sundry debtors have been estimated on the basis of anticipated credit period of about 15 days and this may be allowed.</p>
<b>B.</b> 1.	<p><b><u>SCALE OF RATES</u></b></p> <p>The meaning of the terms "on board stevedoring" and "wharfage charge" mentioned in Part – I General of the proposed Scale of Rates are not clear. Please define the terms explicitly. The reference to BOT agreement may not be appropriate as the port users generally do not have access to that document.</p>	<p>The definitions of the terms of 'on board stevedoring and wharfage charge have been deleted from Part-I of the SOR. The exact scope of services covered by the relevant charges has been incorporated under the relative sub-sections of the Scale of Rates. Revised Scale of Rates has been furnished.</p>

2.	With regard to the proposed Note (5) to the General terms and conditions, the ISHPL may specify the reference Bank proposed to be followed.	The ISHPL desires to follow State Bank of India as the reference bank. The relevant clause has been amended suitably.
3. (i).	<u>Berth hire</u> The prescription of minimum berth hire charge of US\$ 250 for foreign going vessels may be justified.	The average GRT is 35,499 and the average stay of the vessel at the berth is 48 hours. This translates in to a berth hire amount of $35,499 \times 48 \times .0025 = \text{US\$ } 4259.88$ . As compared to this, the minimum berth hire charge of US\$ 250 is not excessive.
(ii).	The period for berth hire commences from the time the vessel occupies the berth. The conditionality governing levy of berth hire proposed at Note (2) under General Notes may be explained.	The berth allotted to any vessel is not available to any other vessel from the time first line is sent ashore at the time of berthing till the time last line is cast off at the time of un-berthing. Hence berth hire should be payable by that vessel for the period the berth is blocked for that vessel.
(iii).	Please justify the rates of proposed penal berth hire charges for foreign going vessels. Clause 2.3.1. appears to make incorrect references to the relevant sections.	Reference in the clause 2.3.1 needs to be corrected as 2.5 instead of 2.4. The rate proposed is double the normal berth hire rate for the first 6 hours escalating thereafter every six hourly period.
(iv).	The ISHPL has prescribed 14000 MT as the per day output rate as per LA. Per day output norms are, however, not prescribed for fertilizers & fertilizer raw materials in the LA. The basis for the proposed per day output rates of 8000 MT each for fertilizers & fertilizer raw material may be brought out.	The norms for fertilizer & fertilizer raw materials are based on achieved out put at other terminals in HDC at 3,500 to 5,000 TPD and we have given the improved out put norm of 8,000 TPD.
(v).	It appears from the operation methodology explained that ISHPL provides complete and comprehensive service to a vessel. That being so, it is not clear as to how a vessel can be held responsible for achieving the productivity norm mentioned at Clause 2.6. [Clause 2.5. is missing in the draft Scale of Rates]. In fact, performance assurance should be made by ISHPL or else a vessel will continue to incur berth hire even for any below par performance by the Terminal. Please explain the reasons why suitable rebate to be allowed by ISHPL should not be prescribed for not meeting the norms prescribed.	If norms cannot be achieved due to vessels fault penal berth hire is payable. It sounds reasonable that terminal should not charge berth hire if norms are not achieved for reasons attributable to them. We have incorporated a suitable clause in line with this.
4. (i).	<u>Cargo Related charges:</u> 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.	On Board charges and wharfage have now been separately prescribed and the rates proposed have been suitably modified.
(ii).	Fertiliser and Fertiliser raw material are not anticipated to be handled in the next 3 years, as per the traffic forecast of ISHPL. The reasons why rates for these commodities should be prescribed now are not clear.	Rates have been provided so that if any user offers this cargo at short notice ISHPL will be able to handle it.
(iii).	With reference to note (ii), please explain the possibility of more than one customer	Even if one customer satisfies the condition he will be eligible for the concession offered.

	satisfying the conditionality in view of the capacity limitations of the Terminal.	
(iv).	With reference to the items of commodities proposed, please explain the relevance of note (iii).	This note has been deleted in the revised Scale of Rates.
(v).	The reasons for prescribing handling and delivery charges separately may be explained.	Rate of deliveries and rate of discharge from the vessel and movement of cargo may not match and cargo will remain in the storage sheds for some time. For giving delivery, cargo has to be reclaimed from the stack and loaded on to truck or wagon. This is a separate operation and the rate for delivery has accordingly been proposed.
(vi).	Notes under Section 3.3 and 3.5.2 – It is billing issue concerning the operator. General provision proposed at the General terms and condition – Note (1) may be adequate in Scale of Rates.	Note 1 referred to provides payment before delivery of cargo. Notes under Section 3.3 and 3.5.2 provide payment of charges before cargo is received for handling i.e. before vessel starts discharge. Hence both the provisions need to be maintained.
5. (i).	<u>Ground rent / storage charges:</u> Since no overstayal of cargo is anticipated by ISHPL the proposed Section – D may be dropped excepting the conditions relating to free period.	The provision is needed as a deterrent levy of charges in case of over-stayal beyond free period.
(ii).	With reference to note (V) under Section D, please indicate the shifting charges of cargo leviable when the cargo is not cleared from the premises of ISHPL within 20 days after the free period. The proposed shifting charges may be justified with reference to cost incurred.	Actual cost of shifting will be to the importer's account and be recoverable from him.
6.	Please justify the proposed Dust suppression charges at Rs.4 per metric tonne with cost details. Also, give reasons why it should not be merged with wharfage charges.	Since this is an optional service, we do not desire to merge it with Wharfage.
7. (i).	<u>Section F – Miscellaneous and Optional Services</u> Item (3), (6) & (7) – Please explain how the proposed rates are linked to tonnage of cargo in the wagon.	For the sake of simplicity rates have been prescribed per MT.
(ii).	Item (7) & (8) – Can these be called port related services covered by MPT Act?	These are ancillary services incidental to the handling of particular type of cargo and optional.
8.	<u>Part IV – Charges for other services</u>  Please explain whether services mentioned at 4.4, 4.5, 4.6 and 4.7 are activities covered by MPT Act and included in the BOT agreement.	Retrieving cargo fallen from conveyor belt system is incidental to handling of cargo. Other services are at the request of users and optional.

7. A joint hearing on the case in reference was held on 29 March 2006 at the premises of the Kolkata Port Trust. The users present at the joint hearing did not have any comments to furnish other than the written comments furnished by them earlier. As agreed at the joint hearing, the KOPT was required to hold a meeting with ISHPL to determine the reasonableness of the traffic forecast made by ISHPL and furnish its Report.

8.1. Based on the submissions made by ISHPL at the meeting on 30 May 2006 convened by KOPT, the KOPT vide its letter dated 15 June 2006 furnished its Report. This Report was forwarded to

ISHPL for its comments. The ISHPL vide its letter dated 23 August 2006 has furnished its comments. It has also furnished the revised cost statements based on the traffic projected by KOPT for Berth No.4A.

8.2. The KOPT was requested vide our letter dated 14 July 2006 to furnish additional information/ clarification arising out of the Report dated 15 June 2006 furnished by it. The KOPT vide its letter dated 14 September 2006 furnished its clarifications. The information sought by us and the replies furnished by KOPT are summarised and tabulated below:

Sr. No.	Information sought by us	Clarification furnished by KOPT
1.	KOPT may furnish the reasons for revision of its earlier traffic estimate of 3 million tonnes per annum at berth no. 4A conveyed to us, to 2.79 million tonnes and 2.46 million tonnes for the years 2006-07 and 2007-08 respectively.	The earlier capacity of berth 4A was indicated at around 3 million tonnes keeping in view the trend of growth of import coking coal through HDC and whether handling of the said quantity was achievable at berth no. 4A. As decided at the joint hearing, a meeting was held with ISHPL and after careful consideration of all relevant factors, a final view on the projection of cargo has been given.
2.	The KOPT has quoted provisions of the LA wherein ISHPL is permitted to levy and recover tariff as per the prevalent Scale of Rates of KOPT. In this connection, it has already been clarified vide our letter no. TAMP/11/2004- KOPT dated 23 March 2004 that the rates in respect of the identified services provided by persons authorised u/s 42(3) are required to be notified by this Authority. The KOPT has endorsed this statutory provision vide its letter dated 27 September 2004.	KOPT is in agreement with the stand taken by TAMP that the rates of the BOT operator authorised u/s 42(3) of the MPT Act, are to be notified by TAMP.
3.	With regard to the provisions relating to the royalty payment by ISHPL to KOPT and the need for reconciliation between the provisions of the LA, it is a matter between KOPT and ISHPL.	KOPT agrees that reconciliation and enforcing of the provisions of the LA is a matter between KOPT and ISHPL. However, as the rights and responsibilities of the licensee have been established under the Licence Agreement and the existence of the Licensee per se arises out of such agreement, KOPT feels that while making any material determination relating to the project, the terms and conditions of the LA may kindly be kept in view.
4.	The observations of KOPT regarding the berth hire charges (to be) approved by this Authority for ISHPL are noted. This Authority will be guided by the approach prescribed in the tariff guidelines for fixing the berth hire charges of ISHPL.	The LA has established certain mechanism for computation of royalty payable as well as provided for certain limit for levy of charge by the Licensee. Unless uniformity in the service definitions between Scale of Rates of ISHPL and KOPT is maintained, the reconciliation of the LA with that of Scale of Rates of ISHPL may be contentious and difficult, which may lead to serious difficulties in the enforcement of certain material conditions of the said agreement. TAMP, while approving the tariff of ISHPL may kindly consider keeping uniformity in the service definitions between Scale of Rates of ISHPL and KOPT, to help avoid any contractual complications.

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

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

- (i). The ISHPL has entered into a LA with Kolkata Port Trust (KOPT) on 14 May 2002 to construct, operate, manage and maintain Berth No.4A at HDC of KOPT for a period of 30 years. It has been operating the terminal since 15 January 2004 reportedly applying the (then) prevailing Scale of Rates of KOPT based on the LA provisions. The Major Port Trusts Act, 1963 mandates this Authority to frame Scale of Rates and Statement of Conditions for Major Port Trusts and Private Terminals operating therein. However, this Authority does not like to go into the legality on the matter in reference at this juncture.
- (ii). KOPT has sought to argue that ISHPL is not entitled to recover charges in excess of the rates prescribed in the Scale of Rates of KOPT. As rightly stated by ISHPL, the tariff leviable by ISHPL at Berth No.4A shall be based on its cost of operation and level of investment. The revised tariff guidelines prescribe continuance of port-wise cost plus approach for tariff setting. This will inevitably lead to variation in the rates across the ports and variation in rates of different operators within the same port.
- (iii). In respect of the charges leviable on its cargo, the SAIL has attempted to keep its position at arm's length from the tariff fixed by this authority for the ISHPL. SAIL has argued that the rate payable by it to ISHPL is governed by the Agreement reportedly entered between them. We did not receive the views of ISHPL with respect to the position maintained by SAIL though we made a request in this regard to ISHPL. Be that, as it may. An Agreement entered between parties cannot supercede the relevant statutory provisions of the Major Port Trusts Act, 1963.

In accordance with Article 3.8(a)(i)(l) of the License Agreement, ISHPL shall operate the Berth No.4A on a common user basis. Presently, ISHPL handles the cargo of SAIL only. The ISHPL has confirmed that it is prepared to handle any other compatible cargo that may be offered by other users.

- (iv). As brought out earlier, the ISHPL has reportedly operated its facilities applying the (then) existing Scale of Rates of KOPT from 15 January 2004. The financial performance of the ISHPL from 15 January 2004 to 31 March 2006 is analysed in the following paragraphs based on actuals.
  - (a).
    - (i). The operating income as shown in the Profit & Loss account for the years 2004-05 and 2005-06 is considered.
    - (ii). Since the financial year 2006-07 is coming to a close, the operator's performance for the year 2006-07 also relevant for analysis of past performance. Since the estimates of operating income for the year 2006-07 furnished by ISHPL is based on the proposed tariff, the operating income estimate for the year 2006-07 is modified based on the actual operating income for the year 2005-06 adjusted to the estimated traffic for the year 2006-07.
  - (b). The ISHPL has signed the LA on 14 May 2002. In those BOT cases where bidding process was finalised 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 the royalty/revenue share not being taken into account, subject to maximum of the amount quoted by the next highest bidder as stipulated in clause 2.8.1. of the revised tariff guidelines. This means that admissibility of royalty as cost in the case of ISHPL has to be governed by this guideline from the year 2005-06 onwards as the revised tariff guidelines came into effect from 31 March 2005. Royalty/revenue share will not be considered as pass through for the years prior to 2005-06 as

per the policy adopted prior to the implementation of the revised tariff guidelines. Accordingly, the royalty payment of Rs.264.50 lakhs and Rs.1246.82 lakhs for the years 2003-04 and 2004-05 respectively are not considered in this analysis.

Considering the NPV of the revenue streams arising out of the quotes of ISHPL and the second highest bidder, the NPV of the revenue streams quoted by second highest bidder is 91.33% of the NPV of revenue streams quoted by the ISHPL. Therefore, 91.33% of the revenue share quoted by ISHPL is considered as pass through. The admissible royalty works out to Rs.1366.48 lakhs, Rs.1257.76 lakhs, Rs.1060.26 lakhs and Rs.1187.64 lakhs for the years 2005-06 to 2008-09 respectively, which have been considered as cost for the respective years.

This Authority has recently disposed of the general revision proposal of KOPT for review of its tariff. The revised cargo related charges will come into effect at KOPT by the end of this financial year. As per the LA provisions, the ISHPL has to pay revenue share on the applicable cargo handling charges as per prevailing Scale of Rates of KOPT. The then prescribed on board and wharfage charges of Rs.90/- per tonne for coal handled through mechanical system will stand modified to Rs.81/- per tonne, atleast from the financial year 2007-08 and will be valid till the financial year 2008-09. In view of this position, the royalty payment admissible for ISHPL for the years 2007-08 and 2008-09 has been calculated on the revised wharfage rate approved for KOPT.

- (c). The Annual Accounts of ISHPL show that ISHPL has incurred demurrage to the extent of around Rs.14.20 lakhs and Rs.9.46 lakhs during the years 2004-05 and 2005-06 respectively; and, an amount of Rs.12 lakhs each has been estimated for the years 2006-07 to 2008-09. The ISHPL has argued that it has to pay demurrage when there is delay in the ship turnaround time beyond agreed norms. In that case, the operator also deserves to be rewarded when the ship turn around time is within the agreed norms. Other ports and terminals do not compensate the demurrage suffered by a ship. If the argument of ISHPL about linking performance to tariff is to be accepted, then such a scheme should work both ways by rewarding the operator for efficiency and penalize him for below par performance. The ISHPL has not spelt out details of agreed norms. The ISHPL is advised to come up with an Efficiency Linked Tariff Scheme (ELTS). The cost of demurrage for the present, is not considered as pass through for the past analysis as well as for fixation of tariff for the future years.
- (d). In case of private terminal operators, the return allowed prior to the year 2005-06 was based on the equity component of capital employed. Hence, the interest on debt component was allowed as a pass through while fixing tariff. In line with this approach, the actual interest on term loan amounting to Rs.179 lakhs for the year 2003-04 and Rs.763.21 lakhs for the year 2004-05 is allowed as admissible expense. This interest cost is apportioned to individual activities based on the respective net block of fixed assets.
- Return at 20% on equity and reserves and surplus component is allowed for the years 2003-04 and 2004-05.
- (e). The cost statement for the year 2003-04 shows an amount of Rs.22 lakhs towards preliminary expenses fully written off in the year 2003-04 itself. As per the general principle adopted by this Authority, preliminary expense is to be written off over the entire project period. The ISHPL has signed the LA in May 2002 for a period of 30 years. Since the amount of Rs.22 lakhs is shown in the second year of the project period, this amount requires to be spread over the remaining period of 29 years from the year 2003-04. Such spread over amount applicable for the years 2003-04 to 2008-09 is considered as cost in equal proportion for all activities.
- (f). Depreciation on assets has been provided on Straight Line Method at the rates specified in the Companies Act, 1956 as confirmed in the audited accounts. The

upfront payment of around Rs.11.96 crores towards leasehold land and expenditure incurred on capital dredging to the tune of Rs.1.69 crores have been amortised equally over the license period. Depreciation and amortised amount are considered in this analysis for all the years under consideration.

- (g). The cost statement for the year 2004-05 shows miscellaneous income of Rs.30 lakhs as non-operating revenue. This appears to be relating to interest income earned by the terminal during the year 2004-05. From the relevant schedule forming part of accounts pertaining to current assets, it is seen that there is an entry for fixed deposits. Presumably, the interest income relates to such fixed deposits. Since fixed deposits are not considered as an admissible item of current assets, the relevant interest income also is not considered in this analysis.
- (h). (i). From the copy of agreement dated 19 June 2003 entered between ISHPL and a private party furnished by ISHPL, it is observed that it had entered into a contract with the private party for lumpsum payment of Rs.97.25 crores towards construction of jetty, supply of material handling system and other related work. Another copy of letter dated 24 July 2003 furnished by ISHPL and addressed to the private party reveals that a contract has been awarded at a total cost of Rs.250 lakhs for 33KV connectivity and augmentation of storage capacity. From the schedule of fixed assets of ISHPL, the gross block of assets as at the beginning of the financial year 2005-06 is seen to be at around Rs.113.65 crores. The difference between Rs.113.65 crores and the aggregate of contract amount of Rs.99.75 crores appears to be towards other assets like office equipments and motor vehicle. In respect of the capital dredging, no documentary evidence has been furnished by ISHPL. The value of fixed assets as contained in the audited annual accounts is relied upon. Further, the estimated amount of Rs.10 lakhs as addition to the gross block towards civil structure in the year 2006-07 is also considered.
- (ii). The actual working capital for the year 2005-06 and estimated working capital for the years 2006-07 to 2008-09 are moderated in line with clause 2.9.9. of the revised tariff guidelines as explained below:-
- (a). As per the operating cost assumptions of ISHPL, the consumption of stores & spares is dependent on the cargo handled. The cost of stores & spares per tonne of cargo handled is Re.1/-. Considering this rate, the expenditure towards stores & spares for the entire year is calculated taking into account the actual throughput for the year 2005-06 and estimated throughput for the years 2006-07 to 2008-09. Based on this annual consumption, six months' consumption is considered for the years from 2005-06 to 2008-09
- (b). Clause 2.9.9 of the revised tariff guideline has prescribed a limit on sundry debtor balances to two months' estate income and railway terminal charges payable by Indian railways. Since these items are not relevant for ISHPL, the current asset element sundry debtors is considered as Nil for all the years from 2005-06 to 2008-09.
- (c). The actual cash & bank balance for the year 2005-06 and the estimated cash & bank balances for the years 2006-07 to 2008-09 are limited to one months' cash expenses as prescribed in Clause 2.9.9 of the revised tariff guidelines.
- (d). The current liabilities as furnished by ISHPL for the year 2005-06 to 2008-09 are considered without any change.

Considering the moderated current assets and actual/estimated current liabilities, the working capital for the years 2005-06 to 2008-09 also results in a negative figure. The working capital for these four years is considered as Nil.

- (i). The capacity of Berth No.4A has been certified as 3 Million Tonnes per annum. Taking into consideration the actual traffic handled for a period of 2 ½ months in the year 2003-04, the proportionate capacity utilisation works out to 99.20%. In the year 2004-05, the ISHPL has operated the berth more than the certified capacity.

In the case of private terminal operators, a maximum permissible pre-tax return of 20% was being allowed subject to 100% capacity utilisation and observance of debt equity ratio of 1:1. As has been explained above, the capacity utilisation at ISHPL for the year 2003-04 and 2004-05 works out to 99.20% and 102% respectively. Accordingly, the maximum permissible return on equity for the year 2003-04 is moderated and full return on equity is allowed for the year 2004-05.

In respect of the year 2005-06 and onwards, return is to be allowed on capital employed, both for major port trusts and private terminal operators, at the same pre-tax rate, fixed in accordance with the capital assets pricing model as stipulated in clause 2.9.1. of the revised tariff guidelines. The rate so fixed presently is 15% per annum subject to capacity utilisation of 60% and above. Considering the certified capacity of the Berth No.4A and actual traffic of 3.24 Million Tonnes for the year 2005-06 and estimated traffic of 2.78 Million Tonnes, 2.46 Million Tonnes and 2.63 Million Tonnes for the years 2006-07, 2007-08 and 2008-09 respectively, capacity utilisation works out to more than 60%. That being so, the maximum return of 15% is allowed on the actual capital employed for the year 2005-06 and estimated capital employed for the years 2006-07 to 2008-09.

- (j). Subject to the above adjustments, the analysis of the performance of ISHPL for the years 2003-04 to 2006-07 shows a net deficit of Rs.447.49 lakhs. In view of the net deficit position, the question of adjustment of past surplus while fixing future tariff of ISHPL does not arise.
- (v). The revised cost statements furnished by ISHPL in August 2006 contained the projections for the years 2006-07 to 2008-09. The year 2006-07 is coming to an end and the projections for the year 2006-07 have already been considered for the purpose of analysis of the past performance of ISHPL. The revised cost statements furnished by ISHPL are considered in this analysis, for the years 2007-08 and 2008-09.
- (vi). Presently, the traffic of ISHPL is coking coal, under a contract with SAIL for annual throughput of 2.3 Million Tonnes. The ISHPL had initially, in June 2005, projected its coking coal traffic at 2.30 Million Tonnes each for the years 2006-07 to 2008-09. The KOPT, licensor of ISHPL, in consultation with ISHPL and after a detailed analysis has reviewed the traffic estimates of ISHPL and revised the estimates upwards to 2.78 Million Tonnes, 2.46 Million Tonnes and 2.63 Million Tonnes for the years 2006-07, 2007-08 and 2008-08 respectively. This revised traffic estimate is considered for the purpose of estimation of operating income of ISHPL. It is noteworthy that the ISHPL is in agreement with the revised traffic forecast made by KOPT. If any undue advantage is found to have accrued to ISHPL due to variation of actual performance in traffic, such undue advantage accrued to ISHPL will be set off in the next review of its tariff in terms of revised tariff guidelines.
- (vii). (a). It is seen from the computation furnished by ISHPL for estimation of income arising out of berth hire charges that it has adopted an exchange rate of Rs.43.50 for 1 US \$. The estimated berth hire income is updated with reference to the prevailing exchange rate of Rs.44.60 per 1 US \$.
- (b). The cargo related charges are proposed to be levied under wharfage & supply of man power & equipment, cargo handling charges and delivery & wagon loading

charges. Considering the estimated traffic of coking coal for the year 2007-08 and 2008-09 and the proposed tariff, the income estimation towards cargo handling charges and delivery & wagon loading charges are found to be arithmetically correct.

With reference to the wharfage & supply of man power & equipment, the estimation appears to be based on a rate of Rs.100 per tonne, whereas the proposed rate is Rs.101 per tonne. Necessary adjustment has been made in the estimated income considering the rate of Rs.101 per tonne.

- (c). The ISHPL has estimated around Rs.25 lakhs for the year 2007-08 and Rs.26 lakhs for the year 2008-09 as "other income". It has stated that the estimated "other income" is calculated at the rate of Rs.1/- per metric tonne of estimated traffic. It appears that the "other income" has been estimated with reference to the (optional) miscellaneous services proposed by ISHPL in its Scale of Rates. The linkage between the cost of rendering miscellaneous services and estimated "other income" has not been established. Nevertheless, the estimated "other income" is considered without any change.
- (d). The ISHPL has made an adjustment of Rs.518 lakhs and Rs.402 lakhs in its income estimation for the year 2007-08 and 2008-09 respectively towards incentives. The nature and the quantum of such incentives to be allowed and the conditions under which they will apply are not disclosed. Since the rates approved will be ceiling rates, the operator has a flexibility to charge less than the ceiling rates, if he so desires. The revenue impact of such incentives, if allowed, should be met by the volume growth triggered by the price reduction effected. Therefore, the adjustment made by ISHPL in the income estimation is not considered in this analysis.

At the time of next review, if it is found that the actual income varies widely from the estimates furnished, the additional accrual will be set off against future tariff revision in line with the revised tariff guidelines.

- (viii). The operating expenses and general administration expenses have been apportioned in certain percentage to the berthing activity, wharfage, cargo handling activity and delivery & wagon loading activity. The labour & equipment hire charges, demurrage, royalty payment to KOPT, survey/testing charges and water, power & fuel charges have not been allocated to berthing activity. All other operating expenses have been allocated to all the four activities. The basis of apportionment of the operating expenses and general administration expenses to various activities adopted by ISHPL is relied upon in this analysis.
- (ix). The estimated operating expenses are analysed below:
  - (a). The labour & equipment hire charges has been outsourced by ISHPL to a private party, as seen from the copy of the agreement. The copy of the agreement entered by ISHPL in May 2002 in this regard specifies a rate of Rs.33/- per metric tonne. However, looking to the actual expenditure incurred by ISHPL for the year 2005-06 and the actual traffic handled by it, the rate works out to Rs.33.15 per metric tonne. Since the contractual rate is also Rs.33/-, the rate of Rs.33/- per metric tonne is considered to verify the estimates for the subsequent three years. Considering the estimated traffic for the years 2006-07 to 2008-09 and the rate of Rs.33/- per metric tonne, the labour & equipment hire charges estimated by ISHPL is seen to be less than what otherwise would have been the case if the contractual rate is considered. The reason for the estimates at the reduced level remains unexplained. The estimates as furnished by ISHPL is considered without any change.
  - (b). The LA provides for payment of monthly rent of Rs.22,40,250.00 calculated at Rs.2175/- per 100 sq. mtr. per month for the land measuring about 103000 sq. mtr. by ISHPL to KOPT. The LA further provides for escalation at 5.1% per annum and a rebate of 2.5% on lease rent if payment is made by the stipulated

due date. The estimated amount for each of these three years is seen to be marginally less than the actual lease rental payable for 103000 sq. mtrs. without rebate.

The ISHPL has been allotted an additional land of 5176 sq. mtrs. after award of the bid. If the lease rent payable for this additional land is also taken into account, the amount payable will be more than the lease rental estimated. The estimates of lease rental for the year 2006-07 to 2008-09 as furnished by ISHPL is considered in this analysis without any change. However, if any variation is found in the actual payment of lease rental, necessary adjustment will be made in the next review of tariff of ISHPL.

- (c). ISHPL has clarified with reference to the survey/testing charges that the survey shown in the operation flow chart is the draft survey of the vessel carried out by the importer. It has been further clarified that the ISHPL is contractually bound to appoint the surveyor to supervise the total operation from discharge from the vessel till loading on to the wagon for delivery. The ISHPL has listed out the services rendered by the surveyor for this operation. A copy of the contract entered by ISHPL with a private party in 2004 in this regard shows a rate of Rs.0.75 per metric tonne towards survey/testing expenses.

However, the estimated expenditure towards survey/testing charges for the years 2007-08 to 2008-09 shows that the ISHPL has considered an amount around Rs.0.98 per metric tonne. The estimated expenditure on this account for the years 2006-07 to 2008-09 is moderated applying an escalation factor of 4.5% over the respective previous years taking the actuals for the year 2005-06 as base, which shows a rate of Rs.0.75 per metric tonne.

- (d). The estimated terminal maintenance expenditure consists of maintenance cost towards building, capital dredging, mobilisation/demobilisation expenses towards maintenance dredging, maintenance cost of plant & machinery, jetty, electrical equipments and other assets.

The terminal maintenance expenditure as estimated by ISHPL is Rs.619 lakhs, Rs.686 lakhs and Rs.758 lakhs for the years 2006-07, 2007-08 and 2008-09 respectively, as against the actual expenditure of Rs.461 lakhs for the year 2005-06. The steep increase in the estimated level of expenditure has not been justified with reference to actuals. The estimates are, therefore, moderated applying an escalation factor of 4.5% per annum over the respective previous years taking the actuals for 2005-06 as base.

- (e). Another item of estimated expenditure shown in the cost statement is water, power & fuel charges. From the Annual Accounts of ISHPL it is seen that the nomenclature of this item is described as electricity charges only. Notably, the ISHPL also has given details for unit cost for consumption of electricity charges. In view of this position, the caption of this item of expenditure is changed as electricity charges in the cost statement.

The actual expenditure towards electricity charges for handling per tonne of cargo is seen to be Rs.7.65 for the year 2004-05 and Rs.7.74 for the year 2005-06. The average electricity charge for handling per tonne of cargo works out to Rs.7.70 for these two years. The ISHPL has estimated electricity charges at Rs.215 lakhs, Rs.191 lakhs and Rs.204 lakhs for the estimated throughput of 2.78 Million Tonnes, 2.46 Million Tonnes and 2.63 Million Tonnes for the years 2006-07 to 2008-09 respectively. At the rate of Rs.7.70 per metric tonne and considering the annual escalation factor of 4.5%, the resultant expenditure works out at a higher level than the estimates furnished by ISHPL. The estimates as furnished by ISHPL are considered without any change.

- (f). The next item of operating cost estimated by ISHPL is insurance cost. It has been estimated at Rs.96 lakhs, Rs.111 lakhs, and Rs.121 lakhs for the years 2006-07, 2007-08 and 2008-09 respectively. Going by the clarification of ISHPL

that insurance cost has been projected on the basis of 1% of capital cost, the estimates of ISHPL are found to be on the higher side. The copies of documents furnished by ISHPL are found to be relevant only for the year 2005-06.

The LA provision 7.1 (y) stipulates the ISHPL to purchase and maintain insurance to cover against loss, damage, destruction of the berth, the terminal area and the ancillary facilities on the terminal for replacement at market 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. The estimated insurance cost has not been justified with reference to these two factors. The estimate of ISHPL at Rs.96 lakhs for the year 2006-07 is maintained for the next two years.

(g). The ISHPL has estimated general administration expenses at Rs.199 lakhs, 219 lakhs and 241 lakhs for the years 2006-07, 2007-08 and 2008-09 respectively. The estimated general administration expense consists of expenses towards personnel and other administration expenses as seen from the Annual Accounts. The estimated general administration expenses have been moderated applying an escalation factor of 4.5% p.a. for the years 2006-07 to 2008-09 over the respective previous years taking the actual general administration expenses for 2005-06 as base.

(x). Subject to the discussion above, the cost statements have been modified. The modified cost statements are attached as **Annex-I (a) to (e)**. The result disclosed by cost statements at the proposed level of tariff is summarised as shown in the table given hereunder:

Sr. No	Particulars	Operating Income (Rs. in crores)			Net Surplus(+)/ Deficit(-) (Rs. in crores)			Net Surplus(+)/ Deficit(-) as a % of		Average
		2007-08	2008-09	Total	2007-08	2008-09	Total	2007-08	2008-09	
1.	<b>ISHPL as a whole</b>	61.27	65.50	126.77	6.68	9.47	16.15	10.91%	14.46%	12.68%
2.	<b>Berthing</b>	1.74	1.86	3.60	-2.32	-2.09	-4.41	-133.67%	-112.80%	-123.24%
3.	<b>Wharfage</b>	24.93	26.65	51.58	6.99	7.87	14.86	28.07%	29.55%	28.81%
4.	<b>Cargo handling</b>	25.91	27.70	53.61	0.98	2.48	3.46	3.79%	8.94%	6.37%
5.	<b>Delivery &amp; wagon</b>	8.69	9.29	17.98	1.03	1.21	2.24	11.82%	13.12%	12.47%

(a). As can be seen from the above table, the ISHPL as a whole will be in a surplus position at the proposed level of tariff during the years 2007-08 to 2008-09. Therefore, there is a case for downward moderation in the proposed level of tariff.

(b). The berthing activity will be in deficit and the other surplus making cargo related activities have to cross-subsidize the berthing activity to the tune of Rs.441 lakhs. The cargo handling activities put together generate an aggregate surplus of Rs.2056 lakhs, during the relevant two years. After allowing the surplus making cargo related activities to cross-subsidize the deficit berthing activity, all the cargo related activities will still be left with an aggregate surplus of Rs.1615 lakhs. This works out to 13.11% of the operating income of all the cargo related activities which requires appropriate reduction. The reduction of 13.11% warranted by cost positions is moderated to the extent of across-the-board reduction of 13% on all the proposed cargo related charges.

(c). The ISHPL has sought an aggregate additional income of around Rs.29.50 crores for the two years, 2007-08 and 2008-09. With the tariff approved by this Authority, the ISHPL may be earning an additional income of around Rs.13.50 crores during the relevant two years. There will be an overall increase of 14.64% at the ISHPL with reference to the existing tariff levied by the operator based on KOPT Scale of Rates.

(xi). It is not necessary for this authority to notify the definition of "Coastal Cargo", "Foreign Cargo" as the general position of law defining such cargo will apply to ISHPL also. This approach was adopted in notifying the Scale of Rates of KOPT recently.

- (xii). ISHPL has proposed a definition for "Statement of Facts (SOF)". The SOF is to be prepared by the concerned parties to signify the completion of cargo operations. It appears to be a documentation of an operation which can be an administrative arrangement. Such an administrative arrangement need not be notified by this Authority.
- (xiii).
  - (a). ISPHL has defined the word "day" under section "Ground Rent/Storage Charges". This definition is shifted to the general section under which other definitions have been proposed.
  - (b). "Labour Holiday" is proposed to be excluded from a Weather Working Day ((D). The term "Labour Holiday" is not defined by ISHPL despite a suggestion made by KOPT in this regard. Without knowing the meaning of "Labour Holiday", the mention of "Labour Holiday" in the definition of "WWD" does not serve any purpose.
  - (c). "Port Holiday" is excluded from the "WWD" as proposed by ISHPL. "Customs Holiday" is also included under the exclusions as rightly suggested by KOPT.
  - (d). Bad / surf / stormy weather / inclement weather are proposed to be exceptions for "WWD". These may be standard terminology in shipping world, as stated by ISHPL; but, such words, without definition, may create confusion. In the absence of definition for such words despite pointed out by KOPT, the words "bad / surf / stormy weather / inclement weather are deleted from the proposed definition of "WWD".
- (xiv). The LA specifies that a special purpose company has been promoted in the name and style of "International Seaports (Haldia) Pvt. Ltd., by the International Seaports (India) Pvt. Ltd. (Licensee). Though the KOPT has also quoted this LA provision, the port is of the view that the ISHPL has been formed as a "general purpose company" and has requested for a close scrutiny. It is not for this Authority go into such scrutiny of the status of service provider. What is required is that the rates in respect of the identified services provided by persons authorized under Section 42(3) are required to be notified by this Authority. Notably, KOPT is in agreement with this statutory provision. Further, ISHPL has produced audited accounts exclusively relating to its terminal operations. Since the "ISHPL" is required to be a Special Purpose Company in the LA, this authority does not have reservation to include the words "Special Purpose Company" in the definition for the word "ISHPL" as proposed by ISHPL.
- (xv). The definition for "Week" proposed by ISHPL is slightly modified to say that "Week shall mean 7 consecutive calendar days including holidays".
- (xvi). With reference to the relevant factors to decide whether a vessel is "Foreign-going" or "Coastal", the notes proposed by the ISHPL under general terms and conditions are slightly modified to reflect the conditionality introduced in the Scale of Rates of all major ports vide Order No.TAMP/65/2001-Genl. dated 8 April 2002.
- (xvii). The ISHPL has not proposed a specific rate of interest on delayed payments / refunds with reference to the prevailing PLR of State Bank of India. Since the rate of penal interest should be 2% above the PLR of State Bank of India as stipulated in Clause 2.18.2 of the revised tariff guidelines, the proposed note under general terms and conditions is suitably modified to reflect the prevailing PLR of 13.50%.
- (xviii). In compliance of the policy direction issued by the Government of India, in the Ministry of Shipping, Road Transport & Highways (MSRTH) under section 111 of the Major Port Trusts Act, 1963, this authority amended the Scale of Rates of major port trusts and private terminals operating thereat by Order dated 7 January 2005 and 15 March 2005 to prescribe concessional rates for coastal cargo/containers/vessels related charges. Accordingly, the general conditionalities prescribed in Order dated 7 January 2005 read with Order dated 15 March 2005 are inserted under general terms and conditions of the Scale of Rates of ISHPL.

- (xix). The revised tariff guidelines prescribe methodologies to be followed by major port trusts and private terminals operating thereat for levy of tariff on ad-hoc basis when a specific tariff for a service / cargo is not available in the Scale of Rates. The methodologies prescribed in Clause 2.17.1 to 2.17.4 are inserted in the Scale of Rates of ISHPL.
- (xx). A general note stating that users will not be required to pay charges for delays beyond reasonable level attributable to the port is incorporated in the Scale of Rates as stipulated in Clause 2.15 of the revised tariff guidelines. This general note was incorporated in the Scale of Rates of Major Ports and Private Terminals recently notified.
- (xxi). As per the provisions of LA, Port Dues and Towage & Pilotage for the vessels entering the ISHPL's berth are payable directly by the ship-owners / vessel agents to the KOPT at the applicable rates as prescribed in the Scale of Rates of KOPT. The conditionality reflecting this position prescribed in this regard at Section 2.1 of the Scale of Rates is in order.
- (xxii). The proposed minimum berth hire of US \$ 250 does not indicate the "unit" of levy. While suggesting "per hour" unit for levy of the proposed minimum berth hire charge, the KOPT has not advanced any justification for such hourly unit.
- (xxiii). Berth hire charges are to be levied from the time the vessel takes or occupies the berth till the time it leaves the berth. Generally, this formulation has been prescribed in the Scale of Rates of Major Ports. In order to specify the duration of stay of the vessel at the berth of ISHPL to calculate the berth hire charges, the duration is proposed to be linked to the time period starting from the time the first line is sent ashore at the time of berthing till the time last line is cast off at the time of unberthing. No problem has been reported so far with reference to the formulation approved in the Scale of Rates of major ports. That being so, there is no reason to deviate from the approved formulation in the case of ISHPL. The proposed general note under Section - C (berth hire charges) is modified suitably.
- (xxiv). In case a vessel idles at the berth of ISHPL due to the reasons attributable to the ISHPL, rebate equivalent to berth hire charges accrued during the period of idling of vessel shall have to be allowed by the ISHPL. The proposed note in this regard by ISHPL is suitably modified to reflect the similar conditionality approved by this authority in the Scale of Rates of major ports.
- (xxv). (a). The proposed Scale of Rates prescribes output norms for coking coal, fertilizers and fertilizer raw materials for the purpose of levy of penal berth hire. The output norm of 14000 Metric Tonne per 'WWD' for coking coal is as per the provision of Licence Agreement.

ISHPL does not anticipate to handle Fertilizer and Fertilizer raw materials during the year 2007-08 and 2008-09. The proposed wharfage and other handling charges are not approved for the reasons explained in the next paragraph of this analysis. The proposed output norms of these cargo also are not notified.

- (b). The penal berth hire charges have been proposed in 4 slab period of 6 hours slab each. The rate proposed is double the normal berth hire rate for the first 6 hours escalating thereafter, every 6 hourly period at double the rate of the respective previous rate.

At the Vizag Seaport Limited (VSPL), the approved penal berth hire charges vide Order dated 15 March 2005 are prescribed in four slab period. The differential between one slab rate to the next slab rate maintained by ISHPL is found to be comparable with the differentials approved in the Scale of Rates of VSPL. The four slab structure proposed by ISHPL is approved along with the proposed rates.

- (c). It appears from the operation methodology that ISHPL provides complete and comprehensive service to a vessel. Performance assurance should be made by ISHPL or else a vessel will continue to incur berth hire even for below par

performance by the terminal. In response to our suggestion to prescribe suitable rebate to be allowed by ISHPL for not meeting the norms prescribed, the ISHPL has incorporated a conditionality to refund berth hire charges when a vessel idles for more than 20% of the total ships stay because of reasons attributable to ISHPL. But, the proposed note does not sufficiently establish a linkage to idling of vessel due to below performance by the terminal. In any case, the ISHPL has incorporated a provision to allow rebate equivalent to berth hire charges accrued during the period of idling of the vessel for the reasons attributable to ISHPL. Therefore, the note proposed under the provision relating to levy of penal berth hire charges is redundant.

- (xxvi). ISHPL does not anticipate to handle fertilizer and fertilizer raw material during the years 2007-08 and 2008-09, as per the traffic forecast; and, operating income for handling these cargoes are not estimated and captured in the cost statement by the operator. In the cost plus model adopted in tariff setting, this authority is not in a position to approve the rates for these commodities without capturing the related operating income and the relevant operating expenditure in the cost statement. In view of this position, the rates proposed for fertilizers and fertilizer raw-materials are not approved.

If the market condition warrants ISHPL to handle such cargo, it can respond to the market conditions following the procedure prescribed in the revised tariff guidelines for tariff fixation.

- (xxvii). The note under section 3.4. and section 3.6.2 of the draft Scale of Rates is the billing issue concerning ISHPL. The ISHPL has sought to argue that the notes under Section 3.4 and 3.6.2. provide payment of charges before vessel starts discharging. The general provision proposed at the general terms and conditions – Note (i) & (ii) also enable the ISHPL to collect charges before the goods are removed and before the goods are shipped. That being so, the notes under Section 3.4 and 3.6.2 are not approved.

- (xxviii). (a). The proposed free period of (21 days) for storage of cargo will be exclusive of Customs Notified holidays and port / ISHPL non-working days and this provision is in line with Clause 5.8 of the revised tariff guidelines.

(b). Though the cargo stored at the ISHPL premises is liable for levy of storage charges beyond the 21 days free period, the operator has proposed another provision to shift the balance cargo to other place beyond the free days, at the cost of the users. The operator may have to put the storage space to optimum use and viewed in this perspective, the proposed provision deserves to be approved. Since such shifting will be at the cost of the users, obviously the operator will not be in a position to incorporate a specific shifting charge in the Scale of Rates. However, the operator should intimate the user in advance of shifting of cargo about the actual cost involved for such shifting.

(c). The proposed storage charge of R.50/- per day for coking coal is leviable after the expiry of the first 21 days free period. Overstayal of cargo in the premises of the ISHPL beyond the free period is not expected by the operator. Further, income estimation on account of storage charge is not captured in the cost statements by the ISHPL. Since the storage charge has been proposed as a deterrent levy of charges in case of overstayal of cargo, the proposed rate is approved, subject to general reduction in rate.

- (xxix). The proposed dust suppression charge at Rs.4 per MT has not been justified with cost details. The proposed rate of Rs.4 per MT appears to be on the higher side as compared to the rate of Re. 1 per MT approved by this authority in the Scale of Rates of Chennai Port Trust. The ISHPL is levying the existing Scale of Rates of KOPT wherein no provision for dust suppression charge has been approved. As no separate costing details have been furnished to justify the proposed rates, this authority is not in a position to approve the proposed rate of Rs.4 per MT. Further, the overall revenue estimation considered does not explicitly include income from this service. Dust suppression services, wherever necessary and provided, should be taken to have been included against levy of wharfage.

- (xxx). The estimated income arising out of rendering (optional) miscellaneous services appears to be accounted for under "other income" calculated at Re.1/- per metric tonne for the projected throughput. The "unit" for levy of tariff items under the Miscellaneous Chapter has also been prescribed to be "metric tonne" for the sake of simplicity, as reported by the operator. Looking to the nature of various services listed under the Chapter-Miscellaneous, the "metric tonne" unit is not seen to be relevant for all tariff items. The metric tonne unit proposed for tariff items like supply of equipment inside hatch, documentation, cleaning of wagons and lable pasting, wood-plugging the wagons are not found to be relevant; and hence this authority is not in a position to approve such proposed tariff items. The other tariff items proposed for miscellaneous services are approved along with the proposed rates.
- (xxxi). The proposed rates for visitor entry pass, vehicle entry pass and photography are similar to the rates approved in the Scale of Rates of South West Port Limited (SWPL) except the rate for taking photographs of crews and others which has been prescribed at a lower level by the ISHPL. The proposed rates are approved.
- (xxxii). The other rates proposed at section 4.4, 4.5, 4.6 and 4.7 of the Scale of Rates relate to retrieving spilled over cargo during transit to conveyor system, cargo insurance, quarterly stock verification and custom clearance & coordination with port, Customs & Agents. The services mentioned except the service relating to retrieving cargo do not appear to be the activities covered under Major Port Trust Act, 1963. To a query in this regard, the response of ISHPL is not categorical and the operator has also not confirmed that such services are included in the BOT agreement. In view of this position, this authority is not in a position to approve the rates proposed at section 4.5, 4.6 and 4.7. However, the rate of Rs.5/- per metric tonne proposed at section 4.4 for retrieving of cargo is approved.
- (xxxiii). The revised tariff guidelines prescribe tariff validity cycle of 3 years. Since the financial and traffic position considered for the purpose of this analysis is only till 31 March 2009, the validity of the revised Scale of Rates will also expire on 31 March 2009.

11.1. In this result, and for the reasons given above, and based on a collective application of mind, this Authority approves the revised Scale of Rates of the ISHPL 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 ISHPL may, if it so desires, charge lower rates and/or allow higher rebates and discounts.

11.2. The revised Scale of Rates and conditionalities of the ISHPL 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 2009. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

11.3. The tariff of the ISHPL 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 ISHPL 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.

In this regard, the ISHPL 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 ISHPL fails to provide such information within the stipulated time period, the KOPT may initiate appropriate action against ISHPL. In the event, this authority may proceed suo motu to review the tariff of ISHPL. This apart, analysis of variation will 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 will be made in line with the revised tariff guidelines in the tariff to be fixed for the next cycle.

( **A.L. Bongirwar** )  
Chairman

**Summary of Comments**