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Tariff Authority for Major Ports

G.No. 61

New Delhi

12 February 2019

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Kolkata Port Trust seeking extension of validity for the performance norm based Penalty/ Incentive for handling Edible Oil through pipeline at Haldia Dock Complex (HDC), as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/66/2018-KOPT

Kolkata Port Trust

QUORUM:

Applicant

- (i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Rajat Sachar, Member (Economic)

O R D E R

(Passed on this 18th day of January 2019)

This case relates to the proposal received from Kolkata Port Trust (KOPT) seeking extension of validity for the performance norm based Penalty/ Incentive for handling Edible Oil through pipelines at Haldia Dock Complex (HDC).

2.1. It is recalled that in order to increase the pumping rate and reduce the Turn Round Time (TRT) of edible oil vessel, the KOPT had come up with a proposal in July 2017 for insertion of provisions relating to performance norm based Incentive/ Penalty for handling of Edible oil through pipelines at HDC. After following the due consultation process, this Authority vide its Order no. TAMP/59/2017-KOPT dated 14 November 2017 had approved performance norm based incentive / penalty for handling edible oil. The said Order was notified in the Gazette of India on 29 November 2017 vide Gazette No. 447. The provisions in the said Order were valid for a period of one year from 1 August 2017 to 31 July 2018.

2.2. Further, as agreed by KOPT, the KOPT was advised vide paragraph no. 8.4 of the said Order dated 14 November 2017, to review the Minimum Pumping Rate of 250 MT per hour for ships carrying Crude Palm Oil/ RBD Palm Oil and 450 MT per hour for ships carrying Crude Soya Bean/ Sunflower Oil and file a suitable proposal for the period beyond 31 July 2018, atleast 2 months prior the expiry of validity of these provisions.

3.1. In this backdrop, the KOPT vide its letter no. MTO/G/19-B/Pt.I/GMT-476 dated 30 August 2018 has filed a proposal seeking extension of validity of performance norm based Penalty / Incentive for handling Edible Oil through pipelines at HDC, as approved vide Order of November 2017. The main submissions made by KOPT are as follows:

- (i). With a view to improve the performance level of edible oil vessels as well as to increase the volume of edible oil cargo at HDC, the Board of Trustees of KOPT vide its Resolution no. R/279/HDC/SH&CH/3/5/ 2017 dated 31.05.2017 had approved performance norm based Penalty/ Incentive norms for handling Edible oil through pipeline at HDC w.e.f 01.08.2017 for a period of one year and to review the same thereafter. The said norms has also been Notified by TAMP vide G.No. 447 dated 29.11.2017.
- (ii). With the introduction of the norms, the KOPT has noticed improvement in the performance of edible oil vessels as well as increase in volume of cargo as follows:

Period	Tonnage Handled	Average Productivity of Crude Palm Oil (MT/Hr)	Average Productivity of Soyabean Oil (MT/Hr)
1.8.2016 to 31.7.2017 *	2.37 MMT	160.58	286.87
1.8.2017 to 31.7.2018 **	2.40 MMT	202.21	295.38
% variation	1.35	25.92	2.61

*Period prior to implementation of performance norms based incentive / penalty

**Period after implementation of performance norm based incentive/ penalty

- (iii). Since there is substantial potential for further increase of edible oil traffic at HDC, the Board of Trustees of KOPT vide its Resolution no. R/81/HDC/SH&CH/3/06/2018 dated 28.06.2018 has decided to extend the performance norm based Penalty / Incentives for handling edible oil through pipelines at HDC for a further period of 1

year w.e.f. 01.08.2018 under the same terms and conditions. The copy of the said Board resolution is furnished by KOPT.

3.2. Accordingly, the KOPT has sought the approval of this Authority for the extension of performance norm based Penalty or Incentive for handling Edible Oil through pipelines at HDC for further period of one year w.e.f. 1 August 2018.

4. In accordance with the consultative procedure prescribed, a copy of the KOPT proposal dated 30 August 2018 was forwarded to the concerned users/ user organizations vide our letter dated 6 September 2018, seeking their comments. In response to this, some of the users organization have furnished their comments. The said comments were forwarded to KOPT as feedback information. The KOPT vide its email dated 20 September 2018 has responded.

5. A joint hearing on the case in reference was held on 1 November 2018 at the KOPT premises. At the joint hearing, the KOPT made a brief Power Point presentation of the proposal. The KOPT and the users/ user organisations have made their submissions at the joint hearing.

6. The KOPT was requested vide our letter dated 12 November 2018 to furnish some information / clarification. KOPT has responded vide its letter dated 21 December 2018. The information / clarification sought by us and reply of KOPT thereon is tabulated below.

Sr. no.	Information / Clarification sought by us	Reply of KOPT
(i).	The quantum of the incentive paid or penalty received by KOPT, on account of implementation of performance norm based incentive / penalty relating to handling of edible oil, to be furnished.	Since introduction of the scheme w.e.f. 01.08.2017 till 30.11.2018 ₹.68,310/- has been paid by KOPT as incentive while KOPT has realized ₹.2,81,33,615/- as penalty during the same period.
(ii).	The basis of the incentive and penalty norms proposed by KOPT, to be furnished.	The incentive as well as Penalty Norms for handling Edible Oil through Pipeline has been proposed following the guidelines of Ministry of Shipping in respect of berthing Policy for Dry Bulk Cargo for Major Ports, 2016 circulated vide file No. PD-11033/73/2013 Pt dated 16.06.2016. In the said Berthing Policy, incentive as well as Penalty has been linked with the Performance Norms. The objective of the Performance linked Incentive / Disincentive Structure is to continuously drive the productivity improvement across the Ports / Customers that are exceeding the Norms. Thus, creating value for the Port in addition to allowing customers and trade to bring down the cost of logistics. The said principle has been adopted for fixing the Penalty / incentive Norms for handling liquid cargo at HDC.
(iii)	Further, during the joint hearing, the KOPT had conveyed that it can consider giving more incentives, if there is scope available. Accordingly, HDC to examine this aspect in light of the above and revise its proposal, if necessary.	Regarding payment of higher incentive, it may be stated that most of the vessels handled during the period 01.08.2016 to 31.07.2017 as well as 01.08.2017 to 31.07.2018 could not achieve the Performance Norms. Therefore, the higher incentives is not being considered at the moment.

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

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

- (i). With a view to improve the Turnaround Time (TRT) of the edible oil vessels and thereby increase the capacity utilization of the berth, the Kolkata Port Trust (KOPT) had earlier come up with a proposal seeking approval for the Performance Norm based Incentive/ Penalty for handling Edible Oil through pipeline at Haldia Dock Complex (HDC). Accordingly, this Authority vide its Order no. TAMP/59/2017-KOPT dated 14 November 2017 had approved performance norm based incentive / penalty for handling edible oil at HDC. Vide the said Order a Minimum Pumping Rate of 250 MT per hour for ships carrying Crude Palm Oil/ RBD Palm Oil and 450 MT per hour for ships carrying Crude Soya Bean/ Sunflower Oil was fixed for a period of one year from 01 August 2017 to 31 July 2018. In this backdrop, the KOPT has come up with a proposal to extend the validity of performance norm based incentive/ penalty for handling edible oil at HDC as fixed vide the November 2017 Order for a further period of one year from 01 August 2018 to 31 July 2019. The proposal of KOPT has the approval of its Board of Trustees of KOPT.
- (ii). The submissions made by KOPT in its proposal dated 30 August 2018 along with the information/ clarification furnished by KOPT during the processing of the case in reference, are considered in this analysis.
- (iii). During the proceedings relating to the case which culminated into the tariff Order of November 2017, the KOPT had sought approval for implementation of the Minimum Pumping Rate along with the provisions of the incentives/ penalties for a period of one year from 01 August 2017 and had expressed its desire to review the performance norms thereafter. With the implementation of the performance norm based incentive/ penalty for handling edible oil, the port has noticed only a 25.92% increase in the average productivity of crude palm oil and a 2.61% increase in the average productivity of soyabean oil. The port has also reported that many vessels have not achieved the performance norms. As per the statistics furnished by the Port, it has paid an incentive of only ₹ 0.68 lakhs since introduction of the scheme from 01 August 2017 till 30 November 2018, whereas it has realized ₹ 281.34 lakhs as penalty during the corresponding period. Based on this position, the port in its proposal under reference has not felt it appropriate to revise upwards the prevailing Minimum Pumping Rates and has expressed its desire to extend the existing provisions relating to the performance norm based incentive/ penalty for handling edible oil at HDC for a further period of one year from 1 August 2018 to 31 July 2019.
- (iv). (a). Some of the users viz., Emami Biotech Limited (EBL), Adani Wilmar Limited (AWL), JVL Oil Refinery (JVLOR), Ruchi Soya Industries Limited (RSIL) and Ruchi Infrastructure Limited (RIL) have stated that considering the number of pigging operations involved, the actual average discharge rate achieved is 180 MT per hour for Crude Palm oil/ RBD Palm Oil and 280 MT per hour for Crude sunflower oil/ Crude Soyabean oil, instead of the prescribed Minimum Pumping Rate of 250 MT per hour for the ships carrying Crude Palm Oil/ RBD Palm Oil and 450 MT per hour for the ships carrying Crude Soya Bean/ Sunflower Oil. And that since the Minimum Pumping Rate cannot be achieved by the vessels, the vessels end up paying more penal charges.
- (b). The Minimum Pumping Rate of 250 MT per hour for the ships carrying Crude Palm Oil/ RBD Palm Oil and 450 MT per hour for the ships carrying Crude Soya Bean/ Sunflower Oil as proposed by KOPT then and approved vide November 2017 Order, was based on the actual productivity achieved/ almost achieved by certain number of vessels at HDC, as reported by HDC then. This was also seen to be based on a port level meeting held by KOPT then with the relevant stakeholders.
- (c). According to KOPT then as well as now, if the existing operational deficiencies/ constraints being faced during the discharge operation on the part of the importers/ exporters and of the vessel are fixed and appreciable action is taken by importers as well as their handling agents by deploying additional compressors, boosters, good quality pumps and nominating

good quality of vessels having adequate pumping capacity etc., then the productivity levels can be easily achieved by more number of vessels.

- (v). Based on the submissions made by the KOPT and considering that the proposal of the port has the approval of its Board of Trustees and that prescription of some performance norm based incentive/ penalty will instill a discipline amongst the importers and handling agents, this Authority is inclined to extend the validity of the existing provisions of the Minimum Pumping Rate along with the provisions of the incentives/ penalties for a period of one year from 01 August 2018 and upto 31 July 2019, as requested by the Port. The port is advised to review the performance norm based incentive/ penalty for handling edible oil, while filing the proposal for the period beyond 31 July 2019. The concerned Port users are also advised to upgrade the shore infrastructure as agreed by them in the meetings held by the Port on 04 May 2017 and 18 July 2017.
- (vi). The port has quantified that it has realized an amount of ₹ 281.34 lakhs as penalty during the period of 16 months since introduction of the scheme from 01 August 2017 till 30 November 2018. If the trend of achievement / non-achievement of performance norm continues without any change, the income for the period of 8 months from December 2018 to July 2019 would work out to about ₹ 141 lakhs on pro-rata basis. In this connection, it may be recalled that in the general revision Order of KOPT passed by this Authority in November 2016, a revenue gap to the tune of about ₹ 383 crores, has been left uncovered by the Port. Thus, the additional revenue that would be generated pro-rata due to levy of penalty at the existing level would get subsumed in the revenue gap and would not lead to any undue advantage to KOPT.

9.1. In the result, and for the reasons given above, and based on collective application of mind, the existing note (iii) under sub-section (ii) under Section 21.6 - "Performance as well as Productivity/ Incentive Norms for handling Edible Oil through pipeline at HDC" is replaced with the following note:

- “(iii). The Performance and Penalty/ Incentive Norm as specified above effective from 1 August 2017 with a validity upto 31 July 2018 is further extended for a period of one year from 01 August 2018 and will remain valid upto 31 July 2019 and will be reviewed thereafter.”

9.2. The KOPT is advised to suitably incorporate the above provision in its Scale of Rates.

9.3. The approval accorded shall automatically lapse thereafter unless specifically extended by this Authority. The port is advised to review the performance norms based incentive/ penalty for handling edible oil while filing the proposal for the period beyond 31 July 2019.

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS / DIFFERENT USER ORGANISATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

F. No. TAMP/66/2018-KOPT	Proposal received from Kolkata Port Trust (KOPT) seeking extension of validity for the performance norm based Penalty/ Incentive for handling Edible Oil through pipelines at Haldia Dock Complex (HDC).
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A summary of the comments received from users / user organizations and response of KOPT thereon is tabulated below:

Sr. no.	Comments of user/user Organization	Reply of KOPT																					
1.	Emami Biotech Ltd, Adani Wilmar Limited, JVL Oil Refinery, Ruchi Soya Industries Limited and Ruchi Infrastructure Ltd.																						
(i)	As on date vessels get berthed with a delay of 1 to 3 days' time from her arrival at sand heads (vessels gets berth upon arrival also) due to which importers are unable to plan their plant operations in view of inconsistency berthing programme.	At HDC, various edible oil like CPO, RBD Palm Oil, CDSBO, Sunflower Oil etc. are handled through pipeline, mainly on account of 5 receivers namely Emami Biotech Ltd, Adani Wilmar Ltd, JVL Oil Refinery, Ruchi Soya Industries Ltd and Ruchi Infrastructure Ltd. After introduction of the Performance as well as Penalty Incentive Norms, during the one year period from 01.08.2017 to 31.07.2018, improvement in the performance of edible oil vessels has been witnessed, which is supported by the following facts:																					
(ii)	The average discharge rate for vessels berthed at 5off / 6off inside port (using floating line) is of 180.00 MT/ Hr. for Crude Palm oil / RBD Palm Oil and 280.00 MT/Hr. for Crude sunflower oil / Crude Soybean oil.	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Period</th> <th>Number of CPO/RBD vessels</th> <th>Number of vessels achieving 250 MT/hr & above</th> <th>Percentage of vessels achieving 250 MT/hr & above</th> <th>Number of CDSBO /CSFO vessels</th> <th>Number of vessels achieving 450 MT/hr & above</th> <th>Percentage of vessels achieving 450 MT/hr. & above</th> </tr> </thead> <tbody> <tr> <td>1.8.16 to 31.7.17</td> <td>221</td> <td>9</td> <td>4.07%</td> <td>57</td> <td>4</td> <td>7.02%</td> </tr> <tr> <td>1.8.17 to 31.8.18</td> <td>188</td> <td>38</td> <td>20.21%</td> <td>65</td> <td>8</td> <td>12.3%</td> </tr> </tbody> </table>	Period	Number of CPO/RBD vessels	Number of vessels achieving 250 MT/hr & above	Percentage of vessels achieving 250 MT/hr & above	Number of CDSBO /CSFO vessels	Number of vessels achieving 450 MT/hr & above	Percentage of vessels achieving 450 MT/hr. & above	1.8.16 to 31.7.17	221	9	4.07%	57	4	7.02%	1.8.17 to 31.8.18	188	38	20.21%	65	8	12.3%
Period	Number of CPO/RBD vessels	Number of vessels achieving 250 MT/hr & above	Percentage of vessels achieving 250 MT/hr & above	Number of CDSBO /CSFO vessels	Number of vessels achieving 450 MT/hr & above	Percentage of vessels achieving 450 MT/hr. & above																	
1.8.16 to 31.7.17	221	9	4.07%	57	4	7.02%																	
1.8.17 to 31.8.18	188	38	20.21%	65	8	12.3%																	
(iii)	The average discharge rate for vessels berthed at Oil Jetty – III is not more than 180.00 MT/ Hr. for Crude Palm oil / RBD Palm Oil and not more than 280.00 MT/Hr. for Crude sunflower oil / Crude Soybean oils. However, the average discharge rate gets reduced further more due to intermediate pigging operations required (i.e. for about 5-6 hours) in-between each parcel. Most of the Soya vessels carries cargos of multiple parties in single vessel to be discharged at Haldia. In such case they cannot achieve the desired	It is seen from the above table that the performance of the vessels have increased after introduction of the performance as well as penalty/ incentive norms. However, although there is enough scope for better performance yet, the edible oil importers as well as their handling agents have not taken any appreciable action to improve the performance. Otherwise more number of vessels could have achieved the performance norms. Incidentally, prior to introduction of the said norms w.e.f. 1.8.2017, the matter was discussed with various stakeholders during the meeting held on 4.5.2017 and 18.7.2017. During the meeting, various stakeholders have appreciated the initiative taken by the port and assured to achieve the said productivity norms through improvement in the shore infrastructure by deploying additional compressors, boosters, good quality pumps etc. They have also assured to nominate good quality of vessels having adequate pumping capacity to achieve the productivity																					

	discharge rate due to number of pigging operations between each parcels.	norms. [The KOPT has furnished the Minutes of the meeting held on 04 May 2017 and 18 July 2017]
(iv).	Due to aforesaid issues we are unable to achieve the discharging rate and importers are penalized with 200% berthing charges whereas Port is providing only 5% incentive against achieving higher discharge rate. Instead, it is urged to have a concrete plan which is acceptable to us creating a win-win situation for all the stakeholders.	At present, edible oil vessels are primarily handled at Berth no. 5,6 and 7 also through the Floating Pipeline. In order to reduce the detention of the edible oil vessels, facility for handling of edible oil have also been created at HOJ-3 as well as Berth no. 3 & 4. Due to creation of additional berthing facility, the Pre Berthing Detention (PBD) of edible oil vessels on Port account have been substantially reduced. Yet, due to non-availability of ullage, Letter of Credit (LC) in the bank etc. the vessels are waiting prior to calling. Due to such waiting of vessels, importers / receivers are liable to pay huge demurrage in foreign currency, which is ultimately passed to the end users by the importers.
(v).	Since Edible oil being an essential commodity and Government of India has always an eye on it in order to control prices, any extra cost imposition will lead to increase in inflation affecting consumers as a whole.	Incidentally, out of 63 numbers of edible oil vessels, which called HDC during the 3 months period from 01.06.2018 to 31.08.2018, 33 vessels were not discharging even after arrival at Sandheads. This is the prime reason for delay in berthing of the edible oil vessels for which the importers are solely responsible. Out of 33 vessels, MT.QIAN TAI 1 was ready for discharging 25 days after her arrival at Sandheads while MV. ADEN PRINCESS was ready after 24 days of her arrival at Sandheads. The cost of the inefficiency of the importers is being passed to the end users and edible oil being an essential commodity; common people have to bear the brunt of the increased prices. Further, the demurrage is payable in foreign currency, which is an overall national loss. Accordingly, the edible oil importers are required to take appropriate steps to avoid detention and demurrage of the vessels. In view of the above, TAMP is requested to consider the proposal and extend the proposed performance as well as penalty / incentive norms for another period of one year w.e.f. 01.08.2018. TAMP is also requested to advise the concerned port users to upgrade their infrastructure appropriately to achieve the proposed performance norms, which will benefit the importers as well as the common people and thereby nation as well.

2. A joint hearing on the case in reference was held on 1 November 2018 at the KOPT premises. At the joint hearing, the KOPT made a brief Power Point presentation of the proposal. The KOPT and other users / user organizations have made the following submissions during the joint hearing:

Kolkata Port Trust (KOPT)

- (i). KOPT had proposed performance as well as Penalty/ Incentive norms for handling Edible oil through pipeline at HDC w.e.f 01.08.2017 for a period of one year, and to review the same thereafter. The TAMP had approved the same in November 2017.

- (ii). After the period of 1 year on 31.07.2018, the KOPT, with the approval of its Board, has extended these provisions for a period of 1 year. TAMP's approval is sought for extending the validity of the performance as well as Penalty/ Incentive norms for a period of one year from 01.08.2018 to 31.07.2019.
- (iii). Thus, the Minimum Pumping rate of 250 MT per hour for vessels carrying Crude Palm Oil / RBD Palm Oil and 450 MT per hour for vessel carrying Soya Bean Oil / Sunflower Oil, would be continued for a period of one year from 01.08.2018.
- (iv). We have noticed improvement in the performance of edible oil vessels, after introduction of performance norm based incentive/ penalty.

TAMP: What is the basis for the proposed incentive and penalty norms?
 What is the quantum of the incentive paid/ penalty received by KOPT on this account from the time of implementation of these provisions?)

- (v). The proposed incentive and penalty norms are as per the Berthing Policy for dry bulk cargo issued by the Government. The quantum of the incentive paid/ penalty received by KOPT is not available at present. We will send the details separately to TAMP.

KOPT: We can consider giving more incentives, if there is a scope available. We will examine this aspect.)

Aegis Logistics Ltd.

- (i). Can the port have different rates for different berths, considering that infrastructure is different in different berths?

KOPT: The infrastructure at the berths is not relevant. The stipulated performance is not being achieved on account of factors like low capacity vessels, low pumping rates, not putting up of boosters. If remedial actions are taken, it will be possible to achieve the stipulated performance. As said earlier, some vessels have achieved the stipulated performance.)
