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Tariff Authority for Major Ports

G.No.256

New Delhi,

28 June 2017

NOTIFICATION

In exercise of the powers conferred by 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 the New Mangalore Port Trust for fixation of Reserve Price for allotment of spaces in the Business Development Park (BDP) at NMPT as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/6/2017-NMPT

New Mangalore Port Trust

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Applicant

QUORUM:

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

ORDER

(Passed on this 24th day of May 2017)

This case relates to a proposal dated 29 December 2016 received from the New Mangalore Port Trust (NMPT) for fixation of Reserve Price for allotment of spaces in the Business Development Park (BDP) at NMPT.

2.1. The NMPT under cover of its letter dated 29 December 2016 has filed its proposal for fixation of Reserve Price for allotment of spaces in the Business Development Park at NMPT following the amended Land Policy Guidelines, 2014 issued by the Ministry of Shipping (MOS).

2.2. At our request vide our letter dated 12 January 2017, the NMPT vide its email dated 17 January 2017 furnished List of users / shortlisted lessees to be consulted with contact details and copy of the approval of the Board of Trustees of the Port approving the subject proposal.

3.1 The main points of the NMPT proposal dated 29 December 2016 are given below:

- (i). The port intends to bring under one roof all the stakeholders viz., Port Users, Customs, Banks etc., to facilitate and promote Exim trade. Earlier SOR for Estate related activities was notified by TAMP vide its letter No.TAMP/60/2012-NMPT dated 3 July 2014. The Reserve Price for the building – Business Development Park was not notified under the said notification.
- (ii). As per the New Land Policy Guidelines, 2014, the port has to follow the tender-cum-auction procedure for allotment of covered space in the building. In order to proceed with the tender modalities, the port trust has to fix the reserve price for the building area in the tender itself. In this respect, a detailed proposal for fixing the reserve price has been worked out by the port as per the New Land Policy Guidelines, 2014.
- (iii). In pursuance of the amended Land Policy Guidelines, 2014, the NMPT has constituted a Land Allotment Committee (LAC) under the Chairmanship of Deputy Chairman (NMPT) and other members viz. Chief Engineer (Civil), Traffic Manager, FA & CAO, Deputy Chief Engineer (Civil) and Asst. Estate Manager.
- (iv). The LAC in its meeting held on 18 November 2016 has considered various factors among those listed in the amended Land Policy Guidelines to determine the market value of the land. The main points made in the report of LAC are given below:
 - (a). The AEM, the Co-convenor of the committee, apprised the committee that, the work of construction of building to facilitate Business Development Park for Export / Import trade, awarded to M/s. CCC Ltd., Chennai, is nearing completion.
 - (b). As per Clause 11.2(d) of the Land Policy Guidelines, 2014, the covered space in the premises shall be leased through tender cum Auction

methodology through a competitive bidding process over the reserve price of such covered spaces.

- (c). As per clause 11.2(h) the Land Guidelines covered spaces may be allotted to the PSU and the government departments at the reserve price on nomination basis. The clause 11.2(e) stipulates that the reserve price shall be finalized by the LAC as per the methodology explained under clause 13(b) of the Land Policy Guidelines. The clause 13(b) states that the LAC, while recommending the latest market value of any land / covered space shall take into account the highest of following the factors:
- (i). State Government ready reckoner of land values in the area, if available for similar classification / activities.
 - (ii). The highest rate of actual relevant transactions registered in last 3 years in the port's vicinity with an appropriate annual escalation rate to be approved by the port Trust Board.
 - (iii). Highest accepted Tender cum Auction rate of port land for similar transaction, updated on the basis of the annual escalation rate approved by the Port Trust Board.
 - (iv). Rate arrived by an approved valuer appointed for the purpose by the port.
 - (v). Any other relevant factors as may be identified by the port.
- (d). The Valuation of BDP considered by LAC is as under:
- (i). The rate of Govt. Reckoner has been taken from the Govt. Ready Reckoner of Mangalore City Corporation for the year 2015-16 given in the Valuation Report.
 - (ii). Relevant transaction in ports vicinity is considered as Nil.
 - (iii). Highest rate of similar transactions has been taken from the latest Tender-cum-Auction methodology followed for leasing the port covered area.
 - (iv). The port has appointed the M/s. MC Jain & Associate, Govt., approved valuer to value the lands and buildings. The valuation of BDP is done by an Independent Govt. approved valuer. The actual cost of construction is taken from the work order issued to the contractor.
 - (v). Current rent / license is considered as one of the factors to arrive at the market value of land.
- (e). A comparative statement of Valuation of Business Development Park and the lease rent recommended by LAC is given below:

(in ₹)

Description of Property	Plinth Area in Sq. Mtrs	Carpet Area in Sq. Mtrs	Land (Value) per Sq. Mtrs	Premises/ Cost of Construction (Value)	Composite value as on 02/11/2016	Land value as per State Govt. Reckoner per sq. mtr.	Relevant Transactions in Port's Vicinity	Highest Rate of Similar Transactions	Rate as per Approved Valuer per sq. mtr.	Any Other Relevant Factor (Current Rent/ SOR)	Annual Rent of the Property @ 6%	Reserve Price for Annual Lease Rent	Monthly Rent of the Property	Monthly Rate per sq. mtr.
1	2	3	4	5	6	7	8	9	10 (6/3)	11	12 (6*6/100)	13	14 (13/12 months)	15 (14/3)
Still + 3 floor and Terrace of Business Development Park for Exports & Testing Centre.	9075	7400	87,008,199	283,036,000	370,044,199	32,000	0	34,200	50,006	1,047	22,202,664	22,202,664	1,850,222	250

(25 Cr. Construction Cost + ₹3,30,36,000 i.e. AMC cost @ 1% on the construction cost @ 8% discount factor for 50 years)

(28.30Cr. Construction Cost+8.70 Cr. Land Cost)

(6% X 3,70,44,199)

(22202664 / 12 months) (18,50,222 / 7400 sq.mtr)

Assumptions:

1. Plinth Area and Carpet Area taken as per the Drawing attached with the Agreement/work order.
 2. Land cost has been taken from the Land Valuation Report of NMPT (2015-16)
 3. Cost of Construction of ₹25 Cr as per work order issued to M/s CCC Ltd Chennai.
 4. Discounting factor of 8% has been considered for AMC cost @ 1% on the construction cost for 50 years and same is included in the cost of construction i.e. ₹3,30,36,000/-.
- (f). As per the Land Policy Guidelines 2014, building / structure are to be rented / released out on tender cum action basis. The lease rent has to be based on the market value of the property as per the five factors prescribed in the guidelines. The rate for Scale of Rate is arrived at based on the guidelines.
- (g). The committee observed that, best rate for the premises has been arrived after considering the 5 factors indicated in the Land Policy Guidelines 2014.
- (h). The proposal is purely based on the report of the valuer or the current lease rent whichever is higher.
- (i). The calculations are arrived based on the Land Valuation Report submitted by the Government approved valuers appointed by the port. The cost of construction of Business Development Park and Testing Centre has been considered at ₹25.00 cr. The Annual Maintenance cost @ 1% of the construction cost of building is also considered for arriving at the rate as explained above. Monthly lease rent is arrived for the building at 6% of market value of the premises as per the Land Policy Guidelines 2014.
- (j). The LAC after detailed discussion and deliberations recommended that appropriate decision may be taken by the Board to fix SOR of ₹250/sqm/month for the Business Development Park building. The LAC has also recommended conditionalities governing the recommended lease rent.
- (v). The recommendation of LAC was considered by NMPT in its Board of Trustees meeting held on 2 December 2016. The main points of the minutes of the Board Meeting are as given below:
- (a). The NMPT has availed assistance from the Commerce Ministry under Assistance to States for Development of Export Infrastructure and Allied Activities (ASIDE) Scheme for ₹15 crores for construction of the Business Development Park and Testing Centre to cater to the needs of the port users and other organizations associated with the port operation viz. Customs, Immigration, Port Health, Testing Laboratories, Clearing and Forwarding Agents, Steamer Agents, Stevedores, Banks, Post Office etc.
 - (b). The construction cost of the building is around ₹28.30 crores, out of which port has availed grant of ₹15 crores from the Commerce Ministry. That apart the land value would be around ₹8.7 crores and therefore the total cost for developing the centre is around ₹37 crores. Accordingly, after taking the actual expenditure of ₹37 crores, the LAC has fixed tariff of ₹250/- per sq.mtr.per month to recover 6% of the total investment as per the Land Policy Guidelines.
 - (c). The objective of giving the grant was to provide the facility at a reasonable rate to facilitate the trade that would reduce the port transaction cost. Such a high rate including the grant component would be passed on to the trade and thereby the object of the Commerce Ministry to facilitate the trade reducing the transaction cost would be defeated. Further, in the proposed rate the entire building may remain vacant.

(d). After deliberation, the Board of Trustees has recommended that after excluding the grant component for fixing of tariff, the rate comes to around ₹171/- per sq.mtr. per month and the same may be endorsed to the TAMP for approval.

(e). The Valuation of Business Development Park considered and the rate recommended by the NMPT Board is given below:

Description of Property	Plinth Area in Sq. Mtrs	Carpet Area in Sq. Mtrs	Land (Value) per Sq. Mtrs	Premises/ Cost of Construction (Value)	Composite value as on 02/11/2016	Rate as per State Govt. Reckoner per sq. mtr.	Relevant Transactions in Port's Vicinity	Highest Rate of Similar Transactions	Rate as per Approved Valuer per sq. mtr.	Any Other Relevant Factor (Current Rent/SOR)	Annual Rent of the Property @ 6%	Reserve Price for Annual Lease Rent	Monthly Rent of the Property	Monthly Rate per sq. mtr.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Stilt + 3 floor and Terrace of Business Development Park for Exports & Testing Centre.	9075	7400	87,008,199	133,036,000	220,044,199	32,000	0	34,200	29,736	1,047	15,184,800	15,184,800	1,265,400	171

(25 Cr. Construction Cost+ ₹. 3,30,36,000 i.e. AMC cost @ 1% on the construction cost @8% discount factor for 50 years- 15 Cr Grand from Ministry of Commerce.)

(f). The Board of Trustees has approved the conditionalities as proposed by the LAC.

(g). The ₹171/- per sq.mtr. per month would be applicable to the port users including Immigration, Port Health, Customs, Testing Laboratory, Post Office, Banks and other Trade related agencies as envisaged in the Project Report.

(h). As regard other agencies, if interested to take the space, the port shall follow the Tender cum Auction process and ₹171/- per sq.mtr. per month would be the reserve price and the market force will decide the rentals that the trade can bear.

(vi). A copy each of the extract of Minutes of the Meeting of the Land Allotment Committee, approval of the Board of NMPT along with proposed Scale of Rates (SOR) are furnished.

3.2. The NMPT has requested to consider the proposal and give approval.

4. Thus, in short the NMPT has sought the approval for reserve price of ₹171 per sq. mtr. per month to complete the tender cum auction formalities for allotment of covered space of the Business Development Park with the following conditionalities:

Description of Property	Lease rent proposed by NMPT
Stilt + 3 floor and Terrace of Business Development Park for Exports & Testing Centre. Admeasuring Carpet Area of 7400 Sq. Mtrs.	₹171/- Per Sq. Mtr. Per Month.

Proposed Conditionalities:

(i). As per the Land Policy Guidelines 2014, building / structure are to be rented / released out on tender cum action basis. The lease rent has to be based on the market value of the property as per the five factors prescribed in the guidelines. The rate for Scale of Rate is arrived at based on the guidelines.

- (ii). The port appointed the M/s. MC Jain & Associate, Govt., approved valuer to value, the lands and buildings.
- (iii). Current rent / license is considered as one of the factors to arrive at the market value of land.
- (iv). The proposal is purely based on the report of the valuer or the current lease rent whichever is higher.
- (v). Monthly lease rent is arrived for the building at 6% of market value of the premises as per the Land Policy Guidelines 2014.
- (vi). The Valuation is done by an independent Govt. approved valuer. The actual cost of construction is taken from the Work order issued to the contractor.
- (vii). All the conditions/ notes prescribed in the existing Scale of Rates/ Schedule of License Fees and Lease Rentals shall apply to the extant they are not inconsistent with the conditions prescribed in the Land Policy Guidelines 2014 announced by the Government on 17 July 2015.
- (viii). The rates prescribed shall be applicable for a period of five years with effect from date of notified by TAMP.
- (ix). The lease rent proposed shall bear an escalation @ 5% (compoundable) per annum. The amount so arrived will be rounded off to nearest Rupee.
- (x). Security Deposit equivalent to two years Licence Fee shall be collected at the time of allotment. The Security Deposit will be refunded without interest after the land is vacated and handed over to NMPT after adjusting any amount that may be due to NMPT.
- (xi). The Licensee shall not make any addition/ alteration to the existing original structure without the prior permission of NMPT. While terminating the contract or vacation licensee has to hand over the premises to the NMPT in the original condition given to them. If the licensee fails to do so then NMPT will arrange for such restoration of structure at the cost, risk and responsibility of the licensee.
- (xii). The License fees or charges shall be paid from the date of issue of the allotment letter by the licensee at the Scale of Rate notified by TAMP from time to time.
- (xiii). The permit shall lapse automatically at the expiry of the calendar month for which it has been issued. The license shall be up to a maximum period of ___ months and license fee is levied as per the notified Schedule of Rates.
- (xiv). The NMPT shall have the right at any time to resume the possession of the building/ space wholly or partly which is required by the Port in after giving a notice period of 15 days about its proposed intention of resuming the building/ space allotted to the license. In case of due expiry of the license tenure/ or after giving notice, if the licensee fails to vacate the premises it will be treated as unauthorized occupation/ encroachment.
- (xv). The licensee shall have the right to appeal against resumption of the land to the Board of Trustees of the NMPT within a period of 30 days from the date of receipt of the Order appealed against and the decision of the Board of Trustees of the NMPT will be final in this regard.
- (xvi). The licensee shall agree to comply with all rules or directions issued by the NMPT from time to time. Should the licensee neglect to comply with the rules or directions, the NMPT may terminate the license.

- (xvii). The License shall agree that all payments and expenses of whatever sort due to the Port in respect of the Building/ spaces allotted to the Licensee, shall be recoverable at the rates prescribed in the Scale of Rates of NMPT from time to time.
- (xviii). The licensee shall comply with all rules and regulations that may from time to time be issued by Govt./ Local Authorities/ Circulars as per Law of the Land.
- 5.1. In accordance with the consultation process prescribed, a copy of the NMPT proposal dated 29 December 2016 was circulated vide our letter dated 23 January 2017 to the users/ user organisations seeking their comments, including the Senior Superintendent of Post Office, as suggested by NMPT vide its e-mail dated 31 January 2017.
- 5.2. The comments received from the users/ user organisations were forwarded to the NMPT as feedback information. The NMPT has not responded.
6. A joint hearing in this case was held on 20 March 2017 at the NMPT premises. The NMPT made a brief Power Point presentation of its proposal. The NMPT and the concerned users/ user organizations / lessees have made their submissions at the joint hearing.
- 7.1. The NMPT was requested vide our letter dated 24 March 2017 to prescribe separate concessional rates with concession only on the land component for organisations eligible under the amended Land Policy Guidelines, 2014, as desired by the NMPT, and file the modified proposal by 31 March 2017.
- 7.2. In this regard, the NMPT vide its fax dated 15 April 2017 has intimated that the proposal sent by the port is for the notification of the rate for the Business Development Park. The building of the Business Development Park is constructed on port's plot of 2.5 Acres. Therefore, the proposal sent by the port is for notification of rate for the constructed building including the land. In Clause no.11.2 (h) of Land Policy Guidelines, 2014 relating to grant of concession to certain specified agencies, it can be seen that the words used are Port Trust Board may decide after incorporating appropriate safeguards. Hence, it is not mandatory to give concessions to Government departments. Therefore, it is felt that there is no need to have separate concessional rates and resultantly there is no need to modify the proposal already sent by the port.
- 7.3. Subsequently, NMPT vide its email dated 08 May 2017 has confirmed that the 1 % of the cost of the building considered as maintenance cost is to meet the expenditure of providing security service in three shifts (round the clock) for the entire complex, garbage clearance in the entire complex, providing lift operators during the working hours, providing periodical maintenance of the building (painting of entire building two years once and plumbing work etc.), garden maintenance in the complex and maintenance of electrical installations etc.
8. 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>.
9. With reference to the totality of the information collected during the processing of this case, the following position emerges:
- (i). The proposal is to fix Reserve Price for allotment of space in the Business Development Park at New Mangalore Port Trust (NMPT). The main aim of the NMPT for construction of BDP is to bring under one roof all the stakeholders to facilitate and promote Exim trade and also to cater to the needs of the Port Users and other Organisations associated with the Port operations viz. Customs / Immigrations, Port Health, Testing Laboratories, Clearing and Forwarding Agents, Steamer Agents, Stevedores, Banks, Post Office etc.

The NMPT has confirmed vide its letter dated 15 April 2017 that construction of the building for Business Development Park is completed. The building is

constructed on survey no.49 having the plinth area of 9075 sq.mtrs and carpet area of 7400 sq.mtrs.

Clause 10.1 (b) of the Amended Land Policy Guidelines of 2014, stipulates that in respect of fresh allotment of land, the Port may also allot land inside the Custom bond area for activities vital to Port operations or for those which clearly aid Port activities and sea trade, such as, setting up of duty free shop, communication centres, parking facilities, passenger facilities like shopping centres, cyber cafes, health clubs etc. and security related activities. The tenure of license for such land will be decided by the respective Port Trust Boards and such tenure shall not exceed 5 years. All such proposals should, however, have the necessary statutory and/or administrative approvals. Land is to be allotted through tender-cum-auction methodology through a competitive bidding process over the reserve price of such plots which shall be the updated Scale of Rates (SOR) notified by this Authority. In this back drop, the NMPT has filed the proposal in December 2016 for fixation of Reserve Price for BDP following the amended Land Policy Guidelines, 2014.

Thus, in short the proposal of NMPT is for fixation of reserve price along with the conditionalities to enable port to complete the tender cum auction formalities for allotment of covered space of the Business Development Park.

- (ii). Clause 13 (c) of the Amended Land Policy Guidelines, 2014 mandates this Authority to notify the scale of rates of the Port Land based on the methodology prescribed in Clause 13(a) of the ibid Guidelines. No specific Guidelines are prescribed in Land Policy Guidelines, 2014 and the Amended Land Policy for fixation of lease rent for the structures owned and constructed by a Port Trust.

It is relevant in this regard to state that this Authority had approved the proposal of Mormugao Port Trust (MOPT) for fixation of lease rental for commercial building owned and constructed by the MOPT near railway station at Vasco and subsequent proposal of MOPT for fixation of lease rent for various structures owned by the port.

This Authority has noted that this Authority is statutorily mandated under Section 49(1) of the Major Port Trusts Act, 1963 to frame SOR and conditionalities governing application of the SOR from time to time for any property belonging to or in the possession of a Port Trust. Further, as pointed out by the MOPT at the relevant point of time, Land as per Section 2(K) of the MPT Act, 1963 includes, inter alia, things attached to the earth or permanently fastened to anything attached to the earth. That being so, this Authority has held that the methodology prescribed in Clauses 18(a) and 18(b) of the Land Policy, 2014 [i.e. clauses 13(a) and 13(b) of the amended LPG 2014] to determine the market value and reserve price in terms of annual lease rent for port "land" would have to be applied mutandis-mutandis for determination of market value and reserve price in terms of lease rent for "buildings" also.

In view of the above position, this Authority proceeded to fix the lease rental for the premises based on the proposal filed by MOPT following the methodology prescribed in Land Policy Guidelines, 2014.

On the same analogy, this Authority proceeds with current proposal of NMPT and fixes lease rent for the newly constructed building by NMPT for Business Development Park following the methodology prescribed in the amended Land Policy Guidelines, 2014.

The proposal of NMPT seeks approval of reserve price for the BDP. In this context, it is relevant here to state here that clause 13(b) of the amended LPG, 2014 states that reserve price in terms of the annual lease rent would be the latest Scale of Rates (SOR) determined in accordance with Para 13(a) and 13(b) clause 13(c) and would in no case be less than 6% of the latest market value

recommended by the Port Trusts. Clause 13 (c) of the amended LPG 2014, mandates this Authority to notify the Scale of Rates of land following the said LPG. Thus, this Authority is mandated as per the amended LPG, 2014 to notify the lease rent for BDP and not reserve price. The lease rent approved by this Authority can be made use by the NMPT as reserve price for inviting tender-cum auction.

- (iii). (a). The amended Land Policy Guidelines 2014, clearly lays down the procedure and the methodology to be adopted for determining the market value and the latest Scale of Rates of the port lands.
- (b). As per clause 11.2(e) of the amended Land Policy Guidelines 2014, a Land Allotment Committee (LAC) shall be constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic.

Port has constituted the LAC under the Chairmanship of Dy. Chairman, NMPT and comprising of other members viz. Chief Engineer, Traffic Manager, Financial Advisor and Chief Accounts Officer, Asst. Estate Manager, Dy. Chief Engineer. Thus, the NMPT has complied with the stipulation of the formulation of the LAC as per the amended Land Policy Guidelines, 2014.

- (iv). Valuation:

As per Clause 13(a) of the amended Land Policy Guidelines of 2014, the LAC shall determine the market value of land taking into account highest of the five factors like (i) State Government's ready reckoner value if available for similar classification/ activities, (ii) Highest rate of actual relevant transactions registered in last three years in the Port's vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards), with an appropriate annual escalation rate to be approved by 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 and (v) any other relevant factors as identified by the port. In case the LAC is not choosing the highest factor, the guidelines require the reasons for the same have to be recorded in writing.

As per clause 13 (c) read with clause 13(a) and (b) of the amended 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) amended Land policy guidelines of 2014.

Of the five factors prescribed in the amended Land Policy Guidelines, 2014 for arriving at the market value of the land, the NMPT has considered the four factors. As regards the factor of highest rate of actual relevant transactions registered in last three years in the Port's vicinity it is considered as nil. The methodology for land valuation considered by LAC is explained below:

- (a). Under the first option, land value as per State Govt. Ready Reckoner is reportedly considered based on the Mangalore City Corporation, for the year 2015-16 as made available by Government approved valuer M/s M. C. Jain & Associates, Supela Bhila at ₹32,000/-per Sq. Mtr.
- (b). Under the second option, as stated earlier, the highest rate of actual relevant transactions registered in last three years in the ports vicinity is considered as Nil.
- (c). Under the third option of land value based on Highest accepted tender cum auction rate of port land, the NMPT has considered the allotment Order issued to

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(25 Cr. Construction Cost+ ₹.3,30,36,000 i.e. AMC cost @1% on the construction cost @8% discount factor for 50 years- 15 Cr Grand from Ministry of Commerce.)

- (v). As per clause 13 (b) of the revised Land Policy Guidelines, 2014, the lease rent should not be less than 6% of the market value of land recommended by Port Trust. The LAC has concluded that 6% is a reasonable rate of return. This recommendation of the LAC is also approved by the Board of Trustees of the Port except for reducing the reserve price from ₹250 per sq. mtr. per month to ₹171/sq.mtr./month by excluding the grant component received from the Government of India for the reasons explained earlier.
- (vi). Thus, in short, the LAC headed by Dy. Chairman and comprising of Head of Departments of the port trust has, after considering the valuation of the BDP following Land Policy Guidelines, 2014 has recommended the lease rent at ₹250 per sq.mtr per month. The Board of Trustees of NMPT has reviewed the recommendation of the LAC and has proposed to reduce the lease rent at ₹171/sq.mtr./month. Recognising that the proposal filed by NMPT is in compliance with the amended LPG 2014, and has the approval of the Board of Trustees of the NMPT, this Authority is inclined to approve the lease rent as proposed by the NMPT. As stated earlier, the lease rent approved by this Authority can be utilised by port for reserve price to invite tender-cum auction for BDP.
- (vii). The Association for New Mangalore Port Stevedores (ANMPS) has contended that the value of land is almost nil as the port already owns the land obtained from local people for a very less rate of ₹2,000 per acre earlier and under ASIDE Scheme a grant of ₹25.00 Cr has been obtained. The ANMPS has requested to fix less than ₹50 per sq. mtr. per month for covered area. The port has not responded on the comments of ANMPS. It is relevant here to state that this Authority is mandated to follow the LPG for fixation of lease rent of port properties. As stated earlier, the port has complied with the guidelines provisions for fixation of lease rent. Grant obtained by NMPT from Government of India has already been excluded while assessing the market value of the Building as per the approved valuer. The amended LPG 2014, require to adopt the highest of the five factor for arriving at the lease rent. The port has followed the amended LPG guidelines 2014. The ANMPS request is not found to be in line with LPG.
- (viii). Most of the users/lessees consulted during the case like Stevedores Association and Postal Department had requested to give some concession in the rate. The NMPT has clarified that the Land Policy Guidelines, 2014 has used the words that Port Trust Board may decide after incorporating appropriate safeguards. Hence, it is not mandatory to give concessions to Government Department. Therefore, the port has felt that there is no need to have separate concession rates and resultantly no need to modify the proposal already submitted by the Port.

In this context, it is relevant to state that as per clause 11.2(h) of the amended Land Policy Guidelines, 2014, concession in lease rent is granted by Major Port Trust to security agencies and Government Department only upto 50% of the annual lease rent. The amended Land Policy Guidelines, 2014 further states that such concession can be given for only small extent of land required for core operational purposes imperative for Port functioning and not otherwise. The issue of granting concession and the quantum is decided on a case to case basis by the

Port Trust Board, after recording the reasons in writing, as stipulated in the LPG, 2014.

Therefore, it is open for NMPT to exercise the powers granted to Major Port Trusts under clause 11.2(h) of the amended Land Policy Guidelines, 2014 to grant concession to Government of India organisations in line with the provisions prescribed in the amended Land Policy Guidelines, 2014.

- (ix). (a). As per clause 13 (c) of the revised Land Policy Guidelines, 2014, the annual escalation in the lease rent should not be less than 2%. Thus, 2% annual escalation is the minimum level.

The NMPT has proposed annual escalation of 5% which has the approval of the Board of Trustees of the NMPT.

None of the users/ users association has objected for escalation of lease rentals by 5%. The port has the flexibility to choose annual escalation higher than 2%. Since the annual escalation for the BDP proposed by the NMPT at 5% has the approval of the Board of Trustees of the NMPT, the same is approved as it is well within the frame work of the amended Land Policy Guidelines, 2014.

- (b). The NMPT has proposed conditionalities governing the lease rental for the BDP. The proposed conditions have been recommended by the LAC and approved by the NMPT Board. The proposed conditions are discussed in subsequent paragraphs:

(i). The conditionalities proposed at Serial nos.1 to 6 of the SOR state the methodology in general followed by the port to arrive at the proposed lease rent. These are general statements and not relevant to be prescribed as part of the schedule of rent and hence not prescribed in the rent schedule.

(ii). The proposed note at Serial No.7 of the SOR states that all conditions/ notes prescribed in the existing Scale of Rates / Schedule of Licence Fees and Lease Rental shall apply to the extent they are not inconsistent with the conditions prescribed in the Land Policy Guidelines 2014 announced by the Government on 17 July 2015. The proposed note is slightly modified to state that all conditions / notes prescribed in the existing SOR / Schedule of Licence Fees and Lease Rental shall be as per the amended Land Policy Guidelines of 2014 issued by the Ministry of Shipping, and as may be amended from time to time in respect of allotment of land/ space/ covered accommodation on License/ Lease basis.

(iii). Notes at Serial Nos.8 and 9 of the SOR state that the rate are applicable for a period of five years from the date notified by this Authority and are subject to 5% escalation (compounded) per annum and rounded off to nearest rupee. The proposed conditions are approved subject to minor addition of words that annual escalation will be applicable after 1 year from the date it comes into effect. The port has proposed rounding off of the lease rent to nearest rupee, which is approved.

(iv). At note 10 of the SOR, the NMPT has proposed to collect Security Deposit (SD) equivalent to two years Licence Fee to be collected at the time of allotment. Further, SD will be refunded without interest after the land is vacated and handed over to NMPT after adjusting any amount that is due to NMPT.

Clause 11.2(d) of the Amended Land Policy Guidelines 2014 prescribes collection of Security Deposit of two years for fresh lease allotted on tender-cum auction method. The proposed note is approved.

- (v). The proposed note at serial no.11 of the SOR states that the Licensee shall not make any addition/ alteration to the existing original structure without the prior permission of NMPT. While terminating the contract or vacation licensee has to hand over the premises to the NMPT in the original condition given to them. If the licensee fails to do so then NMPT will arrange for such restoration of structure at the cost, risk and responsibility of the licensee.

The amended LPG 2014 do not prescribe any such clause. It is relevant here to state that similar provision is prescribed in the existing lease rent of port lands of NMPT approved vide Order dated 4 July 2014. Since the above note proposed by NMPT which appears to safeguard the structure of the Business Development Park, the proposed note is approved as proposed by the NMPT.

- (vi). The note proposed at serial no.12 of the SOR states that the License fees or charges shall be paid from the date of issue of the allotment letter by the licensee at the Scale of Rate notified by this Authority from time to time.

The above note proposed by NMPT is similar to the existing note prescribed in the lease rent approved vide Order dated 3 July 2014 and hence is approved here as proposed by the NMPT.

- (vii). The note at Serial No.13 of the SOR states that the permit shall lapse automatically at the expiry of the calendar month for which it has been issued. The license shall be up to a maximum period of ___ months and license fee is levied as per the notified Schedule of Rates.

The proposed note does not specify the maximum period. As per the LPG 2014, the license shall be maximum for 11 months. The period of license will vary from allotment to allotment. It is prerogative of NMPT and hence need not be prescribed in the schedule of rent approved by this Authority. In any case, the general condition is prescribed that port will be governed by the amended LPG 2014.

- (viii). The note at serial no.14 of the SOR state that the NMPT shall have the right at any time to resume the possession of the building/ space wholly or partly which is required by the Port in which event after giving a notice period of 15 days about its proposed intention of resuming the building/ space allotted to the license. In case of due expiry of the license tenure/ or after giving notice, if the licensee fails to vacate the premises it will be treated as unauthorized occupation/ encroachment.

The note proposed at serial no.15 of the SOR states that the licensee shall have the right to appeal against resumption of the land to the Board of Trustees of the NMPT within a period of 30 days from the date of receipt of the Order appealed against and

the decision of the Board of Trustees of the NMPT will be final in this regard.

The proposed note at Serial No.16 of the SOR state that the licensee shall agree to comply with all rules or directions issued by the NMPT from time to time. Should the licensee neglect to comply with the rules or directions, the NMPT may terminate the license.

The note proposed at serial no.17 of the SOR states that the Licensee shall agree that all payments and expenses of whatever sort due to the Port in respect of the Building/ spaces allotted to the Licensee, shall be recoverable at the rates prescribed in the Scale of Rates of NMPT from time to time.

The note proposed at Serial No.18 of the SOR states that the licensee shall comply with all rules and regulations that may from time to time be issued by Govt./ Local Authorities/ Circulars as per Law of the Land.

The above notes proposed by NMPT are similar to the existing notes no. (xvii) to (xxi) respectively prescribed in the existing lease rent of NMPT land and hence are approved as proposed by the NMPT except for minor modification in respect of Note No. 17. It is observed that there is typographical error in the second word which is typed as "License" in proposed Note No. 17 which is corrected as "Licensee".

- (c). The application of the rate of ₹171 per sq. mtr. per month to the port users including immigration, Port Health, Customs, Testing Laboratory, Post Office, Banks and other trade related agencies and the port's proposal to follow the Tender-cum-Auction process keeping the rate of ₹171 per sq. mtr. per month as reserve price for the other agencies as observed from the minutes of the Meeting of the Board of Trustees, as brought out earlier, are in the domain of the NMPT.
- (d). The NMPT has proposed to implement the approved rate for the purpose of inviting tender cum auction for fresh allotment of covered space in the newly constructed Business Development Park as per the amended Land Policy Guidelines, 2014.

It is to state that the Orders of this Authority generally come into effect after expiry of 30 days from the date of notification of the Order in the Gazette of India unless otherwise different arrangement is specifically mentioned in the respective tariff orders. Since in the instant case, it is a newly constructed building and port has sought lease rent to invite tender-cum auction for fresh allotment, the proposed rent will be effective from the date it is notified in the Gazette of India.

- (e). Clause 6.3(1)(d) of the amended land policy guidelines of 2014 stipulates that the Scale of Rates will be revised every five years. The rate approved by this Authority is made effective from the date of notification of the Order in the Gazette of India for reasons stated earlier and its validity will automatically lapse after expiry of five years period unless and until specifically extended by this Authority.

10.1. In the result, and for the reasons given above, and based on collective application of mind, this Authority approves the rental for the newly constructed Business Development Park at NMPT alongwith the conditionalities attached as **Annex**.

10.2. The rate approved by this Authority will be effective from the date of notification of the Order in the Gazette of India and the validity of rate will automatically lapse after expiry of five years period unless and until specifically extended by this Authority.

(T.S. Balasubramanian)
Member (Finance)

Schedule of rent for the Business Development Park of the New Mangalore Port Trust

Rent for Business Development Park

SL. No.	Description of Property	Rate per month Per Sq. Mtr.
1.	Stilt + 3 floor and Terrace of Business Development Park for Export and Testing Centre.	₹171

General Conditions:

- (i). All conditions/ notes prescribed in the existing Scale of Rates / Schedule of Licence Fees and Lease Rental shall be as per the amended Land Policy Guidelines of 2014 issued by the Ministry of Shipping, and as amended from time to time in respect of allotment of land/ space/ covered accommodation on License/ Lease basis.
- (ii). The rate prescribed shall be applicable for a period of five years with effect from date of notification of Order in the Gazette by TAMP.
- (iii). The rate shall bear an escalation @ 5% (compoundable) per annum which will apply after one year from the date it comes into effect. The amount so arrived will be rounded off to the nearest Rupee.
- (iv). Security Deposit equivalent to two years Licence Fee shall be collected at the time of allotment. The Security Deposit will be refunded without interest after the land is vacated and handed over to NMPT after adjusting any amount that may be due to NMPT.
- (v). The Licensee shall not make any addition/ alteration to the existing original structure without the prior permission of NMPT. While terminating the contract or vacation licensee has to hand over the premises to the NMPT in the original condition given to them. If the licensee fails to do so then NMPT will arrange for such restoration of structure at the cost, risk and responsibility of the licensee.
- (vi). The rental or charges shall be paid from the date of issue of the allotment letter by the licensee at the Scale of Rate notified by TAMP from time to time.
- (vii). The NMPT shall have the right at any time to resume the possession of the building/ space wholly or partly which is required by the Port after giving a notice period of 15 days about its proposed intention of resuming the building/ space allotted to the license. In case of due expiry of the license tenure/ or after giving notice, if the licensee fails to vacate the premises it will be treated as unauthorized occupation/ encroachment.
- (viii). The licensee shall have the right to appeal against resumption of the land to the Board of Trustees of the NMPT within a period of 30 days from the date of receipt of the Order appealed against and the decision of the Board of Trustees of the NMPT will be final in this regard.
- (ix). The licensee shall agree to comply with all rules or directions issued by the NMPT from time to time. Should the licensee neglect to comply with the rules or directions, the NMPT may terminate the license.
- (x). The Licensee shall agree that all payments and expenses of whatever sort due to the Port in respect of the Building/ spaces allotted to the Licensee, shall be recoverable at the rates prescribed in the Scale of Rates of NMPT from time to time.
- (xi). The licensee shall comply with all rules and regulations that may from time to time be issued by Govt. / Local Authorities/ Circulars as per Law of the Land.

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/6/2017 - NMPT - Proposal from the New Mangalore Port Trust (NMPT) for fixation of Reserve Price in the Business Development Park (BDP) at NMPT.

The comments received from the users/ user organisations were forwarded to the NMPT as feedback information. The NMPT has not responded till finalization of this case. The summary of comments received from users / user organisations are furnished below:

Sl. No.	Comments of the users/ user organisations
1.	M/s. Export Inspection Agency (EIA)
(i).	The Export Council was setup by the Government of India under Section 3 of the Export (Quality Control and Inspection) Act,1963 (22 of 1963), in order to ensure sound development of export trade of India through quality Control and Inspection and for matters connected thereof.
(ii).	Export Inspection Agency - Kochi, Sub Office - Mangalore, have its jurisdiction from Mangalore to Karwar, is at present rendering its services to the stakeholders.
(iii).	For clearance of the export consignment in our nation, the certificate of inspection/ health is mandatory requirement. If EIA can establish their office nearby to the port, it can be helpful in reducing the time delay for certification/ inspection/ testing of the products thereby helping the exporters for facilitating the trade.
(iv).	EIA is also equipped with an upcoming Microbiology Laboratory having sophisticated equipment for testing of all kind of food samples received from food industry meant for export to various countries including European Union.
(v).	In view of the above, EIA requests building space for office cum laboratory at BDC-Testing Centre with concession up-to 75% of the lease rent as per applicable clause of Amended Land policy guidelines 2014, Major Ports, issued by Ministry of Shipping (MOS), so as to enable them to submit the same to MOS to obtain necessary approval. Kindly consider the same on priority basis.
2.	Port Health Organisation (PHO)
(i).	Letter no.PD-25014/6/2014-MP, dated 13 May 2016 issued by Ministry of Chipping wherein Chairman of all the Major Ports have been asked to allocate adequate space for PHO whereby, it was requested to make arrangement for providing adequate space / 4 rooms free of cost for establishment of PHO to comply with the obligations under the International Health Regulations 2005.
(ii).	Letter no. QC-NMP/2016-1056, dated 15 November 2016 issued by Port Health Officer, Cochin, for allocation of office space and space for opening Yellow Fever Vaccination Centre at NMPT at the request of NMPT and stakeholders.

(iii).	It is therefore requested that space for opening up of PHO and Yellow Fever Vaccination Centre is made rent free in public interest.
3.	Association of New Mangalore Port Stevedores (ANMPS)
(i).	It is ANMPS's earnest request that the space in Business Development Park be leased / rented at very concessional rates to the stevedores / C & F agents / Steamer agents/ Custom House Agents / Importers / Exporters along with other essential Government Agencies for the following reasons:
(a).	The value of the land is almost nil in this case since the port already owns the land obtained from local people for a very less rate of ₹2,000 per acre earlier.
(b).	Under the ASIDE scheme the port has obtained a subsidy of ₹15.00 Cr. while the total cost of the project is 25 crores.
(c).	The value of the private commercial constructions and rentals in outside port area is irrelevant to this project as this land is given for promotion of Export / Import related port operations. The land is obtained by the port at non-commercial rates and ASIDE has given the subsidy for Export / Import promotion.
(d).	The stevedores / C & F agents have at the request of the port given suitable "Letter of Interest" so that the port could obtained the subsidy under ASIDE scheme and to construct Business Development Park for benefit of EXIM-Trade, port users & Port. A copy of letter addressed to Chairman and Trustees of NMPT is furnished.
(ii).	In view of the above facts the NMPT may fix less than ₹50 per sq. mtr. per month for covered spaces in the Business Development Park for port users like stevedores, C & F agents, Steamer agents, Custom House Agents and all other essential agencies like Plant Quarantine, Immigration, Post Office, MMD, Testing Laboratories, Canteen etc.

2. A joint hearing in this case was held on 20 March 2017 at the NMPT premises. The NMPT made a brief Power Point presentation of its proposal. At the joint hearing, the NMPT and the concerned users/ user organizations / lessees have made the following submissions:

(i). **New Mangalore Port Trust**

- (a). We have developed Business Development Park to promote EXIM Trade and tourism. It is a centralized facility which will have port related offices, customs, banks, post office, testing labs, restaurants, shopping centres etc.
- (b). We have awarded the construction work for ₹25 crores. Work is in progress. It is expected to complete by 31 March 2017.
- (c). It will have two Blocks, one for Business Development Centre and another for Testing Centre.

(d). Rate as per valuation is ₹29,736 per sq. mtrs. Rate as per State Government Ready Reckoner is ₹32,000 per sq. mtrs. The Highest rate of similar transactions is ₹34,200 per sq. mtr. Rate as per relevant transaction in port's vicinity is zero. The Highest among the four rates is ₹34,200 per sq. mtr. This highest rate is taken into account to calculate the annual lease for the carpet area of 7400 sq. mtrs. This works out to ₹2,530.80 lakhs. Annual lease rent at 6% of ₹2,530.80 lakhs works out to ₹151.848 lakh. Monthly lease for 7,400 sq. mtrs is ₹12.654 lakhs. The per sq. mtr is ₹171. We have proposed ₹171 per sq. mtr.

(ii). **Stevedores Association**

Please allot one unit free of cost for our Association.

[Chairman, NMPT: Allotment will be done as per Land Policy Guidelines]

(iii). **Postal Department**

(a). We want concession in the rate of ₹171 per sq. mtr, we being Government Department.

(b). How long the rate will remain same?
[Chairman, NMPT: Rate will get escalated at 2% per annum]
