

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

TARIFF AUTHORITY FOR MAJOR PORTS

G No. 175

New Delhi, 24 August 2011

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963) and in compliance of the common Order dated 10 August 2009 passed by the Hon'ble High Court of Bombay in Writ Petition No.2364 of 2004, 2414 of 1999 and 2539 of 1999, the Tariff Authority for Major Ports hereby disposes of the proposal of the Mumbai Port Trust (MBPT) for levy of charges for lighterage operations and the objection raised by Isapt Industries Limited as in the Order appended hereto.

(Rani Jadhav)
Chairperson

TARIFF AUTHORITY FOR MAJOR PORTS
No. TAMP/93/1999 –MBPT

The Mumbai Port Trust

- - -

Applicant

ORDER

(Passed on this 26th day of July 2011)

This Authority had passed an Order No.TAMP/2/97-BPT dated 2 June 1999 disposing of the proposal received in March 1997 from Mumbai Port Trust (MBPT) about levy of charge for lighterage operation in respect of cargo carried in transit to other ports whether discharged at the Bombay Floating Lights (BFL) or outside. The above said tariff Order was challenged by the MBPT in the Hon'ble High Court of Bombay. The Hon'ble High Court had set aside vide its Order dated 8 January 2002 the tariff Order dated 2 June 1999 and directed this Authority to reconsider the proposal of the MBPT and pass suitable orders in accordance with law after giving an opportunity of the personal hearing to the MBPT.

2.1. In compliance of the High Court Order dated 8 January 2002, this Authority had passed an Order on 17 March 2003 disposing of the proposal of the MBPT. The above said tariff Order was challenged by the MBPT in the Hon'ble High Court of Bombay under W.P. No. 2634 of 2004.

2.2. On 2 June 1999 this Authority had passed another tariff Order No.TAMP/5/97-BPT dated 2 June 1999 disposing of an application filed by the Ispat Industries Ltd., (IIL) on 4 July 1998 raising objection on the competence of MBPT to levy lighterage charges. The above said tariff Order was challenged by IIL in the Hon'ble High Court of Bombay under W.P. No. 2414 of 1999 contending that the levy of ₹15 per tonne by MBPT is not justified as this Authority has held that the MBPT cannot levy lighterage charges.

2.3. The MBPT also challenged the above said tariff Order in the Hon'ble High Court of Bombay under W.P. No. 2539 of 1999 .

2.4. The Hon'ble High Court has passed an interim Order on 9 February 2000 on the above said two Writ Petitions namely 2414 of 1999 filed by IIL and 2539 of 1999 filed by MBPT. The Hon'ble High Court held, inter alia, as follows:

“ 10. Having heard both the learned counsel, in view of the submission on behalf of Ispat Industries Limited itself in its amended application before the Tariff Authority, the appropriate order would be that during the pendency and disposal of both these Petitions, Ispat Industries Limited ought to pay the necessary levy at the rate of ₹6 per Metric Tonne instead of ₹15/- per Metric Tonne, which is the resolution of 1994 passed by the Port Trust and which is challenged by Ispat Industries Limited., As far as refund, which is sought by Ispat Industries Limited , is concerned, it is clear from the order of the Tariff Authority itself that the order is made prospective and no refund is directed even thereunder. That being so, at this stage, the question of directing refund does not arise. Ispat Industries Limited will give periodical details of the cargo off-loaded for taking over to Dharamtar Port. The periodical details will be supported by customs documents.

13. The above order is on the footing that Ispat Industries Limited files an undertaking in this Court within four weeks hereafter (with a copy to Port Trust) stating therein that in the event Port Trust succeeds in the matter, the short-fall will be made good at the rate of Rs. 15 per Metric Tonne and at the rate of interest to be decided by the Court at final hearing. Needless to state that in case Ispat Industries Limited succeeds, Port Trust will have to refund the amount collected with interest rate to be decided by the Court at final hearing”

3.1. The Hon'ble High Court by its Order dated 10 August 2009 disposed of all the above quoted three writ petitions filed by the parties. The operative portions of the High Court Order dated 10 August 2009 are reproduced below:

"6. We have perused the records. So far as the order impugned in W.P. No. 2634 of 2004 is concerned, that order dated 17.03.2003 is clearly in breach of the direction issued by this Court by Order dated 08.01.2002. The operative part of the direction reads as under:

We direct the Tariff Authority as constituted under the Act to reconsider the petitioners proposal and pass appropriate order in accordance with law, after giving opportunity of personal hearing to the Petitioners

Thus, this court had directed the Tariff Authority as constituted under the Act to reconsider the proposal and to give an opportunity of personal hearing to the Petitioner. Admittedly, the opportunity of personal hearing to the Petitioner was not given by the Authority but by its Chairman. In our opinion, therefore, as order has been made clearly in violation of the direction issued by this court which is binding on all the parties to the Petition, the order dated 17.03.2003 has to be set-aside. In our opinion, in terms of that Order, the Authority as constituted under the Act viz., the Authority consisting of Chairman and two members was obliged to give personal hearing to the petitioner before making the Order. The order impugned is, therefore, liable to be set aside".

"8. Now so far as the order which is challenged in W.P. No. 2539 of 1999, upholding the objection raised by the Ispat Industries Ltd., is concerned, in our opinion, the objection raised by the Ispat Industries Ltd., results in rejection of the proposal of the Port Trust. Therefore, as we propose to direct the Authority to consider the proposal submitted by the port trust afresh, in our opinion, the order upholding the objection raised by the Ispat Industries Ltd., has to be set-aside, because if that order remains intact the Authority will not be in a position to consider the proposal submitted by the Port Trust with open mind. Writ Petition No. 2539 of 1999 also, therefore, succeeds and is allowed. Order dated 2.6.1999 in case no. TAMP/5/97-BPT is set aside, and that case is also remitted back to the Authority to be decided afresh alongwith the case No. TAMP/2/97-MBPT."

"9. So far as the Writ Petition No. 2414 of 1999 is concerned, it is filed by the Ispat Industries Ltd., As by our order passed in Writ Petition No. 2539 of 1999 and the order passed in Writ Petition No. 2634 of 2004, we have set aside the orders passed in both the cases, no further order is required to be passed in this writ petition. Writ petition No. 2414 of 1999 is therefore, disposed of"

"10. The Authority is directed to consider both the proposal submitted by the Port Trust and the objection raised by the Ispat Industries Ltd., in accordance with law, including the order passed by this Court and shall make fresh Order thereon in accordance with law, as expeditiously as possible, in any case within a period of 3 months from the date of on which writ of this order is served on the Authority. During the pendency of the proceedings before the Authority, the interim order that is presently operating in these petitions shall continue to operate. The Authority may permit both the sides to submit additional material that they wish to produce."

3.2. (a). The proposal of the MBPT vide its letter dated 24 February 1998 was to levy a charge of ₹15 per tonne for lighterage operations in respect of cargo carried in transit to other ports whether discharged at the Bombay Floating Lights (BF) or outside.

- (b). The objections raised by IIL vide its letter dated 4 July 1997 was that at MBPT anchorage, its mother vessel is only anchoring and discharging cargo with the ship's gear and no facility whatsoever is used from the port authorities except passage to their barges in the MBPT water as well as anchorage of the mother vessel. MBPT is imposing a transshipment charge of ₹15 per tonne which in its opinion is very high. It had approached MBPT for withdrawal of such charges as already it is paying for the port dues of mother vessel as well as pilotage and other charges for plying their barges as per the tariff of the MBPT. As per tariff of MBPT, the same is mentioned as ₹24 per tonne if a vessel is discharging. At the most MBPT should charge 25% of the tariff charged at berth for discharging cargo at anchorage which comes to Rs. 6 per tonne, which is in line with other port (e.g.) mormugao, where transshipment charges are at ₹5.50 per tonne for similar operations.

4. As more than eleven years have elapsed since MBPT initiated its proposal to a new levy of charges on transit cargo, the Port was given an opportunity to update its proposal, with additional material, if any vide our letter dated 14 October 2009 by 23 October 2009. MBPT was also requested to produce all the documents in support of its claim that the BFL area falls within the "port approaches." After reminders vide our letters dated 27 October 2009 and 29 October 2009 the MBPT responded with its updated proposal vide its letter dated 9 November 2009.

5.1. In accordance with the consultative procedure prescribed, copy of the proposal received from MBPT was circulated amongst the concerned user organizations and IIL vide our letter dated 10 November 2009. The IIL was also advised to furnish additional information it may wish to furnish to supplement its earlier submission. After reminder vide our letter dated 27 November 2009 and after granting extension of time to IIL, the IIL and SCI responded vide their letters dated 15 December 2009 and 1 December 2009 respectively. A copy each of the comments received from IIL and SCI was forwarded to MBPT vide our letter dated 16 December 2009 as feedback information for its comments. The MBPT vide its letter dated 11 June 2010 has filed a rejoinder in response to the reply dated 15 December 2009 filed by IIL.

5.2. A summary of the comparative position showing the main points made by the MBPT in its updated proposal, response of IIL to the updated proposal of MBPT and the rejoinder of MBPT on the response of IIL is tabulated below:

Sr. No.	MBPT's updated proposal dated 9 November 2009	Response of IIL	Rejoinder of MBPT
(i).	Mumbai Port Trust Board vide resolution No. 123 dated 08.03.1994 had approved a proposal for levy of ₹ 15/- per metric ton as an all inclusive cargo related charges unloaded/ loaded at BFL area which was outside the port limit.		----
(ii).	A proposal was also sent by MBPT for the levy of charge vide letter dated 24.02.1998. The tariff Authority has passed an order dated 02.06.1999 which inter alia stated that the rate of ₹15/- per M.T. was justifiable and the same was not approved for want of authority for MBPT to levy such charges. However, the matter went to Hon. High Court of Bombay, and the Hon. High Court has passed an order dated 10.08.2009 on the matter. In compliance with the above we submit the following considerations in supplementation to our earlier	These are matter of records as borne out from the orders of either the TAMP or by the Hon'ble Bombay High Court from time to time. Anything stated therein which is contrary to the said orders is specifically denied.	----

	submissions in this regard.		
(iii).	As vessels which carry cargo for the steel plant situated at Raigad which falls within the jurisdiction of Dharamtar Port cannot be anchored at the jetty built by IIL. During fair weather conditions the cargo is unloaded from the mother vessel onto barges (i.e. lighterage operations) in an area which falls within the port limit and approaches of Mumbai Port. The Customs Department had notified this area as the Dharamtar Customs Notified Area. This area in which the above lighterage operations are carried out is within the Vessel Traffic Management System (VTMS) range of the Mumbai Port maintained by MBPT. The barges while going to and from the Dharamtar Customs Notified Area to the jetty of IIL (at Dharamtar Port) pass through the Mumbai Port limits through the channels maintained by them. During rough weather conditions the mother vessel is anchored at Mumbai Port and the cargo is then discharged on the barges and then transported to the jetty of IIL. In both the cases, the barges pass through the Mumbai Port limits / approaches.	It is denied that during fair weather conditions, IIL unloads its cargo from mother vessel on to the barges in an area which falls within the port limits and approaches of Mumbai Port. The lighterage operations during fair weather conditions are carried out by IIL, at Bombay Floating Lights which neither forms part of the Mumbai Port nor forms part of the approach to Mumbai Port. It is also denied that the barges of IIL pass through "approaches to Mumbai Port" as defined by law. For reaching Dharamtar Port the barges of IIL pass through the dredged channel within the limits of Mumbai Port without using any facility of anchorage etc. by way of innocent passage.	It is denied that BFL does not form a part of Mumbai Port or Port Approaches as alleged. For the barges to reach Dharamtar port the said barges have to undoubtedly pass through the port limits of Mumbai Port. The said barges do use facilities provided by the MBPT. Without using the facilities provided by MBPT it is impossible for the said barges to reach Dharamtar Port.
(iv).	IIL vide its letter dated 25th November 1993 requested MBPT for permission for lighterage operations of their vessels.	These are just for creating entitlement for port related charges which are not tenable.	It is denied that the contents of the written submission are not tenable as alleged.
(v).	MBPT passed a Resolution bearing No.123 dated 8th March 1994 granting sanction to IIL for transit of their barges through MBPT port limits on recovery of an all inclusive charges of ₹ 15/- per tonne of throughput. The said lighterage operations included making/ erecting / fixing of pier at the Port approaches / within the Port limits. IIL accepted the terms and conditions proposed by MBPT and vide their Agents letter dated 24th October 1994 paid an amount of ₹ 5,00,000/- and requested for necessary permission for the lighterage operations.	Passing of Resolution bearing no.123 dt. 8 th March 1994 by MBPT is not denied. However, the said resolution was illegal and in violation of the provisions of Major Ports Act as no sanction of the Central Govt as provided under section 52 was obtained by MBPT. It is not admitted that the IIL accepted the said terms & conditions proposed by said resolution which did not get sanction of the Central Govt and were not published in gazette which was mandatory requirement.	It is denied that Resolution No.123 dated 8.3.1994 is illegal or in violation of the provisions of the MPT Act as alleged. IIL not only accepted the terms and conditions set out in the said Resolution but also made payment accordingly. Therefore, a binding contract is subsisting between MBPT and IIL whereunder IIL is bound and liable to pay the said charges at ₹ 15/- per tonne.
(vi).	In view of the MBPT accepting the proposal of IIL and IIL accepting the terms and conditions laid down by MBPT and by making payment, a valid and legally binding contract came into existence between the parties.	It is denied that any valid and legally binding contract came into existence between MBPT & IIL. There was no meeting of minds of both the parties in as much as IIL has not consented and had no occasion to exercise its freewill before passing of Resolution No.123 dt. 8 th March	It is denied that there was not meeting of minds of both the parties. The aforesaid payment made by IIL as per Resolution No.123 of MBPT was out of free will and volition of IIL. It was within IIL's right to dispute the same before availing benefit

		<p>1994. The conditions imposed by the said resolutions were thrust upon IIL and lacked the basic ingredients of free will and consents, offer and acceptance required for the formation of a contract. For the reasons stated above, no valid and legally binding contract could have existed between MBPT & IIL.</p>	<p>of the said conditional permission granted by MBPT to IIL as far as back in the year 1994, which IIL failed to do so. After taking benefit of permission of MBPT to transit the cargo (which forms part of the said lighterage operations) through the port water limit of MBPT for reaching to Dharamtar port on the condition of payment of said charges at the rate of ₹ 15/- per tonne, it is not open for IIL to dispute its liability to pay the same. It is further denied that the conditions imposed by the said Resolution No.123 dated 8.3.1994 were thrust upon IIL and lacked the basic ingredients of free will and consent, offer and acceptance required for the formation of a contract. The letter dated 25.11.1993 addressed by IIL to MBPT was an invitation by IIL to MBPT to give its offer and the said Resolution No.123 dated 8.3.1994 containing the said conditional permission was the offer made by MBPT. IIL accepted the terms and conditions/ offer of MBPT vide their Agent's letter dated 24.11.1994 and pay an amount of ₹ 5,00,000 as called upon and acted upon the said offer and permission given by MBPT by carrying lighterage operations at BFL and transshipping the cargo by its barges which passed through the port water limits of MBPT. In the aforesaid premises, it is clear that there was a valid and binding contract between IIL and MBPT, whereunder IIL is bound and liable to pay ₹15/- per tonne the said charges in respect of the lighterage operations for transiting the cargo within the port water limits of MBPT.</p>
(vii).	<p>Lighterage operations were carried out by IIL and part payments were made by IIL in respect of the same. IIL continued the lighterage operations. They, however, failed and neglected to furnish the complete details and particulars</p>	<p>IIL was not liable to pay any charges for its lighterage operations at BFL, which is beyond the territorial jurisdiction of MBPT.</p>	<p>It is denied that IIL was not liable to pay any charges for its lighterage operations at BFL. It is denied that BFL is beyond the territorial jurisdiction of MBPT.</p>

	of the cargo and failed to pay the due lighterage charges despite various reminders to pay the same.		
(viii).	IIL vide its letter dated 17 th January 1997 admitted the right of MBPT to levy the charges but requested MBPT to reduce the same.	Submissions of MBPT are not admitted in view of the matter that MBPT is not entitled to port related charges for the vessels which are not using the limits of MBPT.	The vessels carrying cargo of IIL are using the limits and facilities provided by MBPT. Hence IIL is liable to pay port related charges.
(ix).	On 4th July 1997 IIL preferred an application to TAMP to revise the tariff of lighterage charges levied by MBPT. MBPT filed their Written Submissions objecting to the jurisdiction of TAMP to sit in judgement over the decision of MBPT to levy lighterage charges. The said objections were rejected by the order dated 27th July 1998 passed by TAMP.	The order dated 27 th July 1998 by Ld Authority could not reach the finality. Hence, the order dated 27.7.1998 is not fit to be acted upon.	The same does not merit any reply.
(x).	(a). MBPT vide their letter dated 9th November 1998 informed IIL that transit of cargo through MBPT waters carrying cargo would be stopped with effect from 11th November 1998. On 11th November 1998, IIL filed a Writ Petition 2187 of 1998 challenging the demand/action of MBPT. IIL made a statement that they will remit an amount of ₹ 50 lakhs on or before 15th November 1998 and the balance on or before 27th November 1998.	The contents are evasive in nature.	
	(b). An ad-interim order was passed directing the parties to maintain status quo.		
	(c). IIL deposited an amount of ₹ 50 lakhs vide their letter dated 17th November 1998. On 30th November 1998 IIL made an application in Writ Petition 2187 of 1998 for extension of time for payment. After hearing the parties Hon'ble High Court directed MBPT to accept a cheque dated 30th November 1998 for an amount of ₹58,86,240 towards part payment and extended the time for IIL to make the balance payment till 14 th December 1998. On 14 th December 1998, IIL paid the balance amount of ₹1.50 crores.		
(xi).	By an order dt. 2 nd June 1999, the TAMP held that the proposed levy of cargo-related charges of ₹15 PMT for lighterage operations at Mumbai Floating Lights (BFL) i.e. the area in which IIL carried out lighterage operations is beyond the competence of the MBPT. The said order, however further held that the rate of ₹15 PMT can be		

	said to be justifiable.		
(xii).	(a). The Hon'ble High Court vide its order dated 9 th February 2000 passed an interim order directing IIL to pay lighterage charges at the rate of ₹ 6 PMT of the cargo discharged and was further directed to give an undertaking that in the event Ispat Industries Ltd. losing the petition, they should pay the balance charges in respect of the cargo so discharged. The said order further directs the MBPT to give an undertaking that in the event of the MBPT losing their petition they would refund the monies paid by Ispat Industries Ltd.	The contents are evasive in nature.	
	(b). Consequent to the orders of the Hon'ble High Court above, a hearing was granted to MBPT on 2 nd December 2002. At the said hearing MBPT relied upon the Government Notification dated 28 th May 1982 as well as the Admiralty Chart No. 1487 showing the areas abutting the port limits, navigable channels leading to Mumbai Port which amounts to port approaches. MBPT also relied upon the Shipping Guidelines and also filed their Written Submissions.		
	(c). TAMP vide an order dated 17 th March 2003 rejected the contentions of MBPT. The TAMP reiterated their earlier decision on the ground that the MBPT could not produce the appropriate Notification to justify levy of cargo related charges.		
	(d). Writ Petition 2634 of 2004 was preferred by MBPT challenging the order dated 17 th March 2003 passed by TAMP.		
	(e). The Hon'ble High Court of Mumbai passed an order on 10.08.2009.		
(xiii).	(a). A Port has been defined under the Major Port Act, 1963 (MPT Act) as under : "2(a) port means any major port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may be defined by the Central Government under the provisions of the Indian Ports Act."	The interpretation given by MBPT to the said provisions is basically erroneous and not supported by any principles of interpretation of Statutes. The submission of MBPT regarding the limits of Mumbai Port are self contradictory as in its supplemental written submissions MBPT itself relies on the Gazette Notification dt. 28.05.1982 wherein the Central Govt. has declared the limits of Port of Mumbai. Therefore, Section 2(a) of MPT Act cannot be read in isolation and without reference to the said Gazette notification. BFL does not form part of limits of the Mumbai port as per the said notification dated	It is denied that the interpretation given by the MBPT to the provisions of the said act is erroneous or not supported by principles of interpretation of estimates. Further it is denied that submissions of MBPT are self contradictory. BFL area is treated as port approaches by the marines and is also deemed to be a port approach and defined under the MPT Act and the Indian Ports Act. It is denied that BFL area is not a port approach as defined under the MPT Act, 1963 for the reasons as falsely contended by IIL. It is
	(b). Port approaches have been defined under the Section 2 (r) of the MPT Act as under : "(r) port approaches" in relation		

	<p>to a port, means those parts of the navigable rivers and channels leading to the port, in which the Indian Ports Act is in force”</p> <p>The definition of port approaches as in Section 2(r) of the MPT Act has thus to be read with Section 1 (2)(a) of the Indian Ports Act which states that the Indian Ports Act, 1908 shall extend save as otherwise appears from its subject or context.- (a) to the ports mentioned in the First Schedule, ...”. The port of Mumbai is mentioned in the First Schedule to the Indian Ports Act, without any limits. A conjoint reading of the two makes it clear that the port of Mumbai would include the navigable rivers and channels leading to the port.</p>	<p>28.05.1982 of the Central Govt. More over, Section 2(r) of the MPT Act which defines port approaches cannot be used with benefits by MBPT in the absence of any notification bringing a particular port approach within the purview of Indian Port Act. The word approach cannot be given a meaning of general usage when it has been particularly defined in the Act. The basic fallacy in the argument of MBPT is that it is relying on various alleged documents wherein mariners have been allegedly treating BFL as a port approach but it loses sight of the fact that such usage cannot override the specific provision of law defining the port approach with particular reference to Indian Ports Act. Even though BFL is being treated as Port approach by the mariners but it will not be deemed to be a port approach as defined under Major Port Act, as Indian Port Act has no applicability over BFL. Once this distinction is appreciated, the argument of MBPT loses its strength and cannot be accepted. It is also incorrect to say that a conjoint reading of the above two referred provisions would make it clear that Port of Mumbai would include navigable rivers and channels leading to the port even if the Indian Port Act is not in force there.</p>	<p>further denied that argument of MBPT loses strength and/or the same cannot be accepted as falsely contended by IIL.</p>
	<p>(c). The phrase ‘in which the Indian Ports Act is in force’ which occurs at the end of Section 2 (r) of the MPT Act qualifies the last antecedent term ‘port’ and not the earlier term ‘navigable rivers and channels’. This interpretation is in consonance with the well settled principles of interpretation as laid down by the Hon’ble Supreme Court.</p>	<p>The para under reply is argumentative in nature to justify the stand taken by MBPT. It is denied that the words “in which the Indian Ports Act is in force” will qualify the word “Port” only and not the words “navigable rivers and channels”. Section 2(r) of MPT Act does not invite any such interpretation in as much as the plain reading of the said section is unambiguous and clear.</p>	<p>MBPT does not admit the contentions/ denials of the IIL as sought to be raised/ made in the said paragraph.</p>
<p>(xiv).</p>	<p>The Hon’ble Supreme Court construed Section 2 of the Bar Council Act which reads</p> <p>“Notwithstanding anything contained in the Indian Bar Councils Act, 1926, or in any other law regulating the conditions subject to which a person not entered in the roll of advocates of a High Court, may be permitted to practice in that High Court every advocate of the Supreme Court shall be entitled as of right to practice in any High</p>	<p>The said para is argumentative in nature. The judgment (without citation) referred by MBPT has no bearing to the facts & circumstances of the present case and therefore cannot bind the Authority as a precedent.</p>	<p>It is denied that the judgment cited by MBPT have no bearing to the facts of the present case and that the same cannot bind TAMP as a precedent as falsely contended by IIL.</p>

	<p>Court whether or not he is an advocate of that High Court".</p> <p>The Court observed</p> <p>"Much ado was made on both sides about the comma occurring just before the word "or" in the non obstante clause, the Petitioner stressing its importance as showing that the adjectival clause "regulating the conditions etc." does not qualify the words "Indian Bar Councils Act" which are separated by the comma and that, therefore, the whole of that Act is superseded".</p>		
(xv).	<p>In the premise channels and rivers leading to the Port of Mumbai would be covered by the term 'port approaches' and MBPT possesses jurisdiction to levy rates for lighterage operations carried out within the port limits and also within the 'port approaches' subject to approval and notification of such rates by TAMP.</p>	<p>It is incorrect to say that the term port approaches would also include channels and rivers leading to the port of Mumbai, even though Indian Ports Act is not made applicable to them. It is also incorrect that MBPT would possess jurisdiction to levy lighterage charges carried out within such rivers and channels as alleged.</p>	<p>The term port approaches include channels or rivers leading to the port of Mumbai and MBPT has jurisdiction to levy charges in respect of the lighterage operations carried out at within the said rivers and channels leading to Mumbai Port. As per section 2 (r) which defines port approaches under the MPT Act, 1963, only the concerned port is required to be covered by the Indian Ports Act and there is no necessity for the concerned channels or rivers leading to such port being required to be defined or described under the said Indian Ports Act. In other words, the provisions of Indian Ports Act are not applicable to such channels and rivers leading to Port of Mumbai.</p>
(xvi).	<p>The term port approaches is well understood in the shipping circles and does not require any separate notification.</p>	<p>No usage custom or practice can over ride specific statutory provisions. Hence, the provisions of Section 2(r) of MPT Act cannot be overridden by alleged usage / custom / practice of the mariners. It is incorrect that in view of such alleged customs, usage and practices, no separate notification is required as alleged by MBPT.</p>	<p>MBPT reiterates what is stated in their submissions.</p>
(xvii).	<p>The term 'approaches' has been defined in The Mariner's Handbook as 'the waterways that give access or passage to harbours, channels, etc.' The term 'anchorage' is also defined on the same page of the same publication as "Water area which is suitable and of depth neither too deep nor too shallow, nor in a situation too exposed, for vessels to ride in safety.</p>	<p>Submissions of MBPT are not admitted. The alleged "Mariners Handbook" has no authenticity and cannot be relied upon.</p>	<p>It is denied that the Mariners Handbook does not have any authenticity and cannot be relied upon.</p>
(xviii).	<p>The publication 'Admiralty Sailing Directors – West Coast of India</p>	<p>Submissions of MBPT are not admitted. The alleged publication</p>	<p>It is denied that the 'Admiralty Sailing Directors –</p>

	Pilot' refers to an Anchorage area 20 miles North West of the entrance to the Mumbai Harbour. Thus, these Anchorage areas lie within the port approaches of the Port of Mumbai and are so regarded by mariners.	has no authenticity and cannot be relied upon.	West Coast of India Pilot' relied upon by MBPT has no authenticity and cannot be relied upon.
(xix).	<p>The British Admiralty Chart No. 1487 (Map) titled Approaches to Mumbai shows the port of Mumbai and the approaches and lighterage operations areas. The Chart also shows limits of the Vessel Traffic Management System (VTMS) maintained by MBPT.</p> <p>The area where Ispat Industries Ltd. carry out the lighterage operations is shown in Blue line. It is pertinent that a part of the said area is now within the new limits of the Mumbai Port. The barges on to which cargo is unloaded have to pass through the port approaches to reach Dharamtar Port.</p>	<p>Submissions of MBPT are denied. The IIL wishes to refer to the following statement made by MBPT subsequently of its Supplemental Written Submissions.</p> <p>"It is pertinent that a part of the said area is now within the new limits of the Mumbai Port."</p> <p>The above statement supports the contention of IIL that the area of BFL was not within the limits of Port of Mumbai as MBPT itself submits that "a part of said area is now within the new limits of Mumbai Port".</p>	It is denied that BFL area is not within the limits of port of Mumbai/ port approaches. Before raising the present dispute, the charges were paid by IIL without any protest. Further, in the light of facts and relevant sections, the barges of IIL with the cargo (forming part of the said lighterage operations) pass through the port water limits of MBPT under permission given by MBPT in the year 1994 on the condition of part payment of all inclusive charges of ₹15/- per tonne, the IIL is not entitled to raise false and baseless contentions against the claiming jurisdiction of MBPT to levy the said charges.
(xx).	The chart demonstrates that a vessel to enter the Port of Mumbai has to approach the Port from one of the various recommended safety fairway as marked in the chart or from the anchorages which are within the approach to the port of Mumbai.	In view of the fact that the copy of the chart referred by MBPT has not been supplied to the IIL, the IIL does not admit the correctness thereof or the allegations made in that respect.	It is denied that the chart filed by MBPT was not supplied to IIL. In any event, the said chart is one which is available to all concerned. It is not an internal chart maintained only by MBPT.
(xxi).	Lighterage operations are carried out only when the vessel is approaching the port with a view to save time and cost so that the mother vessel does not have to spend considerable time in the outer anchorage waiting to enter the port) or when the draft is not enough for the mother vessel to enter the port. Hence lighterage operations by nature have to be carried out at the port approaches also. The same demonstrates that Dharamtar Customs Notified area falls within the approaches to the Mumbai Port	Submissions of MBPT are not admitted. It is denied that the allegations made demonstrate that Dharamtar custom notified area (BFL) falls within the approaches to Mumbai Port. In the absence of any copy of the alleged chart relied upon by the MBPT the allegations made in that respects are not admitted.	IIL has admitted that the BFL area is covered by VTMS operations. Further, the barges carrying the goods belonging to IIL have to pass through the BFL area to reach Dharamtar port and hence availed of the VTMS facility provided by MBPT. The chart referred in the said paragraph has been forwarded to IIL.
(xxii).	The said chart also demarcates the Mumbai Vessel Traffic Management System (VTMS) operation area. Vessel bound for any area within this reporting zone contacts the Mumbai VTMS center and seeks direction, information about the traffic in the area and gives details about the vessels crew and the cargo. The Dharamtar Customs Notified Area falls within the Mumbai	However, it is correct that BFL is covered by VTMS operational zone.	

	VTMS operational zone and vessels bound for this area do avail for the assistance Mumbai VTMS center.		
(xxiii).	The Central Government has by a Gazette Notification dated 28 th May 1982 declared the limits of the Port of Mumbai. (The said limits were revised and increased by a Gazette Notification dated 26 th October, 2006).	The IIL craves leave to refer to its reply in Para xiii herein above. The contents of the same may be read as part of this para as the same are not repeated here for the sake of brevity and to avoid repetition. It is further submitted that even after the said notification dated 26.10.2006 the BFL did not become part of limits of Port of Mumbai.	The para does not merit any reply as the same has been dealt with hereinabove.
(xxiv).	(a). The Barges which load/unload cargo to/from vessels which anchor at Dharamtar Customs Notified area do call up the VTMS centre so as to give their position, expected time of entering the Mumbai Port Limits and the traffic in the area at that time. The barges while going to or from Dharamtar Customs Notified Area passes from the Mumbai Port limit and avail of navigational aids.	MBPT collects Anchorage/ Berthing/ Light charges as port dues for actual services at BFL & inside Mumbai Port to which IIL are not liable to pay the port related charges. The VTMS services are also part of port services and are therefore part of port dues. Therefore, the allegations of MBPT that services towards navigational and VTMS are availed by IIL is of no significance since IIL is paying port dues even for the vessels which are anchored at BFL. As far as lighterage charge are concerned, no services are provided by MBPT to IIL at BFL and also BFL area is not within the territorial jurisdiction of MBPT. Therefore, MBPT has no right or jurisdiction to levy lighterage charges on IIL for its lighterage operation at BFL.	It is denied that IIL is not liable to pay lighterage charges in view of their paying port dues as falsely contended by IIL. It is denied that BFL area is not within the territorial jurisdiction of MBPT. It is denied that MBPT has no right or jurisdiction to levy lighterage charges on IIL for its lighterage operations at BFL.
	(b). The aforesaid demonstrates that the IIL avails of and uses MBPT's Infrastructure. The MBPT render port and navigation aids for the operations and the barges transit through the port approaches. During the transit of the barges various anchorage points are required to be kept vacant for the barges to pass through.	It is denied that during the transit of the barges various anchorages points are required to be kept vacant for the barges to pass through. On the contrary the fact is that no anchorage is kept vacant for barges and barges are required to stay clear and pass through at a safe distance from vessels at MBPT anchorage even at the cost of taking a longer routes, if required.	It is denied that no anchorages are kept vacant for barges of IIL as alleged by IIL.
(xxv).	In the above premises MBPT is entitled to levy lighterage charges under the provisions of the MPT Act.	Submissions of MBPT are absolutely incorrect and denied. MBPT has no jurisdiction or right to levy lighterage charges at BFL.	It is denied that MBPT has no jurisdiction or right to levy lighterage charges at BFL.
(xxvi).	(a). Section 48 deals with scales of rates for services performed by the Board or any other person at or in relation to the port or port approaches. The same includes transshipping of goods between vessels in the port or port approaches. Landing and shipping of goods from such vessel to or from any wharf, quay, jetty, pier, dock, berth etc.	Submissions of MBPT are merely in narration of the scope of various provisions of MPT Act which does not entitle MBPT to collect port related charges from IIL.	It is denied that provisions of MPT Act do not entitle MBPT to collect port related charges from IIL.

	in the possession of the Board or at any place within the limits of the port or port approaches		
	(b). Section 49 deals with the scale of rates to be fixed by the Board for use of the property belonging to the Board at any place within the limits of the port or the port approaches		
	(c). The aforesaid provisions of the MPT Act demonstrate that MBPT have the powers under the MPT Act to levy charges for use of port and port approaches.	Submissions of MBPT are wrong and denied. It is absolutely incorrect that MBPT has any jurisdiction or power to levy charges as alleged. The MPT Act does not empower the MBPT to levy lighterage charges at BFL.	It is denied that MBPT does not have jurisdiction or power to levy charges. It is denied that the MPT Act does not empower the MBPT to levy lighterage charges at BFL.
(xxvii)	IIL required to seek permission of MBPT for carrying out operations in the said area. IIL sought permission vide its letter dated 25 th November, 1993. Permission was granted by MBPT subject to payment of charges which Ispat Industries Ltd. agreed to.	Submissions of MBPT are not admitted as stated. It is denied that IIL agreed to levy of cargo related charges at BFL as alleged by MBPT.	It is an admitted position that IIL did agree to pay/ paid initially to MBPT cargo related charges in respect of the lighterage operations carried on by IIL at the BFL area. Further, MBPT does not admit the denials made therein by IIL.
(xxviii).	(a). Provisions for levy of fees under an Act or Rules cannot be challenged on ground that there is no reasonable relationship between levy of fee and services rendered to the entire industry. The Hon'ble Supreme Court while dealing with fees levied by the Textile Committee observed "When the entire proceeds of the fee are utilized in financing the various projects undertaken by the Textiles Committee, as also the inspection of all textiles including manmade fibers and textile machinery, the appellants cannot be heard to say that there is no reasonable and sufficient correlation between the levy of the fee and the services rendered."	It is incorrect that the provisions for levy of fee cannot be challenged as alleged. The judgment referred by MBPT without giving citations thereof, is unrelated to facts & circumstances of the present case and therefore cannot be treated as a precedent having binding force of law over this Authority. More over any act of the statutory body can always be challenged if the same is arbitrary, biased, and in colourable exercise of its powers. The MBPT acted unfairly and in a biased manner in treating IIL differently from other bulk users like Reliance, from whom it was not charging such charges in the similar circumstances.	It is denied that the act of MBPT in levying lighterage charges is arbitrary or biased or colourable exercise of its power as alleged. It is denied that MBPT has acted unfairly or in a biased manner in treating IIL differently from other bulk user as alleged.
	(b). A direct or special benefit of services is not necessary. General benefit is enough to justify levy of a fee.		
	(c). There is no need for fastidious balancing of cost of services rendered with fees collected. The Hon'ble Supreme Court has held that "it is thus well settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation		

	may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay, receives general benefit from the authority levying the fee, the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee."		
	(d). The Hon'ble Supreme Court further held that the power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlation between the levy and the services rendered or expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered."		
	(e). In the premises, TAMP may consider that MBPT were entitled to levy lighterage charges under the provisions of the MPT Act.	MBPT has no jurisdiction or right to levy lighterage charges under the provisions of MPT Act.	It is denied that MBPT has no jurisdiction or right to levy lighterage charges under the provisions of MPT Act.
(xxix).	(a). There was a valid and legally binding contract between the parties. IIL vide its letter dated 25 th November 1993 requested for permission for lighterage operation of their vessels at the port approaches also. MBPT granted permission for the same on payment of charges of ₹15 per tonne of throughput. The said lighterage operations included making/erecting/fixing of pier at the Port approaches/within the Port limits. IIL accepted the terms and conditions proposed by M/s. MBPT.	It is denied that there was a legal and valid contract between the parties as alleged by MBPT. It is also denied that IIL accepted the terms & conditions proposed by MBPT. There cannot be any estoppel, as alleged by MBPT, against IIL. There can be no estoppel against law and MBPT cannot levy, recover and be entitled to charges for lighterage operations in areas which are beyond its territorial limits.	There is a legal and valid contract between IIL and MBPT for levy of lighterage charges. It is also an admitted fact that IIL accepted the terms and conditions proposed by MBPT. As there is a binding contract between the parties the principles of estoppel would apply and IIL is not entitled to deny its contention to pay the said charges. MBPT further do not admit the denials made therein by IIL.
	(b). In view of MBPT accepting the request of Ispat Industries Ltd. and Ispat Industries Ltd. accepting the terms and conditions laid down by MBPT by making payment, a valid and legally binding contract came into existence between the parties.		
	(c). A person knowingly accepting benefits of a contract is stopped from denying binding effect of such a contract.		
(xxx).	The impugned order dated 2 nd June 1999 was passed by TAMP in violation of the principles of natural justice. It resulted in rejecting a concluded contract wherein the party had	It is not admitted that the order dated 2 nd June 1999 passed by this Authorities was in violation of principles of natural justice or it rejected an otherwise concluded contract as alleged.	MBPT repeats and reiterates what is stated in its supplemental written submission and does not admit the contention of IIL which are inconsistent with

	<p>contract and the evidences of Port approach submitted may be given due reckoning.</p> <p>(g). The principles of natural justice may be extended.</p> <p>(h). TAMP is requested to approve a tariff of ₹15 per tonne as cargo related charges against lighterage operation at BFL area outside Port Limits but on port approaches.</p>	<p>₹15 / Ton levied in 1994 is reasonable and justified. It is submitted that the same is arbitrary, biased and in colourable exercise of its powers by MBPT.</p> <p>(d). It is denied that the operations at BFL takes place within the port limits / port approaches as alleged by MBPT.</p> <p>(e). It is denied that Principle of Natural Justice requires to be followed while applying substantive statutory provisions though it is submitted that principles of natural justice must be followed in favour of all the parties in the matters of practice and procedure.</p> <p>(f). The MBPT has itself admitted that BFL, at relevant times was never within the territorial limits of port of Mumbai. The allegations regarding concluded contract and the BFL being within the limits of port of Mumbai deserves no consideration</p> <p>(g). Both the Resolutions No.TR 123 dated 8.3.1994 and Resolution No.50 dated 24.2.1998 upon which the alleged demand has been made by MBPT did not and do not have sanction of Central Govt and also the same have not been officially gazetted as mandatorily required under Section 52 of Major Port Trust Act 1963 prior to its amendment. More so, the said section by an amended act 15 of 1997 has been omitted and the authority vests with Tariff Authority for Major Port since 25.03.1997. In view of above reason, the demand letter dated 9.11.1998 is fit to be quashed.</p> <p>(h). In view of above, action of MBPT claiming/ demanding port related charges is even otherwise illegal, void and contrary to principle of fair play, equality and natural justice.</p> <p>(i). It is, therefore, prayed that the Authority may be graciously pleased to reject the demand of Tariff/ levy of ₹15/Ton of cargo related charges at BFL by MBPT made in its supplemental written submissions as the same deserves no consideration and</p>	<p>In the premises, MBPT prays that</p> <p>(i). The Hon'ble Authority may be pleased to reject the objections of IIL against the claim of MBPT for recovery of the aforementioned charges from IIL in respect of lighterage operations carried on by IIL at BFL area</p>
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>may be dismissed with cost. It is requested that the prayer made by IIL herein before in its earlier pleadings may be allowed and levy of charges by MBPT being untenable and destitute of law may kindly be quashed and the MBPT be directed to refund the amount with interest paid by IIL under protest.</p>	<p>and for transit of cargo within the port limits of Mumbai Port in terms of Resolution No.123 dated 8.3.1993 passed by MBPT and</p> <p>(ii). Approve the proposal dated 10.2.1998 (for lighterage dues on cargo unloaded from/ loaded into the vessels anchored within the port approaches of Mumbai Port) which is submitted by MBPT for approval of TAMP.</p>
--	--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5.3. The IIL responded with its Sur-rejoinder dated 9 August 2010 to the rejoinder of MBPT stating that the rejoinder of MBPT sets out certain new facts and submissions for the first time. The IIL in its sur-rejoinder has stated that the denials made in the paragraphs of the rejoinder of MBPT are false to the knowledge of MBPT and stated that IIL repeats, confirms and reiterates what is stated in its sur-rejoinder and denied all allegations which are inconsistent and / or contrary to what is stated thereon. It has prayed to reject the proposal of MBPT and direct MBPT to refund the amount paid by IIL under protest together with interest at such rate as this Authority may deem fit.

5.4. A comparative position of other submissions made by IIL in its reply to the updated proposal of MBPT and the rejoinder of MBPT to the submissions of IIL is given below.

Sr. No.	Other submissions made by IIL in its reply to the updated proposal of MBPT	Rejoinder of MBPT to the submissions of IIL
(i).	(a) IIL's material arrives by ships (Mother Vessels) which are anchored beyond Bombay Floating Lights (BFL) outside the territorial limits and jurisdiction of MBPT. The cargo is thus transshipped from mother vessel to barges and the said barges with the IIL's cargo proceed to Dharamtar Jetty and pass through natural water falling within the territorial limits of MBPT due to its geographical position but such position does not entitle MBPT to charge IIL for cargo related charges for the simple reason that their limit is not used for transshipping the cargoes / vessels and in any event no services are provided by the MBPT.	<p>The contention of the IIL to the effect that its vessels are anchored beyond BFL area and outside the territorial limits and jurisdiction of MBPT and that MBPT is seeking to levy charges in respect of lighterage operations which fall beyond BFL area is misleading. As per the Notification issued by the Customs Authority dated 3 October 1994, IIL is required to anchor its mother vessel for lighterage operations only at the said BFL area. BFL area at Bombay High Sea, is having a radius of 4 miles and limits which is the only approved place for IIL to anchor its mother vessels for lighterage operations. As of now, substantial portion of the BFL area falls within the port limits of Mumbai Port.</p> <p>It is, therefore, clear that vessels of IIL, as per the said Notification, for the purpose of the said lighterage operations, are supposed to be anchored at BFL area only. Even the available contemporary records maintained by MBPT in respect of anchoring of mother vessels of IIL at the BFL area for the purpose of said lighterage operations also belie the said contention of IIL. It is also noteworthy that, it is admitted by IIL that the cargo is transshipped from the mother vessel to barges and such barges pass through the territorial limits of MBPT. The services provided by MBPT to the barges of IIL including VTMS services in relation to the areas falling within their limits or listed in detail in the application filed by MBPT. Without the said VTMS service, it would be very difficult for the barges to navigate. The VTMS services provided by MBPT monitored the entire traffic within the operational zone, advice the vessel about the traffic and also necessary actions to be taken in case of close proximity with other vessels. MBPT renders port and navigational aids for the operations of barges which transit through the port limits of MBPT. During the transit of barges, various anchorage points are required to be kept vacant for the barges to pass through and the same is done</p>

		<p>by MBPT. These facts clearly demonstrate that it would not be possible for the barges of IIL to negotiate/ navigate through the port approaches without the assistance of and availing of services provided by the MBPT. The contention of IIL that the limit of MBPT is not used for transshipping the cargo/ vessels and that no services are provided by MBPT is totally incorrect and same is denied.</p>
	<p>(b). If at all IIL have paid the port and vessel related charges those have been paid under protest and we have been persistently following up for refund of the deposited amount of ₹ 3,14,02,857/-. However, our demand for refund of the above amount would be subject to the order of TAMP. It is reasserted that IIL are not liable to pay cargo related charges outside operation as demanded by MBPT till 29.09.1998. Prior to 29.09.1998 MBPT vide their letter dated 5.6.1998 required IIL to furnish details of the cargo handled at Bombay Floating Lights (BFL) which were submitted to show that their demand falls outside of their operation. IIL has already challenged the legality and validity of authority to charge cargo related charges in respect of inside and outside operation and its reasonableness of rates / charges as per their demand which are legally unjustified, untenable and still denied and disputed.</p>	<p>The contention of IIL that the port and vessel related charges have been paid under protest is false and misleading and the same is denied. The available materials on record including the following records completely falsify the said contention of IIL.</p> <p>(i). Application/ letter dated 25.11.1993 by IIL to MBPT seeking permission for the said lighterage operations at the BFL area.</p> <p>(ii). Resolution dated 8.3.1994 of MBPT granting the said permission for transit of cargo (forming part of the said lighterage operations) through Mumbai Port limits on payment of all inclusive charges of ₹ 15/- per tonne.</p> <p>(iii). letter of MBPT dated 15.10.1994 making it clear that IIL would be liable to pay the said charges.</p> <p>(iv). IIL's letter dated 24.10.1994 whereunder IIL made initial payment of ₹5,00,000 towards the said charges while seeking permission of MBPT.</p> <p>From the above said facts, it is clear that</p> <p>(i). there was a concluded contract between MBPT and IIL whereunder IIL agreed for payment of charges at ₹15/- per tonne for transit of barges laden with cargo forming part of the said lighterage operations through the port limits of Mumbai Port.</p> <p>(ii). IIL initially paid the said charges at ₹15/- without any protest.</p> <p>In the circumstances, IIL is bound and liable to pay the said charges to MBPT at ₹15/- per tonne.</p> <p>The MBPT had vide its letter dated 5.6.1998 called upon IIL to furnish details of cargo handled at BFL for the purpose of calculating charges to be levied. However, the said letter seeking details of cargo handled at BFL cannot be construed to be a demand made by MBPT in respect of operations not falling within the authority of MBPT. It is further denied that the demand made by the MBPT is unjustified or untenable as alleged. There was a binding contract between the MBPT and IIL. The IIL has agreed to the terms and conditions stipulated by the MBPT by making payments as agreed. Since the above said transactions form part of a valid and binding contract between the IIL and MBPT, the IIL is bound and liable to honour the contractual obligations and pay the said charges to MBPT.</p> <p>TAMP would have no jurisdiction to enquire into the validity of the said contract between MBPT and IIL and/or mutual obligations of parties under the said contract. The TAMP has power to fix Scale of Rates and terms and conditions in relation to the services specified under the provisions of Sections 48 and 49 and the said sections do not confer any power upon TAMP (a) to fix such general scale of rates and conditions retrospectively (b) to re-open or discontinue the contractual arrangements entered into by MBPT with third parties in exercise of MBPT's powers under Sections 33 of the MPT Act read with section 46 of the said Act, if such</p>

		contracts have been entered with prior to the constitution of TAMP and/or prior to fixing of any general scale of rates covering the concerned activity covered by such contract.
	(c). The demand letter dated 9.11.1998 which is under challenge is illegal, invalid, void ab initio and ultra virus of Major Port Trusts Act, 1963. The resolution No. TR 123 dated 8.3.1994 and No.50 dated 24.2.1998 are also illegal, invalid and void and ultra virus of Major Port Trusts Act, 1963 and without authority of law. It is further submitted that the demand of cargo related charges at the rate of ₹15 / M. Ton of cargo is also without the authority and competence of MBPT. The fixation of cargo related charges is within the domain of authority of Tariff Authority for Major Ports and not the MBPT. Therefore, the impugned demand by MBPT is beyond the jurisdiction of MBPT and totally untenable, non-payable and illegal in view of the reason that the rate demanded and still proposed at the rate of ₹15/- per MT is arbitrary and has been fixed without any guide lines and basis.	It is denied that the demand letter dated 9.11.1998 issued by MBPT is illegal or invalid or void ab initio or ultra virus of the provisions of MPT Act, 1963. It is denied that the Resolution No.123 dated 8.3.1994 and Resolution No.50 dated 24.2.1998 are illegal or invalid or ultra virus or without authority of law. It is denied that the demand of cargo related charges at ₹ 15/- per metric tonne of cargo is without authority of law. It is denied that the demand by MBPT is beyond the jurisdiction of MBPT or untenable or non-payable or illegal as alleged. The contention of IIL that the rate of ₹15/- per metric tonne is arbitrary or has been fixed without any guidelines or basis as alleged is without merit or substance.
	(d). Both the Resolutions No. TR 123 dated 8.3.1994 and Resolution No.50 dated 24.2.1998 upon which the alleged demand has been made by MBPT did not and do not have sanction of Central Govt and also the same have not been officially gazetted as mandatorily required under Section 52 of Major Port Trust Act 1963 prior to its amendment. More so, the said section by an amended Act 15 of 1997 has been omitted and the authority vests with Tariff Authority for Major Port since 25.03.1997. The said Resolutions are ultra virus of the provisions of the Major Port Trust Act 1963. Above being the statutory position, MBPT should not have raised demand for port related charges which is even otherwise not tenable and payable.	The contention of the IIL that the Resolutions No.123 of 1994 and 50 of 1998 did not have the sanction of Central Government or was not officially gazetted is without any merit or substance for the reason that in law, particularly in the light of Sections 46 and 33 of MPT Act the said Resolution neither require sanction of Central Government nor the same are required to be published in official gazette. It is further denied that the said Resolutions are ultra virus of the provisions of MPT Act, 1963. It is denied that MBPT cannot and should not have raised the demand and/ or that the same is not tenable or payable as alleged by IIL.
(ii).	Fees are generally defined as a charge for special services rendered to individual by some Government agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government. Under Section 48 of the Major Port Trust Act, 1963, scale of rates need to be framed for the services specifically mentioned in subsections (a) to (e). Any fee levied requires a specific service. It is an admitted position that no services are provided by the Mumbai Port when the discharge takes place from the mother vessel. Therefore, firstly how the sum of ₹15 is assessed and secondly, fee charged has no nexus to services provided and therefore it is tax and without any jurisdiction. Under Section 49 rates are fixed for the purpose mentioned in subsection (a) to (d), which does not	The contention of IIL that there should be a direct benefit of the services rendered is false, misconceived and irrelevant. As per the law of the land, though fees must have some broad relation to the services rendered or the advantages conferred, such relation need not be direct and a broad relation is enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay fee, receives general benefit from the authority levying the fee, the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee. The interpretation sought to be given by IIL to the judgments of the Hon'ble Supreme Court reported in AIR SC 1954 282 and 1985 (SUPP) SCC 476 is incorrect. In the present case in any event, in the light of the said contract between MBPT and IIL, IIL is not entitled to deny its obligation to pay the said charges to MBPT. Further, in view of the above said legal position, IIL is not entitled to assail the proposal in respect of lighterage charges submitted by MBPT to TAMP for its approval.

apply in this case.

The Full Bench of Supreme Court in, The Commissioner, Hindu religious Endowments, Madras vs. Sri. Lakshmindra Thirtha Swamiar of Shri. Shirur Math (AIR SC 1954 282) interalia, observed that :

* The distinction between tax and fee lies primarily in the fact that a tax is levied as a part of the common burden, while fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example in the case of registration fees for documents or a marriage license is secondary to the primary motive of regulation in the public interest.

* If as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should be on the face of the legislative provision, be correlated to the expenses incurred by the government in providing the services.

* Giving the illustration of license fees for motor vehicle, costs incurred by the Government in maintaining an office or bureau for the granting of license may be small and amount of imposition that is levied is based really not on costs incurred by the Government but upon the benefit that individual receives, in such cases, the tax element is predominant, if the money paid by the license holder goes for upkeep of roads and other matters of general public utility, the license fee cannot be regarded as tax. See also AIR 1980 SC 1008

* The Supreme Court in the decision of ITC v. State of Karnataka [1985 (Supp) SCC 476] has elaborately dealt with the issue, holding however, in the favour of an increased levy, wherein it interalia observed that :

* There should be a relationship between the services and fee;

* That the relationship is reasonable cannot be established with mathematical exactitude in the sense that both the sides must be equally balanced;

* That is course of rendering such services to the payer of fees, if some other benefit accrue or arise to others, quid pro quo is not destroyed;

* Primarily object and essential

	<p>purpose of the imposition should be looked into;</p> <p>* The same argument will also apply to charge of Rs.15/- per M.Ton as "Composite" cargo related charges since no service is provided to the cargo.</p>	
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

5.5. The IIL in its sur-rejoinder to the rejoinder of MBPT has denied all allegations which are inconsistent and / or contrary to what is stated in its replies. It has also reiterated that BFL area does not fall under the port list. It has further contended that MBPT cannot levy any charge for lighterage operations at highsea. It has also stated that payments were made under protest and subject to the decision of this Authority, since it was forced to make payment to the MBPT to avoid the threatened action of stoppage of their barges from navigating through the port territory. It has also again denied that there is any contract between IIL and MBPT for making the payment at ₹15 per tonne or at any other rate. It has contended that this Authority has jurisdiction to decide the dispute and / or to consider the MBPT's proposal and also the legality and validity of Resolution No.123 of 1994 and 50 of 1998. According to IIL, there is no contract as per Section 33 of the MPT Act.

5.6. The MBPT has made some general submissions in its rejoinder, which are summarized below:

- (i). The attempt on the part of the IIL in its reply to assail entitlement of MBPT to levy lighterage charges false and misconceived. The below mentioned facts would prove entitlement of MBPT to recover its charges from Ispat in terms of Resolution No.123 dated 8.3.1994
 - (a). The ILL after having entered into a legally binding contract with MBPT in the year 1994 to carry on the lighterage operations in the BFL area and thereafter transit its barges laden with transhipped cargo through Mumbai Port limits on the condition of payment of charges @ ₹15/- per ton, cannot deny its liability to pay the said lighterage dues to MBPT.
 - (b). The lighterage operations carried out by the ILL at the BFL area (which is a port approach) involves transit of cargo laden on Ispat's barges which pass through Port limits of Mumbai Port and for reaching Dharmatar and such transit of cargo cannot be equated with innocent passage of vessels. But for the lighterage operations at BFL area and transit of cargo through port water limits of Mumbai Port for reaching to Dharmatar, the said cargo had to be unloaded by IIL at Mumbai Port in which case, the MBPT would have been entitled to charge Berth hire, which are higher than charges of Rs.15/- per ton sought to be recovered by MBPT from IIL for giving permission to the barges/ vessels of IIL laden with said cargo forming part of the said lighterage operations at BFL, to pass through the Port limits of MBPT and for rendering VTMS and navigation facilities to such barges/ vessels.
 - (c). In the light of the provisions of sections 33 and 46 of the Major Port Trusts Act, 1963 also, the MBPT was/ is well within its legal authority to enter into the said contract with IIL.
 - (d). The said Sections 46 and 33 of the MPT Act operate in a field independent of the field occupied by Section 48, 49 read with sections 42 and 47A of the MPT Act. The authority conferred upon MBPT by virtue of the said Sections 46 and 33 of the said Major Port Trusts Act, 1963 is neither affected nor controlled by the provisions of the said Sections 48, 49, 42 and 47A of the said Act.
 - (e). The lighterage operations carried out by IIL at the BFL area involves user/ placing of geared vessels and barges which amounts to erection of a pier as contemplated under section 2 (p) of the said MPT Act read with section 46 of

the said Act at the port approaches of the Mumbai Port. Under Section 46 of the said Act, IIL can erect such pier at BFL area which is a port approach and now also falls in port limits, only with the permission of MBPT and subject to such conditions as MBPT may impose. The IIL has availed such permission from MBPT and MBPT gave such permission to IIL on condition of payment of lighterage charges at ₹ 15/- per ton. IIL acted under the said permission and has been taking benefit of the said permission. Therefore, under a valid and binding contract, IIL is bound and liable to pay the said charges to MBPT. The said lighterage operations carried out by IIL also involve:

- (a) transshipment of cargo at/ within the port approaches/ port limits of Mumbai Port and
- (b) transit of cargo laden on the barges of IIL through the port limits of port of Mumbai.

For the said operations, a composite lighterage charges of ₹ 15/- per tonne under a binding contract is being levied by MBPT upon IIL.

- (f). Unless and until the above said general scale of rates is framed by TAMP in respect of such lighterage operations carried out at the said BFL area/ port approaches and for transit of cargo through MBPT port limits, TAMP cannot disturb the entitlement of MBPT (under the contractual arrangement with IIL) to recover the said lighterage dues of ₹ 15/- as a consideration for the permission given by MBPT to IIL to transit the cargo (which forms part of the said lighterage operations carried out by IIL at the said BFL area) through the port limits of MBPT.
- (g). Without making payment of the said charges at ₹ 15/- per ton as per the binding contract between MBPT and IIL, the IIL is not entitled to seeking continuance of benefit of permission given by MBPT vide the said Resolution 123 dated 8.3.1994 for its barges laden with cargo to transit through MBPT limits.
- (h). Even otherwise, the claim of ₹ 15/- per ton in respect of the said operations by the IIL is justifiable, both in law and equity, on account of the loss of revenue opportunity by granting permission to IIL to carry out the said lighterage operations at the BFL area and to transit the concerned cargo on IIL barges through Mumbai Port water limits and also in view of the services rendered by the MBPT to IIL in relation to the concerned lighterage operations and transport of cargo interalia in the form of VTMS facilities, navigation, etc.
- (i). The refusal on the part of IIL to pay the said charges at ₹ 15 per ton is not legally sustainable even in the light of principle of promissory estoppel.
- (ii). The proposed lighterage charges dated 10.2.1998 as submitted by MBPT deserves to be approved by TAMP for the following reasons:
 - (a). The BFL area, as evidenced by the Admiralty Charts (Maps) bearing Nos.1487 and 2621 interalia showing India West Coast Inner Approaches to Mumbai (Bombay) undoubtedly forms part of Port approaches (channels) leading to Mumbai Port. Customarily, the said Admiralty charts, have been uniformly accepted by the Maritime community all over the world. Further, as per the extended limits of Mumbai Port as notified by the Government vide Notification No.5221 dated 26 October 2006, substantial portion of the said BFL area falls within the port limits of Mumbai Port. Therefore viewed from any angle, the said BFL area (as approved by Customs Authority) is a 'Port Approache" of Mumbai Port as contemplated under section 2 (r) of MPT Act, 1963.

- (b). The lighterage operations if permitted by MBPT for being carried out at the said BFL area, which according to MBPT is a port approach, the concerned transhipped cargo forming part of such said lighterage operations indisputably pass through the MBPT port limits. Therefore, the TAMP has every right and jurisdiction to fix necessary scale of rates towards lighterage operations as contemplated under the said proposal dated 10.2.1998 submitted by MBPT.
- (c). In case of such lighterage operations at Port approaches, the revenue loss of MBPT on account of non-utilisation of MBPT port facilities would be substantial. The contents of the Resolution No.123 dated 8 March 1994 (Annexure VII to the MBPT reply dated 18.12.2009 addressed to TAMP) whereunder permission was given by MBPT to IIL to transit its barges through MBPT limits amplifies the submission of revenue loss of MBPT and shows that there is a valid, justified and rationale basis for arriving at the said rate of ₹ 15/- per metric ton after taking into account the revenue loss that would be caused to MBPT on account of such transshipment operations carried on by IIL at the BFL port approach/ port limits. Further, in respect of the said operations, MBPT, is required to render necessary VTMS facilities and navigations facilities to the concerned vessels/ barges which pass through the port limits/ port approaches of Mumbai Port. Thus there is reasonable correlation between the charges of ₹ 15/- per tonne sought to be levied by MBPT for such operations and revenue loss to which MBPT would be subjected to and also the cost of services which MBPT is required to render to the concerned vessels/ barges by maintaining necessary infrastructure. Therefore, viewed from any angle, the said proposal dated 10.2.1198 for fixing of lighterage dues at ₹ 15/- per tonne is fair, correct, proper, reasonable and deserves to be approved by TAMP.

5.7. A summary of the counter made by IIL in its sur-rejoinder to the general submissions of MBPT made in its rejoinder is given below:

- (i). It is denied that the case set out by Ispat in its reply is misleading or false as falsely alleged. It is denied that MBPT is entitled to recover charges from Ispat in terms of the Resolution No.123 dated 8.3.1994 in respect of transit of barges laden with cargo forming part of lighterage operations carried on by Ispat at BFL area as alleged. It is denied that the proposal made by MBPT for incorporation of lighterage dues in scale of rates is justified or deserves to be approved by this Authority as alleged.
- (ii). It is denied that the proposed lighterage charges sought by MBPT deserves to be approved by this Authority as alleged. It is denied that BFL area falls within the port limit of Mumbai Port as falsely alleged. It is denied that BFL area is a 'Port Approach' of Mumbai Port, as contemplated under section 2 (r) of the Major Port Trusts Act, 1963 as alleged. It is denied that the Government Notification No.5221 dated 26.10.2006 have been enlarged/ extended the substantial portion of BFL area and falls within the port limits of Mumbai Port as alleged. It is denied that figure of ₹ 15/- PMT is arrived at a rational basis or is just as alleged. It is denied that MBPT is required to render necessary VTMS facilities or navigation facilities to the concerned vessels/ barges which passes through port limits/ port approaches of Mumbai Port as alleged. The levy of lighterage charges beyond the port limit is not only illegal but is also unjust and exorbitant.

5.8. In its Sur-rejoinder, the IIL has stated that the correct facts are as under:

- (i). The vessel loaded with Ispat cargo arrives and drops anchor beyond BFL six miles outside the port limit of Mumbai Port. The Dharamtar Port has been designated by the Collector of Customs by Notification dated 3.10.1994 to be a place of unloading/ loading of Ispat cargo. The Dharamtar is a notified port under the Government of Maharashtra. The mother vessels/ barges and cargoes are

cleared by the Dharamtar Custom Authorities which are situated at the jetty of the Ispat and posted on cost recovery basis by Ispat.

- (ii). In fair weather condition, mother vessels approach at the BFL which is outside Mumbai port limits. The cargo is transshipped from the mother vessels on the barges in midstream. After the cargo is discharged into barges they proceed to Dharamtar jetty. During its transit from the mother vessel to the Dharamtar jetty the said barges navigate through the Mumbai Port natural waters. The barges do not make use of the dredged channel but merely navigate in and out of the port water due to the shallow draft of the barges. Even though no facilities are availed by its barges except for innocent passage, nevertheless, the MBPT Authorities have been levying vessel related charges which include port dues and pilotage notwithstanding the fact that the barges do not make use of the harbour pilots or any other infrastructure. IIL were made to pay the said charges as they were threatened that their vessels would be stopped. The said payments, therefore, are under protest and duress.
- (iii). MBPT in addition to vessel related charges impose a charge of ₹ 15 PMT towards "cargo transiting charges" and "transshipment charges" even though the barges were in no way using any of the port facilities to warrant the charges being demanded by MBPT Authorities. These charges were not paid by IIL prior to November 1998 inspite of cargo operation carried on outside the Mumbai Port limits. During foul weather condition and mostly during the monsoon period, the mother vessels are anchored in Mumbai Ports water and discharge the cargo into the barges. IIL pays port dues, pilotage and anchorage charges as per MBPT tariff for the said operations. IIL is not using any of the other facilities of the port. MBPT started demanding from IIL further charges at the rate of ₹ 15/- PMT for transshipment of the barges through the water falling in the territorial limit of Mumbai Port on their way to Dharamtar Port on the basis of a Resolution No.123 dated 8.3.1994. The Resolution No.123 dated 8.3.1994 is not valid or enforceable unless it is approved by the Central Government. Central Government has not approved the said Resolution No.123 dated 8.3.1994 nor the same has been published in the official gazette. IIL thereafter learnt that MBPT has passed a Resolution No.50 dated 24.02.1998. The said Resolution No.50 dated 24.02.1998 has also not been approved and/ or sanctioned by the Central Government and neither has been published in the Government gazette and is thus neither valid, enforceable or binding upon Ispat.
- (iv). MBPT Authorities were threatening to stop the movement of their vessels if they fail to make the payment as demanded by the MBPT. They filed Writ Petition No.2291 of 1998 in the High Court, Bombay seeking appropriate reliefs. The Hon'ble High Court by Order dated 12 November 1998, 17 November 1998 and 30 November 1998 were pleased to direct that the amounts paid by IIL shall be subject to the final order passed by the Tariff Authority. The Hon'ble High Court by Order dated 9 February 2000 on Writ Petition No.2414 of 1999, Writ Petition No.2539 of 1999 was pleased to record that IIL was making payment at the rate of ₹ 6/- PMT in respect of offloaded cargo. IIL has continued to pay the charges at the rate of ₹ 6 PMT for offloading the cargo.

5.9. A copy of the Sur-rejoinder filed by the IIL was supplied to the MBPT at the joint hearing held on 10 August 2010 and 11 August 2010.

5.10. The SCI in its letter dated 1 December 2009 has stated that prima facie the proposal for fixation of ₹ 15 PMT for cargo related charges against lighterage operations at BFL area outside port limits but on port approaches is not justified.

6.1. Based on the preliminary scrutiny of the proposal, MBPT was requested to furnish the following information / clarifications. The MBPT has responded. The queries raised by us and the response of MBPT are tabulated below:

Sr. No.	Queries raised by us	Response of MBPT
(i).	It has been stated by MBPT that the area where the vessels carry out lighterage operations of cargo meant for IIL's captive jetty at Raigad falls within the port limit and approaches of Mumbai Port and the Custom Department has notified this area as the Dharamtar Customs Notified Area. MBPT to confirm that there exist certain areas in the Mumbai Harbour which overlaps the Dharamtar Customs Notified Area and the Mumbai Port Customs Notified Area.	<p>The Collector of Customs (Preventive) Bombay had issued notification dated 3 October 1994, wherein the place of loading / unloading of goods at specified anchorage called BFL for an area covering 4 miles of radius has been notified.</p> <p>The BFL denotes Bombay Floating Light Area. By this notification the Customs Department has allowed loading and unloading operations at an area abetting the Mumbai Port limits. This area falls under the 'approach' of Mumbai Port.</p>
(ii).	Section 2 (q) of the MPT Act, 1963, defines a port as any major port to which the Act applies within such limits as may be defined by the Central Government by notification in the Official Gazette. Section 2 (r) ibid defines port approaches as those parts of the navigable rivers and channels leading to the port in which the Indian Ports Act is in force. Section (1) (2) read with Section 4 (1) (a) and Section 4 (2) of the Indian Ports Act clearly stipulates that the Port approaches should be defined by the Government. The notification dated 28 May 1982 issued by the Government of India defines the Port limits of the MBPT. There is, however, no mention in this notification about the port approaches. Since the issue at consideration is about the Port levying a charge for operations outside the port limits which is claimed to be falling in the port approaches, MBPT to submit the notification, if any, issued by the Government defining the Mumbai Port approaches.	<p>The Government of India vide notification No. 5221 dated 26.10.2006 has revised MBPT's port limits. A part of the area covered under notification dated 3.10.1994 by the Collector of Customs had also fallen within the port limits of Mumbai Port.</p>
(iii).	MBPT has stated that the term Port approaches is well understood in the shipping circles by persons connected with the navigation of vessels and it does not require any separate notification. MBPT to substantiate, with documentary proof, its contention that by customs and conventions the relevant area of operation is treated as the Mumbai Port approaches.	<p>We clarify that the notification issued on 28 May 1982 and 26 October 2006 did only describe the port limits and it did not describe port approaches. We further clarify that 'port approaches' means, "the water ways which give access or passage to harbours, channels and similar areas." The Mariners Hand Book describes "approaches" the Admiralty Sailing Direction of West Coast of India also describes "approaches".</p> <p>It is not a practice to declare port approaches. It is customary. The corroborative evidences to establish that no port declares approaches while declaring port limits could be seen from Maharashtra Government's GR specifying the limits of state owned Ports. A copy of the GR is furnished.</p>

<p>(iv).</p>	<p>MBPT has stated that British Admiralty Chart No. 1487 (Map) titled "Approaches to Bombay" denotes various aspects and geographical features of land and shows the approaches to Port of Mumbai and the approaches and lighterage operations area. The Chart (Map) received under letter dated 9 November 2009 in fact bears number 2621 and is titled INDIA – WEST COAST "INNER APPROACHES TO MUMBAI (BOMBAY)". The Port has stated that "the anchorages have been demarcated as Area 'A' in violet and anchorage in Red". MBPT to confirm whether the Port intended to convey that "the anchorages have been demarcated as Area 'A' in violet and Area 'B' in Red".</p>	<p>An analysis of Admiralty Chart of Mumbai Harbour shows that there is plenty of water area available with 14 – 15 meters draft outside the Mumbai Port limit. However the Customs has notified the area, which falls within the approach of Mumbai Port limit. In fact the Customs notification is describing the anchorages stating it to be 'Bombay Floating Light (BFL)'.</p> <p>Vessels arriving at Mumbai Port from North west need to approach from the area which is notified by Customs for loading and unloading of cargo. Hence also the area where loading / unloading operations are allowed by Customs falls within "Mumbai Port approaches".</p> <p>Whenever a vessel approaches from North west to Mumbai Harbour area and intends to undertake cargo operations at customs notified area covered under the customs notification dated 03.10.94, the vessel is directed by Mumbai Port VTS for movement, anchoring, surveillance, information of traffic in vicinity, instructions for precautions to be taken etc. since the activity takes place at Mumbai Port approaches.</p> <p>It is a well established convention, practice and well settled position that the port do have port approaches. In the present case the area where the operations taking place are within the VTMS limits and was at the North west approach to MBPT. In the present case both the above are satisfied. As such it is submitted that TAMP may take a practical view of the case, which carries merit.</p> <p>It is the necessity and responsibility of MBPT to have a proper watch over the port approaches, the identification of wreck at port approaches and to take pro-active actions to avoid untoward incidences at port approaches which hamper closing down of port approaches or obstruction to port approaches. As such Mumbai Port has clear authority and locus standi for its port approaches as per convention and practice. It is submitted that TAMP may give due weightage to the practical conditions in this regard which carries merit.</p> <p>Similarly, the barges transiting through Mumbai Port limits also take services. The barges also avail the services of navigational aids such as South East, South West and South Prongs Reef buoys, Kansa Light House etc. They are maintained by MBPT. Further the charges prescribed are a part of the arrangement for transit of cargo through MBPT waters by the barges to and fro the mother vessel, between the IIL plant at Dharamtar and mother vessel stationed outside MBPT limits at</p>
--------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>the port approaches and unload cargo. The barges shall pay vessel related charges. The composite cargo related charges @ ₹ 15/- per ton is payable for the operations facilitating the transit of cargo as per the arrangement.</p> <p>With regard to the specific clarification at point No. 4 raised by TAMP we confirm that the anchorage area 'B' in red is correct.</p>
(v).	<p>Since a cost plus approach is generally followed while prescribing the tariff, MBPT to submit a cost sheet with supporting documents substantiating the proposed levy of ₹ 15/- per MT. If MBPT proposal is not with reference to cost of providing services, but to compensate the opportunity foregone, then the opportunity costs may be quantified with detailed analysis.</p>	<p>The proposal of MBPT is not only based on direct cost of the operations. The proposal is also based on opportunity loss being incurred by MBPT. The cargo handled at the customs notified area is general cargo. The cargo related income at MBPT's docks for similar cargo works out to ₹ 101.55 per metric ton. As such the opportunity loss for MBPT for the cargo not coming to its docks is ₹ 101.55 per metric ton. The charges levied was only ₹ 15/- per metric ton and hence is justified.</p>
(vi).	<p>The Port has averred that there exists a concluded contract with Ispat Industries Limited which meets the essential ingredients under the Indian Contract Act, 1872 such as offer, acceptance and consideration etc. MBPT to furnish a copy of the Contract. The relevant provision of the MPT Act, 1963 under which such contract was entered into and the provisions of the Act empowering the Port to prescribe tariff through contract may be indicated.</p>	<p>The IIL had requested for permission to undertake discharge operations at customs notified area and movement of cargo through Mumbai port waters. This means that the cargo is not unloaded at the docks of Mumbai Port Trust and the same is unloaded at the customs notified area and moved through Mumbai ports area, on payment of composite cargo related charges of ₹ 15/- per metric ton with effect from 1994 and vessel related charges for the barges.</p> <p>The request of M/s. IIL for permission for the operation amounts to notice inviting offer from MBPT for the contract. The decision by MBPT to allow such operations amounts to the offer. The starting of the operations by M/s. IIL and payment made amounts to acceptance of the offer. The consideration derived by IIL on the above contract is the savings of the entire MBPT charges had the cargo been brought to MBPT's docks and transshipped to Dharamtar Jetty. This consideration is very high as compared to the rate of ₹ 15/- per ton insisted by MBPT Board. In any case, the consideration need not be adequate as per Indian Contract Act, 1872. It only demands for a consideration without any adequacy test thereto.</p>
(vii).	<p>MBPT has stated that the Government of India has notified extension of Mumbai Port Limits vide Notification No. 5221 dated 26 October 2006 and by this extension of Port limit part of the area where lighterage operations were taking place have been included in the revised port limits. The Port to clarify whether in the said notification the Port approaches have been defined.</p>	<p>We clarify that the Notifications issued on 28 May 1982 and 26 October 2006 did only describe the port limits and they did not describe port approaches.</p>
(viii).	<p>MBPT has made a reference to one decision of the Supreme Court pertaining to Bar Council Act. The significance thereof may be elaborated in the context</p>	<p>The Hon. Supreme Court construed Section 2 of the Bar Council Act, which reads "Notwithstanding anything contained in the Indian Bar Councils Act, 1926, or in any other</p>

	of deciding the proposal of the Port.	law regulating the conditions subject to which a person not entered in the roll of advocates of a High Court may, be permitted to practice in that High Court, every advocate of the Supreme Court shall be entitled as of right to practice in any High Court whether or not he is an advocate of that High Court". The Court observed much ado was made on both sides about the comma occurring just before the word "or" in the non obstante clause, the petitioner stressing its importance as showing that the adjectival clause " regulating the conditions etc." does not qualify the words "Indian Bar Councils Act" which are separated by the comma and that, therefore, the whole of this Act is superseded, while learned Council for the respondents insisted that in construing a statute punctuation marks should be left out of consideration. Nothing much, we think, turns on the comma, as it seems grammatically more correct to take the adjectival clause as qualifying "law". Having regard to the words "anything contained" and the preposition "in" used after the disjunctive "or", the qualifying clause cannot reach back to the words "Bar Councils Act". The Hon. Supreme Court in another matter observed, "If ordinary grammatical rules are applied there is no escape from the conclusion that the adjectival phrase "as amended by this Act" qualifies the proximate substantive vis the Calcutta Thika Tenancy Act, 1949. The above legal position is applicable in case of port approaches.
(ix).	It has been stated that the barges while going to or from Dharamtar Customs Notified Area passes from the Mumbai Port Limit and avail the navigational VTMS facilities. The facilities extended to such barges may be furnished.	The barges carrying the cargo through MBPT waters do require services and certain anchorage points are to be kept vacant for facilitating such movements. However, we do not maintain record of such stoppages.
(x).	As per MBPT while the barge movements to or from Dharamtar Customs Notified Area take place, various anchorage points are required to be kept vacant. The number of occasions during the last three years the anchorage points had to be kept vacant to enable the smooth transit of the barges and the loss, if any, suffered by the Port may be furnished.	
(xi).	MBPT to furnish a copy each of the relevant extracts of the following for reference purposes. (a). Anchorage area referred to in the "Admiralty Sailing Directions – West Coast" of India Pilot' vide sub-para 26 of letter dated 9 November 2009. (b). Mariner's Hand Book with reference to the term approaches and anchorage vide sub-para 25 ibid.	Not furnished Not furnished
(xii).	MBPT to furnish a copy each of the orders passed by the Supreme Court on	

<p>the following cases for reference purposes.</p> <p>(a). The fees levied by the Textile Committee vide sub-para 41 ibid.</p> <p>(b). The traditional concept in a fee of quid pro quo vis a vis the services rendered vide sub-para 43 ibid.</p> <p>(c). The relationship between the levy of the fee and the services rendered vide sub-para 44 ibid.</p>	<p>The MBPT has furnished the copies of judgments provided in the manual "Supreme Court Cases".</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------

6.2. The further submissions made by MBPT in its above referred letter dated 18 December 2009 are summarized below:

- (i). It is to be clarified in the light of Section 38 of MPT Act that the lighterage operation is not port's regular activity and this type of an activity takes place only on specific request of parties like IIL. The permission to carry out the lighterage activity was granted by the Board on certain conditions and on payment of specific charges. IIL had agreed to the condition of port charges as decided by the Board. Since lighterage operation is not a regular activity of the port, it is our view that till such time specific rates for such operations are incorporated in the MBPT Scale of Rates, Board can sanction levy of charges. The legal advice is that the levy of this charge is in order. The Port Trust Board has taken a decision to levy ₹ 15/- per metric ton, after due consideration of all the facts of the case and in the wider public interest. A balanced view to levy ₹ 15/- per metric ton as all inclusive cargo related charges against insisting to bring to Mumbai Port Trust's berths and then transhipped to Dharamtar port was not beneficial to Mumbai Port Trust but for the public interest.
- (ii). In the earlier deliberations on the issue of justification of ₹ 15/- per metric ton, TAMP itself has observed that the rate of ₹ 15/- per metric tone is justifiable in its earlier orders. The Hon. High Court of Mumbai has also stated the above fact in the judgement dated 10.08.2009. Due consideration may be given to the above facts and the heavy loss being suffered by MBPT in allowing such operations by foregoing the option of bringing the cargo to MBPT's berths.

7.1. This case was taken up for joint hearing on 29 December 2009 and Chairman and Member were present. The Mumbai Port Trust was represented by its Legal Counsel and other senior officials of the Port. IIL was represented by its Sr. Counsel and other officials. Users were also present.

7.2. A copy of the Court Order dated 10 August 2009 was received in this office from MBPT on 22 September 2009 vide MBPT letter dated 18 September 2009. It was, however, noted at the joint hearing that since the copy of the Court order dated 10 August 2009 was forwarded to TAMP by the High Court Department vide their letter dated 5 November 2009, the time of three months to dispose the proposal will start from the day when the letter was received by this Authority and the proposal was to be disposed by this Authority by 5 February 2010. In this regard, both MBPT and IIL agreed at the joint hearing to move the Hon'ble High Court of Bombay seeking extension of time for disposal of the proposal by this Authority till 15 June 2010 since the proceedings were incomplete for want of action by both the parties.

- 7.3. (i). The Counsel for MBPT referred at the joint hearing to the Order dated 10 August 2009 passed by the Hon'ble High Court of Bombay and requested that this Authority comprising of Chairman and Members as constituted under the Act should hear the case, i.e. Chairman plus 2 Members.
- (ii). It was pointed out by this Authority that a post of Member is vacant as of now which is yet to be filled by the Government. The provisions of Section 47(G) of the

MPT Act about vacancy, etc. not to invalidate proceedings of this Authority were read out and the views of both the parties were sought. The Sr. Counsel appearing for IIL specifically referred to the direction of the Court contained in para-6; page-7 of its order wherein the Court has recorded that 'this Authority as constituted under the Act, viz. this Authority consisting of Chairman and two Members was obliged to give personal hearings to the petitioner before making the order'. In the end, both the parties agreed that, by way of abundant caution, it would be desirable to seek clarification from the Hon'ble Court pointing out the vacant position of Member in this Authority at present.

7.4. (i). As agreed at the joint hearing, both the parties moved the Hon'ble High Court for an extension of time for disposal of the case by this Authority till 15 June 2010. Clarification was also sought by them from the Hon'ble High Court on this Authority deciding the case with the available quorum. The Hon'ble High Court vide its Order dated 5 March 2010 granted an extension of time upto 15 June 2010 for disposal of the case by this Authority.

(ii). On the issue of the case being decided with the available existing quorum viz. Chairman and one member, the Order of the Hon'ble High Court was not clear, as it did not specifically mention the present composition of TAMP could decide the matter. When this position was pointed out to MBPT and to secure necessary clarification from the Hon'ble High Court, the MBPT vide its letter dated 15 May 2010 furnished the copy of letter dated 7 May 2010 of its counsel stating that the existing quorum of TAMP was brought to the notice of the Court in the Affidavit filed by the Port and the Court was of the view that since it was by the consent of all the parties, the TAMP may proceed with the disposal of the case. The MBPT letter dated 15 May 2010 was forwarded to IIL for their confirmation. Incidentally, the affidavit filed by the MBPT in support of the Notice of Motion mentions, inter alia, that it was agreed by both the parties that the parties would point out the fact of vacant position of one Member in this Authority and obtain permission of the Hon'ble High Court to dispose of the said case with available existing quorum of Chairman and one Member as per Section 47 G of the MPT Act, 1963. IIL vide their letter dated 28 May 2010 confirmed the Order dated 5 March 2010 of the Hon'ble High Court of Bombay and IIL has no objection in respect of the letter dated 7 May 2010 of MBPT.

7.5. (i). The MBPT admitted that in addition to the chart referred to in its proposal, it was to submit one more chart showing the Port limits and various outer anchorage points. IIL referred to the updated proposal of the MBPT and pointed out that the chart stated to have been attached to the proposal was not served on them which would be necessary for them to furnish their comments on the proposal. MBPT submitted a copy of the new chart detailing the Port limits and anchorage points, a copy of which was also given to IIL. MBPT also handed over to the IIL, a copy of the chart referred by it in its updated proposal.

(ii). Both the parties were allowed to verify the concerned files of TAMP for making suitable reference during their arguments.

8. As agreed at the Joint hearing held on 29 December 2009, IIL by letter dated 11 January 2010 forwarded their comments as under to the Annexes supplied to them by MBPT on 29 December 2009. The MBPT vide its letter dated 11 June 2010 filed rejoinder to the comments of IIL. A comparative position of the comments of IIL and rejoinder of the MBPT thereon is given below:

Sl. No.	Submissions of IIL to the Annexes supplied to them by MBPT	Rejoinder of the MBPT
(i).	The MBPT has relied on two maps (outer & inner anchorages to Mumbai Port Trust) and excerpts of two publications i.e., Admiralty Sailing Directions and Mariner's Hand Book. In addition to & without prejudice to the	

	contentions taken in its earlier reply, the IIL submits as under:-	
	(a) Maps are not published under the Authority of the Govt. of India.	
	(b) The Admiralty Sailing Directions and the routes & approaches shown on the maps are only for the purposes of regulation of traffic, safety of life at sea, safety of environment etc. These publications serve the purpose of describing Separation Schemes & Sea Routes, thus cannot be a guide or aid to determine jurisdictional issues of a port.	The contents of the reply of IIL do not take the case of IIL any further. Concerned maps, interalia, clearly show the old and new port limits and the anchorage area. The said maps are widely accepted and used by all the mariners.
	(c) The maps and Admiralty Sailing Directions are not published under the authority of MBPT. Largely these publications adopt / refer to the sea routes, Separation Schemes, Navigational Aids etc., as adopted by International Maritime Organization. These Publications do not refer to the territorial jurisdiction of MBPT. Therefore, no reliance can be placed on these publications for the said purpose.	
	(d) The word 'approach(s)' used in these publications is used in its generic sense and not in the legal sense of 'port approaches' as defined in Major Ports Act. Since the determination of Jurisdiction of MBPT is purely a technical issue and cannot be decided without reference to Major Ports Act and Indian Ports Act. Only the definition of 'Port Approach' as laid down in Major Ports Act can be relied upon and no reliance can be placed on generic connotations of the word 'approach' used in above maps and publications.	The word "Port Approaches" as defined in the Mariners Handbook is relevant for giving proper interpretation to the meaning of word "Port Approaches" as defined in the said Acts.
	(e) (i). The publication "Mariner's Hand Book" is not at all relevant for the present controversy in as much as it excuses itself by stating that the definitions given are those in UKHO use and have no significance in International Law. (ii). Thus when the publication itself is only for generic purpose and no legal consequences follow for what is stated therein, the Mariner's Hand Book cannot have any authority of Law and cannot be relied upon.	In the circumstances, the contentions of MBPT which are inconsistent with or contrary to the earlier submissions of MBPT and what is stated hereabove are hereby denied.

9. It was agreed at the joint hearing held on 29 December 2009 to fix next date of hearing after receipt of written submissions of MBPT and IIL and also the direction of the Hon'ble High Court of Bombay on the clarifications sought by both the parties.

10. Accordingly, a joint hearing in this case was held on 15 June 2010 at the office of this Authority by the Authority consisting of Chairman and Member. The MBPT was represented by its Counsel and other officials. The IIL was represented by its Senior Counsel and other officials. Users were present. At the joint hearing, the following was decided:

- (i). MBPT and IIL agreed that in the light of the Hon'ble Bombay High Court Order dated 5 March 2010 and subsequent clarification regarding the interpretation of the same, the matter can be disposed of by the Authority with its existing quorum viz., Chairman and one member and the matter may be finally disposed by the Authority by 30 September 2010.
- (ii). Both the parties agreed to take on record their consent to this effect.

- (iii). Since longer time would be needed to conclude the arguments, both the parties requested this Authority to hold another hearing at a later date.
- (iv). It was decided to hold another hearing on 8 July 2010 at the office of this Authority and to continue on 9 July 2010, if necessary.

11.1. At the request of the IIL vide its letter dated 6 July 2010, the hearing scheduled on 8 July 2010 was deferred and held on 10 August 2010 by this Authority consisting of Chairman and Member. Since the arguments could not be completed, the hearing continued on 11 August 2010 also. The MBPT was represented by its Legal Counsel and other officials. The IIL was represented by its Senior Counsel and other officials. Users were present.

11.2. In the course of its arguments, the MBPT submitted copies of the following documents:

- (i). Extract of the reported decision in "Mansukhlal Dhanraj Jain V/s Eknath Vithal Ogale" - (1995) 2 Supreme Court Cases 665 as to how to interpret phrases like "in relation to" "in connection with".
- (ii). Letter dated 25 November 1993 from Nippon Denro Ispat Ltd. to the Dy. Conservator of MBPT.
[to summarize, IIL in its letter dated 25 November 1993 has stated that vessels will be anchored in JNPT waters / outside MBPT limits and the materials from vessels will be unloaded into barges by using vessel's own cranes fitted with grabs. During lighterage operations their barges will transit MBPT waters on way to Dharamtar creek. Accordingly, IIL has requested the permission of MBPT for the same and sought advice as to the charges which would be levied by MBPT for transiting barges and other formalities to be completed in this respect]
- (iii). Letter No. DC/C-SH/6833 dated 15 October 1994 from the Dy. Conservator, MBPT to Nippon Denro Ispat Ltd.
[MBPT letter dated 15 October 1994 conveys the recommendation of its Board of Trustees vide Resolution No. 123 of 8-3-1994 to levy ₹15 per tonne of throughput of cargo imported by vessels for Dharamtar]
- (iv). Letter dated 17 January 1997 from IIL to Chairman, MBPT requesting for reduction in the charge of ₹ 15/- per tonne on the cargo transhipped at the Port Approaches.

Copies of documents filed by MBPT were supplied to the IIL.

11.3. The MBPT and IIL made the following submissions at the joint hearing:

MBPT

- (i). The two issues fall for consideration are (a) whether MBPT can charge Ispat for lighterage at BFL area and (b) fixing of general rate of ₹ 15/- PMT for operations at port approaches which is to be included in the SOR.
- (ii). We submit TAMP has the power to look into the rate leviable in the Ispat case as well as the general rate, as the Hon'ble High Court has already remitted the matter to TAMP.
- (iii). The Admiralty charts submitted by us clearly show BFL is an area abetting the port limits. It forms Port Approach.
- (iv). Both sections 48 and 49 of MPT Act, require TAMP to frame SOR for the specified services at 'Port Approaches'. Section 48 (1) (a) specifically mentions about "transhipping of passengers or goods between vessels in the port or port approaches".

- (v). The wordings “in relation to” in Section 48 clearly convey the connection with port operations. Lighterage at BFL is an operation connected with port operation. Please refer para 14 of Supreme Court Judgement in “Mansukhlal Dhanraj Jain V/s Eknath Ogale” which clearly explain how to interpret phrases like “in relation to”, “in connection with”.
- (vi). Lighterage operation at Port Approach is in connection with the Port and therefore Section 48 comes into play. The concerned area is under VTMS of MBPT.
- (vii). [Chairman (TAMP): Explain the services provided by MBPT at the areas outside the port limits].
- (viii). Even those vessels at BFL area are in touch with our VTMS and monitored by us. For example, a vessel moving from Surat to Goa does not come close to our coast and therefore we don't guide. But, BFL is too close to our limit and, therefore, we have to monitor them.
- (ix). The operation is composite in nature. Not only lighterage but also the transit of barges through our waters needs to be considered. On the barges, vessel related charges like port dues and water conveyance charges are levied. No cargo related charges is levied.
- (x). [Chairman (TAMP) : If a vessel without lighterage at BFL, makes innocent transit, what are the charges on cargo?].

We allow such case only as case to case on the basis of MOUs. (e.g.) JNPT bound vessels, Tata Power.
- (xi). Ispat dispute should be seen pertaining only for the period from 1998 to 2006, as the Government notification of 2006 has brought the major part of the concerned area of lighterage operation within the port limits. Part of the Dharamtar Customs Area falls within our Port limits after 2006.
- (xii). The charges for inner anchorage operation have already been approved by TAMP. If the charge of ₹15 / tonne levied at outer area is more than inner anchorage operations, TAMP has to consider to prescribe a reasonable rate.
- (xiii). Ispat vide letter 17 January 1997 requested MBPT to reduce the rate to ₹ 6 / PMT (copy given). This shows IIL has conceded our jurisdiction to charge.
- (xiv). ‘Port approaches’ should be understood by a harmonious reading of IP Act & MPT Act. Please see Section 2 (a), 3 (4) and Section 5 of IP Act. Please see Section 2 (q) and (r) of MPT Act. No need for Government notification defining Port Approaches. The only condition is Indian Port Act should be in force at the concerned Port. The definition of Port Approaches clearly mentions “in relation to Port”.
- (xv). The age old practice followed by the Marine and trade community should be recognised.
- (xvi). We don't claim that Port approach extends infinitely. Port approach should be “in relation” to Mumbai port. There should be an immediate connection.
- (xvii). TAMP in its earlier order of June 1999 has quantified the rate as ₹15/- PMT. Please go by opportunity loss and cost. Because of the lighterage operation at BFL, notional loss to the port is about 101.55 per tonne.
- (xviii). ₹ 15/- PMT was fixed by the Board in 1994. Even after more than 15 years, we propose to maintain the same rate.

- (xix). Please see Delhi Municipal Corporation V/s. Mohd. Yasun in which SC says no direct relationship is always necessary to levy a fee. Quid pro quo is not essential. Only a casual connection is enough.
- (xx). For the period from 1994 to 2006, the charges levied by us are in terms of contract. Power of a Port to enter into contract is independent of Sections 48 and 49. Please read Section 33. Section 46 empowers the Board to set conditions.
- (xxi). If MBPT jurisdiction in Port approaches is doubtful then why should Ispat apply for our permission in November 1993? By 15 October 1994 letter, MBPT informed IIL about the charges payable and conditions for lighterage operations. Thus in 1994 a binding contract between MBPT & IIL came into force. IIL had acted on it. No sanction of the Government to the concerned Board Resolution was necessary.
- (xxii). In a commercial contract, the arguments of 'duress' and 'pressure' are not admissible.
- (xxiii). The contract with IIL will survive till such time TAMP frame the General Scale of Rates.
- (xxiv). [Chairman (TAMP) : Is any channel maintained or dredging done by MBPT outside the port limits?]
- (xxv). No dredging is done outside the port limits, but it is to be taken as a natural channel without dredging.
- (xxvi). Section 48 does not talk about provision of services. But, it mentions about "services performed". "Perform" cannot be equated with "Provision". MBPT permitted IIL to perform.
- (xxvii). Obtaining Government approval u/s 42 can be a follow up action to be taken by MBPT. It cannot impinge upon the powers of TAMP to fix tariff for such performance u/s. 48.
- (xxviii). Our proposal is, therefore, to fix a common tariff on cargo under section 48 for the operations carried outside the port limits but in the port approaches.
- (xxix). With reference to arguments of Ispat on section 2 (r), it may be noted that there may not be a defined channel in the place in reference. But, it is a path leading to the port.
- (xxx). TAMP has not yet fixed any tariff so far for port approaches. Since no tariff was available, the contractual agreement between MBPT and Ispat should guide the transaction for the period prior to 2006. Our counter offer to Ispat made in 1994 is for payment of cargo related charges of Rs.15/- as a condition for permitting lighterage.
- (xxxii). Till such time a tariff is fixed u/s 48 and 49, a contract entered by the port u/s 33 and 34 should be recognised. Since no value was coming into play in the contract, allegation of violation of section 34 cannot be admitted.
- (xxxii). Principles of estoppel will apply to Ispat, as they have performed the contract.

ISPAT

- (xxxiii). We do not have any doubt that TAMP is the only Authority to fix tariff under sections 48 and 49 for services rendered in the port limits and approaches.
- (xxxiv). The MBPT SOR contains rates for lighterage and anchorage fees. The SOR set by TAMP is obviously for port and port approaches. Why should MBPT ask for a

separate rate now and only for the operations carried out by Ispat? This is discriminatory.

- (xxxv). Provision of the listed services is a pre condition for levy of tariff u/s 48. Port could not explain satisfactorily about the services provided by it at BFL area. VTMS is a general monitoring system for vessels. It is not for a cargo related services. Therefore, the port's proposal cannot be approved under Section 48.
- (xxxvi). The expression used in Section 49 – Section 49 is specific about port limit and approaches. No wording like “in relation to” is used in Section 49.
- (xxxvii). Section 2(r) defines port approaches. This definition applies to Sections 48 & 49. In order to qualify as Port Approaches there has to be a “navigable river or channel”. There is no navigable river or channel leading to MBPT where our operations take place. Therefore, Under Sections 48 & 49 tariff can be set only for the port limits of MBPT as Mumbai Port does not have navigable river or channel leading to its port which lie outside the port limits.
- (xxxviii). Argument on quantum of levy is not necessary as the question of fixing tariff at the place in reference does not arise at all.
- (xxix). The letter of Ispat and MBPT of 1994 is an agreement for payment of vessel related charges on barges transiting through the MBPT waters, which we don't dispute. There is, therefore, no offer or acceptance on our part on cargo related charges, which can be cited as the basis of the contract alleged by MBPT.
- (xL). MBPT cannot distinguish between parties. Ispat can be asked to pay a fee fixed only u/s 48 & 49. Even before TAMP was constituted, tariff setting conditions were listed under sections 48 and 49 and accordingly only the Central Government was empowered to approve tariff.
- (xLi). No contract satisfying the conditions of section 34 exists between MBPT & Ispat.
- (xLii). Section 48 permits performance by authorised person under section 42. But, Ispat is not a person authorised by MBPT under section 42.
- (xLiii). If 'Performance' is essential u/s 48 then Ispat, and not MBPT, is performing the specified service at the BFL area. Then how can MBPT ask for a tariff on a service performed by somebody else?

11.4. The IIL submitted at the joint hearing a synopsis of the arguments made by them. The points for determination considered by IIL and its arguments on such points are tabulated below:

Sl. No.	The points for determination considered by IIL	Arguments of IIL on such points
1)	For the period beyond 2006, i.e. after the notification extending the Port limits, whether the MbPT is entitled to demand fixation of tariff for cargo operations outside the Port limits?	<p>The answer to this query is to be definitely “No”. Admittedly, Chapter VI specifically refers to “any of the services provided at or in relation to the Port or Port approaches”. The expression used in Sections 48 and 49 is “any place within the limits of the Port or the Port approaches”.</p> <p>No service is provided to the vessel in relation to cargo and, therefore, this would come only under Section 49, which restricts with limits of Port or Port approaches.</p> <p>In the circumstances, it is clear that the Port Trust can seek from the TAMP a Scale of Rates and a Statement of Conditions under which services</p>

shall be performed by a Board "at or in relation to the Port or Port approaches".

When a certain expression has been used in the Act, it must be construed as per the definition provided in the said Act. Section 2 (r) defines "Port approaches" in relation to a Port, which means those parts of the navigable rivers and channels leading to the Port in which the Indian Ports Act is in force. It is crystal clear that the expression "Port approaches" used in Sections 48 and 49 must certainly follow the definition contained in Section 2 (r), and not in any other legislation or otherwise.

The obvious reason why the expression, "in relation to Port approaches", is used in the Act is to take care of the navigable channel which, for example, that leads to Kandla Port. For example, Sandheads in Kolkata is outside the Kolkata Port limits. However, the Hooghly River leads to the Port. The provision in the Ports Act has direct relation to these aspects, rather than the arguments advanced by the Mumbai Port Trust (MBPT), i.e. in relation to the Port, which means anything related to Port.

MbPT already has a current Scale of Rates and Statement of Conditions for the ships lightering within the Port limits. If the discharging point by Ispat is within the Port limits or Port approaches, what was the need for them to fix a separate rate at all? That itself will make it clear that the Port itself has correctly understood the situation, that, in this case, the discharging is outside the Port limits; and hence, the need for fixing up a separate rate. In the circumstances, it is respectfully submitted that, since the cargo operations are carried on beyond the limits of the Port and Port approaches, the Port is not entitled to seek fixation of tariff for any operations carried on therein. To a pointed question from this Authority, as to what is the nature of the services rendered in regard to cargo, I did not hear any answer furnished by the Port.

This Hon'ble TAMP would kindly see the subtle distinction between Sections 48 and 49.

Section 48 speaks of services performed "at or in relation to the Port or Port approaches". In Section 49, the expression used is "any place within the limits of the Port or Port approaches".

Under Section 48, the services had to be rendered "at or in relation to the Port or Port approaches". It denotes the place where services are provided or the nature of the services. Repeated questioning in regard to what services have been provided, the only answer was VTMS. I respectfully submit that VTMS is not a service

		provided to cargo or ships. It is only for the management of traffic. In any event, for passing through the Port, Port is levying vessel-related charges.
2)	For the above decision, whether the ILL operations, viz. lighterage operations, take place outside the Port limits and / or Port approaches?	<p>ILL operations take place outside the limits of the Port and Port approaches. It has been very carefully and correctly shown in the map that about 75% of the area of the anchorage is the Customs declared lighterage point for Dharamtar Port.</p> <p>If a ship does lighterage work within the limits of the Port, there is already a rate prevailing under the tariff, and there is no need to fix a rate. If the work is being carried out outside the Port limits, nothing is payable.</p> <p>It is absolutely necessary to remember that, for the vessels passing through the Mumbai Port to Dharamtar, vessel related charges are being separately paid and, therefore, the contention that a vessel passing through the Port limits is a service in relation to the Port is incorrect.</p>
3)	Quantum?	<p>It is unnecessary to fix a quantum, as the Scale of Rates has already fixed it when the lighterage takes place within the Port limits. The Scale of Rates also provides for vessel related charges when the vessel passes through the Port limits. In the circumstances, there is no need to fix any quantum.</p> <p>It is an accepted position that no service is provided to the vessel and, for using the port waters for passing through, vessel related charges are already collected. Rest of the arguments has no substance.</p>
4)	For the period prior to 2006, can MbPT levy and recover charges at the rate fixed by the Port Trust but not approved by the Central Government or notified in the official gazette, under the provisions of the Major Port Trusts Act?	<p>The Port Trust contended that recovery prior to 2006 was on the basis of a contract, and certain letters were read out. All that is totally irrelevant.</p> <p>The Major Port Trusts Act and Sections 48 and 49 existed at all times, and the method of fixing the tariff before TAMP came in was for the port to fix and get it approved by the Central Government and to be published in the official gazette. Unless this is done, it has no legal sanctity.</p> <p>Law cannot change merely because human beings err. If their contention is right, that levy can be done by contract, then what is the need for them to approach the TAMP today for fixation of rate. The situation has only changed to the extent that earlier the rate fixed was to be approved by the Government and published in the official gazette, but now, it is fixed by the TAMP. One cannot say that until 2006 it was a contractually agreed tariff and that the tariff will be fixed from 2006. If the Port Trust has not followed a proper procedure for fixation of tariff, so be it.</p> <p>Kindly peruse the correspondence produced. It is only in relation to the passing through the port and</p>

		<p>not for carrying on lighterage operations.</p> <p>Article 14 of the Constitution of India should be kept in mind. An Executive cannot act without the authority of law and, therefore, the Port Trust could not have levied a Scale of Rates unless that was imposed in accordance with the provisions of the Act. The Port Trust cannot have one Scale of Rates for one person and another for a separate person, for that would be violative of the Article 14 of the Constitution; and it is for this reason that transparency is required and rate for services provided or for occupation of the space to be fixed by this Authority now which was earlier done by the port and got approved by the Central Government and notified in the official gazette.</p> <p>In any event, there is a rate which is already fixed and, therefore, it is unnecessary to fix any other rate; but this rate will be applicable only is the vessel lightens within the port limits and not beyond.</p>
--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

11.5. A copy of the synopsis submitted by IIL was given to MBPT at the joint hearing with an advice to submit a synopsis of the arguments made by its Counsel. The MBPT was also advised to explain, along with necessary supporting documents, the existence of navigable rivers and channels at the place where the operations which is the subject matter of the dispute is carried out. The MBPT agreed to file a written submission in this regard and to simultaneously forward a copy of the submission to IIL. If any new points are made by MBPT, IIL was given liberty to submit its written comments thereon.

12.1. After granting of extension of time at its request vide its letter dated 25 August 2010, the MBPT vide its letter dated 31 August 2010 filed the synopsis of arguments of MBPT. A copy of the synopsis of arguments made on behalf of MBPT was forwarded to IIL vide our letter dated 31 August 2010 for its written comments. The IIL after seeking extension of two weeks time filed its rejoinder vide its letter dated 26 October 2010. A comparative position of the synopsis of arguments made by MBPT and the rejoinder filed by IIL are tabulated below:

Sl. No.	Issues contained in the synopsis of MBPT	Arguments made by MBPT in its synopsis	Rejoinder of IIL on the arguments of MBPT
1)	Whether in respect of lighterage operations carried on by IIL at the area near BFL, which according to MBPT is a port approach of Mumbai Port, MBPT is entitled to levy lighterage charges at the rate of ₹15/- per metric tonne?	<p>(i). The documents on record clearly go to prove that there was a complete and concluded contract between IIL and MBPT to carry out its lighterage operations near BFL area.</p> <p>Under the said contract, the MBPT offered necessary permission to IIL to undertake lighterage and conveyance of cargo through the MBPT waters on payment of all inclusive cargo related charges at ₹15/- per tonne. IIL has in fact acted upon the said permission and contract and has been deriving commercial advantage under the said contract. In the circumstances, IIL, even by virtue</p>	<p>(i). It is the case of MBPT, that there is a concluded contract.</p> <p>It is the contention of the MBPT that in view of the alleged concluded contract IIL is estopped from disputing the validity of the said contract with MBPT. There is no contract at all between IIL and MBPT as alleged.</p> <p>(ii). By letter dated 25.11.1993, IIL had only intimated MBPT about its lighterage operations at BFL or beyond that and has requested for innocent passage through the water of the MBPT.</p> <p>(iii). Resolution No.123 dated 8.3.1994 is not a contract. Section</p>

		<p>of the principles of promissory estoppel and contemplated under Section 115 of the Indian Evidence Act, is barred from disputing the validity of the said contract between IIL and MBPT.</p> <p>(ii). Even otherwise, but for the permission of MBPT, IIL would not have been entitled to transit its cargo through the port waters of MBPT port limits and undertake the “package operation”. The operations were undertaken at the volition of IIL and there was no compulsion from MBPT.</p> <p>(iii). The transshipment operations carried on by IIL involve erection of pier as contemplated under Section 2(p) of the Major Port Trusts Act 1963 and transit of cargo through the port water limits. The definition of “pier” as it may be seen include a floating barge [transhipper] or pontoon or other works connected therewith. Under Section 46 of the said Major Port Trusts Act, 1963, inter alia, no person is entitled to erect or fix within the limits of a port or port approaches any pier without the previous permission of MBPT in writing and subject to such conditions, if any, as MBPT may specify. In the present case, the MBPT has given permission to IIL and IIL has acted upon the said permission to erect a pier (in the form of a mother vessel to which the daughter barges are attached for transshipment operations at BFL area which is a port approach). IIL has been erecting pier at the said port approaches at the area near BFL pursuant to the permission of MBPT and as per the contract entered by MBPT with IIL.</p> <p>(iv). In the aforesaid premises, under the provisions of Section 33 read with Section 46 and 2(p) of the said Major Port Trusts Act, 1963, MBPT is legally entitled to enter into the said contract with IIL.</p> <p>(v). In the circumstances, viewed from any angle, IIL having entered into the said contract with</p>	<p>33 of the Major Port Trusts Act, 1963 provides that subject to the provisions of Section 34, a Board shall be competent to enter into or perform any contract necessary for the performance of its functions under this Act. Section 34 provides the mode of executing contracts on behalf of Board.</p> <p>Section 34 of the Act provides that every contract shall, on behalf of a Board, be made by the Chairman (or by any such officer of the Board not below the rank of Head of the Department as the Chairman may, by general or special order authorized in this behalf) and shall be sealed with common seal of the Board.</p> <p>Section 34 (3) of the said Act provides that no contract which is not made in accordance with the provisions of this Act and the Regulations made thereunder shall be binding on the Board.</p> <p>(iv). Admittedly, the mode prescribed under Section 34 of the Act is not followed in the present case and hence the contentions of MBPT that Resolution No.123 dated 8.3.1994 is a contract requires to be rejected.</p> <p>(v). The said issue was also raised by MBPT before TAMP. IIL had filed documents which clearly shows that IIL has consistently being protesting against the levy of charges and were forced to make payment to avoid disruption of passage through the water to MBPT.</p> <p>(vi). Filing of suits, Writ Petitions and other legal proceedings by IIL before the Hon’ble High Court also demonstrate that there was no understanding, agreement or contract between IIL and MBPT. On contrary, the record shows that IIL were thereafter making payment to MBPT as per Order passed by the Hon’ble High court which were subject to the decision of the TAMP. Such payment made by IIL in pursuance of the Order passed by the Hon’ble High Court, Bombay and/ or the initial payment made by</p>
--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>MBPT and taken benefit of the said contract is not entitled to deny the validity of such a contract and its obligation to pay the stipulated charges at the rate of ₹ 15/- per tonne to MBPT under the said contract for the lighterage operations carried out by IIL at the said BFL area. Non payment @ 15 per metric tonne is denial of dues to public exchequer.</p> <p>(vi). Te said contract is in consonance with the provisions of Section 34 as the same has been duly approved by the Board by passing of necessary resolution i.e. Resolution No.123 dated 8 March 1994.</p> <p>(vii). The BFL point abuts Mumbai port limits. Therefore, indisputably the area near the said BFL point i.e. BFL area, where lighterage operations take place, form part of a navigable channel leading to Mumbai port and the same is a port approach as contemplated under Section 2(r) of the said Major Port Trusts Act, 1963. The said fact is interalia proved from a bare perusal of the Marine British Admiralty Chart titled as the Indian West Coasts Approaches Mumbai (Bombay) showing the area pertaining to Mumbai port limits as well as the surrounding areas and the approaches to the same. The very fact that mother vessels navigate and Anchor at BFL area and undertake lighterage operations and many of such vessels Navigate further to inner Anchorages clearly shows that Navigable channel exists. As clarified by MBPT on specific query from Chairman, TAMP, indisputably:</p> <p>(1) The services of VTMS is rendered. (2) Surveillance of the area is undertaken by MBPT (3) MBPT ensures that approaches and channels leading to Mumbai Port are duly maintained to facilitate navigation by taking suitable actions on wrecks and other obstructions etc, in respect of such channels</p>	<p>IIL in view of the coercive action by MBPT cannot be termed as that the IIL had accepted the levy of charges by MBPT as falsely alleged. IIL has been all along opposing the legality of levy of charges by MBPT.</p> <p>(vii). Resolution No.123 dated 8.3.1994 has no legal binding effect. As per Section 52 of Major Port Trusts Act, 1963, (omitted by Act 15 of 1997 with effect from 9.1.1997) prior sanction of the Central Government is required for any rates or conditions framed by any Board and its obligations in the official gazette. Admittedly, the mandatory requirement of Section 52 has not been complied with in respect of Resolution No.123. Admittedly, no prior sanction of the Central Government was obtained by the MBPT. It is, therefore, submitted that the contention of MBPT that Resolution No.123 is a concluded contract and binding upon IIL requires to be rejected.</p> <p>(viii). Section 2(p) of the Act defines "pier" and Section 2(r) of the Act defines "port approaches".</p> <p>The contentions of MBPT that IIL has erected a pier is perse false. It is alleged by MBPT that unloading of goods from mother vessels to daughter barges amounts and erection of pier. The explanation to the term "pier" clearly stipulates for the purpose of the term "transhipper" means a floating craft or vessel, whether dump or self propelled on which gears are provided for discharging cargo from a barge or wharf and loading it into a ship. It can be seen that for a "transhipper" there has to be</p> <p>(a). a floating craft or vessel on which gears are provided for discharging cargo (b). a barge or a wharf and (c). a ship</p> <p>In the present case, there is only mother vessel and daughter barge. The submission that loading and unloading cargo from mother vessel</p>
--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>and approaches.</p> <p>(4) It is not essential that all channels and approaches are to be mandatorily to be dredged for the reason that so long as natural depth/ draft at the concerned channel and approaches exist.</p> <p>(5) The port doesn't allow vessels to approach from anywhere and everywhere.</p> <p>(viii). Even otherwise, inter-alia in view of the fact that under the aforesaid contract the MBPT has given permission to IIL to transit its cargo through MBPT port water limits on payment at the rate of ₹ 15/- per tonne of cargo as all inclusive charges per metric tonne and IIL having acted upon such permission, IIL is bound and liable to pay the said charges at the rate of ₹ 15/- per tonne to MBPT in respect of the said lighterage operations carried out by IIL.</p> <p>(ix). Even otherwise, Sections 46 and 33 of the said Major Port Trusts Act, 1963, operate independently and in a field not controlled by the provisions of Sections 48 and 49 of the said Major Port Trusts Act, 1963.</p> <p>(x). Therefore, till a regular Scale of Rates is framed by the TAMP in respect of said lighterage operations, the MBPT under, the aforesaid contract entered into with IIL is entitled to recover from IIL and IIL is bound to pay the said all inclusive charges at the rate of ₹ 15/- per tonne for the transit of cargo through MBPT port limits.</p>	<p>to daughter barges amounts to erection of barge is false and denied. It is denied that there is any agreement or contract entered into between MBPT and IIL as alleged.</p> <p>Without prejudice to the above submission, even if it is assumed for the sake of argument that the lighterage operations at BFL or beyond that the same is erection of "pier", the provisions of Section 46 of the Major Port Trusts Act cannot be attracted. Section 46 is applicable only for certain activities within the port limit or port approaches. There cannot be any contract or imposition of any terms stipulated therein for the alleged erection of such pier at BFL which is admittedly beyond the port limit or port approaches.</p> <p>(ix). Admittedly, till notification dated 26.10.2006 BFL was not a part of port limit. Even after the said notification the entire BFL area does not fall into port limit. MBPT cannot levy any charge for lighterage operation at high sea. For VTMS or any other Surveillance, the payment of monthly port charges is being made in accordance with the law through the barges. It is, therefore, submitted that there cannot be double charges for the same services.</p> <p>(x). The findings of the TAMP in its Order dated 17.3.2003 is further relied upon whereby it has been held that the port approaches shall be defined by the Government. It has been observed that from practical point of view also, it is necessary to define the port approaches. It is submitted that undefined limit of the port approaches shall give rise to serious ambiguity and the same is not permissible under the Act.</p> <p>(xi). It is denied that the BFL forms the part of navigable channel leading to Mumbai port as alleged. Admittedly, MBPT has neither caused dredging activities nor the channel has been demarcated nor named specifically. It is, therefore,</p>
--	--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

			submitted that there is no contract or agreement between the MBPT and IIL as alleged and the submissions made by the MBPT in the said respect is required to be rejected.
2)	Whether the proposal submitted by MBPT for fixing of tariff in respect of lighterage operations carried out by vessels at the port approaches, deserves to be approved?	<p>(i). Under Section 48 of the said Major Port Trusts Act, 1963, the TAMP is expected and enjoined to frame a Scale of Rates from time to time by notification in the Official Gazette and a statement of conditions under which any of the services specified therein are performed by MBPT or any other persons authorized under Section 42 of the Major Port Trusts Act, at or in relation to the port or port approaches.</p> <p>(ii). The services specified under the said Section 48 include transshipment of goods between vessels in the port or port approaches and also shipping of goods from vessels to or from any pier, land or building in possession of the Board or at any place within the limits of the port or port approaches or in relation to the concerned port or port approaches. Indisputably, the lighterage operations involve transshipment of goods at the port approaches and to say the least, such lighterage operations are undoubtedly in relation to port approaches of Mumbai Port as the same shipping (passage) involve of goods from the pier/BFL area to the Port. The said goods thereafter passes through the port waters of Mumbai Port as part of the package operations.</p> <p>(iii). From the plain reading of Section 48 as stated above, the Authority is empowered to frame Scale of Rates in respect of all services mentioned to be performed by the Board, or any person who may be authorized by the Board as contemplated under Section 42 of the Major Port Trusts Act, 1963, or in relation to the port or port approaches.</p> <p>(iv). Further from the reading of the said Section 48 of the Act, and particularly the word "performed" as appearing therein</p>	<p>(i). Lighterage operation at BFL area and beyond by IIL cannot be construed as any service performed by the Board or by other person authorized as per the terms of Section 42 of the Act.</p> <p>(ii). MBPT, for the first time, raised the issue that VTMS is a service at or beyond the BFL and is being provided "in relation to the port or port approaches" and so even if the lighterage operation is being carried beyond the port limit the MBPT is entitled to levy the charges. The said contention is fallacious and is also contrary to Section 48 of the Act.</p> <p>(iii). Section 48 of the Act stipulates that TAMP will consider only those services mentioned in clause (a) to (e) of Section 48 of the Act. The services alleged by the MBPT are not a subject matter of Scale of Rates as prescribed under Section 48 of the Act.</p> <p>(iv). The legislation only intends to limit the scope of work for determination of the tariff by using the word services performed at or in relation to the port or port approaches. Only those services which could be performed at or in relation to port or port approaches shall be subject matter of determination of the Scale of Rates by TAMP. In cases where the MBPT is either providing or may choose to provide any service which are not being performed at or in relation to the port or port approaches have to be out of the purview of the TAMP. TAMP need not frame Scale of Rates with respect to such services.</p> <p>(v). This distinction shall be further apparent from the plain reading of Chapter V, "Work and Services to be provided at port". Section 35 of the Major Port Trusts Act, 1963 further provides "power of the Board to execute works and appliances".</p>

		<p>it is clear that for the purposes of fixing of tariff, it is not necessary that the services mentioned therein are required to be provided by the port or any person authorized by the port essentially to any other third party. As per the language of the said Section even in a situation where a person is authorized by the port to perform (underline provided for) any of the services mentioned in the said Section at the port or port approaches or even in a situation where such services are performed by the concerned person in relation to a port or port approaches and not exactly within or at the port or port approaches also, the TAMP is empowered/ enjoined and fix necessary Scale of Rates in respect of such services.</p> <p>(v). In the present case, as per the proposal submitted by MBPT, tariff is required to be fixed by the Authority for the lighterage operations carried on at/ or in relation to Mumbai port/ port approaches. The words "In relation to" of the said Section 48 of the said Act are quite significant. The said words would go to indicate that this Authority has powers to frame Scale of Rates in respect of the services mentioned therein need not be confined only to the area of the port or port approaches, but on the contrary this Authority can frame necessary Scale of Rates in respect of services mentioned in the said Section 48 of the said Act even in the event of any of such services being related to or in any way connected with the area of port (as defined under the Indian Ports Act, 1908) or port approaches and performed by the persons who may be authorized by MBPT.</p> <p>(vi). The words "in relation to" as appearing in the said Section 48 of the said Act, have a wide meaning and would clearly go to show that even in respect of the services which may not take within the port limits or at the port approaches, but so long as such</p>	<p>From bare reading of the said Section in particular and the entire Chapter V in general, it becomes apparent that the Board can perform several works and services which are definitely far more than those services which are stipulated under clause (a) to (e) of Section 48 of the Act. Some of the works do not have relation to the port approaches i.e. as Section 35 (2)(a) stipulates further buildings required for the residence of the employees of the Board as the Board may consider necessary. For determination of the Scale of Rates only those services are relevant which are mentioned in Section 48 of the Act and at or in relation to the port or port approaches. It is pertinent to point out that in case the legislation would have intended to apply the Scale of Rates for the services rendered beyond the port limit it would have simply mentioned the word "within or without the limits of the ports" (as mentioned in Section 35 (1) of the Act) in Section 48 of the Act, instead of using "at or in relation to the port or port approaches".</p> <p>(vi). The MBPT has raised the contention that it has been providing services in respect of lighterage operation, interalia, in the nature of VTMS services and surveillance, etc. The VTMS has a range far beyond BFL and monitors the object coming under its range. It does not provide any specific service to the vessel coming to BFL. Further, after lighterage operation the barges enter into MBPT water and they are paying all applicable dues like port dues. It is specially denied that the VTMS provide any service to the vessels arriving at BFL. Above all, any such system cannot justify for imposition of cargo related charges. It will amount to double charging also as all the dues are being paid through the barges. It is also pertinent to state that the barges only travel through the MBPT water while going to Dharamtar port. There is no service performed by MBPT at or in relation to the port or port approaches. It has also been specifically admitted by the MBPT</p>
--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>services are in relation to or connected with the port or port approaches, the TAMP is empowered/ enjoined to frame necessary Scale of Rates in respect of such services.</p> <p>(vii). In this regard, to ascertain the true and correct meaning of the word "in relation to", useful reference to paragraph 15 of the Judgment of Hon'ble Supreme Court of India in the case of Mansukhlal Dhanraj Jain & Ors V/s. Eknath Vithal Ogale (2 SCC 665) may be made. In the present case, the lighterage operations are carried out at the BFL area which is the port approach and such lighterage operations are carried out in relation to the port/ port approaches of Mumbai. The very essence of the package operation of undertaking lighterage at BFL area and transiting through MBPT to Dharamtar is essentially is in relation to port/ port approaches. Part of the said BFL area, on account of extension of port limits of Mumbai pursuant to the notification issued by the Government of India in the year 2006 falls within the port limits of Mumbai. The above submission is fortified inter alia by the fact that immediately after transshipment of the cargo in the concerned barges, the said cargo laden on concerned barges pass through the port water limits of the Mumbai ports.</p> <p>(viii). What is being proposed by MBPT is a cargo related charges in respect of such lighterage operations and not vessel related charges. Therefore, payment of vessel related charges in respect of the concerned vessels/ barges cannot be the ground of denial of fixation of cargo related charges in respect of the said lighterage operations carried on at the port approaches or in relation to the port/ port approaches of Mumbai port. In fact IIL vide letter dated 17 January 1997 requested to reconsider the rate at ₹ 6/- per metric tonne as charged in past to other port users. Only the quantum of charge was disputed</p>	<p>in its Resolution No.123 dated 8.3.1994.</p> <p>(vii). No services are provided by MBPT, and the question of levy of charges by MBPT in respect of the lighterage operations carried out by the vessels at the port approaches does not arise. For framing the Scale of Rates under Section 48 of the MPT Act, the services rendered by the Board shall be within the port limit and port approaches and no extra territorial jurisdiction is envisaged under the said provisions and it simply defines the scope of this Authority for determination of the tariff.</p>
--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>by IIL.</p> <p>(ix). The submissions of IIL that not only the port limits but also the port approaches are required to be defined by the Government as contemplated under the provisions of MPT Act is misconceived. Under the Major Port Trusts Act and particularly Section 2 (q) of the Act port means any Major Port to which the said Act applies inter alia under the provisions of Indian Ports Act. As against this, if one sees the definition of "port approaches" as defined under Section 2(r) of the said Major Port Trusts Act, it may be seen that "port approaches" in relation to a port would mean those parts of the navigable rivers and channels leading to port in which the Indian Ports Act is in force. From a close reading of the said Section and in particular the words "in relation to" and in the light of the aforesaid Supreme Court Judgment, it would be clear that as per the said Section, "port approaches" is not an integral part of the port covered by the Indian Ports Act. On the contrary, as per the said definition, "the port approaches" and "port" are two separate subject matters. A "port approach" is nothing but those parts of the navigable rivers and channels leading to a port in which the Indian Ports Act is in force". Further, from the reading of the said Section, it is also clear that the concerned rivers and channels leading to a port in the said Section need not be even defined or named by Government or any other Authority. In the present case, substantial part of the BFL area pursuant to the extension of the port limits of Mumbai port by the notification issued by Government of India in the year 2006, falls within the port limits. The remaining part thereof, undoubtedly forms part of port approaches leading to the Mumbai port. As stated above, the BFL point abuts the port limits of Mumbai port.</p> <p>(x). The material on record go to</p>	
--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

		<p>prove that the BFL area undoubtedly forms part of port approaches. Even assuming but not admitting that some portion of the BFL area does not form part of the Mumbai port or port approaches of Mumbai port, the lighterage operations carried out at the said BFL area are undoubtedly in relation to the Mumbai port and/ or the port approaches. TAMP is, therefore, empowered and authorized to frame necessary Scale of Rates in respect of the said lighterage operations carried out/ performed at the BFL area.</p> <p>(xi). Further, as per the provisions of Section 48 of the Act, the requirement under Section 42 of the said Act i.e. previous permission of the Central Government for the purpose of authorizing any person to perform/ carry out the services specified therein need not hold up fixation of tariff by this Authority for the concerned services to be provided by the port at the port or in relation to the port approaches, etc. Once a tariff is fixed for such services, before authorizing any person to perform the said services at the port/ port approaches or in relation to the port approaches, MBPT would take necessary permission of Central Government for the said purpose. Further, the fact remains that IIL has undertaken the operations since 1994, pursuant to the permission given by MBPT on the condition of payment of the said charges at ₹ 15/- per tonne.</p> <p>(xii). Moreover, under Section 49 of the said Act also, TAMP is expected and enjoined to frame a Scale of Rates and statement of conditions under which any property belonging to or in possession or occupation of MBPT or any place within the limits of port or port approaches may be used for the purposes mentioned in the said Section. The purposes mentioned in the said Section include approaching, lying at or alongside any place as</p>	
--	--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

		<p>aforesaid by vessels, and any other use of any land belonging to or provided by the Board.</p> <p>(xiii). Even otherwise, in view of the fact that the lighterage operations carried out at the said BFL area undoubtedly involve use of MBPT port waters within the port limits of Mumbai Port Trust for the transit of cargo involved as integral part of the operation, even by virtue of Section 49 of the said Act also TAMP is entitled/ enjoined to frame the Scale of Rates for such operations.</p>	
3)	<p>Whether the rate of ₹15/- per metric tonne as prescribed by MBPT for the concerned lighterage operations at BFL area is reasonable?</p>	<p>The said charge of ₹ 15/- per tonne is in the nature of fee. The MBPT provides services in respect of the said lighterage operations, inter alia, in the nature of VTMS services and surveillance etc. which involves sizable establishment expenditure and operational expenses. Moreover, on account of lighterage operations carried out at the BFL area, the opportunity loss of MBPT could be at the rate of ₹ 105/- per tonne. Opportunity loss is an accepted concept. Further in law, as held by various Supreme Court Judgments including a judgment of Supreme Court reported in AIR 1983 SC 617, there should not be mathematical exactitude between a fees charged and expenses incurred by an Authority, a broad co-relation is enough.</p> <p>In the present case, such broad co-relationship is in existence. Moreover, for similar lighterage operations at inner anchorages of MBPT, the tariff has already been fixed by this Authority by which the revenue to the port is more than ₹ 15/- per tonne. In this regard, to be more specific, even as per the average figure of revenue earned by MBPT in respect of lighterage operations carried out at the inner anchorages within the extended port limits of MBPT for the period of 20.11.2006 to 26.03.2008, the aggregate revenue works out to ₹19.69 per tonne. Needless to state that in the present case</p>	<p>(i). The levy of charge in respect of lighterage operation at BFL area is illegal. The MBPT has no authority to charge any amount for lighterage operation at BFL area.</p> <p>(ii). No justification tenable in law has been shown or made out by MBPT for levy of charges at the rate of ₹ 15/- per tonne in respect of lighterage operation at BFL area.</p> <p>(iii). As regards the contention of MBPT about the opportunity loss, so called opportunity loss at ₹ 105/- per tonne is highly misconceived. It appears that the MBPT has reckoned those cargoes which would have been unloaded at its port. In the present case no activity at the port is being taken place. In fact, the cargo laden barges only travel through the water of MBPT upto Dharamtar port. It is reiterated that all applicable dues are being paid at Dharamtar port. It is pertinent to state that even for MBPT it is not possible to handle all the volumes at the port itself. It would lead to congestion. Hence, the alleged loss of opportunity is highly speculative in nature.</p> <p>(iv). For IIL also, cargo operation at the port of MBPT had never been intended. It has no relation to the alleged loss with respect to the lighterage operation at MBPT. It was only meant for its captive jetty for Dharamtar port.</p> <p>(v). In case IIL starts discharging through Mumbai port for handling average discharge of 15,000 tonnes</p>

		<p>however, MBPT is being deprived of its other revenue which in the case of lighterage operations at inner anchorage MBPT would have earned. Therefore, viewed from any angle, the rate of ₹ 15/- per tonne as proposed by MBPT is fair and just. Further, the said proposal of ₹ 15/- per tonne has been made by MBPT way back in the year 1994. Therefore, in the year 2010 even considering inflationary trends/ WPI also, the said proposal of ₹ 15/- per tonne is very much reasonable.</p> <p>The proposal of MBPT for fixation of tariff ₹ 15/- per tonne for the said lighterage operation at BFL area is pending before this Authority since the year 1997. The Authority in law, and particularly with the facts and circumstances of the present case and as per the applicable policy, is empowered/ enjoined to fix necessary tariff for the said lighterage operation at BFL area as per the proposal of MBPT submitted in the year 1997 to this Authority.</p> <p>The proposal submitted by MBPT for fixing of necessary tariff for lighterage operations at the BFL area at the rate of ₹ 15/- per tonne requires to be approved by this Authority.</p>	<p>per day, 500 trucks may be required which will lead to not only the traffic congestion but also pollute the city of Mumbai. It will be nightmarish experience for the citizens.</p> <p>(vi). It has been stated by the MBPT that within the extended port limit of the MBPT for the period of 20.11.2006 to 26.03.2008 the aggregate revenue works out to be ₹ 19.69 per tonne. So, by extending the port limit and applying the Scale of Rates the MBPT has started earning the additional revenue which was not otherwise available to it. Now, how can they justify the imposition of the charges which was never available to it. It has become available to it only after extension of the port limit. The levy of charges could be done strictly in accordance to law. There was no impediment before the MBPT and for any latches any lacunae, if any, IIL cannot be saddled and make to suffer. The Scale of Rates has already been framed by the TAMP and further extension beyond the limits of the MBPT is not permissible.</p> <p>(vii). It is, therefore, submitted that the proposal made by MBPT for the review of cargo related charges may be rejected.</p>
--	--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

12.2. A copy of the rejoinder filed by IIL was forwarded to MBPT vide our letter dated 12 November 2010.

13. A joint hearing on the case in reference was held in the Office of this Authority on 18 January 2011 and Chairman and Member were present. The counsel appearing for IIL requested for an adjournment in view of the non-availability of their Senior Counsel and due to late receipt of advice from their clients. The MBPT had no objection to accede to the request of IIL. The MBPT was advised to coordinate with IIL and communicate a mutually convenient date for the next date of hearing.

14.1. The hearing on the case in reference was set up on 17 February 2011 at the Office of this Authority. The MBPT and IIL were represented by their respective Counsel / Senior Counsel and Senior officials.

14.2. Based on the written and oral submissions made by both the parties, several issues emerged which were flagged and the clarifications of both the parties were sought.

14.3. The Counsels appearing for both the parties noted down the various issues raised for their clarifications and requested for an opportunity to file their written clarifications. The request was allowed by this Authority. The MBPT was advised to furnish its written clarifications within three weeks with a copy to IIL. The IIL was required to furnish its response within a week's time.

14.4. In view of the time required by both the parties, the proceedings could not be concluded. The parties agreed and recorded their consent to extend the date of disposal of this case till 30 June 2011.

15.1 As agreed at the joint hearing held on 17 February 2011 and after grant of extension of time to MBPT at its request, the port filed its clarifications vide its letter dated 25 March 2011. A copy of MBPT letter dated 25 March 2011 was forwarded to IIL advising the IIL to furnish its views and comments within a week's time vide our letter dated 28 March 2011. After grant of extension of time to IIL at its request, the IIL filed its response on the clarifications furnished by MBPT vide its letter dated 15 April 2011. A comparative position of the various issues raised in the joint hearing held on 17 February 2011 for the clarifications of MBPT and IIL and the clarifications furnished by both the parties are tabulated below:

Sl. No.	Issues raised for clarifications	Response of MBPT on the issues raised for clarifications	Response of IIL on the issues raised for clarifications
1)	Whether TAMP is to fix a general tariff for lighterage operation or a specific tariff only for the operation of IIL?	<p>The MBPT on 20.03.1197 had submitted a proposal for fixation of a general tariff for lighterage operations (i.e. discharge of cargo from mother vessel into barges) carried on at BFL area which forms part of port approach and corresponding transit of cargo through port water limits of port of Mumbai.</p> <p>This proposal was submitted by MBPT with an object of bringing transparency and uniformity in the matter of levy of charges/ tariff in respect of lighterage operations carried on at BFL and corresponding transit of cargo through port water limits of port of Mumbai.</p> <p>This proposal was submitted also bearing in mind the fact that transit operations carried on at BFL area and transit of cargo through port water limits by the concerned vessels undoubtedly resulted in deprivation of revenue, which otherwise the port/ National Exchequer would have earned in the form of port related charges.</p> <p>On account of such lighterage operations at BFL area and corresponding transit of cargo through port water limits to some other port as a package operation, huge amount of capital expenditure, running into several crores of rupees, which the port has incurred on construction of berths and related facilities which are made available at the port remain</p>	<p>The MBPT or TAMP cannot fix a tariff for IIL different than what is applicable to other parties doing the same kind of operation. Therefore, the tariff that is sought to be fixed by MBPT has to be understood as general tariff applicable to all parties doing lighterage operations within the area where the port is entitled to levy tariff, i.e. within the port limits and approaches.</p> <p>In regard to all vessels bringing in cargo for IIL, wherever the cargo is discharged from the mother vessel, the daughter vessel carried through the port limits of Mumbai, for which the vessel related charges are duly paid by the IIL and there is no dispute between MBPT and IIL in that behalf.</p> <p>As per Chapter II, clause 2.2 of the MBPT Scale of Rates, which is effective from 1.9.2006 and is fixed by TAMP and already published in the Gazette, IIL is being charged regularly beyond 2006 and, therefore, TAMP is not required to fix any charges in that behalf. As a matter of fact, as stated above, TAMP cannot fix a differential rate for IIL.</p> <p>It is an admitted position that the transit operations were carried on at the BFL area and then the cargo transited through the port water limits. Obviously, there is no dispute in regard to the transiting part; and, it is an admitted position that the lighterage operation is carried</p>

		<p>underutilized. Hence, the element of opportunity loss needs to be reckoned. Such underutilization of facilities, in turn, result in increased operation cost on the part of MBPT and also non-realisation of adequate returns on capital employed by MBPT for providing the said necessary facilities at the port. Once general tariff is fixed in respect of lighterage operations carried on at BFL area and transit of cargo through port water limits of port of Mumbai by TAMP, the applicable tariff would be same/uniform for every one (including IIL) who would undertake such lighterage operations at BFL area and transit of cargo to any other ports through Mumbai port waters.</p>	<p>on at the BFL, which was, in any event, outside the port limits and port approaches before 2006, when the port limits were extended.</p> <p>Rest of the further submissions made by the MBPT and answered to the above query has no relevance because TAMP has already fixed cargo related charges for transshipment and lighterage by the 2006 notification.</p>
<p>2)</p>	<p>(i). If tariff is to be approved by TAMP in terms of MPT Act, 1963, what is the significance of the MBPT repeatedly stressing about the concluded contract between MBPT and IIL?</p>	<p>The material on record and the pleadings already submitted by MBPT clearly go to prove that:</p> <p>(a). There was a concluded contract between MBPT and IIL since 25.04.1993.</p> <p>(b). Pursuant to the said contract, IIL started deriving the benefit of permission granted by MBPT for the package deal for lighterage operations at BFL area and corresponding transit of cargo through port water limits of Port of Mumbai (hereinafter collectively referred as the said lighterage operation at BFL area) resulting in saving of enormous amount by IIL, which otherwise IIL had to incur in the absence of the package deal.</p> <p>(c). Further, for the purpose of bringing transparency and uniformity in the matter of levy of tariff / charges in respect of lighterage operations carried at, in the year 1997, after formation of TAMP, the MBPT has submitted necessary proposal for fixation of cargo related charges at ₹15 per tonne in respect of such lighterage operations, as all inclusive cargo related charges. The said proposal is under consideration by TAMP.</p> <p>Till the fixation of such general tariff, the MBPT and IIL would</p>	<p>The short point is that there has been writ petitions filed by both the sides, and the last order is the order of the Division Bench of the Hon'ble High Court of Bombay, dated 10 August 2009. Under this Order, TAMP has been directed to decide on the proposals filed by MBPT and the objections raised by IIL in that behalf.</p> <p>The disputed period is the period prior to 20.11.2006. On 20.11.2006, the port limits were extended to cover the area where the lighterage operations by IIL have been taking place. And beyond 2006, there is tariff available, according to which IIL has been paying and, therefore, there is no dispute in regard to the place of operation and payment to be made to IIL.</p> <p>All disputes are for the period prior to 2006.</p> <p>It is denied that pursuant to any alleged contract IIL derived benefit of permissions granted by MBPT for the "package deal" for lighterage operations at BFL area and corresponding transit of cargo through port water limits of port of Mumbai as alleged. It is submitted that the BFL area is out of the territorial</p>

		<p>be bound by the contractual terms. It also needs to be stressed that but for the said contract between MBPT and ILL, MBPT is not bound and obliged to permit IIL to carry on lighterage operations at the said BFL area.</p> <p>It also needs to be clarified that the lighterage / discharge operations at BFL area constitute one composite operation / package deal. Under the aforesaid contract IIL has obtained permission of MBPT to carry out the said composite operation.</p> <p>It also needs to be mentioned that IIL has neither deferred its said lighterage operations at BFL area and / or waited for fixation of general tariff by TAMP or any Authority in respect of lighterage operations at BFL area. On the contrary, the said IIL has indisputably commenced the said lighterage operations at the said BFL, only under the shelter of permission granted by MBPT under the aforesaid contract. However, when MBPT demanded its legitimate dues, IIL has chosen wrongly to contend to the effect that in the absence of a particular tariff, MBPT cannot claim the charges in respect of said lighterage operations from IIL. At the same time, it is also contended by IIL that MBPT cannot disturb the said lighterage operations carried on at BFL area by IIL. The material on record would clearly go to show that IIL has raised disputes on the aforesaid lines before the Hon'ble High Court of Mumbai, inter alia, by filing Writ Petitions. The record also go to show that the Hon'ble High Court, while referring the dispute to be decided by TAMP by way of an interim arrangement has already fixed the rate of ₹ 6 per tonne.</p> <p>While answering the above issue, TAMP's attention is once again invited to the fact that immediately after entering into</p>	<p>limits of MBPT. In the absence of any interim order, IIL continue to pay sums as demanded by the MBPT under protest. From 1998, IIL has been paying without prejudice, ₹6 per tonne of cargo against a demand of ₹15 per tonne. MBPT has given an undertaking that, if it does not succeed in fixation of tariff, it will refund to IIL the sum of ₹6 per tonne; and, if the rate is fixed in its favour and as claimed by it, the difference would be paid by IIL to MBPT. Ultimately, by the last Order, the Hon'ble High Court has directed TAMP to fix this rate, which should be effective from 1998 till 2006.</p> <p>In view of the above, it is submitted that TAMP has to consider:</p> <p>(a). since TAMP has fixed a tariff in 2006, then that tariff cannot be less than earlier period and the tariff so fixed should be less than the tariff which was fixed in 2006.</p> <p>(b). TAMP's tariff Order may be restricted to Port's limit and port approaches.</p> <p>It is an admitted position that until 2006 lighterage operations were being carried out by IIL beyond the BFL, an area beyond the limits of the MBPT and the area does not come within the limits of the port approaches either.</p> <p>This aspect has been directed to be decided by TAMP by the High Court. In any event, this is true or else there was no need to extend the port limits.</p> <p>The MBPT has submitted proposals for fixation of cargo related charges at ₹15 per tonne in respect of such lighterage operations carried on at BFL area which is opposed by IIL. As pointed out hereinabove, the BFL area (prior to 2006) did not come within the limits of port and there is no question of fixing any charges for the same. As regards the proposal to fix tariff</p>
--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<p>the contract as already pleaded by MBPT for some period i.e., from 08.03.1994 to 08.02.2000, in fact, the IIL had paid cargo related charges for the said transshipment operations at ₹ 15 per tonne to MBPT.</p> <p>Therefore, it would be clear that TAMP is expected to adjudicate on two separate and distinct issues;</p> <p>(i). The liability of IIL to pay MBPT, all inclusive cargo related charges at ₹15 per tonne in respect of the said lighterage operations carried on by IIL at BFL area.</p> <p>(ii). Whether the proposal filed by the MBPT in the year 1997 for fixation of a general tariff in respect of the said lighterage operations carried on at BFL area deserve favourable consideration or not?</p> <p>In the aforesaid premises, MBPT is justified in its request to TAMP that both the aforesaid issues may kindly be adjudicated by TAMP.</p>	<p>for the period after 2006, it does not survive since TAMP has already fixed charges by notification dated 20.11.2006 which is already gazetted. Therefore, it is unnecessary for TAMP to fix any tariff for the period up to 2006, since the transshipment was outside the limits and port approaches, where the jurisdiction of TAMP does not extend.</p>
	<p>(ii). Can tariff be set by contract between a port and user. MBPT itself says its jurisdiction to levy rates is subject to approval and notification of such rates by TAMP?</p>	<p>It has never been the contention of MBPT that a tariff (as contemplated under MPT Act, 1963 or Scale of Rates) can be set by a contract between a port and user. Undoubtedly, tariff fixation is always subject to the approval and notification of such rates by TAMP. However, as already made clear by MBPT, in the present case, the provisions of tariff fixation i.e., Section 42 read with 48 and 49 of MPT Act, 1963 do not impinge in any manner the powers of MBPT to enter into contracts as contemplated under Section 33 of MPT Act, 1963 read with Section 46 of the said Act. Provisions of the said section 42 read with Sections 48 and 49 and provisions of Section 33 read with Section 46 of the said MPT Act 1963 operate in totally different fields and do not overlap each other.</p>	<p>MBPT, in their further submissions, have admitted that they have never contended that tariff can be set by contract between a port and user. The said submissions is contrary to the submissions made by MBPT and answer to question no. 2(i) above, it is submitted that tariff fixation has also been subject to the approval of Central Government and notification of such rates in the gazette. In view of the said admission by MBPT, tariff could not be fixed by contract between the port and user.</p>
3)	<p>MBPT has adopted vacillating stand:</p>		

	<p>(i). It has submitted a proposal before TAMP for fixing tariff under Section 48. This shows the rates levied will be legal only when it is approved under Section 48 by TAMP. But the port has taken different stands at different point of time during the arguments.</p> <p>(ii). MBPT says that it has authority to enter into the contract by virtue of Sections 33 and 46 which are neither affected nor controlled by Sections 48, 49, 42 and 47 (A). If so, why the proposal?</p> <p>(iii). MBPT says that IIL has erected a pier and therefore under Section 46, MBPT is within its rights to impose any condition including payment of charges. If so, why TAMP approval under Section 48 is being sought?</p> <p>(iv). MBPT says that Sections 46 and 33 operate independently and not controlled by Sections 48 and 49. In the same breath, it says that TAMP is empowered to frame the Scale of Rates in respect of all services performed by the Board.</p> <p>(v). What is the final stand of MBPT? If they want to maintain that the charges levied from IIL is as per the contract under Section 33, then they should withdraw the proposal. If the contract is disputed by the other party, TAMP is not a forum to determine the rights and obligations of the parties to the contract.</p>	<p>The MBPT has never adopted any vacillating stand. The stand of MBPT has been consistent as aforesaid. It is the specific case of MBPT that the said lighterage operations carried on at BFL area by IIL, are based on the contract entered way back in the year 1994 by and between MBPT and IIL. The dispute between MBPT and IIL is with regard to liability of IIL to pay and right of MBPT to recover cargo recover charges at ₹15 per tonne in respect of the said lighterage operations carried on continuously by IIL at BFL area.</p> <p>The said dispute even in terms of Orders passed by the Hon'ble High Court in the Writ Petitions (filed by none else but IIL) indisputably needs to be adjudicated and resolved by TAMP. However, such resolution of dispute should not be mixed up or confused with the proposal submitted by MBPT in the year 1997 for fixation of general tariff in respect of such operations which may be and / or might have been carried out by any body including IIL or similarly placed parties at the said BFL area with effect from the date of such proposal. However, that does not and would not mean that submission of such a proposal, till the fixation of tariff by TAMP would in any way curtail or adversely affect the rights and / or entitlement of MBPT to claim recovery of cargo related charges at the rate of ₹15 per tonne in respect of the said lighterage operations and as agreed under the contract between IIL and MBPT.</p> <p>The said contract has been entered into between the said parties way back in the year 1994. In the aforesaid premises, it may be seen that the said proposal (submitted in the year 1997) and the entitlement of MBPT to recover the said cargo related charges under the contractual agreement dating</p>	<p>It has submitted a proposal before TAMP for fixing tariff under Section 48. This shows the rates levied will be legal only when it is approved under Section 48 by TAMP, but the port has taken different stands at different point of time during the arguments. MBPT has adopted vacillating stand. TAMP has noted that MBPT has adopted vacillating stand as mentioned in the query. It is pertinent to note that the submissions made by MBPT and answered to query no 2(i) above contains that tariff fixed by contract in the year 1994 by and between MBPT and IIL while answer to the query no. 2 (ii) admits by MBPT tariff could not be fixed by contract between the port and user.</p> <p>It is an admitted fact that the dispute is in respect of lighterage operation carried on at BFL area by IIL prior to 2006 as pointed herein above, prior to 2006, BFL area did not come within the port limits or port approaches and MBPT was therefore, not entitled to any charges for the said lighterage operation at BFL area, nor is TAMP empowered to fix tariff outside the limits of port and port approaches.</p>
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

back to the year 1994 are totally separate issues independent of each other.

Further, in the light of the Orders passed by the Hon'ble High Court in the concerned writ petitions also, TAMP is entitled / empowered to fix necessary rates from the date of submission of proposal, which as aforesaid has been submitted in the year 1997 by MBPT. Therefore, viewed from any angle, merely because MBPT, has in accordance with its legal rights in the matter of contractual dispute between MBPT and IIL, prayed for recovery of its legitimate dues under the contract between MBPT and IIL, MBPT is not required to withdraw the proposal submitted by it. The said proposal, has been submitted with a view to bring transparency and uniformity in the matter of levy of tariff in respect of such discharge operations carried on at BFL area.

Further, IIL raised dispute before Hon'ble High Court in the concerned Writ Petitions filed by it wrongly denying its contractual obligations to pay to MBPT the agreed cargo charges at the rate of ₹15 per tonne with effect from the year 1994 (from the date when the said lighterage operations are being carried on IIL at BFL area). The said dispute as aforesaid, has been specifically referred by the Hon'ble High Court of Bombay to TAMP for necessary adjudication. Therefore, TAMP is undoubtedly the Forum (chosen by parties and as directed by the Hon'ble High Court) to determine the right and obligations of MBPT and IIL under the aforesaid contract which came into existence way back in the year 1994. Needless to state that, it is only on account of pendency of the dispute and in the hope and expectation that the same would be adjudicated by TAMP, till the

		adjudication of the said dispute, MBPT has been permitting IIL to carry out lighterage operations at the BFL area and to let the cargo laden vessels of IIL to pass through the MBPT port water limits which otherwise, the MBPT is not bound to. The aforesaid query is answered accordingly.	
4)	Whether the issue of the disputed area falling outside the port limits is resolved by the post 2006 notification of the Government? This is not clear as MBPT says only "substantial portion of the said BFL area falls within the limits of Mumbai port".	It is true that post 2006 notification of the Government has not completely resolved the issue of dispute area falling outside the port limit. Undoubtedly as rightly contended by MBPT, BFL area is port approach. Therefore, sofaras the lighterage operations carried on in the said BFL area, which as aforesaid, is at port approach area, apart from adjudicating the dispute between the IIL and MBPT in respect of entitlement of MBPT to recover cargo related charges from IIL at ₹15 per tonne in respect of the said lighterage operations, it is also necessary to fix a general tariff for the purpose as aforesaid to bring transparency and uniformity in the matter of levy of tariff for such operations. The aforesaid query is answer accordingly.	The submissions made by the MBPT that 2006 notification has not completely resolved the issue of dispute area falling outside the port limits is denied.
5)	Whether the proposal seeks retrospective fixing of tariff and if so from which date? (i). MBPT maintains that TAMP has the power to look into the rates leviable in the IIL case as the Hon'ble High Court has already remitted the matter to TAMP, but TAMP does not have any	The MBPT does not seek retrospective fixation of tariff by TAMP. However, MBPT undoubtedly seeks and expects TAMP to fix necessary tariff with effect from the date of proposal. Such fixation of tariff from the date of the said proposal by TAMP is legally permissible and legitimate and cannot be construed as a proposal by MBPT for fixing the tariff with retrospective effect. Moreover, in the light of the directions issued by the Hon'ble High Court, TAMP is expected to give its decision on the said proposal. With specific reference to query no. (i), <i>ibid</i> , it needs to be clarified that the submissions of MBPT in relation to the contractual agreements entered into by MBPT with IIL which as submitted earlier, date back to the year 1994 and much prior to	There cannot be any dispute in this behalf, as both the parties have agreed and the High Court has directed that what is requested by port and what is contested by IIL would be determined by TAMP and would apply with retrospective effect from 1998, the time when the interim Order started to operate, and would apply till 2006, when the new tariff came into force.

	<p>power to fix the rates retrospectively or reopen the contractual agreement entered by MBPT with the third parties.</p>	<p>TAMP coming into existence. Undoubtedly, between the period 1994 i.e., the date of contract till 1997 i.e., the period prior to formation of TAMP, TAMP cannot fix any general tariff retrospectively or even reopen or disturb the contractual agreements between MBPT and IIL which came into force during the said period. However, at the same time, it must be stated that once TAMP finds that a contractual arrangement did exist between MBPT and IIL since the year 1994 and TAMP will have to adjudicate the said dispute raised by IIL with regard to its liability to pay lighterage charges in the light of the said contractual arrangement and not otherwise. In any event, in view of the direction given by the Hon'ble High Court also, the dispute between IIL and MBPT will have to be resolved by TAMP, inter alia, taking into consideration the aforesaid contractual arrangement between IIL and MBPT. It was in this context a submission has been made by MBPT that the said contractual agreement which has been already in existence way back since the 1994 cannot be reopened by TAMP as the said contractual agreement is governed by provisions of Section 33 read with Section 46 of the MPT Act, 1963. The said sections 33 and 46, operate in a field totally independent of the field governed by section 42 read with Sections 48 and 49 of MPT Act, 1963 which, inter alia, contain provisions for fixation of general tariff by TAMP.</p>	
	<p>(ii). If contract is sacrosanct, will it mean a port can avoid tariff fixing by not filing a proposal and take a stand that the contract would prevail till tariff is fixed?</p>	<p>With specific reference to query (ii) <i>ibid</i>, the stand of MBPT has already been made clear. The MBPT never intended to avoid tariff fixation. The MBPT has always been ready and willing to subserve the contractual arrangement to the general tariff in the event of necessary tariff acceptable to MBPT being fixed by TAMP from such date as this Authority may deem fit and</p>	

	<p>(iii). In any case, MBPT itself has filed a proposal in 1997 and, therefore, TAMP can set tariff from that day. MBPT itself admits that the proposal of MBPT for fixation of tariff at ₹15/- per tonne for the said lighterage operation at BFL is pending before TAMP since 1997.</p>	<p>proper. However, at the same time, it needs to be mentioned that till the fixation of such tariff the contractual agreement between MBPT and IIL has to be respected.</p> <p>With reference to query (iii) ibid, the stand of MBPT has already been made clear.</p>	
6)	<p>MBPT says that a direct or specific benefit of service is not necessary, general benefit is enough to justify the levy of "fee". Tariff guidelines of 2005 which are the policy direction of the Government under Section 111 prescribe a cost plus method of tariff determination. There is a no provision to consider the proposal of MBPT to fix the tariff based on opportunity cost or value based tariff.</p> <p>All the services listed by MBPT are vessel related services. The issue of recovery of vessel related charges is not in dispute. The proposal is to fix a cargo related charge. What are the specific services provided to the cargo? What are the costs involved?</p>	<p>The Law of the land as laid down by the Hon'ble Supreme Court in the matter of tariff fixation is clear. The Hon'ble Supreme Court in the concerned judgments has made it clear to the effect that there need not be any mathematical exactitude between the rate or tariff that is being levied by the Authority and the corresponding costs which the Authority may be required to spend in respect of concerned services for which such a rate / tariff is sought to be fixed. Therefore, even the tariff guidelines of 2005 are required to subserve to the law of the land.</p> <p>From a bare perusal of the said tariff guidelines of 2005 (including Clause 2.2. thereof) also, it can be seen that the said tariff guidelines are guidelines which are directive and not mandatory in nature. Therefore,, the said guidelines do not seek to do away fair play at the joints in the matter of tariff fixation by TAMP. Moreover, from the reading of the said clause 2.2 of the said guidelines, it would be clear that as per the said guidelines, TAMP is expected to be guided by 8 parameters as set out thereunder. One of the parameters set out in the sub Clause (ii) of the said Clause 2.2. makes a mention of "ensuring just and fair return to ports". In the present case, as stated above, the transshipment</p>	<p>MBPT was not providing any cargo related services to IIL for lighterage operations at BFL area. It is denied that direct or specific benefit of service is not necessary, general benefit is enough to justify the levy of fee as alleged. It is denied that tariff guidelines of 2005 provides for levy of alleged fees. As pointed out hereinabove, the lighterage operations were carried out at the BFL, which was outside the port limits and port approaches and MBPT are not entitled to levy any charges for the same.</p>

operations BFL deprives the port of its opportunity to get fair returns against huge outlay of capital expenditure in respect of various facilities, including vast berthing facilities created by the port. Therefore, it would be clear that the lighterage operations, in fact, ultimately result in deprivation of revenue to the national exchequer in the form of port charges which otherwise would have been earned by the port for the benefit of national exchequer.

Further, from a close scrutiny of sub-clause (iv) of the said Clause 2.2. reading as “the established costing methodologies (including cost plus approach) and pricing principles” also make it clear that while prescribing tariff, TAMP is expected to be guided not only by the established costing methodologies (which include cost plus approach) but also pricing principles. Therefore, it would be clear that even as per the said guidelines, cost plus approach is not the only determining factor in the matter of fixation of tariff. The act of tariff fixation by TAMP is expected to be guided by various factors as set out therein including choice of fair return to ports and also pricing principles. Indisputably, as per the established pricing principles, loss of opportunity is undoubtedly one of the criteria for determination of fixation of price / tariff. Therefore, the approach that there is no provision to consider the proposal of MBPT to fix the tariff based on opportunity loss or value based tariff is not correct.

The said guidelines neither restrict the powers of TAMP in the matter of fixation of tariff nor tie down TAMP to only cost plus method.

Even in the past, TAMP has fixed tariff on the basis of opportunity loss. In this regard, attention of the TAMP is drawn

to Order dated 15.05.2007 passed by TAMP on the Scale of Rates of Kandla Port Trust. Note (3) to Section I on Schedule of Wharfage under Chapter III of SOR of KPT reads as follows:

“50% of the wharfage charges shall be levied as transshipment charges in the cases where the cargo discharged from the mother vessel to daughter vessel within the port limits is destined to other ports. In case of transshipment of crude at wadinar transshipment charges of ₹5 per MT shall be levied”

From the above it may be seen that while fixing the above tariff, the opportunity loss is the prime/main consideration which was weighed by the TAMP. Therefore, on the same rationale, in the present case also, TAMP is very much entitled and empowered to fix the tariff as per the proposal submitted by MBPT taking into account the factor of opportunity loss to MBPT as aforesaid.

As per the established law of the land, the procedural requirements are expected to act as a lubricant in the administration of justice and not as fetter in the path of justice and particularly in a case where interests of national exchequer are involved, which, ultimately affect the public at large.

The MBPT under the contractual agreement has permitted IIL to carry out the said lighterage operations at BFL area by discharging cargo and to transit its vessels laden with cargo through MBPT port water limits. Essentially, it would mean that MBPT by granting the said permission under the contractual agreement has permitted IIL, passage of its cargo through MBPT port waters. Further, during such passage of cargo,

		<p>MBPT renders necessary navigational assistance and surveillance service to the vessels laden with such cargo. Moreover, because of permission given by MBPT for discharge / transshipment of cargo at the BFL area, ultimately pass through port water limits of MBPT, the national exchequer lost its valuable revenue in the form of port charges. Bearing in mind such revenue loss to the national exchequer in the case of KPT, already TAMP has fixed under Chapter – III the cargo related charges at 50% of wharfage charges for transshipment of cargo from mother vessel to daughter vessel. The said fixation of tariff is not based on cost plus approach. Therefore, in case of MBPT, a different treatment cannot be meted out.</p> <p>MBPT has been providing navigation assistance, traffic assistance and surveillance service to such cargo laden vessels at the cost of several crores of rupees spent on required infrastructure. Therefore, if one takes into account the huge expenditure running into crores which has been spent by MBPT for providing the said necessary infrastructure and fix cost, the proposed tariff at ₹15 per tonne is fully and completely justifiable. The rate of ₹15 per tonne is of 1994. Hence, also is highly reasonable.</p>	
7)	<p>MBPT argues that Section 48 does not require “provisions of services” but “authorizing any other person to perform the services” can also make it eligible for tariff.</p> <p>(i). If MBPT has made such authorization, has it followed the pre-requisite conditions set out in Section 42?</p> <p>(ii). The reference to fixing tariff made in Section 48 in respect of authorized</p>	<p>In view of the fact that in the case of IIL, the claim of MBPT, is solely and completely based on the contractual arrangements which came into existence in the year 1994 and the contractual entitlement to which MBPT is entitled as against IIL is based on the provisions of Section 33</p>	<p>In reply to this query MBPT has relied on their earlier submissions. The submissions made by MBPT are denied by IIL. The question of applicability of Section 42 does not arise. Unless service is provided no charge can be levied.</p> <p>The answer given by MBPT is</p>

	<p>person is to fix tariff for the services to be provided by said authorized person and not for the act of "Authorizing".</p>	<p>read with section 46 of the MPT Act, 1963, and the said provisions are fully and totally independent of sections 42 and 48 of the said Act, reference to Sections 42 and 48 in the case of MBPT's specific claim against IIL (which is based on the said contractual agreement under Sections 43 & 46 of MPT Act) is unwarranted and uncalled for and in any event irrelevant.</p> <p>So far as the proposal submitted by MBPT in the year 1997 for fixation of general tariff is concerned, the same is also in accordance with the provisions contained in <u>Section 49 as well as 48 of the MPT Act, 1963.</u> The said proposal, indisputably, has been submitted after constitution of TAMP. Under Section 49 of the MPT Act, 1963, necessary scale of rates can be fixed by the TAMP. The lighterage operations at the BFL area undoubtedly involve use of port waters which undoubtedly are properties in possession / control / occupation of MBPT. Therefore, it may be seen that apart from sections 42 and 48 of the said MPT Act, 1963, even under section 49 of the said Act, TAMP is empowered and expected to fix necessary SOR and statement of conditions in respect of the said lighterage operations which undoubtedly involve user of property belonging to MBPT, not only within the port limits but also at port approaches for the purposes mentioned in the said section. Moreover, so far as section 42 read with 48 is concerned, once a tariff is fixed as contemplated under Section 48 read with Section 42 of the said MPT Act, 1963, before authorizing any person to perform, the services contemplated under Section 42 of the said MPT Act, 1963, at the port / port approaches or in relation to the port approaches, MBPT would take necessary permission from the Central Government for the said purposes. Therefore, grant of</p>	<p>treated with the contempt it deserves. The question of Section 42 does not arise at all. Unless service is provided, no charge can be levied.</p>
--	--------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------

	<p>(iii). When some of the listed services are authorized to be performed by other person, the consideration for such authorization is royalty and not tariff. If MBPT seeks royalty then TAMP cannot fix the quantum of such royalty.</p>	<p>permission by MBPT to any person to perform any services as contemplated under Section 42 of the said Act and fixation of tariff by TAMP under Section 48 or 49 are two separate issues. The said fact is proved, inter alia, from the fact that while fixing the aforementioned tariff and Scale of Rates for KPT, TAMP never insisted upon the said KPT taking any prior consent of Central Government for authorizing any specific persons to carry out the operations of cargo discharge from the mother vessel to daughter vessel. Therefore, in the present case also, the fixation of tariff by TAMP as per the proposal by the MPT would be completely inconsonance with the provisions of not only Section 49 but also Sections 42 and 48 of the MPT Act, 1963.</p> <p>From the plain reading of provisions of Section 48 read with Section 42 and also Section 49, it would be clear that in respect of the services performed within the port limits or at port approaches and / or use of port property, as specified under the said section 48 and 49 of the said MPT Act, 1963, TAMP is expected and enjoined to fix necessary SOR and related terms and conditions. Such fixation of SOR is nothing but tariff fixation and does not amount to royalty. Therefore, the question of MBPT seeking fixation of royalty by TAMP does not arise.</p>	
8)	<p>IIL concedes that the MBPT Scale of Rates set by TAMP is obviously for port and port approaches. So, IIL has no objection to pay as per the MBPT's SOR. Does this mean the controversy is only on the territorial jurisdiction of MBPT on the disputed site.</p> <p>If this being so, the dispute is of civil nature and it is not for the Tariff Authority to resolve such</p>	<p>In the present case, in the light of the orders passed by the Hon'ble High Court, the dispute between MBPT and IIL with regard to entitlement of MBPT to recover charges for the lighterage operations carried out by IIL at the BFL area under the permission granted by MBPT pursuant to the contract that had been entered into in the year 1994 is required to be resolved by TAMP. The said resolution of dispute to be in the light of the contract that has been entered into by and between IIL and</p>	<p>It is not correct that the dispute is territorial. It is submitted that TAMP has to decide whether the tariff fixed by it will be applicable</p>

	issues.	<p>MBPT as aforesaid way back in the year 1994. Therefore, the said dispute has to be resolved as a whole.</p> <p>Further, in view of the fact that said lighterage operations are undoubtedly carried out at BFL area and in view of the fact that as part of the said lighterage operations, as aforesaid, said vessels carrying cargo of IIL pass through the port waters of MBPT, IIL is not entitled to raise any objections on the ground of territorial jurisdiction of TAMP.</p> <p>In the circumstances, the aforesaid dispute is expected to be resolved by TAMP especially in the light of the directions given by the Hon'ble High Court and also in view of the fact that the interests of national exchequer are also involved in the present case. Therefore, the said dispute is undoubtedly required to be resolved by TAMP.</p>	to an area beyond the port limits and port approaches and, for that purpose, TAMP has to clarify as to what are the port limits, that includes port approaches to MBPT.
9)	Is it necessary for TAMP to identify a specific location of operation and to specify the rate therefor. If otherwise permissible, TAMP will prescribe a rate for the subject operation at the port approach. It is not for TAMP to give a ruling whether a particular location falls within port approach or not. If any doubt is raised on the claim of the port about its territorial jurisdiction, the dispute title needs to be resolved by the concerned court and not by the tariff regulator.	MBPT repeats and reiterates its submissions in response to the preceding query.	
10)	MBPT says that TAMP has not yet fixed any tariff for port approaches. In its own admission, Section 48 covers not only port but also port approaches. It is noteworthy that the Scale of Rates of all the port trusts are notified by TAMP under the provisions of Section 48. That being so, the Scale	The tariff fixation by TAMP with effect from 26.10.2006 is in respect to lighterage operations and anchorage operations within the extended port limits as specified by TAMP. While it is true that under Section 48 as well as under Section 49 TAMP is entitled to fix from time to time by notification in official gazette necessary SOR for the purposes as provided thereunder and in	<p>It is denied that BFL area constitute a "port approach" to MBPT as alleged.</p> <p>Needless to repeat that, by virtue of the definition contained Section 2(r) of the MPT Act, 1963, port approaches "in relation to a port means the navigable rivers and channels leading to the port in which the Indian Ports Act is in force".</p>

	<p>of Rates of MBPT covers all the operations within the port limits and the port approaches. Then what is the need of approving once again a specific rate for port approach?</p>	<p>respect of services specified under Section 48 of the said Act at the port or port approaches or in relation to the port or port approaches, while specifying such SOR, TAMP is expected to clarify the area / extent of applicability of the SOR as to whether the same is applicable for the concerned services or the use of the concerned property of the port at the concerned port area or at the concerned port approaches or whether the same is in relation to port area or port approaches.</p> <p>So far as the SOR fixed by TAMP with effect from 26.10.2006 in respect of lighterage and anchorage charges is concerned the same as per the order of TAMP is applicable in respect of lighterage and anchorage operations carried out only within the extended port limits of MBPT and the same is not made applicable to port approaches or the areas in relation to the port also. Further, as stated earlier, the said fixation of SOR is for the period subsequent to 26.10.2006.</p> <p>In the circumstances, so far as the lighterage operations carried out at BFL, which is a port approach area, there is a necessity of fixation of tariff as aforesaid for the purposes of transparency and to bring uniformity in the matter of levy of charges for such lighterage operations carried on BFL area which is a port approach.</p> <p>IIL be ordered and directed to honour its contractual commitments of payments of agreed charges at the rate of ₹15 per tonne along with interest. Further, it is also prayed that the proposal submitted by MBPT dated 20.03.1997 also be approved by TAMP.</p>	<p>MBPT has not been able to show, by any drawing or other accepted material any river or channel in the area known as Bombay Floating Lights (BFL).</p> <p>Traditionally many of the ports in India are in estuaries of rivers and that is why the expression “navigable rivers” is used. As far as a channel is concerned, depending upon the depth at the berth of the port, a continuous channel is to be maintained, by dredging or otherwise, from the main sea till the berth in order for the vessels to come into port. The BFL area is indeed in high seas and is not at the mouth of any channel and, therefore, the expression used by MBPT that “the BFL comes within the limits of the port approaches even though it may not be within the limits of the port” is totally fallacious and incorrect.</p> <p>We concur with the postulated point in regard to the tariff guidelines.</p>
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

15.2. In addition to the above, the IIL has made following general submission:

- (i). In general it might be seen that IIL started the operation of lighterage some time in the year in 1994. Lighterage operations were always carried out at the BFL, which, at the relevant time, i.e., prior to 2006 was beyond the port limits. There is no river or channel leading up to the port from BFL and therefore that area cannot be considered even as port approach. In the circumstances, MBPT were not entitled to insist on any payment, let alone ₹15 per tonne, as they did for discharging at BFL prior to 2006, which they did as a condition to allow vessel to pass through the port waters.
- (ii). In any event, MBPT could not have levied any tariff without publishing the same and obtaining sanction from the Government of India, prior to the formation of TAMP, which permission MBPT had not taken nor had they gazetted the tariff of ₹15 per tonne.
- (iii). No service was being provided by MBPT to the cargo. Therefore, MBPT were not entitled to recover any cargo related charges.
- (iv). As per the order dated 12.11.1998 in W.P No. 2187 of 1998 filed by IIL, the IIL deposited a sum of ₹50,00,000 without prejudice to their rights and contentions. In 1998, IIL filed W.P. No. 2414 of 1999, challenging the imposition on the grounds stated above. On 09.02.2000 an interim Order was passed by the High Court, Bombay directing IIL to pay the necessary levy at the rate of ₹6 per tonne instead of ₹15. Subsequently, by the final Order, the Court has directed TAMP to fix the tariff. If the tariff fixed by TAMP is more than what IIL had paid, IIL have undertaken to pay the difference; and, if the tariff fixed is less, MBPT has undertaken to refund the excess amount to IIL.
- (v). In the circumstances, as per the High Court direction whether MBPT were entitled to charge any cargo related charges for an operation at BFL, outside the limits of the port and port approaches, when no service is rendered in regard to cargo, and if so what should be such charges?

The interim Order operated until the year 2006, whereafter IIL have been paying the tariff as fixed by TAMP, and there is no dispute in regard to that.
- (vi). In the circumstances, TAMP has to decide whether the operation carried out at BFL which is admittedly outside the port limits and certainly not in port approaches will attract tariff? And whether TAMP can fix a tariff for that area and if so fix the tariff.
- (vii). In the circumstances, it is prayed that the proposal made by MBPT be rejected.

16. The Advocates of IIL vide their letter dated 15 April 2011 while furnishing the IIL version on the points raised by the Authority and the reply of the MBPT thereupon, once again requested for a personal hearing. The IIL was given adequate opportunity of hearing by the Authority in the joint hearings held on 29.12.2009, 15.6.2010, 10.8.2010 & 11.8.2010, 18.1.2011 and 17.2.2011. However, the IIL was requested to submit their additional submissions, if any, in writing on or before 3 June 2011 vide our letter dated 27 May 2011. It was also conveyed to IIL that, if no communication is received from the IIL before 3 June 2011, it will be presumed that IIL has nothing to submit further and the case will be processed accordingly. There was no response from the IIL till finalization of this case.

17. With reference to the totality of information collected during the processing of the case and arguments advanced by the parties, the following position emerges:

- (i). This case has been initiated based on the common Order dated 10 August 2009 passed by the Hon'ble High Court of Bombay in W.P. Nos. 2364 of 2004, 2414 of 1999 and 2539 of 1999. For the reasons stated therein, the Hon'ble High Court has set aside the tariff order No. TAMP/2/1997-MBPT dated 17 March 2003

passed by this Authority. Para 10 of the Order of the Hon'ble High Court contains the following directions to this Authority:

- (a). To consider the proposal submitted by the MBPT.
- (b). To consider the objections raised by the Ispat Industries Limited.
- (c). To consider the Order passed by the Hon'ble High Court.
- (d). To make fresh order on the proposal of the Port Trust.
- (e). To pass such a fresh order in accordance with law.
- (f). To permit both the sides to submit additional material that they wish to produce.

The Hon'ble High Court has set aside the tariff order dated 17 March 2003 on the grounds that the opportunity of personal hearing to the Petitioner (MBPT) was not given by this Authority but only by its Chairman. Referring to the earlier direction dated 8 January 2002 of the same court, the Hon'ble High Court held that this Authority as constituted under the Act viz. this Authority consisting the Chairman and two members was obliged to give personal hearing to the Petitioner before making the order. During the entire period of the proceedings initiated based on the directions dated 10 August 2009, the position of a Member remained vacant in this Authority and, therefore, this case was heard and decided by the existing quorum of Chairman and one Member. This position is known to both the parties and they do not have any objections. Further, as explained in the earlier part, at our instance, MBPT had brought to the notice of the Hon'ble High Court about the existing quorum of TAMP.

The directions of the Hon'ble High Court require TAMP to dispose of the matter within three months of the said order. Because of various procedural requirements and the time sought by both the parties to submit their arguments, the case could not be decided within the stipulated time limit. Both MBPT and IIL agreed that the case would be disposed before 30 June 2011. This time limit was subject to the understanding that both the parties would adhere to the schedule for submissions of their respective written submissions as agreed by them in the joint hearing held on 17 February 2011. But, both the parties have subsequently sought extension of time to furnish their clarifications and therefore, this case could not be concluded before 30 June 2011. It may be noted that the delay in disposing this matter is not due to any casualness on the part of this Authority but on account of time taken by the parties.

The directions dated 10 August 2009 issued by the Hon'ble High Court require both the parties to be given an opportunity to file additional matter if they desired. As recorded in the earlier part, such an opportunity was extended to both the parties.

- (ii). The main task before this Authority is to consider the proposal submitted by the MBPT for levy of lighterage dues for cargo operations at the port approaches. While doing so, the objections raised by ISPAT Industries are to be considered. The Port had filed a proposal vide its letter No. Secy/G/DT-TA/2563 dated 24 February 1998 seeking approval of this Authority for inclusion of the following provisions in its Scale of Rates:

"Lighterage dues at the rate of ₹ 15/- per tonne shall be levied on the cargo, unloaded from or loaded into the vessels anchored within the port approaches but outside port limits and the cargo is transported through Mumbai Harbour. Provided, however, that 'lighterage dues shall not be levied on the cargo destined to or from the port of Mumbai."

When the opportunity of updating this proposal was given to MBPT, the Port vide its letter dated 9 November 2009 made various submissions in support of levying a cargo related charges at its port approaches and concluded that a tariff of ₹ 15/- per tonne as cargo related charges for the lighterage operations at BFL area outside port limits but in the port approaches be approved. It is noteworthy that

the initial proposal of the port was general in nature about levy of the proposed rate for the operation carried out at the port approaches. The updated proposal, however, specifically mentions about the operations at the BFL area. Subsequently, the port through its arguments in the hearing and written submission, has clarified that its proposal is for a general tariff for the lighterage operations and not confined only to the operations carried out by IIL. IIL has also maintained a stand that the tariff that is sought to be fixed should be a general tariff applicable to all parties doing lighterage operations within the area where the port is entitled to levy tariff. Accordingly, this analysis will proceed to fix cargo related charges for the lighterage operations taking place within the port approaches of MBPT as may be applicable under the MPT Act, 1963.

- (iii). During the proceedings, both the parties, particularly, the MBPT referred to certain findings and decisions contained in the earlier tariff orders dated 2 June 1999 and 17 March 2003 passed by this Authority on the same matter. It has to be recognised that both the said orders had been set aside by the Hon'ble High Court of Bombay and, therefore, any of the findings and decisions recorded in the said orders cannot have the binding effect on this Authority. Further, the order dated 10 August 2009 of Hon'ble High Court makes it amply clear that the proposal submitted by the Port should be considered with open mind and a fresh order thereon to be issued.
- (iv). Both the parties have relied upon the provisions of Sections 48 and 49 of the Major Port Trusts Act, 1963 which deal with the imposition and recovery of rates at ports. Section 48 of the MPT Act, 1963 unambiguously requires this Authority to frame a scale of rates at which and a statement of conditions under which any of the specified services listed therein shall be performed by a Board of Trustees of Major Port or an authorised person at or in relation to the port or port approaches. The list of services given under Section 48 includes transshipping of passengers or goods between vessels in the port or port approaches. Sub-section 1(b) of Section 48 also mentions about landing and shipping of passengers or goods from or to such vessels to or from any wharf, etc. or at any place within the limits of the port or port approaches. Keeping aside the question of what constitutes the port approaches, there is no doubt that this Authority is statutorily empowered to fix tariff for cargo operations taking place in the port approaches of a Major Port Trust. In this regard, it is to be understood that the regulatory jurisdiction of this Authority is co-terminus with the administrative and territorial jurisdiction of a Major Port Trust. That being so, the rate approved by this Authority will operate only within the area over which a port trust can legitimately exercise its jurisdiction and control.
- (v). Both MBPT and IIL unanimously endorsed that this Authority is competent to prescribe a scale of rates for the services provided at the port approaches also. The main difference between them is, however, on the questions whether BFL would be in the port approaches and the authority under which the MBPT claims certain areas to be part of its port approaches.

Section 2(r) of the MPT Act defines 'port approaches' as 'those parts of the navigable rivers and channels leading to the port, in which the Indian Ports Act is in force'. The MBPT admits that the notification issued by the Central Government in the year 1982 as well as the one issued subsequently in the year 2006 do not define port approaches, as they are confined only in stating the different co-ordinates of the port limits. The argument of MBPT is that any navigable rivers and channels leading to a port would automatically be the port approaches of that port and no specific notification to this effect would be necessary. It has also placed reliance upon certain other documents like admiralty chart, etc. which show some areas as the port approaches of Mumbai Port.

IIL counters the arguments of MBPT and insists that a notification under Indian Ports Act needs to be issued by the Competent Government declaring the extent of the port approaches. Convention and usage cannot be taken as a substitute for

the legal requirement of the notification from the Government. More specifically, IIL has pointed out that the area around BFL in any case will not fall within the port approaches as it is only an open sea and not within a channel or navigable river leading to the port.

Prima facie, it appears that the extent of port approaches cannot be an open ended one and needs to be defined and understood in an unambiguous manner. Nonetheless, the points made by both the parties in this regard warrant an interpretation of the provisions of the MPT Act read with the relevant provisions of the Indian Port Act, 1908. This Authority is only a body created to fix tariff and therefore, it is not competent to authoritatively interpret the provisions of the Act to set out the requirement under law which are to be complied with "in relation to the port approaches". But what is not in doubt is that this Authority is empowered to prescribe tariff for the operations at the port approaches and this point is not at all contested by the IIL also. Therefore, this Authority will confine this proceedings only to fix tariff for cargo operations at the port approaches of MBPT in exercise of its statutory powers conferred upon it by the MPT Act subject to a clear understanding that the tariff to be fixed will operate only within such areas which can lawfully be established as the port approaches of MBPT. In this regard, it is relevant to point out that while fixing various tariff items for the port trusts, whether for landside and seawards services / facilities, this Authority does not verify the issue of ownership and title of individual assets involved. Tariff is generally fixed for the services or facilities, subject to be the presumption that it should be levied by the port only when they are legally entitled to do so. To illustrate this, in fixing the lease rentals of lands belonging to ports, zone-wise / sector-wise lease rentals are set in a general manner and title of individual parcel of land is not verified by this Authority. In fact, the law also does not require this Authority to conduct such verification. In the same analogy, in this case also, this Authority is not the competent forum to decide the issues questioning the territorial jurisdiction of the MBPT. MBPT can levy the tariff fixed for operations at such areas where its jurisdiction lawfully extends. If any doubt over the territorial claim of the port trust is raised, then the dispute need to be settled in some other forum competent to determine such issues under law.

In view of the forgoing this Authority does not like to go into the issues relating whether the port approach should be defined by a notification of the Government or whether BFL area would fall within the port approaches.

- (vi). IIL has contended that the existing scale of rates already contains provisions for levy of lighterage fees and even if a separate rate is to be fixed the same should be only for the period prior to 2006.

The existing scale of rates of MBPT contains a provision to levy of lighterage fee on GRT basis from the vessels working cargo at the notified anchorages situated within the port limits. The proposal of the MBPT is to cover the cargo operations taking place outside the port limits but within the port approaches. Evidently, the existing Scale of Rate does not contain any rate for the operation taking place at the port approaches. Extending the existing rates for similar operation done within the port limit to the port approaches may cast an extra burden on the users since, as revealed by MBPT, the average revenue realised by the port at the prescribed rates in the scale of rates in respect of the lighterage operations carried out at the inner anchorages was about ₹ 19.69 per tonne, whereas the proposal of the port trust is to levy only around ₹ 15/- per tonne at the port approaches. This Authority, therefore, does not like to introduce a tariff at a level more than that proposed by MBPT. It appears that IIL has made the demand without perhaps analysing the financial implication that might arise from it. Furthermore, the rate to be fixed will apply not only to IIL but also to any port user undertaking lighterage operations in the Port approaches.

It is a fact that in a subsequent development, the port limits of MBPT were extended by the notification dated 26 October 2006 issued by the Central

Government. By virtue of it, many of the areas which fell outside the port limits earlier had come within the port limits. This development is not relevant to the issues before this Authority as even after such notification, there is a possibility of two distinct areas i.e. port limits and port approaches; and, the proposal in hand is to fix the charges for the operations which take place in the port approaches. Therefore, there does not appear to be any reasons to artificially draw a cut-off line of the year 2006 to fix the tariff, as demanded by IIL.

- (vii). The arguments for and against prescription of cargo related charges at the port approaches as made by both the parties are recorded in the earlier part of the note. In short, the argument of the MBPT is that even the cargo handled at port approaches transit through the port waters and therefore, it is entitled to levy a charge thereon. It has further contended that because of such transshipment, facilities created by it within its dock area go underutilised and the tariff to be levied will partially offset such opportunity cost forgone. On the other hand, IIL argues that no cargo related services are provided at the BFL and therefore, MBPT cannot levy any charge. In any case, the barges passing through MBPT waters after the transshipment pay necessary vessel related charges.

In this regard, MBPT has pointed out a provision available in Kandla Port Trust (KPT) to levy a fraction of wharfage charges as transshipment charges when the cargo transshipped between vessels anchored within the port limits is destined to other ports. A similar provision is available at many other Major Port Trusts also. A levy on cargo is realised by many of the Port Trusts when transshipment takes place within the port limits. As is the case with the other charges, there is, however, no uniformity at different Port Trusts on the quantum of the tariff levied on the transshipped cargo. But, in all the cases such transshipments reportedly take place within the port limits. The fact that such transshipments take place in the port approaches cannot be the only ground on which the precedent available elsewhere should be ignored. After all, the charges levied at other ports are also for the transshipment operation taking place within the area of jurisdiction of the port.

- (viii). This Authority generally follows a cost plus method for fixing tariff of major port trusts. In the instant case, the Port Trust could not provide any cost details to support the proposed rate of ₹ 15/- per M.T. The argument of the port trust to solely rely upon the opportunity cost cannot be considered favourably. On the face of it, the proposed rate of ₹ 15/- per M.T. is not justified from the cost point of view, but it has to be recognised that each and every individual item of tariff levied at the Major Ports are not fixed strictly with reference to the cost of rendering of the particular services or use of the specific facilities. The cost plus approach is maintained generally at the macro level of cargo handling and vessel related activities and for the port as a whole. In other words, it is generally ensured that tariff levels are maintained in such a way that the port as a whole meets the relevant aggregate cost of all its activities and earn the stated level of return on all its assets from the total revenue generated from levy of such tariff. Flow of cross-subsidisation of one activity by another is somewhat inherent in this arrangement, though efforts are maintained to contain the level of cross-subsidisation.

In the instant case, in the absence of specific cost details, it is difficult to assess whether the proposed rate of ₹ 15/- per tonne is reasonable. The Hon'ble High Court of Bombay has passed an interim order on 9 February 2000 requiring IIL to pay a rate of ₹ 6/- per M.T. for the operations taking place at the disputed port approaches. In view of this interim order, the revenue earned by the MBPT from the operations since the said period can only be at the rate of ₹ 6/- per M.T. In the successive general revisions of the port scale of rates, this Authority has considered the total revenue earned / estimated to accrue to the Port, to revise the (then) prevailing scale of rates of MBPT. The revenue position considered in such exercise includes the revenue accrued to the MBPT from the subject transshipment operation which is calculated at the rate of ₹6/- per M.T. in view of the interim order of the Hon'ble High Court. Since the revenue model considered

under the cost plus regime to fix the general scale of rates of MBPT include the revenue from the transshipment operation of ₹ 6/- per M.T. and the cost plus regime adopted to fix the general scale of rates which accounts for all the expenditure of MBPT and return on its capital employed, the MBPT may not be in any disadvantageous position if the same rate of ₹ 6/- M.T. is allowed as the rate for the transshipment operation taken place at the port approaches. This Authority is constrained to take this decision in the absence of separate costing for the activity made available. Further, the rate of ₹ 6/- per M.T. is now in vogue for more than 11 years and can, therefore, be considered to be a final rate for the said operations.

- (ix). Another issue raised before this Authority by both the parties, particularly by the MBPT, is about the validity of the contract between MBPT and IIL by virtue of which the port is entitled to levy the lighterage dues at ₹ 15/- per M.T. IIL has vehemently denied the existence of any such contract and even challenged the legality of the resolution of the Board of Trustees of MBPT passed in the year 1994. This Authority is not in a position to accept the contention of MBPT that the Order passed by the Hon'ble High Court requires this Authority to adjudicate upon the dispute arising from the so called contract between MBPT and IIL. The direction of the Hon'ble High Court is only to consider the proposal of MBPT and the objections of IIL and pass a fresh order thereon. MBPT has repeatedly stressed in the proceedings that its proposal is for fixation of a general tariff for the lighterage operations at the port approaches and it is not specific to any specific user. If this be the case, it cannot be its contention that this Authority should settle the disputes between MBPT and IIL arising from some action taken by MBPT. The argument of the MBPT that this Authority is the forum chosen by parties and directed by the Hon'ble High Court to determine the right and obligations of MBPT and IIL under the disputed contract which came into existence in 1994 is misplaced. The Order of the Hon'ble High Court requires TAMP to dispose the matter in accordance with law and neither the applicable law nor the direction of the Hon'ble High Court requires TAMP to determine whether the contract was in existence and if so to determine the rights and obligations of the parties thereto. TAMP is a statutory body with a mandate to fix port tariff and this proceedings will be confined only to discharge that mandate.
- (x). The proposal of the MBPT was filed before this Authority on 24 February 1998 and MBPT has prayed that tariff to be determined now can be made applicable retrospectively from the date of filing of its proposal. From the material available on record, it is clear that the cargo operations outside the port limits had been taking place even prior to February 1998. If the prayer of MBPT is accepted, a question will arise about the tariff to be levied for the period prior to February 1998. This Authority is not in a position to endorse the stand of MBPT that till a general tariff is set by this Authority, a Port Trust can introduce necessary tariff arrangement through contract, in view of certain other provisions of the MPT Act. There is no doubt even in the minds of MBPT that the charges to be fixed for operations outside the port limits will fall under purview of section 48 of MPT Act. It will be fallacious that this position would arise only when a proposal is filed by the port before this Authority. If this argument is conceded then any Port Trust can willfully delay submission of proposal before Authority and introduce any tariff arrangement convenient to them through bilateral arrangement thereby circumventing the tariff setting arrangement envisaged by the MPT Act. This Authority may, therefore, like to go beyond the date of filing of the proposal by MBPT in this matter. As correctly argued by MBPT, this Authority cannot fix any tariff retrospectively for the period before its constitution. By virtue of amendments to the MPT Act, this Authority was constituted by a notification by the Central Government issued on 10 April 1997. Therefore, the lighterage levy for the cargo operation at the port approaches at the rate of ₹ 6/- per M.T. is approved for inclusion in the Scale of Rates of MBPT retrospectively with effect from 10 April 1997.

- (xi) Before we conclude, it is once again reiterated that the tariff for cargo operations at the port approaches approved by this Authority is subject to the condition that it is leviable only at such places where the jurisdiction of MBPT legitimately extends. If any doubt is raised on the claim of MBPT about its territorial jurisdiction on the port approaches, the onus is on MBPT to establish its title and jurisdiction over such areas as per the provision of MPT Act and Indian Ports Act.

19. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following provision for inclusion in the Scale of Rates of MBPT with retrospective effect from 10 April 1997 –

‘Lighterage dues at the rate of ₹ 6/- per tonne shall be levied on the cargo, unloaded from or loaded into, the vessels anchored within the Port approaches and the cargo is transported through Mumbai Port Waters. Provided, however, that Lighterage dues shall not be levied on the cargo destined to or from the Port of Mumbai’.

(Rani Jadhav)
Chairperson