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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 55

New Delhi,
NOTIFICATION

08 February, 2019

In exercise of the powers conferred under Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Mumbai Port Trust (MBPT) seeking approval for rate of Special Way Leave Fees & rent payable by Oil and Natural Gas Corporation Limited (ONGC) to MBPT, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/65/2018-MBPT

The Mumbai Port Trust

- - -

Applicant

QUORUM

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

ORDER

(Passed on this 18th day of January 2019)

This case relates to a proposal received from Mumbai Port Trust (MBPT) seeking approval for rate of Special Way Leave Fees & rent payable by Oil and Natural Gas Corporation Limited (ONGC) to MBPT.

2.1. The MBPT has entered into an agreement with ONGC on 28 January 2005 responding to the permission sought by ONGC to lay additional pipelines within the MBPT port limits on land as well as in the sea, for transportation of oil and gas from Mumbai High field to Uran Terminal.

2.2. By virtue of the said agreement, the ONGC was permitted to lay pipelines within the MBPT port limits on land as well as in the sea. As per the terms and conditions forming part of the Agreement, the ONGC was to pay way leave fees on the pipelines.

2.3. However, the ONGC has reported to have not made the payment of way leave charges to MBPT on the ground that the rates being levied by MBPT do not have the approval of this Authority.

2.4. Accordingly, the MBPT has come up with the proposal under reference.

3.1. The submissions made by MBPT in its proposal dated 30 August 2018 are summarized below:

- (i). The Board of Trustees of MBPT vide TR No. 7 dated 24 January 1978, TR No. 98 dated 15 April 1987 and TR No. 116 dated 27 October 2004 granted the Special Way Leave to Oil & Natural Gas Corporation Ltd (ONGC) for laying of Bombay Uran Trunk (BUT) pipelines, Heera Uran Trunk (HUT) pipelines and Mumbai Uran Trunk (MUT) pipelines.
- (ii). On 28 January 2005, an agreement was executed between ONGC and MBPT in respect of all BUT, HUT and MUT pipelines and its extension laid within MBPT Port limit and land parcel of ONGC's terminal at Jawahar Dweep.
- (iii). As per the agreement entered between MBPT and ONGC on 28 January 2005, ONGC was permitted to lay two additional pipelines within the MBPT port limits on land as well as in the sea, subject to terms and conditions and payments to be made to MBPT towards way-leave fees (as per section 3.2.1(I) of scale of rates) and all other associated charges as applicable as amended by MBPT from time to time and Government taxes, duties, cesses and levies in connection with the same as may be levied by State/ Central Government Organizations or any other Statutory Authority from time to time are fully paid every year within the stipulated period.
- (iv). The details of the ONGC pipelines laid in the Port limit and land area alongwith respective Way Leave Fees/ rent as mentioned in the agreement are as under:

Sr. No.	Code No.	Description	Length of the Pipeline (In Mtrs.)	Way Leave Fees/ rent mentioned in the agreement (₹. per sq.m.p.m.)
1.	31209901	30" Dia. pipeline from Bombay High to Uran (BUT)	19500	7.68
2.	31209902	26" Dia. pipeline from Bombay High to Uran (BUT)	19500	7.68
3.	31209903	36" Dia. pipeline from Trombay East to T/T	2000	18.23
4.	31209904	18" Dia. pipeline from Trombay East to T/T	2000	18.23
5.	31209905	36" Dia. pipeline from Pir Pau land fall to T/T	500	30.38
6.	31209906	36" Dia. pipeline from Pir Pau land fall to JD land fall	5000	18.23
7.	31209907	36" Dia. pipeline from JD land fall to ONGC JD jetty	10	36.45
8.	31209908	26" Dia. HUT Pipeline	19500	7.68
9.	31209909	24" Dia. HUT Pipeline	19500	7.68
10.	31209910	30" Dia. MUT Pipeline	19500	152.21
11.	31209911	28" Dia. MUT Pipeline	19500	152.21
12.	31209103	Land at Jawahar Dweep	2600 M ²	72.83

- (v). Special Way Leave Fees and rent were payable by ONGC in accordance with terms & conditions No.1, 2, 4, 5, 6, 7 & 8 and condition No. 2 of terms and condition (Financial) of the agreement dated 28 January 2005. (Copy of Agreement dated 28 January 2005 is furnished by MBPT).
- (vi). As per the agreement entered with ONGC on 28 January 2005, 11 Special Way Leave permissions were granted to ONGC for laying the pipelines on land as well as in the water area (sea bed) within the port limits and the annual bills were raised by MBPT every year with effect from 2005 to 2009. ONGC was regularly paying the annual Special Way Leave Fees except payment towards the billed interest for delayed payments and interest on Service Tax arrears. Special Way Leave Fees and rent were billed to ONGC annually as per agreement dated 28 January 2005.
- (vii). For the last 4 years, ONGC has stopped payment of annual bills raised by MBPT in case of all 11 pipelines and one piece of land at Jawahar Dweep and ONGC insisted that MBPT shall obtain TAMP's approval on the rates applied for Special Way Leave Fees/ rent as per Section 48 of MPT Act, 1963.
- (viii). Further, ONGC vide letter dated 2 May 2016, has stated that MBPT was bound by Section 48 of MPT Act 1963 to get the rate of Special Way Leave Fees/ rent approved by TAMP after signing the agreement and also stated that the payment of Special Way Leave Fees will not be made till TAMP's approval is obtained.
- (ix). ONGC has also disputed payment in respect of two pipelines (31209901 and 31209902) pointing out that these are dead pipelines. In terms of Clause No.7 of terms and conditions, all way leave fees/ rent will remain in force till ONGC completely removes all their structures/ pipelines/ encumbrances, etc. and vacates the site by handing over peaceful possession of the site to MBPT free from all such structures/ pipelines, etc. irrespective of whether they are actually not in use/ lying in decommissioned state. Therefore, MBPT is entitled to levy way leave fees on pipelines, as the pipelines are occupying the area, till the date of its removal. Thus, the levy of way leave charges on these two pipelines also forms part of the proposal.
- (x). The Special Way Leave fees with effect from 01 October 2009 has been calculated on the basis of rate of developed land as per Stamp Duty Ready Reckoner 2009 at

6% return and applying 50% factor for way leave which is applicable to all way leaves and additional 60% for pipelines being submerged (as per TR 203 of 1977). The total outstanding of Special Way Leave Fees works out to ₹.174.93 crores (approx.) as on 01-05-2017 (₹.216.99 crores (approx.) as on 31-05-2018) excluding interest on delayed payment which is payable by ONGC in respect of 11 pipelines (BUT, HUT & MUT pipelines) and one land parcel at JD.

- (xi). Rate of rent for land parcel at JD has been calculated by applying 4% increase p.a. over the rate of ₹.72.83 as mentioned in agreement dated 28 January 2005.
- (xii). In accordance with the Land Management Policy Guidelines, 2014, a Land Allotment Committee was constituted.
- (xiii). The Land Allotment Committee examined the issue during the meeting on 15 January 2018 regarding obtaining TAMP's approval for Special Way Leave charges and recommended to obtain Board's approval to put the subject matter before TAMP. Accordingly, Board's approval vide TR 11 of 27 April 2018, was obtained.

3.2. Thus, Authority's approval is requested to the rates of special way leave fees and rent as per agreement between MBPT and ONGC dated 28 January 2005 with retrospective effect which is given below:

- (a). For pipelines –

**Schedule of Scale of Rates of Special Way Leave
For BUT, HUT & MUT pipelines of ONGC upto 30.09.2018
(as per agreement between MBPT and ONGC dated 28.01.2005)**

Sr. No	Code No.	Description of pipeline	Length of the Pipeline (In Mtrs.)	Rate of Sp. Way leave fee as on 30.09.04 (₹. Per sq.mtr.p. m.)	Rate of Sp. Way leave fee as on 01.10.09 with 4% annual increase from 01.10.04) (₹. Per sq.mtr.p.m.)	Revised Rate of Sp. Way leave fee (as per TR 138/2009) (₹.per sq. mtr. p.m.)	TAMP's sanction required for revised sp. Way leave fee w.e.f. 01.10.09 (whichever is higher in e&f) (₹. per sq.mtr. p.m.)	Rate of Sp. Way leave fee from 01.10.17 to 30.09.18) (with 4% annual increase from 1.10.09 upto 30.09.18) (₹. Per sq.mtr.p.m) (i.e.f
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1.	31209901	30" Dia. pipeline from Bombay High to Uran	19500	7.68	9.72	105.60	105.60	144.51
2.	31209902	26" Dia. pipeline from Bombay High to Uran	19500	7.68	9.72	105.60	105.60	144.51
3.	31209903	36" Dia. pipeline from Trombay East to T/T	2000	18.23	23.07	14.10	23.07	31.57
4.	31209904	18" Dia. pipeline from Trombay East to T/T	2000	18.23	23.07	14.10	23.07	31.57
5.	31209905	36" Dia. pipeline from Pir Pau land	30.38	38.44	47.00	47.00	47.00	64.32
6.	31209906	36" Dia. pipeline from Pir Pau landfall to JD	5000	18.23	23.07	105.60	105.60	144.51
7.	31209907	36" Dia. pipeline at JD	10	36.45	46.08	352.00	352.00	481.74

		land fall to ONGC jetty						
8.	31209908	26" Dia. HUT Pipeline	19500	7.68	9.72	105.60	105.60	144.51
9.	31209909	24" Dia. HUT Pipeline	19500	7.68	9.72	105.60	105.60	144.51
10.	31209910	30" Dia. MUT Pipeline	19500	152.21	192.61	152.21	192.61	263.59
11.	31209911	28" Dia. MUT Pipeline	19500	152.21	192.61	152.21	192.61	263.59

(b). For land –

**Schedule of Scale of Rates for land at Jawahar Dweep
In occupation of ONGC upto 30.09.2018
(as per agreement between MBPT and ONGC dated 28.01.2005)**

Sr. No	Code No.	Description of pipeline	Area of the place of land (in sq.mtr.)	Rate of Sp. Way leave fee as on 30.09.04 (₹. Per sq.mtr.p.m.) as per the agreement dtd. 28.01.05	Rate of Sp. Way leave fee as on 01.10.04 with 4% annual increase) (₹. Per sq.mtr.p.m.)	Revised Rate of Sp. Way leave fee, as per clause (5) of T&C of Agreement as on 01.10.09 (as per TR 138/2009) (₹.per sq. mtr. p.m.)	TAMP's sanction required for revised sp. Way leave fee w.e.f. 01.10.09 ₹. per sq.mtr. p.m. (whichever is higher in e&f)	TAMP's sanction required for present sp. Way leave rates (as on 31.3.18 with 4% annual increase) (₹. Per sq.mtr. p.m.) (i.e.f from 01.10.09 upto 30.09.18)
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1.	31209103	Land at Jawahar Dweep	2600	72.83	88.61	47	88.61	126.12

4. In accordance to the consultative procedure followed, a copy of the MBPT letter dated 30 August 2018 was forwarded to ONGC for its comments vide our letter dated 10 September 2018. The ONGC vide its letter dated 20 September 2018 has furnished its comments, which were forwarded to MBPT as feedback information. The MBPT vide its letter No. FA/OEA-L-3(04)/U12/512 dated 24 October 2018 has responded.

5. A joint hearing on the case in reference was held on 15 October 2018 at the office of this Authority in Mumbai. At the joint hearing, both the MBPT and the ONGC have made their respective power point presentation. The MBPT and ONGC have made their submissions at the joint hearing:

6. On a preliminary scrutiny of the proposal of MBPT, it was seen that some additional information/ clarification are required from MBPT. Accordingly, we have vide our letter dated 22 October 2018 sought information/ clarification from MBPT. After reminders dated 12 November 2018 and 03 December 2018, the MBPT has responded vide its letter No. FA/OEA-L/03(04)/VIII/U-12/630 dated 19 December 2018. The information sought by us and the reply of MBPT thereon are tabulated below:

Sl. No.	Information/ Clarification sought by us	Response of MBPT
1.	The Land Policy for Major Ports, 2004 announced by Ministry of Shipping (MOS) vide its letter no. PT-17011/55/87-PT dated 8 March 2004 was not applicable to Mumbai Port Trust (MBPT) as stated in Clause 3 of the Policy. The next Land Policy for Major	TAMP's jurisdiction to fix lease rents outside the port limits and port approaches in respect of purposes other than those mentioned under sections 42, 48 and 49 of the Major Port Trusts Act, 1963, is concerned, the Hon'ble High Court of Judicature at Bombay has taken a consistent view that the same falls outside TAMP's competence. The special way leave fee fixed by the Board from time to time was with regard to letting rates of land. The way leave fee

<p>Ports- 2010 came into effect with effect from 13 January 2011, as announced by the MOS vide its letter No. PT-11033/4/2009- PT dated 4 March 2011. Clause 3 of this Land Policy for Major Ports-2010 stated that the policy is applicable for all Major Port Trusts. This implies that this policy was applicable for MBPT also. The revised rates of Special Way Leave fee applicable with effect from 01 October 2009 with the approval of the Board of Trustees vide TR 138 of 22 September 2009 were continued with 4% annual escalation even beyond 13 January 2011, when the Land Policy for Major Ports- 2010 as applicable for all Major Port Trusts including MBPT was announced. The reason for not filing a proposal in time to review the Rates of Special Way Leave fee for 11 pipelines before expiry of 5 years from 01 October 2009 to be explained.</p>	<p>for the water area would be on 60% of the way leave fee applicable to the land area in terms of precedent set under TR 138 of 2009. Thus, while fixing letting rates, no specific way leave fee would be fixed for the water area and as far as rates for land are concerned it was not mandatory for the Board to approach TAMP for its approval in view of orders of the High Court dtd.02.05.2000 in the Writ Petition No.1153 of 2000. Further, the letting rates for the land for the period from 1982 onwards were under litigation. The Board at the instance of the High Court has formulated a compromise policy under TR No.253 of 1991 which laid down rates for the period from 1980 to 2012 which was subsequently upheld by the Supreme Court while adjudicating the land revision matters of the Mumbai Port vide its judgment dated 13.01.2004. There was a provision in the Supreme Court judgment that notwithstanding fixation of rent for period upto 30.09.2012 for good and sufficient reason, the Board could always review and revise the rent. Accordingly, the Board vide TR No.127 of 2006 accorded approval to fixation of rentals at 6% rent of land value as per the Stamp Duty Ready Reckoner for the year 2006 w.e.f. 01.09.2006. Thus, all the previous revisions of way leave fee were in accordance with the then prevailing letting rates and therefore, TAMP's approval was not envisaged. Writ Petition No.1153 of 2000 filed by the MBPT against TAMP's orders dated 15.3.2000 is pending. The Writ Petition has been admitted and stay has been granted thereon vide H.C. order dtd.02.05.2000.</p> <p>(iii). Similarly, in the case of the Board of Trustees of the Port of Mumbai v/s Jayantilal Dharamsey reported in AIR 2001 BOM 26, the Bombay High Court has inter alia held that, "the TAMP can fix rates in respect of the properties within the port limits under section 49 and other relevant provisions. This would necessarily mean that rates for the properties outside the port limits can be fixed by the MBPT even after the said amendment constituting the authority".</p> <p>(iv). In this connection brief background on MBPT decision applicable of TAMP jurisdiction as under : The Major Port Trust Act 1963 was amended in 1997 introducing chapter V A under the title "Tariff Authority for Major Ports" with Sections 47A to 47H. Subsequent to the said amendment, the authority for fixing the scale of rates and statement of conditions for use of property belonging to the Board within the limits of the Port or the Port approaches vested with TAMP. The applicability of TAMP's jurisdictions to land falling outside the limits of the Port or the Port approaches was examined by the then Additional Solicitor General Shri Altaf Ahmed, who opined that TAMP did not have Jurisdiction to frame the scale of Rates for land falling outside Port Limit which was within the competent Jurisdiction of the Board under Section 34 of Major Port Trust Act 1963. Although this was brought to the notice of the TAMP and the Ministry, TAMP, however, by order dated 15.03.2000 inter alia decided that TAMP has the jurisdiction to frame Scale of Rates and amendment of conditions for use of all Port properties</p>
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		<p>including all lease cases and sought proposal in this regard.</p> <p>In terms of clause 49 of MPT Act, TAMP has no jurisdiction for fixation of rates for areas which are falling outside Port Limit. Since, most of the Port area except Custom Notified area are outside the Port Limit and therefore TAMP has no jurisdiction for fixation of rates. In view of the opinion of Additional Solicitor General, MBPT have filed High Court Writ Petition No.1153 of 2000 challenging TAMP's notification No.TAMP/10/98-Misc. dated 28.03.2000. All the past rent revisions decided by the Board for let out lands under Estate were effected without TAMP's approval and therefore would adversely affected if TAMP's approval is made mandatory retrospectively.</p> <p>In the past, the Ministry of Shipping had notified on 13.01.2011 the 'Land Policy for the Major Ports -2010' applicable to all Major Port Trust lands. The said policy 2010 has been adopted by the Board under TR No.21 dated 31.05.2011 as circulated by Ministry Of Shipping, Government of India with Supreme Court's Judgement in Jamshed Hormusji Wadia Vs Board of Trustees Port of Mumbai and another (2004) 3 SCC 214. The 2010 Policy contained broad guidelines for the fresh allotment of the land within and the outside Custom Bound area and covered the aspects of renewal of leases, permitting change of lease etc. and framing of SOR at 6% return p.a. on market value in terms of the State Govt. Stamp Duty Ready Reckoner. The New Land Management Policy Guidelines for Major Port 2014 sanctioned by the Cabinet/Government of India is applicable to all the Major Port Lands excluding the Township areas of Mumbai, Kandla & Kolkata Port. The Land Policy 2014 is in supersession to the earlier Land Management Policy 2010 and Draft Land Management Policy 2012.</p> <p>The above is brought to notice only for information. In view of proposal already sent by MBPT, TAMP is requested to approve the proposal.</p>
2.	<p>The Land Policy for Major Ports-2010 as well as the Land Policy Guidelines, 2014 require the Land Allotment Committee to determine the market value of Port land as per the five methods as indicated in the respective Guidelines and thereafter to recommend the rentals, based on the highest market value of land so determined as per the five methods. In the LAC Report furnished by MBPT, the LAC is not seen to have determined the rentals based on the five methods. Further, the LAC is seen to only recommend for orders of the Board of Trustees of MBPT to get approval from</p>	<p>(i) As stated in reply to para 1, there was no policy provisions for SOR for obtaining LAC approval in the year 2004 – 2009. However, Board's approval was taken for fixation of Way Leave Fees for ONGC vide TR No.116 of 2004 before entering into the Agreement with ONGC on 28.01.2005. Then rates have been reviewed and revised by Board vide TR No.138 of 2009.</p> <p>(ii) In the light of applicability of five factor of valuation prescribed in the PGLM-2014/2015, it is clarified that way leave is neither a lease nor a licence and that the grant of way leave permission bestows only a limited right to the user which right is inferior to the right enjoyed by the tenants/ lessees in case of grant leases for the land and for which applicability of five factors have been laid down in PGLM-2014. It is stated that the Land Policy has left it to the respective Ports to decide the 'Facility Compensation' or 'Right of Way' charges. Further Board Policy vide TR No.269 of 2014, while fixing the charges in terms of PGLM 2014 had decided to continue the existing</p>

	TAMP for the rate of special way leave fees to be levied to ONGC. The MBPT to furnish LAC Report complying with the requirement of Land Policy Guidelines with the approval of Board of Trustees of MBPT.	practice of charging way leave at 15% p.a. return on market value of land as per Stamp Duty Ready Reckoner for grant of fresh way leave permission. (iii) ONGC vide letter dated 08.08.2017 requested for resolution of long pending dispute between ONGC with MBPT and sought TAMP approval or Ministry of Shipping ruling for rates of Sp. Way Leaves fees. In the meeting held by Dy. Chairman, MBPT on 05.01.2018, it was decided to place the matter before LAC & Competent Authority of MBPT. Accordingly, LAC recommended for orders of the Board vide their report dated 15.01.2018 which is approved by the Board vide TR No.11 of 2018.																																																																																																																																											
3.	The ONGC reported in the joint hearing held on 15 October 2018 that it has stopped payment of way leave fees after 2013-14. The MBPT in its proposal has also stated that the ONGC has stopped payment of annual bills raised by MBPT for the past four years. In this regard, the MBPT to indicate the status of payment of way leave fees from 1978 to 2013-14.	ONGC has stopped payment towards special way leave fees of 11 pipelines & one piece of land at Jawahar Dweep (JD) w.e.f. 2014 and are in arrears of Rs.291.65 crores as on 01.05.2018. The statement showing total arrears upto 01.05.2018 is as follows: (Amount of ₹ in crores)																																																																																																																																											
		<table border="1"> <thead> <tr> <th rowspan="2">Bill Date</th> <th colspan="2">Bill Amount in ₹</th> <th colspan="2">Amount paid by ONGC in ₹</th> <th colspan="2">Balance Amount in ₹</th> </tr> <tr> <th>General</th> <th>ST/GST</th> <th>General</th> <th>ST/GST</th> <th>General</th> <th>ST/GST</th> </tr> </thead> <tbody> <tr> <td>01.05.2005</td> <td>51.89</td> <td>1.31</td> <td>26.72</td> <td>0.00</td> <td>25.17</td> <td>1.31</td> </tr> <tr> <td>01.05.2006</td> <td>12.09</td> <td>1.29</td> <td>11.85</td> <td>0.00</td> <td>0.23</td> <td>1.29</td> </tr> <tr> <td>01.05.2007</td> <td>12.32</td> <td>1.48</td> <td>12.32</td> <td>0.00</td> <td>0.00</td> <td>1.48</td> </tr> <tr> <td>01.05.2008</td> <td>12.82</td> <td>1.59</td> <td>11.07</td> <td>0.00</td> <td>1.75</td> <td>1.59</td> </tr> <tr> <td>01.05.2009</td> <td>13.66</td> <td>1.37</td> <td>11.82</td> <td>0.00</td> <td>1.84</td> <td>1.37</td> </tr> <tr> <td>01.05.2010</td> <td>26.20</td> <td>2.68</td> <td>22.57</td> <td>0.59</td> <td>3.63</td> <td>2.10</td> </tr> <tr> <td>01.05.2011</td> <td>28.37</td> <td>2.79</td> <td>23.48</td> <td>2.44</td> <td>4.89</td> <td>0.35</td> </tr> <tr> <td>01.05.2012</td> <td>28.17</td> <td>3.48</td> <td>24.46</td> <td>2.79</td> <td>3.71</td> <td>0.69</td> </tr> <tr> <td>01.05.2013</td> <td>30.43</td> <td>4.34</td> <td>25.60</td> <td>3.16</td> <td>4.83</td> <td>1.18</td> </tr> <tr> <td>01.05.2014</td> <td>30.47</td> <td>3.76</td> <td>26.63</td> <td>3.29</td> <td>3.84</td> <td>0.47</td> </tr> <tr> <td>01.05.2015</td> <td>32.09</td> <td>3.97</td> <td>0.00</td> <td>0.00</td> <td>32.09</td> <td>3.97</td> </tr> <tr> <td>01.05.2016</td> <td>32.95</td> <td>4.78</td> <td>0.00</td> <td>0.00</td> <td>32.95</td> <td>4.78</td> </tr> <tr> <td>01.05.2017</td> <td>34.27</td> <td>5.14</td> <td>0.00</td> <td>0.00</td> <td>34.27</td> <td>5.14</td> </tr> <tr> <td>01.05.2018</td> <td>35.64</td> <td>6.42</td> <td>0.00</td> <td>0.00</td> <td>35.64</td> <td>6.42</td> </tr> <tr> <td>TOTAL</td> <td>381.38</td> <td>44.40</td> <td>196.53</td> <td>12.27</td> <td>184.86</td> <td>32.13</td> </tr> <tr> <td></td> <td colspan="2">425.79</td> <td colspan="2">208.80</td> <td colspan="2">216.99</td> </tr> <tr> <td></td> <td colspan="2"></td> <td colspan="2">Interest</td> <td colspan="2">74.66</td> </tr> <tr> <td></td> <td colspan="2"></td> <td colspan="2">Total Amount due</td> <td colspan="2">291.65</td> </tr> </tbody> </table> <p>The amount of ₹ 291.65 crores (approx.) due from ONGC is subject to TDS, Service tax and Interest reconciliation.</p>	Bill Date	Bill Amount in ₹		Amount paid by ONGC in ₹		Balance Amount in ₹		General	ST/GST	General	ST/GST	General	ST/GST	01.05.2005	51.89	1.31	26.72	0.00	25.17	1.31	01.05.2006	12.09	1.29	11.85	0.00	0.23	1.29	01.05.2007	12.32	1.48	12.32	0.00	0.00	1.48	01.05.2008	12.82	1.59	11.07	0.00	1.75	1.59	01.05.2009	13.66	1.37	11.82	0.00	1.84	1.37	01.05.2010	26.20	2.68	22.57	0.59	3.63	2.10	01.05.2011	28.37	2.79	23.48	2.44	4.89	0.35	01.05.2012	28.17	3.48	24.46	2.79	3.71	0.69	01.05.2013	30.43	4.34	25.60	3.16	4.83	1.18	01.05.2014	30.47	3.76	26.63	3.29	3.84	0.47	01.05.2015	32.09	3.97	0.00	0.00	32.09	3.97	01.05.2016	32.95	4.78	0.00	0.00	32.95	4.78	01.05.2017	34.27	5.14	0.00	0.00	34.27	5.14	01.05.2018	35.64	6.42	0.00	0.00	35.64	6.42	TOTAL	381.38	44.40	196.53	12.27	184.86	32.13		425.79		208.80		216.99					Interest		74.66					Total Amount due		291.65	
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01.05.2008	12.82	1.59	11.07	0.00	1.75	1.59																																																																																																																																							
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01.05.2010	26.20	2.68	22.57	0.59	3.63	2.10																																																																																																																																							
01.05.2011	28.37	2.79	23.48	2.44	4.89	0.35																																																																																																																																							
01.05.2012	28.17	3.48	24.46	2.79	3.71	0.69																																																																																																																																							
01.05.2013	30.43	4.34	25.60	3.16	4.83	1.18																																																																																																																																							
01.05.2014	30.47	3.76	26.63	3.29	3.84	0.47																																																																																																																																							
01.05.2015	32.09	3.97	0.00	0.00	32.09	3.97																																																																																																																																							
01.05.2016	32.95	4.78	0.00	0.00	32.95	4.78																																																																																																																																							
01.05.2017	34.27	5.14	0.00	0.00	34.27	5.14																																																																																																																																							
01.05.2018	35.64	6.42	0.00	0.00	35.64	6.42																																																																																																																																							
TOTAL	381.38	44.40	196.53	12.27	184.86	32.13																																																																																																																																							
	425.79		208.80		216.99																																																																																																																																								
			Interest		74.66																																																																																																																																								
			Total Amount due		291.65																																																																																																																																								
4.	The MBPT has sought approval for the special way leave charges for a period of 9 years from 01 October 2009 and upto 30 September 2018. In this regard, the MBPT to clarify/ furnish the following:																																																																																																																																												
(a).	Clause 13 (c) of the amended Land Policy Guidelines of 2014 stipulates that Scale of Rates would be refixed once in 5 years by TAMP. The reason for seeking approval for a truncated period of 9 years (covering two cycles from 01 October 2009 to 30 September 2018), to be explained	The rate of way leaves fees for ONGC was fixed by the Board applicable vide TR No. 116 of 2004 & revised in 2009 in terms of TR 138 of 2009. In 2014, the Board of Trustees vide TR No.269 of 2014 reviewed and decided to follow the existing practice / norms. The rates of Way Leave Fees for MUT pipelines which were laid in 2004, for which 15% return on Ready Reckoner values of 2004 was levied being higher than the rates arrived by considering 6% return on Ready Reckoner 2014 values the said higher rates were continued with 4 % increase in every October.																																																																																																																																											

(b).	The MBPT to also explain why no approval is being sought for the subsequent period.	In respect of other pipes lines the rates of Way Leave Fees revised in terms TR No.138 of 2009 were continued with 4% increase in every October. The revision of special way leave was approved by the Board & TAMP's approval was not mandatory as explained in para (i) above. However, PGLM -2014 was made applicable to all Estate areas of non-home occupations. Since, ONGC was again & again insisting a TAMP's approval to way leave fees, the matter was placed before Land Allotment Committee (LAC) on 15.01.2018 & then LAC's recommendations were submitted to Board & same has been approved by the Board vide TR No.11 of 2018.
5.	ONGC in its submission has stated that it is agreeable for levy of nominal way leave charges, calculated as per the practice followed by MBPT till July 2004. In this regard, the MBPT to explain as to what was the practice followed by MBPT to fix the way leave charges and levy the same on the ONGC, till July 2004.	In this connection the paras 11,12,13,14,15 of the minutes of meeting dated 20.10.2004 may be perused which meeting held by Secretary, Ministry of Shipping Government of India & Joint Secretary, Ministry of Petroleum & Natural Gas, CMD ONGC & Chairperson, Dy. Chairman & other MBPT Officials were present & thereafter Additional Secretary (P&NG) held a meeting on 10.11.2004 & gave dispensation to all concerned Party. Therefore, in accordance with same dispensation, the agreement with ONGC & MBPT was entered into on 28.01.2005. The copy of minutes of meeting dated 20.10.2004 is a part of Agreement at Page Nos.45-49 & resume of the meeting dated 10.11.2014 is also part of agreement at Page Nos.58-59.
6.	The reason for not approaching TAMP earlier, for seeking approval of the way leave charges to be levied on ONGC pipelines, to be explained, considering that it was brought to the notice of MBPT on the earlier occasions that the levy of way leave charges would have to be fixed by TAMP.	As explained in detail in para (i). Further, TAMP's approval was not mandatory as per Agreement dated 28.01.2005 between MBPT & ONGC. However, to settle the issue amicably and since ONGC is repeatedly insisting TAMP's approval, therefore MBPT is seeking TAMP's approval in terms of Board's Resolution No.11 of 2018.
7.	In the workings relating to the calculation of Way leave charges for the HUT, MUT and BUT pipelines, the MBPT has indicated two set of workings. With regard to the 1 st set of workings, the rate of special way leave fee prevailing as on 30 September 2004 ranging from ₹ 7.68 per sq.m per month to ₹ 152.21 per sq.m per month for 11 pipelines has been considered. This is reported to be 50% of the land rate, considering that the pipeline is under water. In this regard, MBPT to clarify/ furnish the following:	
(a)	The basis for arriving at the rentals for the land rate, based on which special way leave fee ranging from ₹ 7.68 per sq.m per month to ₹ 152.21 per sq.m per month prevailing as on 30	(i). Applicable rate existing on BUT pipelines i.e. 26" and 30' dia both laid In 1978 – Way Leave rate per pipeline @ ₹ 1/- per mensem from February 1978 to December 1982; @ ₹ 4.80 per sq mtr per mensem from Jan 1983 to July 2004 with 4% annual increase in every October w.e.f.

	September 2004 has been determined.	<p>October 1992 upto July 2004; and thereafter @ ₹ 7.68 per sq. per month with 4% increase every October every year.</p> <p>(ii). Applicable rate on exiting HUT pipelines i.e. 24" and 26" dia both laid in 1987 – Way Leave rate per pipeline @ ₹ 10/- per mensem from May 1987 to Dec 1991; @ ₹ 4.80 per sq mtr per mensem from Jan 1992 to July 2004 with 4% annual increase in every October w.e.f. October 1992 upto July 2004; and thereafter @ ₹ 7.68 per sq. per month with 4% increase every October every year.</p> <p>(iii). Applicable rates for new MUT pipelines i.e. 28" and 30" dia both laid in 2004 – way leave rate per pipeline @ ₹ 152.22/- per sq mtr per mensem plus Service Taxes with 4% increase every October every year. The working of Special Way Leave Fees for rates are based in accordance with MBPT Policy approved under TR No. 186 of 2001 and TR No. 107 of 2004, fixing 15% return on the land value at the nearest location. The Calculations are furnished.</p>
(b)	The Authority who approved the rentals for the land area, based on which special way leave fee as indicated above has been determined, may be indicated. Documentary evidence in support of the said approval to be furnished.	Way Leave charges is for the use of the Property of the Port & Way Leave fee the Property is within Port limit and all Special Way leave charges for ONGC pipelines are approved by the Board Policy approved under TR.No.186 of 2001, TR No. 138 of 2009, TR No. 21 of 2011 & TR No. 11 of 2018 is furnished.
(c)	Basis for considering the rate of special way leave fee for pipelines under water at 50% of the rentals for land area, considering that such provision has been introduced by the Government only in the Land Policy Guidelines of 2010.	Determination of Special Way charges for the pipeline under water, the reduction of 60% of land value as per Ready Reckoner was adopted in accordance with the applicable Board Policy vide T. R. No. 138 of 2009 and the same rates were continued by 4% increase every year, according to the provision in the Agreement. The Policy Guidelines for Land Management by Major Ports 2014 is applicable for new allotment.
	With regard to the 2 nd set of workings, MBPT to clarify/ furnish the following:	-
(a).	Documentary evidence in support of the rate of developed land as per Ready Reckoner, 2009 for each pipeline.	MBPT has approved TR No. 107 of 2004 & vide TR No. 138 of 2009 to all Special Way Leave Fee w.e.f. 01.10.2009. As per the present policy of Mumbai Port Trust, the existing way leave permissions are renewed at 6% return whereas fresh allotments are done at 15% return on land value as per TR No. 138 of 2009 & TR No. 186 of 2001. Copy of Ready Reckoner 2004 & 2009 for respective land zone applicable is enclosed.
(b).	The rationale to consider 60% of the Ready Reckoner rate of developed land as the rate of submerged land.	60 % considered being submerged land in terms of T.R. No.203 of 1977 & TR No. 138 of 2009 is furnished.
8.	In the workings relating to the calculation of rentals for land at Jawahar Dweep, information/ clarification is required from MBPT on the following points:	
(a).	MBPT to clarify whether approval is being sought for rentals for land at Jawahar	Yes.

	Dweep (JD) or for pipelines passing through land at JD.																													
(b).	The basis for arriving at the special way leave fees of ₹ 72.83 per sq.m per month prevailing as on 30 September 2004.	Since there is no Ready Reckoner value for Jawahar Dweep Land, the rate of the land value arrived based on land value furnish in Kirloskar Valuation report in 1983 with 6% escalations per annum & after giving effect of discount, the rate of rent of ₹ 72.83 per sq. mtr. Per month is applied w.e.f. 01.08.2004.																												
(c).	The Authority who approved the special way leave fees of ₹ 72.83 per sq.m per month. Documentary evidence in support of the said approval to be indicated. Documentary evidence in support of the said approval to be furnished.	<p>All the Special Way charges/ rates made applicable to ONGC are approved by Board of Trustees. The calculation of rent/ Way Leave chargeable at Jawahar Dweep is as follows:</p> <table border="1"> <tr> <td>Rate of freehold land recommended by Kirloskar Consultants</td> <td>₹ 4140/- per sq.m</td> </tr> <tr> <td>Discounting Factors as per 'K' Report</td> <td></td> </tr> <tr> <td>(a). Since only a portion of land will be used for actual construction of tanks</td> <td>25%</td> </tr> <tr> <td>(b). Difficult accessibility</td> <td>10%</td> </tr> <tr> <td>(c). For Development</td> <td>6.35%</td> </tr> <tr> <td>(d). Limited draft</td> <td>10%</td> </tr> <tr> <td>(e). Provision of roads, electric supply, pipeways etc.</td> <td>7.25%</td> </tr> <tr> <td>Total discounting factor</td> <td>58.60%</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td>Land rate after discounting factor</td> <td>₹ 1713.96 per sq.m</td> </tr> <tr> <td>Land rate after providing escalation for 21 years @ 6% per annum</td> <td>₹ 5826.71 per sq.m</td> </tr> <tr> <td>Rate of rent @ 15% return p.a. per sq.m</td> <td>₹ 874.01</td> </tr> <tr> <td>Rent per sq.m per month</td> <td>₹ 72.83 per sq.m</td> </tr> <tr> <td>Thus, way leave fee chargeable @ 50% of Rent</td> <td>₹ 36.42 per sq.m*</td> </tr> </table> <p>* Service tax as fixed by the Govt. extra.</p>	Rate of freehold land recommended by Kirloskar Consultants	₹ 4140/- per sq.m	Discounting Factors as per 'K' Report		(a). Since only a portion of land will be used for actual construction of tanks	25%	(b). Difficult accessibility	10%	(c). For Development	6.35%	(d). Limited draft	10%	(e). Provision of roads, electric supply, pipeways etc.	7.25%	Total discounting factor	58.60%			Land rate after discounting factor	₹ 1713.96 per sq.m	Land rate after providing escalation for 21 years @ 6% per annum	₹ 5826.71 per sq.m	Rate of rent @ 15% return p.a. per sq.m	₹ 874.01	Rent per sq.m per month	₹ 72.83 per sq.m	Thus, way leave fee chargeable @ 50% of Rent	₹ 36.42 per sq.m*
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(d).	Workings in support of rate of revised special way leave fees as per Clause (5) of T&C of Agreement, as on 01 October 2009 (as per TR 138/2009) of ₹ 47/- per sq.m per month.	Applicable rate on the 36" dia Crude pipeline from ONGC Trombay Terminal to Pirpau landfall laid in 1978, working of rate of revised way leave fee of ₹ 47 per sq. mtr per month as on 01.10.2009.																												
9.	MBPT to furnish copies of all the documents as listed at Page no. 3 & 4 of the Agreement dated 28 January 2005, which are deemed to form part of the said Agreement.	Copies of all the documents as listed at Page no. 3 & 4 of the Agreement dated 28 January 2005, which are already part of the said Agreement. The copy of Agreement dated 28.01.2005 is furnished.																												
10.	MBPT to also furnish copy of the Protest Letter of ONGC, reported by ONGC to have been made as a part of the Agreement dated 28 January 2005.	No such protest letter of ONGC was part of the Agreement. ONGC may be asked to produce strict proof thereof.																												
11.	The Power point presentation made by MBPT at the joint hearing indicates an amount of ₹ 174.9319249 Crores as	<p>Details of dues outstanding from ONGC till date in a summarised position is furnished below:</p> <table border="1"> <tr> <td style="text-align: center;">Total Dues outstanding from ONGC</td> </tr> </table>	Total Dues outstanding from ONGC																											
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	outstanding from MBPT for the period 2017-18. However, both ONGC and MBPT have reported at the joint hearing that ONGC has not paid the Way Leave Fees after 2013-14. Therefore the MBPT to furnish the year wise outstanding amount due from ONGC only towards Way Leave Fees from 2014-15 to 2017-18.	Period	Way Leave Fees	ST / GST
		2005-06 to 2013-14	46,05,77,480	11,35,80,363
		2014-15 to 2017-18	1,03,15,60,172	14,36,01,234
		2018-19	35,64,38,243	6,41,58,884
		Billed Arrears	1,84,85,75,895	32,13,40,481
		Int. billed on delayed payment	74,65,82,909	--
		Total Outstanding	2,91,64,99,286	
12.	From the copy of the Minutes of the Board Meeting dated 22 September 2009, it is seen that MBPT has allotted pipelines slots to other parties i.e. Bharat Petroleum Corporation Limited (BPCL), Aegis Chemicals Industries Limited. The reason for not seeking approval of TAMP for way leave fees for other parties to be clarified.	As explained in para 2.1 (i) where permission of TAMP was not required		

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 this case, the following position emerges:

- (i). The Agreement dated 28 January 2005 entered between Oil & Natural Gas Corporation (ONGC) and Mumbai Port Trust (MBPT) contains three distinctive but interrelated features – i.e. (i) permission to lay additional pipelines within the MBPT port limits, (ii) to pay 50% of the wharfage rate to MBPT as per the Scale of Rates on per tonne of Crude Oil applicable from time to time and (iii) the applicable way leave fees for pipelines. The Agreement covers all Bombay Uran Trunk (BUT) pipelines, Heera Uran Trunk (HUT) pipelines and Mumbai Uran Trunk (MUT) pipelines and extension laid within MBPT Port limits and land parcel of ONGC terminal at Jawahar Dweep as reported by MBPT and not disputed by ONGC. As admitted by the ONGC, it has entered into this Agreement dated 28 January 2005 with the MBPT for the pipelines as per the terms of MBPT and make payments for the future on that basis, as directed by the Additional Secretary, Ministry of Petroleum and Natural Gas consequent to the Meeting chaired by him on 10 November 2004 after hearing both the parties, ONGC and MBPT.
- (ii). A dispute arose between MBPT and ONGC with regard to payment of wharfage and way leave charges by ONGC to MBPT. The matter regarding the wharfage compensation payable by the ONGC to MBPT has already been disposed of by this Authority separately vide its Order no. TAMP/18/2018-MBPT dated 03 October 2018, based on a proposal, then received from MBPT. Therefore, only the matter regarding way leave fees and rent for a parcel of land at Jawahar Dweep is before this Authority for consideration now.
- (iii). The ONGC agrees that pipelines of different lengths from the shore fall within the MBPT limits. The issue raised by the ONGC is that the MBPT cannot levy the Way leave charges for the pipelines passing through the port limits as it does not have the approval of this Authority. The MBPT has reported that ONGC has withheld the Way leave charges claimed by MBPT after the year 2013-14, for want of approval

of this Authority. The ONGC is for approval of the Way Leave charges by this Authority.

- (iv). The submissions made by MBPT in its proposal dated 30 August 2018 alongwith the information/ clarification furnished by MBPT as well as the submissions made by ONGC during the processing of the case in reference, are considered in this analysis.
- (v). Section 49 of the Major Port Trusts Act, 1963 (MPT Act) empowers this Authority to frame a Scale of Rates and statement of conditions for use of property belonging to a Board. The way leave charge is a levy, levied for the use of the property of the port within the port limits. In the instant case, the way leave charge is for the pipelines of ONGC passing through the MBPT limits. Thus, the fixation of Way Leave charges, falls under the regulatory ambit of this Authority as per the Statute.
- (vi).
 - (a) In the subject proposal, the MBPT has sought approval for the way leave charges for a period of 9 years from 01 October 2009 and upto 30 September 2018. For the period prior to 01 October 2009, the MBPT has reported to have levied the way leave charges as approved by its Board of Trustees. The validity of the specific rates of way leave charges mentioned in the Agreement entered into between MBPT and ONGC has expired on 30 September 2009 and such rates are subject to review at any given time or quinquennially thereafter as deemed necessary by MBPT. In this circumstance, the MBPT has sought approval for way leave charges for the period from 01 October 2009. Further, by drawing reference to the interim stay granted by the Hon'ble High Court of Bombay vide its Order dated 02 May 2000 in the Writ Petition No.1153 of 2000 filed by the MBPT in the Hon'ble Court against the Order no. TAMP/10/1998-Misc dated 15 March 2000 passed by this Authority, the MBPT had earlier not sought approval for the way leave charges.
 - (b). With regard to the Order of this Authority as referred above, it is to state that this Authority had passed an Order dated 15 March 2000 setting out the legal position about this Authority's jurisdiction in respect of framing scale of Rates and Statement of Conditions for use of port properties. Vide the said Order, this Authority had decided that for purpose of framing Scale of Rates and Statement of Conditions, this Authority has jurisdiction over all the properties and assets, wherever located, of a Major Port Trust, and will frame the Scale of Rates and the Statement of Conditions under Section 49(1) of the MPT Act in respect of property belonging to, in possession/ occupation of the Board of Trustees of the Port, in any place within the limits of the port area or port approaches. This Authority had also decided that for the purpose of framing Scale of Rates and Statement of Conditions, all 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.
 - (c). When the MBPT challenged the Order dated 15 March 2000 and praying, inter alia, that this Authority has no power to fix rates of those premises belonging to the MBPT and situated outside the port limits (MBPT) by filing a Writ Petition in the Bombay High Court in April 2000, the Hon'ble Division Bench of Bombay High Court passed an interim order on 2 May 2000 restraining this Authority from giving effect to the Order dated 15 March 2000 to the extent that the decision taken therein shall not apply to any property or place not within the limits of the port or port approaches. The Division Bench also restrained this Authority from giving effect to the decision of this Authority that for the purpose of framing Scale of Rates and Statement of Conditions, all 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 matter is still pending in the Hon'ble Court and the interim stay granted in May 2000 is still in force. Since the

proposal of MBPT is for approval of Way Leave charges for pipelines and for land at Jawahar Dweep which fall within the MBPT port limits, the proposal of MBPT does not appear to be hit by the interim order dated 2 May 2000 passed by the Hon'ble Bombay High Court.

- (vii). For fixation of rates for the use of the port properties, this Authority is mandated to follow the extant Land Policy Guidelines. The Land Policy for Major Ports, 2004 was not applicable to MBPT then, as stated in Clause 3 of the said Policy. The next Land Policy for Major Ports- 2010 came into effect with effect from 13 January 2011. Clause 3 of this Land Policy for Major Ports - 2010 stated that the policy is applicable for all Major Port Trusts. This implies that this policy was applicable for MBPT also. The latest amended Land Policy Guidelines of 2014, issued by the Ministry of Shipping (MOS) to all the Major Port Trusts on 17 July 2015 also covers the MBPT.
- (viii). As per clause 13(a) read with clause 11.2(e) of the amended Land Policy Guidelines 2014, a Land Allotment Committee (LAC) constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic shall determine the market value of land as per the methodology prescribed in clause 13(a). Accordingly, the MBPT has constituted a Land Allotment Committee (LAC) under the chairmanship of the Dy. Chairman of the Port and the Heads of Departments of Finance, Traffic and Estate and Chief Engineer being the other members of the Committee.
- (ix).
 - (a). Clause 13(a) of the amended land policy guidelines of 2014 prescribes the methodology for determination of market value of the land based on the five factors as prescribed therein. In terms of the said para of the amended Land policy guidelines of 2014, the LAC may normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for similar classification/ activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity with an appropriate annual escalation rate to be approved the Port Trust Board, (iii). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (iv). Rate arrived at by an approved valuer appointed for the purpose by the Port and (v). Any other relevant factor as is identified by the Port.
 - (b). Further, as per clause 13 (c) read with clause 13(a) and (b) of the Land policy guidelines of 2014, the port shall file a proposal to this Authority for fixation of latest SOR of the land based on the market value of land recommended by the LAC which will normally take into account the highest of the five factors for market value of land stipulated in Para 13 (a) of the land policy guidelines of 2014. The amended Land Policy guidelines of 2014 also stipulates that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded.
 - (c). In the instant case, the LAC is seen to have only recommended for orders of the Board of Trustees of MBPT to get approval from this Authority for the rate of special way leave fees to be levied by MBPT on ONGC. The LAC has not recommended any way leave charges. However, Board of MBPT has accorded approval to seek the approval of this Authority for the proposed rates. As stated by MBPT, applicability of five factors as prescribed in the Land Policy Guidelines is for determination of lease rentals i.e. where the land would be allotted to a lessee for long period of time. According to MBPT, way leave is neither a lease nor a licence and the grant of way leave permission bestows only a limited right to the user, which right is inferior to the right enjoyed by the tenants/ lessees in case of grant of leases for the land.

- (d). To determine the way leave charges for the ONGC pipelines during the period from 01 October 2009 to 30 September 2017, the MBPT is seen to have considered the rate of developed land as per Stamp Duty Ready Reckoner 2009 and considered a discounting factor of 40% towards pipelines being submerged in water (based on the approval of Board of Trustees of MBPT). Thereafter, 6% return on the discounted value has been considered. Subsequently, a 50% discounting factor for way leave has been considered. The workings in respect of one pipeline of 30' dia from Bombay High to Uran, as given by MBPT is illustrated below:

Particulars	Amount in ₹ per sq.m
Rate of developed land as per Stamp Duty Ready Reckoner 2009	70400/-
60% considered for pipeline being submerged under water i.e. (40% discount)	42240/-
Letting rate @ 6% per annum	2534.40
Letting rate per month	211.20
50% discounting factor considered for pipeline being submerged under water	105.60
Special way leave charges for 30' dia from Bombay High to Uran (Code no. 31209901) w.e.f 01.10.2009 to 30.09.2017	₹ 105.60 per sq.m per month
Special way leave charges for 30' dia from Bombay High to Uran (Code no. 31209901) w.e.f 01.10.2017 to 30.09.2018 (by applying 4% escalation per annum)	₹ 144.51 per sq.m per month

Likewise, the special way leave charges for various other 10 pipelines has been sought by MBPT with effect from 01 October 2009. Thereafter, by applying an annual escalation of 4%, the MBPT has worked out the special way leave charges for all 11 pipelines with effect from 01 October 2017 to 30 September 2018.

- (e). The way leave fees in the above illustration was ₹ 4.80 per sq.mtr. per month on 30 September 1992. This rate was increased by MBPT by applying an annual escalation of 4% per annum for 18 years till 30.09.2009 from 30.09.1992 without any revision linking it to market value of the relevant parcel of land. In 2009, the MBPT determined the way leave fees linking it to market value of land, as illustrated in the table given above. This is the reason for the steep increase from the escalated rate of ₹ 9.72 that prevailed as on 30.09.2009 to ₹105.60 as on 01 October 2009. With reference to the objection of ONGC about steep increase in way leave charges from 01 October 2009, it has to be recognized that the MBPT has followed one of the methods listed in the Land Policy Guidelines for determination of market value. It is noteworthy that the ONGC has been enjoying the benefit of lower way leave rates in the past for the period prior to 01 October 2009.
- (f). As seen from the above table, the way leave charge has been derived from the rate of lease rental of the relevant parcel of land over which the pipeline passes. The Land Policy Guidelines does not prescribe any specific methodology for determination of way leave charges. In the absence of a specific methodology, the approach followed by the MBPT is considered in the analysis.

- (g). The MBPT has also sought approval for rent for land at Jawahar Dweep. For the purpose, the MBPT has considered the rate of rent as applicable at Jawahar Dweep as on 30 September 2004 and has escalated it by 4% per annum to arrive at the rental as on 01 October 2009. Thereafter, by applying an annual escalation of 4%, the MBPT has worked out the rent for land at Jawahar Dweep with effect from 01 October 2017 to 30 September 2018.
- (x). From the above, it is seen that to determine the way leave charges, the MBPT has considered the past rates as per the Ready Reckoner of 2009/ Valuer's Report of 1983, and has thereafter applied an annual escalation of 4% per annum on the rentals so derived.

There may be a view that the MBPT has not followed all the factors as prescribed in the Land Policy Guidelines for determination of market value of land for the period from 13 January 2011 (when the Land Policy – 2010 covering MBPT, came into effect). As reported by the MBPT, the lease rentals approved by the Board of Trustees for the lands of MBPT for the period from 1980 upto 30 September 2012 as per the Compromise formula has been upheld by the Hon'ble Supreme Court. That being so, the requirement of determining market value of lands by other factors does not arise.

Taking into account the approval of its Board of Trustees, this Authority is inclined to rely upon the approach adopted by the MBPT in this regard. Resultantly, this Authority is inclined to approve the way leave charges for the pipelines and rent for land at Jawahar Dweep, as proposed by the Port.

- (xi). The ONGC has contended that ONGC pipelines are laid under the seabed and far off from operational areas of the port, thereby not impacting other developmental activities of the port. The ONGC has further stated that no services are being rendered by MBPT in connection with the said pipelines. Accordingly, the ONGC is of the view that the MBPT should not levy any way leave charges on ONGC. In this regard, it is relevant to mention here that pipelines of ONGC are laid in the port limits. So, way leave charges are payable by ONGC to MBPT, as the MBPT is the facilitator of the facility for use by ONGC. Section 49 of the MPT Act, 1963 provides for fixation of charges for use of port properties.
- (xii). The ONGC is aggrieved that it signed the Agreement under duress and without full consent. The ONGC was not obliged to accept such Agreement if it did not want to. Having signed the Agreement, the ONGC cannot, at this stage, argue that it signed the Agreement under duress and without consent. Agreement has been made between both the parties who have intended to bind together to serve the interest of both the parties. When a binding agreement is not honored by one party to the Agreement by non-performance there is breach of Agreement. The other party is discharged from its obligation under the Agreement and it is entitled to rescind the Agreement which would affect the Oil industry. The MBPT, being a responsible Public Authority, has chosen not to rescind the Agreement.
- (xiii). The MBPT has sought the approval of this Authority with retrospective effect for recovery of way leave charges as per the agreement between MBPT and ONGC dated 28 January 2005. This Authority does not ordinarily give retrospective effect to the Order. But, in cases governed by special circumstances, it does require retrospective application of its Order. In a case relating to an agreement between New Mangalore Port Trust and the Kudremukh Iron Ore Company Ltd., on the advice of Ministry of Law, the (then) Ministry of Surface Transport had vide its Communication No. PR-14011/5197-P4 dated 16 March 1998 advised this Authority to give retrospective effect. In the circumstances and for the reasons given in the earlier paragraphs, the proposal of the MBPT for recovery of way leave charges and rent for the parcel of land at Jawahar Dweep leviable as per the agreement between ONGC and MBPT dated 28 January 2005 is approved with

retrospective effect from 01 October 2009 to 30 September 2018, as proposed by MBPT.

9. In the result, and for the reasons given above, and based on a collective application of mind, this Authority accords approval for levy of following way leave charges for pipelines and rent for the land at Jawahar Dweep with retrospective effect from 01 October 2009 to 30 September 2018, as per the Agreement dated 28 January 2005 entered into between MBPT and ONGC:

“(a). For pipelines –

**Schedule of Scale of Rates of Special Way Leave
For BUT, HUT & MUT pipelines of ONGC
(as per agreement between MBPT and ONGC dated 28.01.2005)**

Sr. No	Code No.	Description of pipeline	Length of the Pipeline (In Mtrs.)	Special Way leave fee w.e.f. 1.10.09 to 30.09.17 with 4% annual escalation (₹. per sq.mtr. p.m.)	Rate of Sp. Way leave fee from 01.10.17 to 30.09.18) (₹. Per sq.mtr.p.m)
	(a)	(b)	(c)	(d)	(e)
1.	31209901	30" Dia. pipeline from Bombay High to Uran	19500	105.60	144.51
2.	31209902	26" Dia. pipeline from Bombay High to Uran	19500	105.60	144.51
3.	31209903	36" Dia. pipeline from Trombay East to T/T	2000	23.07	31.57
4.	31209904	18" Dia. pipeline from Trombay East to T/T	2000	23.07	31.57
5.	31209905	36" Dia. pipeline from Pir Pau land	30.38	47.00	64.32
6.	31209906	36" Dia. pipeline from Pir Pau landfall to JD	5000	105.60	144.51
7.	31209907	36" Dia. pipeline at JD land fall to ONGC jetty	10	352.00	481.74
8.	31209908	26" Dia. HUT Pipeline	19500	105.60	144.51
9.	31209909	24" Dia. HUT Pipeline	19500	105.60	144.51
10.	31209910	30" Dia. MUT Pipeline	19500	192.61	263.59
11.	31209911	28" Dia. MUT Pipeline	19500	192.61	263.59

(b). For land –

**Schedule of Scale of Rates for land at Jawahar Dweep
In occupation of ONGC (as per agreement between MBPT and ONGC dated 28.01.2005)**

Sr. No	Code No.	Description of pipeline	Area of the place of land (in sq.mtr.)	Rental w.e.f. 01.10.09 to 30.09.17 with 4% annual escalation (₹. per sq.mtr. p.m.)	Rental from 01.10.17 upto 30.09.18)
	(a)	(b)	(c)	(d)	(e)
1.	31209103	Land at Jawahar Dweep	2600	88.61	126.12

”

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE COMMENTS RECEIVED FROM THE OIL AND NATURAL GAS CORPORATION LIMITED (ONGC) AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

TAMP/65/2018-MBPT	:	Proposal received from Mumbai Port Trust (MBPT) seeking approval for rate of Special Way Leave Fees & rent payable by Oil and Natural Gas Corporation Limited (ONGC) to MBPT .
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A summary of the comments furnished by Oil and Natural Gas Corporation Limited (ONGC) and the comments of Mumbai Port Trust (MBPT) thereon is tabulated below:

Sr. No.	Submissions of MBPT in its letter dated 30.08.18	Comments of ONGC	Reply furnished by MBPT on comments of ONGC
1.	The Board of Trustees of Mumbai Port vide TR No. 7 dated 24.1.1978, TR No. 98 dated 15.4.1987 and TR No. 116 dated 27.10.2004 granted the Special Way Leave to Oil & Natural Gas Corporation Ltd (ONGC) for laying of pipelines (BUT, HUT & MUT pipelines). On 28.1.2005, an agreement was executed between ONGC and MBPT in respect of all BUT, HUT and MUT pipelines and its extension laid within MBPT Port limit and land parcel of ONGC's terminal at Jawahar Dweep. The details of the ONGC pipelines laid in the Port limit and land area along with respective Way Leave Fees/rent are mentioned in the agreement.	Statement of facts, but it is submitted that the said agreement dated 28.01.2005 was one sided and the same is not an agreement in law since the same was not with free consent of ONGC. MBPT purposely had taken undue advantage of compelling circumstances of ONGC. ONGC was forced to sign on dotted line which were to the benefits of MBPT and against the interest of ONGC. The protest letter which was made a part of the said agreement is an evidence of same nature of the said agreement. The agreement in question is also not enforceable at law.	In the years 1978 and 1987, permissions were granted to ONGC on certain terms and conditions which inter-alia included conditions for payment of way leave fees and compensation at the rate of 50% of wharfage on crude oil which was to be imported into the port through ONGC's pipelines but not exported through MBPT's pipelines at Marine Oil Terminal at Jawahar Dweep. On both the occasions, without accepting terms and conditions, ONGC went ahead with laying of pipelines and contested MBPT's claims. It is on this background, it became necessary to have an agreement signed by ONGC in place, before conveying formal permission for laying of pipelines. Agreement was prepared after various rounds of discussions between officials of MBPT and ONGC and also after meetings held by respective ministries. On the request of ONGC, issues related to (i) reclamation and occupation of 23 acres and 2 acres of plots of MBPT's sea bed area by ONGC at Nhava and Trombay, respectively, in 1978 and (ii) way leave fees arrears with interest in respect of 26" dia. And 10.75" dia. gas pipeline from Uran to Thal, about 4 kms. of which passes through Port limits, have been de-linked by MBPT. These issues are yet to be settled by ONGC. At the time of agreement, ONGC was fully aware of payment of such charges since they were seeking permission for laying of pipelines. Further, ONGC

Sr. No.	Submissions of MBPT in its letter dated 30.08.18	Comments of ONGC	Reply furnished by MBPT on comments of ONGC
			<p>was under no obligation to sign the agreement under duress as contended by them. Therefore, ONGC's contention that agreement was one sided and ONGC was forced to sign on dotted line is legally objectionable and without any justification. Further, their observation is in fact ridiculing the inter-ministerial process undergone during the process of entering into the agreement.</p>
2.	<p>As per the agreement between MBPT and ONGC on 28.01.2005, ONGC was permitted to lay two additional pipelines within the MBPT port limits on land as well as in the sea, subject to terms and conditions and payments to be made to MBPT towards way-leave fees, wharfage compensation (as per section 3.2.1(l) of scale of rates) and all other associated charges as applicable as amended by MBPT from time to time and Govt taxes duties, cesses and levies in connection with the same as may be levied by State/Central Government Organizations or any other Statutory Authority from time to time are fully paid every year within the stipulated period.</p>	<p>1. MBPT insisted ONGC to sign one sided agreement before granting permission for laying of pipelines on certain term and conditions and some conditions were not agreeable to ONGC. However, on 28/01/2005 an agreement was signed between ONGC and MBPT which was entered under compelling circumstances as pipeline laying barges of LSTK contractor were on standby and ONGC's letter of disagreement was made part of the agreement. The agreement is not a contract in true sense as it does not have clauses for duration, exit, arbitration etc. It's an 18 page document with relevant governing documents made as part of the agreement.</p> <p>2. In the year 2006, MBPT had submitted a proposal to TAMP for general revision of its scale of rates. Pursuant to the proposal, TAMP issued notice to all port users including ONGC seeking their comments. A joint hearing followed on June 29, 2006 wherein ONGC made its submission about levy of compensation, exorbitant and unilateral increase in way leave charges and</p>	<p>As stated above, various requests made by ONGC have been considered by MBPT before signing agreement on 28.01.2005. Agreement dated 28.01.2005 was on the terms mutually agreed after various rounds of discussion between officials of MBPT and ONGC and also as per dispensation given by respective ministries and not one sided agreement as claimed by ONGC.</p> <p>Statement of Claim (for arrears from 1978 till July 2004) and Statement of Applicable Rates (indicating rates that will be applied from July 2004 onwards for old pipelines and rate that will be applied for new pipelines, which were to be laid) were communicated to ONGC on 27.07.2004. If ONGC then felt being coerced by MBPT, ONGC was very much free to lay new pipelines without entering into MBPT's Port limit. MBPT had not insisted on laying of pipelines through MBPT's Port limits.</p> <p>As can be seen from the above, matter was delayed for six months after communication of Statement of Claim and Statement of Applicable Rates. Delay was not on account of MBPT. Therefore, ONGC's statement that agreement was signed under compelling circumstances is not acceptable to MBPT. Compelling circumstances, stated by ONGC, were creation of its own and in no way was MBPT responsible for the same.</p> <p>TAMP's approval was not mandatory as per agreement dated 28.01.2005. However, ONGC has stopped payment w.e.f. 2014 in violation of the agreement insisting</p>

Sr. No.	Submissions of MBPT in its letter dated 30.08.18	Comments of ONGC	Reply furnished by MBPT on comments of ONGC
		<p>continuation of way leave charges for redundant pipelines. Subsequently, TAMP passed an order on Sept. 28, 2006 (Case No. TAMP/57/2005-MBPT) on the proposal submitted by MBPT for revision of its scale of rates. The above order was published in Gazette of India Extraordinary (Part-III, Section-4) on December 1, 2006, refer gazette no 178.</p> <p>In the above said order, while referring the dispute between ONGC and MBPT on the issue of way leave charges, TAMP observed <i>inter alia</i> that "As regards way leave charge is concerned, it is a fee for use of property of the port and the property is within port limit. Since Section 49 of MPT Act empowering this Authority alone to fix charges, the decision arrived at in the inter-ministerial meeting may have to be put in a legal framework so as to meet the provisions reported above. This position has also been brought to the notice of the Government."</p> <p>3. Opinion of the then Solicitor General of India was sought for taking further necessary action for resolving the dispute as the dispute could not be settled through discussions. SGI on 14.03.2014 has observed that Ministry of Shipping has recognized the existence of a dispute by directing Chairperson of MBPT to resolve the dispute mutually with ONGC. The SGI was of the opinion that ONGC should move the nodal ministry for referring the matter to TAMP instead of approaching the Writ Court. The ministry of</p>	<p>upon TAMP's approval. In terms of Clause Nos.3, 4 & 5 of Terms and Conditions (Page No.7), by various letters dated 19.09.2015, DO letter dated 13.11.2015 and another letter dated 01.07.2010 ONGC was requested to make payment of way leave fees as per the said agreement, failing which interest @ 18% is leviable on delayed payment.</p>

Sr. No.	Submissions of MBPT in its letter dated 30.08.18	Comments of ONGC	Reply furnished by MBPT on comments of ONGC
		Shipping also in all earnestness should make the reference to TAMP to resolve this long standing dispute.	Since the matter has been referred to TAMP, this argument has no relevance at this point.
3.	Special Way Leave Fees and rent was payable by ONGC in accordance with terms & conditions No.1, 2, 4, 5, 6, 7 & 8 and condition No. 2 of terms and condition (Financial) of the agreement dated 28.01.2005. Copy of Agreement on 28.1.2005 is furnished.	Statement of facts but in view of settled position of law, ONGC denies any such liability to pay since the same is not payable under the agreement signed under duress which is non-est. in law.	As stated above, requests made by ONGC have been considered by MBPT before signing agreement on 28.01.2005. Thus, agreement dated 28.01.2005 was on mutually agreed terms and not one sided agreement as claimed by ONGC. Therefore, ONGC's statement that agreement was signed under duress is far from factual position, as elaborated earlier.
4.	As per the agreement with ONGC on 28.01.2005, 11 Special Way Leave permissions were granted to ONGC for laying the pipelines on land as well as in the water area (sea bed) within the port limits and the annual bills were raised by MBPT every year with effect from 2005 to 2009. ONGC was regularly paying the annual Special Way Leave Fees except payment towards the billed interest for delayed payments and interest on Service Tax arrears. Special Way Leave Fees and rent were billed to ONGC annually as per agreement dated 28.01.2005.	<p>1. ONGC had been making payment of Way Leave Charges as per the agreement but under protest and in the meantime initiated the proposal for adjudication of the dispute by TAMP through discussions with MBPT officials at Mumbai and with the intervention of MoP&NG. Accordingly, based on the ruling of TAMP, CMD ONGC had written 08 letters to MoP&NG for referring the dispute to TAMP for resolution of the dispute. (5.12.2006, 02.01.2007, 01.02.2010, 26.10.2010, 25.06.2014, 29.07.2014, 03.02.2016 and 05.12.2016). MoP&NG in turn had written 3 letters to MoS for referring the dispute to TAMP for resolution. (29.11.2010, 08.03.2011 and 22.08.2014).</p> <p>2. Under Secretary, MoS vide letter no. PR-15020/01/2100-PG dt: 27.07.2011 had directed Chairperson, MBPT to mutually settle the matter with ONGC. ONGC officials had held a number of meeting with Financial Advisor & Chief</p>	<p>1. Bills have been raised as per mutually agreed terms recorded in agreement dated 28.01.2005</p> <p>2. As stated above, after receipt of Statement of Claim and Statement of Applicable Rates on 27.07.2004 by ONGC, it was ONGC's choice to lay pipelines through MBPT's Port limit. MBPT had not insisted upon ONGC for laying of pipelines through MBPT's Port limit. Therefore, ONGC's statement that agreement was entered into without free will and coercion is factually incorrect.</p> <p>The very fact that ONGC has been making payment till the year 2009 as per the agreement and raising issue of applicability of the agreement now is an afterthought.</p> <p>However, to settle the issue amicably, MBPT is seeking TAMP's approval in terms of Board's Resolution No.11 of 2018.</p>

Sr. No.	Submissions of MBPT in its letter dated 30.08.18	Comments of ONGC	Reply furnished by MBPT on comments of ONGC
		Accounts Officer for amicable resolution of the dispute. A meeting was also held on 13.08.2013 on certain issues including the dispute of Way Leave charge. MBPT took the stand that after signing of agreement, the dispute is not open for review. The stand of MBPT appears to have been taken without legal advice since the legal position is very clear. Any agreement which is entered into without free will and coercion is non-est in law and hence void-ab-initio.	
5.	For the last 4 years, ONGC has stopped payment of annual bills raised by MBPT in case of all 11 pipelines and one piece of land at Jawahar Dweep and ONGC insisted that MBPT shall obtain TAMP's approval on the rates applied for Special Way Leave Fees/ rent as per Section 48 of MPT Act, 1963.	Statement of facts.	As stated above, ONGC has stopped payment of Special Way Leave Fee in violation of mutually agreed terms of agreement. This has caused hardship to MBPT on account of non-receipt of revenue besides payment of ST/GST amounting to ₹32.13 crores on accrual basis.
6.	Further, ONGC vide letter dated 2.5.2016, has stated that MBPT was bound by Section 48 of MPT Act 1963 to get the rate of Special Way Leave Fees/ rent approved by TAMP after signing the agreement and also stated that the payment of Special Way Leave Fees will not be made till TAMP's approval is obtained. Also GGM Plant Manager, ONGC, Uran Plant requested for obtaining TAMP's approval for the rates of Special Way Leave fees billed by Estate Department of Mumbai Port.	Statement of facts. The approval of TAMP is sine qua non without which should such fees is levied, the same is bad in law.	ONGC is liable for payment of bills raised as per mutually agreed terms entered into vide agreement dated 28.01.2005. TAMP's approval was not mandatory as per agreement dated 28.01.2005. However, to settle the issue amicably, MBPT is seeking TAMP's approval in terms of Board's Resolution No.11 of 2018. However, MBPT has already approached TAMP, this argument has no relevance now.

Sr. No.	Submissions of MBPT in its letter dated 30.08.18	Comments of ONGC	Reply furnished by MBPT on comments of ONGC
7.	<p>ONGC has also disputed payment in respect of two pipelines (31209901 and 31209902) pointing out that these are dead pipelines. In terms of Clause No.7 of terms and conditions, all way leave fees/ rent will remain in force till ONGC completely removes all their structures/ pipelines/ encumbrances, etc. and vacates the site by handing over peaceful possession of the site to MBPT free from all such structures/ pipelines, etc. irrespective of whether they are actually not in use/ lying in decommissioned state. Therefore, MBPT is entitled to levy way leave fees on pipelines, as the pipelines are occupying the area, till the date of its removal. Thus, the levy of way leave charges on these two pipelines also forms part of the proposal.</p>	<p>This statement appears to be totally false. There was no dispute as such for two pipelines (31209901 and 31209902). ONGC asked clarification from MBPT as the zone/ sub-zone considered for the purpose of calculation of way leave fee were inappropriate. After repeated reminders, no clarification was received from MBPT on the subject. But still payment was made by ONGC as per actual zone/sub-zone.</p>	<p>The method of computation of Special Way Leave charges was explained to ONGC even before signing of the agreement and also vide letter No.EM/U-12/SD-42A/2312 dated 01.07.2010. The land rates for the zone nearest to the pipeline as prescribed in the Ready Reckoner have been considered for computation of special way leave fees. The rates for each pipeline, therefore, differ according to the land value of zone nearest to the pipelines. MBPT Board vide TR No.138 of 2009 has effected general revision in the rates of Special Way Leave fees. The contention of ONGC is, therefore, not correct.</p>
8.1	<p>The Special Way Leave fees with effect from 01.10.2009 has been calculated on the basis of rate of developed land as per Stamp Duty Ready Reckoner 2009 at 6% return and applying 50% factor for way leave which is applicable to all way leaves and additional 60% for pipelines being submerged (as per TR 203 of 1977). The total outstanding of Special Way Leave Fees works out to Rs. 174.93 crores (approx.) as on 01-05-2017 (Rs. 216.99 crores (approx.) as on 31-05-2018) excluding interest on delayed payment</p>	<p>1. ONGC pipelines are laid under the sea bed and are far off from the shores of Mumbai. Offshore fields to Uran Plant pipelines are spread over a length of approx. 19.5 Kms from the shore and only a small portion of pipeline passes nearby the shoreline of Mumbai (Uran Plant landfall portion of pipelines). In contravention to the established guidelines, the Ready Reckoner rates meant for the mainland of Mumbai had been used for fixing Way leave charges and there is exorbitant increase in way leave charges. Pipelines laid under sea bed are considered as laid</p>	<p>For underground pipelines, MBPT charges Way Leave Fees at 50% of the letting rate. For the land area under sea, rate is further reduced and charged at 60% of the rate of Way Leave Fee. Thus, Special Way Leave fees charged for ONGC's pipelines is 30% (i.e. 50% of the 60%) of the applicable rate and not 60% as contended by ONGC..</p>

Sr. No.	Submissions of MBPT in its letter dated 30.08.18	Comments of ONGC	Reply furnished by MBPT on comments of ONGC
	which is payable by ONGC in respect of 11 pipelines (BUT, HUT & MUT pipelines) and one land parcel at JD.	<p>on land and are charged at 60% of ready reckoner rates. It is stated that ONGC pipelines are laid under the seabed and far off from operational areas of the port. Facilities creation or other developmental activities of the port are not affected by ONGC pipelines. MBPT was charging nominal way leave for these pipelines till July 2004 and increased substantially from Aug 2004. Details of Way Leave charges as furnished by ONGC are brought out at para 4.3 below.</p> <p>2. Provisions of Policy Guidelines for Land Management by Major Ports does not apply to ONGC pipelines as these pipelines are laid under seabed. No land is occupied by these pipelines.</p>	<p>The policy guidelines for land management by ports provides for charging licence fee for water area. Please refer 12(l) of Broad Terms and Conditions for issuance of Right of Way permission for laying pipelines/ conveyor, etc. Therefore, ONGC's contention is incorrect. Further, the way leave charges are levied as per the agreement. At the relevant time, the policy guideline did not exist.</p>
8.2	Rate of rent for land parcel at JD has been calculated by applying 4% increase p.a. over the rate of Rs.72.83 as mentioned in agreement dated 28.01.2005.	Statement of facts.	No comments.
9.	A meeting was convened by Dy. Chairman, MBPT on 05.01.2018 when FA&CAO, Traffic Manager and Estate Manager (I/C) were present and it was decided to place the matter of recovery of outstanding arrears towards Special Way Leave fees of 11 ONGC pipelines before Land Allotment Committee in accordance with the Land Management Policy Guidelines, 2014 and to competent authority of MBPT and	No comments.	No comments.

Sr. No.	Submissions of MBPT in its letter dated 30.08.18	Comments of ONGC	Reply furnished by MBPT on comments of ONGC
	seek TAMP's approval for the Special Way Leave fees levied by MBPT.		
10.	The Land Allotment Committee examined the issue during the meeting on 15.01.2018 regarding obtaining TAMP's approval for Special Way Leave charges and recommended to obtain Board's approval to put the subject matter before TAMP. Accordingly, Board's approval vide TR 11 of 27-04-2018, was obtained.	Provisions of Policy Guidelines for Land Management by Major Ports does not apply to ONGC pipelines as these pipelines are laid under seabed. No land is occupied by these pipelines.	Land has been defined under Section 2(k) of the Major Port Trusts Act, 1963, as under : <p>"land" includes the bed of the sea or river below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth."</p> <p>The policy guidelines for land management by ports provides for charging licence fee for water area. Therefore, ONGC's contention is incorrect. Further, the way leave charges are levied as per the agreement. At the relevant time, the policy guideline did not exist.</p>
12.	TAMP's approval is requested to the rates of Special Way Leave Fees and rent as per agreement between Mumbai Port Trust and Oil & Natural Gas Corporation Ltd. dated 28.01.2005 with retrospective effect as indicated in Annexures – 3A and 3B, respectively.	It is submitted that: 1. Pipelines for Crude oil and Natural gas from Offshore fields to Uran Plant are laid on the sea bed (subsea) and no portion of these pipelines are on land. 2. Pipelines laid under sea bed are considered as laid on land and are charged at 60% of ready reckoner rates. It is stated that ONGC pipelines are laid under the seabed and far off from operational areas of the port. Facilities creation or other developmental activities of the port are not affected by ONGC pipelines. Therefore, there is no justification for levying Way Leave Charges on the pipelines of ONGC. Moreover, no services are being rendered by MBPT in connection with the said pipelines. Levying the said charges may be tantamount to unjust enrichment since for no service, charges are being levied by MBPT. 3. Nominal Way leave charges should be charged for the pipelines as per the	1. Definition of "land" as provided in the MPT Act, 1963 has been furnished above. 2. Charging of way leave fee/ licence fee for land/ area below water at the rate of 30% of rate applicable to land is as per general policy of the MBPT Board. 3. Way Leave Fees has been applied as per Statement of Claim and Statement of Applicable Rates communicated to ONGC on 27.07.2004 and agreed to by ONGC. In nutshell – (a) After communication of Statement of Claim and Statement of Applicable Rates to ONGC on 27.07.2004, ONGC was free to lay new pipelines without entering into MBPT's Port limit; (b) it was ONGC's choice to lay pipelines through MBPT's Port limit even after knowing the claim for arrears MBPT has made and the rate at which MBPT proposes to charge Way Leave Fees; (c) compelling circumstances stated by ONGC were due to its own actions, for which MBPT was not responsible; and (d) as stated hereinabove, there was no coercion from MBPT's side on ONGC to lay pipelines through MBPT's Port limits.

Sr. No.	Submissions of MBPT in its letter dated 30.08.18	Comments of ONGC	Reply furnished by MBPT on comments of ONGC
		<p>practice followed till July-2004.</p> <p>In light of the above and more specifically order of TAMP passed on Sept. 28th, 2006, we pray that the request of MBPT deserves to be dismissed in limine.</p>	<p>In view of the facts stated above, TAMP is requested to pass suitable order granting approval to the rates of way leave fees levied as per the agreement between MBPT and ONGC dated 28 January 2005 and further revised from time to time as per MBPT Board's policy, with retrospective effect as proposed.in the matter of Way Leave Fees chargeable to the pipelines laid by ONGC in MBPT's Port limits.</p>

1.2. The ONGC has also furnished the details of the Way leave charges stating that as per records available, the way leave charges so far has been as follows and the MBPT vide its letter dated 24 October 2018 has responded as follows :

S. No	Duration	Way Leave Charge	MBPT's Reply
1.	1978 to Dec 83	Nominal charge of ₹.1.0/ month per pipeline irrespective of the area occupied by the pipeline.	<p>Revision of way leave fees is as per Board's policy from time to time.</p>
2.	Jan 84 to Dec 88	Nominal charge of ₹.10.0/month per pipeline irrespective of the area occupied by the pipeline.	
3.	Jan 89 to July 2004	Charge @ ₹.1.0/ M3/month for the area occupied by the pipeline i.e. if the area occupied by pipeline is say 26529 M3, then Way Leave Charge would be ₹.26529/month. Increase from ₹.10.0/month to ₹.26529.0/month.	
4.	Aug 2004 to Sept 2009	Way Leave Charge fixed at different rate for pipelines depending upon location of the pipeline. i.e. way leave for pipelines from offshore fields to Uran Plant were in the range of ₹.7.68/M3 to 152.22/M3 whereas for pipelines from Uran Plant to Trombay Terminal/ Jawahar Deep were in the range of ₹.18.23/M3 to 72.83/M3. Above rates were annually increased by 4% till Sept 2009.	
5.	Aug 2009 till date	Way Leave Charge fixed as per Ready Reckoner 2009 for pipelines depending upon location of the pipeline. i.e. way leave for pipelines from offshore fields to Uran Plant were in the range of ₹.105.6/M3 to 192.6/M3 whereas for pipelines from Uran	

		Plant to Trombay Terminal/ Jawahar Deep were in the range of ₹.23.06/M3 to 352.0/M3. Above rates were annually increased by 4%.	
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2. A joint hearing on the case in reference was held on 15 October 2018 at the office of the Authority in Mumbai. At the joint hearing, both the MBPT and the ONGC have made their respective power point presentation. The MBPT and ONGC have made the following submissions at the joint hearing:

Mumbai Port Trust (MBPT)

- (i). MBPT & ONGC signed an Agreement on 28 January 2005. Based on the Agreement provisions, MBPT raised bills for licence fees and way leave charges. ONGC made payment of way leave charges upto 2014. It withheld way leave charges after 2013-14.
- (ii). On being referred to Ministry, the Ministry has directed MBPT to resolve the issue amicably with ONGC. MBPT has held several meetings with ONGC on the matter. ONGC insists for specific approval of TAMP/ Ministry. We have submitted a proposal to TAMP on 30.08.2018, for approval as requested by ONGC.
- (iii). ONGC has disputed payment for dead pipelines. Charges are payable in respect of dead pipelines as per condition no. 7 of the Agreement till the pipelines are completely removed.
- (iv). Special way leave fees and rent are payable by ONGC as per the terms and condition no. 1, 2, 4, 5, 6, 7 and 8 read with condition no. 2 of the Agreement dated 28.01.2005.

ONGC

- (i). We have two pending issues with MBPT viz., wharfage compensation and way leave. Our submissions on wharfage compensation has been given by us earlier. We now give comments with regard to way leave charges.
- (ii). ONGC has laid pipelines for crude oil evacuation from Mumbai High to Uran Plant since 1978. Approximately, 19.5 kms of these pipelines pass through MBPT limits.
- (iii). While granting permission to lay pipelines, MBPT imposed some conditions for payment of way leave fees for pipelines and wharfage compensation (for crude oil imported through port limit and not exported from port facilities).
- (iv). ONGC objected to the payment since beginning and did not make any payment till 1989. Thereafter, based on the discussions in inter-ministerial meetings, ONGC paid ₹.10 crores to ONGC in October 1989.
- (v). When ONGC again approached MBPT for permission to replace old pipelines and lay new pipelines, MBPT declined and asked ONGC to clear past dues since 1978 amounting to ₹.584.54 crores. This amount includes wharfage compensation from 1978-79 to 2003-04 of ₹.221/- crores, interest @ 18% pa on wharfage compensation of ₹.321.6 crores, way leave charges of ₹.15.96 crores, interest on way leave @ 18% pa at ₹.24.12 crores, miscellaneous charges at ₹.1.7 crores.
- (vi). At the Ministry of Shipping's behest ONGC paid ₹.100 crores to MBPT in October 2004. Thereafter, ONGC has paid ₹.127.82 crores in November 2004.
- (vii). The Agreement entered by ONGC with MBPT in 2005 was signed by ONGC under compelling conditions.

- (viii). In the Order passed by TAMP in 2006 while dealing with the general revision proposal of MBPT, TAMP has observed that as regards way leave charges, it is a fee for use of properties of the port and the property is within port limit. Since Section 49 of MPT Act empowers TAMP alone to fix charges, the decision arrived at the inter-ministerial meeting may have to be put in a legal framework to meet the provisions reported above.
- (ix). Based on the said ruling, ONGC approached Petroleum Ministry. Petroleum Ministry has also written to Ministry of Shipping.
- (x). Though ONGC desires to settle the matter amicably, MBPT has not given any cognizance to TAMP Order and has repeatedly cited the provisions of the Agreement. MBPT has taken the stand that after signing of agreement, dispute is not open for review and that TAMP Order is subsequent to signing of Agreement.
- (xi). In view of this stand taken by MBPT, ONGC decided to withhold payment of wharfage compensation and way leave after 2013-14.
- (xii). From the year 2003-04 to 2013-14, we have made a payment of ₹.220.22 crores to MBPT towards way leave charges.
- (xiii) ONGC pipelines are laid under the sea bed and are far off from the shores of Mumbai. Offshore fields to Uran Plant pipelines are spread over a length of approx. 19.5 Kms from the shore and only a small portion of pipeline passes nearby the shoreline of Mumbai (Uran Plant landfall portion of pipelines). The Ready Reckoner rates are meant for the mainland of Mumbai had been used for fixing Way leave charges and there is exorbitant increase in way leave charges. We are paying under protest.
- (xiv). To cite an example, the way leave charges of one category of pipelines has been proposed to be increased by more than 1000% i.e. from ₹. 9.34 per sq.m to ₹.105.60 per sq.m.
- (xv). It is not that we do not want to pay. We are ready to pay. But the amount should be reasonable and should be in line with the practice followed by MBPT till July 2004.

MBPT

- (i). MBPT had its own policies for working out the rentals in the past. Thereafter, MBPT decided to determine the way leave charges as per the Ready Reckoner rates. Since the Agreement with ONGC had provision for review of way leave charges, the way leave charges were reviewed. The way leave charges have been reviewed based on Ready Reckoner. Hence, there was a substantial increase in way leave charges.
- (ii). The Agreement was signed by high rank officials of MBPT and ONGC. There was no coercion/ compulsion. It is not fair to now state that the Agreement was signed by ONGC under compelling conditions.
- (iii). We have determined the way leave charges based on the Ready Reckoner as per the Land Policy Guidelines.

MBPT

- (i). As per the definition of land in the MPT Act, 'land' includes the bed of the sea or river below high-water mark, and also things attached to the earth or permanently fastened to anything attached to the earth.
