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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. : 108

New Delhi, 16 July 2005

NOTIFICATION

In exercise of the powers conferred by Sections 48 and 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of the Mumbai Port Trust for fixation of licence fee for allotment of office space to M/s. Hindustan Petroleum Corporation Limited at Marine Oil Terminal in Jawahar Dweep as in the Order appended hereto.

(A.L. Bongirwar)
Chairman

Tariff Authority for Major Ports
Case No. TAMP/66/2004 - MBPT

The Mumbai Port Trust

Applicant

ORDER

(Passed on this 15th day of June 2005)

This case relates to a proposal received from the Mumbai Port Trust (MBPT) for fixation of licence fee for allotment of office space to M/s. Hindustan Petroleum Corporation Limited (HPCL) at Marine Oil Terminal (MOT) in Jawahar Dweep.

2.1 The MBPT has made the following points in its proposal:

- (i). M/s. Bharat Petroleum Corporation Limited (BPCL), Indian Oil Corporation Limited (IOC), Oil and Natural Gas Corporation Limited (ONGC) and HPCL are the four oil companies operating at the MOT. HPCL has been sharing a small portion of the office space leased out to BPCL at MOT for conducting its operations. Since HPCL is facing difficulties in its sharing agreement with BPCL it has requested MBPT for allotment of separate office at MOT, Jawahar Dweep on lease basis on the lines of other oil companies.
- (ii). (a). The draft report on the comprehensive guidelines for land management at MBPT submitted to the Ministry by the Committee under the Chairmanship of Chairman, JNPT, provides, inter alia, the following:
 - (aa). Waiver of the procedures of inviting bids by public auction for allotment of vacant land / structure to Central Public Sector Units / State Public Sector Units for commercial purposes.
 - (ab). Allotment of space for a period not exceeding 11 months, which may be extendable for two such periods of 11 months each.
 - (ac). The licence fee will be based on a return of 15% on tenement value as prescribed in the Government ready reckoner for the relevant year.
- (b). The Committee formed by MBPT to examine the request of HPCL has worked out the rate of rent taking into consideration the above guiding principles and recommended allotment of 170.20 sq. mtr of built up area in MBPT administrative building at Jawahar Dweep on some terms and conditions. The main terms and conditions are as follows:
 - (ba). 11 months term renewable for further two terms of 11 months each.
 - (bb). License fee:
 - License fee of Rs.31,216.38 per month at the rate of Rs.183.41 per sq. mtr., per month exclusive of taxes and cesses subject to TAMP's approval. The license fee shall be increased by 4% per annum at the end of license period of 11 months and for every 11 months thereafter till the end of the two 11 months extended term.

- The licensee shall pay service charges as per Bye-law No. 31 of MBPT General Bye-laws at the rate prescribed from time to time. The present rate is at Re. 0.50 per sq. mtr. p.m.
 - The licensee shall take separate water and electricity meter and shall reimburse to the MBPT water /sewerage/ garbage disposal, electricity and telephone charges as per the actuals as may be billed by the departments concerned of MBPT.
 - The licensee shall pay all other taxes, increase in taxes and all other outgoing payable or hereinafter payable on account of their occupation.
 - At present the Jawahar Dweep is neither indexed nor shown in the property card records of the Collector. It is, therefore, proposed to bill the monthly taxes / cesses based on the provision of MCGM assessment amounting to Rs.20,795.04 per month.
- (bc). A premium of 12 months license fee is payable by HPCL to MBPT for direct allotment of premises to HPCL without auction.
- (bd). The security deposit equivalent to 12 months license fee is also payable by the HPCL to MBPT.
- (iii). The licence fee is based on a return of 15% p.a. on tenement value as prescribed in the Government Ready Reckoner for relevant year. In the absence of land values of Jawahar Dweep in the Ready Reckoner the market rent is to be ascertained based on the values prescribed by MCGM, Collector of Mumbai etc., failing which the prevailing land value in the vicinity is to be taken into account for determining the rate of rent. Taking into consideration the above guiding principles, the rate of rent has been worked out by adopting two methods:
- (a). By adopting the Kirloskar Valuation Report:
- The land value has been worked out on the basis of Kirloskar Valuation Report on Butcher Island (Jawahar Dweep) by taking into consideration the inflation of 6% p.a. average. The land value so arrived is Rs.142.78 per sq. mtr per month and structure value works out to Rs.40.63 per sq. mtr per month after considering depreciation on the cost of construction as per the Stamp Duty Ready Reckoner 2004 and date of construction as furnished by the Chief Engineer, MBPT. Thus, the total rate of rent works out to Rs.183.41 per sq. mtr., per month.
- (b). By adopting the rate as per the Stamp Duty Ready Reckoner – 2004:
- The Stamp Duty Ready Reckoner does not prescribe any rate of Butcher Island. However, by adopting the tenement values of Mahul Zone in the vicinity the rate of rent of 15% p.a. return works out to Rs.98.44 per sq. mtr., per month.
- The MBPT has proposed the rate of rent of Rs.183.41 per sq. mtr per month following the Kirloskar valuation report.

2.2. The MBPT has stated that the HPCL has accepted the terms and conditions of allotment of space including the proposed rate of rent of Rs.183.41 per sq. mtr per month.

3. In accordance with the consultative procedure prescribed, a copy of the MBPT proposal was forwarded to M/s. Hindustan Petroleum Corporation Limited (HPCL) seeking its comments. We have, however, not received any comments from the HPCL.

4. On a preliminary scrutiny of the proposal, the MBPT was requested to furnish additional information / clarifications. The queries raised by us and the response of MBPT are tabulated below:

Sl. No.	Our Queries	Response of MBPT
(i).	The MBPT had earlier obtained an order from the Hon'ble High Court of Bombay against the jurisdiction of TAMP to fix lease rentals for its estate. In this context, the MBPT should confirm that the present proposal will not be hit by the Order of the High Court.	It appears that the order of Bombay High Court referred to is Hon'ble Bombay High Court order dated 2 May 2000 which granted stay to the implementation of TAMP Order dated 15 March 2000 in respect of any property or place not within the limits of the port or port approaches. The port trust's structures at Jawahar Dweep area falling within operational area in port limits. Hence it is felt that the present proposal will not be hit by the interim order of the Bombay High Court.
(ii).	The Government announced in 2004 the revised Land Policy for all the major ports except MBPT and KOPT. It was indicated by the Government that the land policy in respect of these two ports would be announced separately but such announcement is still awaited. It is not clear whether TAMP can go ahead and fix the licence fee when the revised policy is expected to be announced soon. Till the revised guidelines are announced, if it becomes necessary, then the rate fixation should be done as per 1995 policy. The MBPT should examine this issue and furnish its response. It should also explain in detail how its proposal is in conformity with the Government guidelines particularly with reference to the method of market value, return thereon, various conditionalities proposed, etc.,	Guidelines issued by the Ministry from time to time were considered by the Board and practical difficulties in implementation of guidelines were conveyed to the ministry. Issues were also discussed at length with the Secretary (Shipping) during the meeting held on 9 July 2001 when it was decided that based on discussion, MBPT would prepare separate comprehensive guidelines and forward the same to the Ministry for approval. Accordingly, comprehensive land management guidelines were framed by the Port under TR No. 186 of 2001 and forwarded to the Ministry for concurrence on 5 February 2002. Ministry's approval is awaited. The proposal is in conformity with the said guidelines as brought out in para 4 of the Committee's Report appended to TR No. 73 of 2004.
(iii)	(a). TAMP generally fixes rentals for a zone of land or a group of properties. The reasons for seeking TAMP's approval for an individual licence may be clarified.	Since Jawahar Dweep is sensitive area, the instances of allotment at Jawahar Dweep are very few. In accordance with land management guidelines, rates of rentals will be guided in each case of fresh allotment by the prevailing market rate.

	<p>(b). It appears that licenses have been granted to other oil companies in the same premises. The licence fees levied in such cases and the competent authority which has fixed such rates may be explained.</p>	<table border="1"> <thead> <tr> <th data-bbox="804 219 954 331">Name of Party & Location</th> <th data-bbox="954 219 1093 331">Area (in Sq. Mtr.)</th> <th data-bbox="1093 219 1241 331">Authority TR</th> <th data-bbox="1241 219 1410 331">Rent Per month (Rs.)</th> </tr> </thead> <tbody> <tr> <td data-bbox="804 331 954 488">BPCL, Office Bldg. at Butcher Island</td> <td data-bbox="954 331 1093 488">1258.93</td> <td data-bbox="1093 331 1241 488">477 of 22.5.1962</td> <td data-bbox="1241 331 1410 488">17013.97</td> </tr> <tr> <td data-bbox="804 488 954 611">HPCL, Land at Butcher Island</td> <td data-bbox="954 488 1093 611">1207.00</td> <td data-bbox="1093 488 1241 611">6 of 11.1.1977</td> <td data-bbox="1241 488 1410 611">2655.40</td> </tr> <tr> <td data-bbox="804 611 954 768">BPCL, Lease of plot at Butcher Island</td> <td data-bbox="954 611 1093 768">38543.13</td> <td data-bbox="1093 611 1241 768">86 of 1983</td> <td data-bbox="1241 611 1410 768">546252.04</td> </tr> <tr> <td data-bbox="804 768 954 952">HPCL, Office space of Maratha Mandir Bldg</td> <td data-bbox="954 768 1093 952">180.62</td> <td data-bbox="1093 768 1241 952">73 of 2004</td> <td data-bbox="1241 768 1410 952">33127.51 + taxes (22068.15)</td> </tr> </tbody> </table>	Name of Party & Location	Area (in Sq. Mtr.)	Authority TR	Rent Per month (Rs.)	BPCL, Office Bldg. at Butcher Island	1258.93	477 of 22.5.1962	17013.97	HPCL, Land at Butcher Island	1207.00	6 of 11.1.1977	2655.40	BPCL, Lease of plot at Butcher Island	38543.13	86 of 1983	546252.04	HPCL, Office space of Maratha Mandir Bldg	180.62	73 of 2004	33127.51 + taxes (22068.15)
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(iv)	<p>TAMP vide its order dated 20 September 2001 fixed a Licence Fee of Rs.165/- per sq. mtr / month for allotment of port trust building to users. The reasons why this rate cannot be applied to the property in question may be explained.</p>	<p>The licence fee of Rs.165 per sq. mtr., per month has been incorporated by way of sub-section in the Scale of Rates charged at the docks. The proposal under reference is in respect of allotment of space at Jawahar Dweep. The said area is not covered under notified dock area. Hence this rate cannot be applied in the present case.</p>																				
(v)	<p>(a) As the Kirloskar Committee report is not available, the basis of valuation of land and the annual escalation applied thereon to arrive at the current value are not clear.</p> <p>(b). It appears that in a multi storey structure, the basic land value is to be apportioned on the entire built up area. Kindly confirm whether this approach is adopted.</p> <p>(c). The basis of claiming a return of 15% on updated land value. (In case of other ports, Government has allowed 6%)</p>	<p>The annual escalation applied thereon to arrive at the current value is the average annual rate of inflation based on the rise in the consumer price index. (MBPT has furnished a copy of the Kirloskar Committee Report on Butcher Island). The sum total of return on land per sq. mtr and return on structure per sq. mtr. is the recommended rate of rent per sq. mtr.</p> <p>The basis of claiming a return of 15% on updated land value is as per the decision taken by the Board under TR No. 186 of 2001.</p>																				
(vi)	<p>Please furnish –</p> <p>(a). The cost details to justify the proposed service charges of Rs.0.50 / sq. mtr.</p> <p>(b). The basis of claiming one year rental as non refundable premium</p>	<p>The service charges are based on General Bye Law No. 31.</p> <p>The basis of claiming one year rentals as non-refundable premium is for direct allotment of premises to HPCL without auction in terms of comprehensive guidelines for land management at MBPT framed by the port in 2001.</p>																				

(vii)	It has been mentioned that HPCL had given its consent to the proposed rate and conditions of licence. Please furnish a copy of the consent letter from HPCL	A copy of the consent letter from HPCL regarding the rate and terms is furnished by MBPT.
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5. A joint hearing in this case was held on 23 March 2005. The MBPT was represented by its officials; HPCL did not participate. At the hearing, the MBPT explained the salient features of its proposal.

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

(i). The Scale of Rates of the MBPT provides for levy of license fee for space allotted to the users including Government agencies in the port trust building. But, this Scale of Rates is applicable for port trust buildings at the Docks. As clarified by the MBPT, the proposal in reference is with respect to an area at the Marine Oil Terminal in Jawahar Dweep. It is noteworthy that the existing licenses granted by MBPT to other oil companies at Jawahar Dweep are not covered by Dock Scale of Rates. Incidentally, the MBPT has granted such licenses to the other oil companies at Jawahar Dweep prior to constitution of this Authority.

(ii). The Authority in its Order dated 15 March 2000, *inter alia*, observed at paragraph 4 (iii) as follows:

“For purposes of framing Scale of Rates and statement of conditions, of lease cases (irrespective of any time limitation) relating to all the properties of a major port trust shall be seen to fall within the jurisdiction of this Authority”.

The MBPT had obtained an interim order from the Hon'ble High Court of Bombay restraining the operation of the above mentioned Order. To a query in this regard, the MBPT has confirmed that the Jawahar Dweep structures fall within the port limits and the proposal in reference will not be hit by the Order of the Hon'ble High Court of Bombay.

(iii). In terms of the tariff policy announced by the Government, this Authority is to fix licence fee / lease rentals for port trusts lands following the extant Government guidelines on land and water front management of major ports. The Government announced in the year 2004 the revised land policy for all the major ports except MBPT and Kolkata Port Trust (KOPT). It was indicated by the Government that the Land Policy in respect of these two ports would be announced separately but such an announcement is still awaited. The MBPT has sought to explain that the proposal in reference is in conformity with the July 2001 land management guidelines which were reportedly framed based on the discussion with senior officials of the (then) Ministry of Shipping in July 2001 and such set of guidelines awaits the approval of the Government. The guidelines of July 2001 on land management reported by the port are only its proposal. If a reference is drawn from the revised Land Policy for major ports other than MBPT and KOPT, a port trust is authorized to allot land on lease basis for port related uses in accordance with the Scale of Rates approved by this Authority.

(iv). The Authority generally fixes rentals for a zone of land or group of properties. As stated earlier, the proposal in reference is for allotment of office space to a particular public sector oil company on certain terms and conditions. In this regard, it is relevant here to mention that the Government amended its policy guidelines of 1995 in January 1996 to the effect that the land may be leased to a public sector undertaking for commercial purpose after examination on case

to case basis. Though the amendment pertains to long term lease of land and not for short term license basis, the present proposal is not the first instance of allotment of land of MBPT to a public sector undertaking. The port had been making such allotments to the other oil companies at different points of time at the Jawhar Dweep, on a case to case basis, prior to constitution of this Authority.

- (v). The 1995 guidelines stipulate that rate should be determined after taking into account the cost of development of land, provision of services and facilities, fair rate of return on the capital investment, market rent etc. The MBPT had in 1983 engaged the Kirloskar Consultant Limited for fixation of lease rent for allotment of land to another oil company in the Butcher Island (Jawahar Dweep). The Consultants had assessed the fair market rate of land at Butcher Island based on the commercial transactions in the main land. The MBPT has relied upon the land value as determined by the consultants which forms the basis to calculate the annual return.

The proposed license fee of Rs.183.41 per sq. mtr., per month comprises two components-one relating to the rate of return for the land and another pertains to the rate of return for the structure. In order to compute the rate of return on land, the approach adopted by MBPT is to peg the yield at 15% on the updated land value. In terms of the existing guidelines for tariff fixation, the prescribed rate of return is 15% on historic cost of the assets. It is pertinent to mention here that in the revised land policy, the Government has prescribed only 6% return for other ports. In such a scenario, the basis for 15% return on the updated land value remains unexplained. The basis of escalating the return on land value from 1983 level, by applying an annual escalation factor of 6% over the 15% return of 1983 value is also not explained by the port. Even the 1995 land policy prescribed only 4% escalation per annum in the rentals for the properties of MBPT. Notably, the 6% annual escalation is also not included in the Kirloskar Report.

This Authority is to fix license fee / lease rentals for port trust lands following the government guidelines on land in terms of revised tariff guidelines announced by the Government. That being so, this Authority is not in a position to endorse the approach of MBPT adopted for determining the licence fee in this case.

- (vi). With reference to computation of the rate of return on the value of the structure, the formula suggested by the Kirloskar Committee Report is only with regard to determination of land value and rate of return thereon. The MBPT has, therefore, worked out the rate of return on the depreciated value of the structure separately at 15%. As stated earlier, the revised guidelines for tariff fixation permits 15% return on the depreciated value of the asset on historical cost basis. The methodology adopted by the MBPT to determine the rate of return for the port structure, therefore, appears to be in order.
- (vii). The MBPT has proposed a service charge of Rs.0.50 per sq. mtr per month in addition to the license fee of Rs.183.41 per sq. mtr per month. The yield expectancy suggested by the Kirloskar Report is inclusive of the service charges for the infrastructure services which the port was allowing to the oil companies at Jawahar Dweep. To a query in this regard, the MBPT has clarified that the service charge is based on its general Bye-Law up dated in the year 1989 to cover the cost of maintenance of infrastructural facilities provided. The other conditionalities include tenure and term, payment of nonrefundable premium and payment of security deposit by the lessee and notice period of termination. Some of the conditionalities are not fully in line with the Government guidelines.

As mandated by the Statute, this Authority has to frame Scale of Rates and statement of conditions governing the Scale of Rates. While the MBPT has sought the approval to the proposed rate of license fee, no specific request to approve the terms and conditions for allotment of space to the HPCL is made by the port. TAMP, therefore, would not pass any Order in this regard. The 4% escalation per annum in the license fee prescribed by the MBPT is, however, in line with the 1995 guidelines. The 4% escalation (compoundable) per annum over the proposed rate of license fee is, therefore, approved. The Municipal Taxes will be payable by the lessee on proportionate basis.

- (viii). As brought out by the MBPT, the Butcher Island is sensitive area and the instances of allotment there are very few. The proposal in reference is not for fixation of rate for the entire Butcher Island property but is a specific individual case of allotment of office space to the HPCL. The MBPT has produced a consent letter from HPCL agreeing to the proposed terms and conditions. Even in the proceedings before this Authority the HPCL has not raised any objection to the proposed rate of license fee. Since the proposed rate of license fee is the mutually agreed rate, this Authority is inclined to approve the proposed license fee of Rs.183.41 per sq. mtr per month.
- (ix). The approval accorded to the proposed rate of license fee should not be construed as an endorsement either of the approach adopted by the Kirloskar Committee for the determination of land value in the Butcher Island or the approach adopted by the MBPT for arriving at the proposed rate of license fee for allotment of office space in the Butcher Island to HPCL. This case should not, therefore, be quoted as a precedent for MBPT for its future proposals, if any, for fixing licence fee / lease rent.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following:

- “(i). License fee of Rs.183.41 per sq. mtr per month for allotment of office space to M/s. Hindustan Petroleum Corporation Limited in the Mumbai Port Trust Administrative Building (Maratha Mandir) at Marine Oil Terminal, Jawahar Dweep.
- (ii). The License fee shall bear an escalation of 4% per annum (compoundable).
- (iii). The Municipal Taxes are recoverable on proportionate basis.”

(A.L. Bongirwar)
Chairman