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Tariff Authority for Major Ports

G.No. 295

New Delhi,

21 August 2019

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963) and in pursuance of Ministry of Shipping letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on Stressed PPP Projects, the Tariff Authority for Major Ports hereby disposes of the proposal received from the Visakhapatnam Port Trust (VPT) for increase in free period and amendment in the storage schedule approved by this Authority vide Order No.TAMP/36/2014-VPT dated 2 January 2015 notifying Scale of Rates in the name of Adani Vizag Coal Terminal Pvt. Ltd. for mechanised handling of steam coal at East Quay-1 berth at inner harbour on DBFOT basis in VPT as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/14/2019-VPT

Visakhapatnam Port Trust

Applicant

QUORUM

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

O R D E R

(Passed on this 24th day of July 2019)

This case relates to a proposal dated 12 February 2019 received from the Visakhapatnam Port Trust (VPT) for increase in free period and amendment in the storage schedule approved by this Authority vide Order No.TAMP/36/2014-VPT dated 2 January 2015 notifying Scale of Rates in the name of Adani Vizag Coal Terminal Pvt. Ltd. (AVCTPL) for mechanised handling of steam coal at East Quay-1 berth at inner harbour on DBFOT basis at VPT.

2.1. The main points contained in the VPT proposal are summarised below:

- (i). This project was awarded to AVCTPL at VPT on DBFOT basis on 8.8.2012 with a capacity of 6.41 MTPA. The project was completed on 2.9.2014 and operations commenced on 24.10.2014.
- (ii). It has been represented by the AVCTPL that utilisation of the facility is below par on account of different reasons like change in economic conditions leading to decline in imports of Steam Coal, graduation of some of the volumes from Panamax to Cape vessels and high storage charges. The Concessionaire has also stated the following:

“it has become absolutely difficult and impossible to operate the Berth EQ-1 at Visakhapatnam Port and there is also no scope of improvement in the situation”

- (iii). The issues relating to PPP projects in Major Ports has been raised in various meetings held by the Ministry of Shipping. Considering the importance of the issue, Ministry of Shipping constituted a committee under the Chairmanship of Chairman IPA to take a decision. The report submitted by the committee was forwarded by Ministry of Shipping vide file No.PD-13/1/2018-PPP Cell, dated 11-07-2018 to Major Ports and TAMP directing to adopt the procedure contained therein including review of the situation periodically for optimum utilisation of the facility created.
- (iv). The directions of the Ministry were communicated to the AVCTPL for remarks. In response, AVCTPL vide their letter dated 27 August 2018 has furnished relevant data as per the criteria for classification of “Stressed Project” as per the report of the committee. The AVCTPL has also requested to declare AVCTPL as a Stressed Asset and to consider free days of 40 days for Supramax/ Handy Max vessels and free days of 45 days for Panamax vessels against the existing free period for storage of cargo in stockyard of 5 days.

(a). The main points submitted by the AVCTPL in its letter dated 27 August 2018 are as follows:

- (i). AVCTPL could not handle cargo upto its designed capacity due to various reasons as detailed in our various letters represented to VPT from time to time.

The Details of Cargo handled during preceding four years are as below:

Financial Year	Cargo Handled (MMT)	Remarks
2014-15	0.97	Certificate issued by VPT Traffic Department is furnished.
2015-16	0.88	Certificate issued by VPT Traffic Department is furnished.
2016-17	NIL	Certificate issued by VPT Traffic Department is furnished.
2017-18	NIL	To get the Certificate from VPT Traffic Department.

Total Cargo handled during in last four FYs - 1.85 MMT.

- (ii). AVCTPL is running with huge losses since start of its operations. Cash loss incurred by AVCTPL during the preceding two financial years i.e., 2016-17 and 2017-18 duly certified by its statutory auditor is furnished.
- (iii). Abnormally high storage charges are prohibitive in attracting customers at AVCTPL. Competing ports are cheaper options. All competing ports in the vicinity are offering free storage period from 45 to 60 days.
- (iv). Considering the above, the AVCTPL proposed the following free days to VPT for storage of Cargo at its terminal:

S. No.	Vessel Size	Proposed Free days
1	Supramax/ Handy Max	40
2	Panamax	45

In view of the above, AVCTPL has requested VPT to consider their project as a stressed project and forward proposal of free storage days to TAMP as per MOS guidelines.

2.2. In response to our letter dated 20 February 2019, the VPT vide its letter dated 29 March 2019 has stated that the amended storage schedule for AVCTPL approved in principle was implemented with effect from 20 February 2019 and has submitted the following:

- (i). Actual traffic handled by AVCTPL for the year 2014-15 to 2017-18 are given below:

Year	Cargo Handled (MMT)
2014-15	1.01
2015-16	0.85
2016-17	Nil
2017-18	Nil

- (ii). A copy of letter dated 4 January 2019 of AVCTPL forwarding a Certificate of Chartered Accountant from its Auditors certifying the cash losses and net worth of AVCTPL for the preceding two financial years as tabulated below:

(₹ in lakhs)			
Sr. No.	Particulars	FY 2016-17	FY 2017-18
	Net Loss as per Statement of Profit and Loss	(4,020.51)	(18,528.60)
	Add - Depreciation	2,258.21	1,676.81
	Add - Exceptional Items (impairment provision)	-	15,518.00
1.	Cash Loss incurred by the Company	(1,762.30)	(1,333.79)
2.	Net Worth of the Company	(1855.84)	(20384.44)

The above cash loss and net worth exclude impact of waiver of interest on loan taken from its holding Company during these two years.

3.1. The VPT has placed the request of the AVCTPL to the Board of Trustees of the VPT in its meeting held on 16.11.2018 for review and deliberations. After detailed review and deliberations, the Board of Trustees of VPT is of the opinion to consider the proposal of the Concessionaire M/s.AVCTPL for classification of the said project as "Stressed Project" and has resolved the following, subject to the compliance of the concessionaire to cure the events of

defaults as per the directions of the Board and subsequent conditional withdrawal of Consultation Notice by this Authority. The Board of Trustees of VPT vide Resolution No.125/2018-19 dated 16 November 2018 has resolved the following:

- (a). Consider the proposal of M/s.AVCTPL for classification of the said project as “Stressed Project” and to treat the project as stressed project in compliance with the directions of Ministry’s order dated 11 July 2018.
- (b). Approach TAMP under the provisions available at Article 21.9 of the Concession Agreement covering “Amendments, Modifications or Alternations” with an appropriate proposal for rationalization of storage charges in consultation with the Concessionaire M/s.AVCTPL so as to achieve the ARR as per the TAMP guidelines/ notifications.
- (c). Fix the free time for storage of cargo from the existing 5 days as stipulated in the Concession Agreement to 20 days as the same is mutually agreed by both Concessionaire and the Concessing Authority for rationalization of storages charges in the TAMP proposal and to inform the Concessionaire to submit a detailed proposal to TAMP through VPT duly justifying the reasonableness of increasing the storage period for rationalization of storage charges.
- (d). Carry out necessary modifications as per the provisions available under Article 21.9 of the Concession Agreement covering “Amendments, Modifications or Alternations” as per the order of the Ministry dated 11.07.2018.
- (e). Consider the proposal for a period of one year and to review thereafter.

3.2. The VPT has communicated the decision of the VPT Board to AVCTPL. In response, AVCTPL has submitted a proposal vide their letter No.AVCTPL/Stressed Project/CE/2018-19/91 dated 9.1.2019 addressed to VPT for rationalisation of storage charges. The AVCTPL has requested that the free storage days be increased from 5 to 45 days and accordingly has submitted a proposal to VPT for rationalisation of storage charges. The main points submitted by AVCTPL in its proposal dated 9 January 2019 addressed to the VPT, are summarised below:

- (i). AVCTPL proposes for modification of the notification of Scale of Rates approved vide Order No.TAMP/36/2014-VPT dated 2 January 2015 pertaining to mechanized handling of steam coal at the berth no.EQ-1 of VPT on DBFOT basis at Visakhapatnam Port in pursuance of the guidelines for upfront tariff setting for Public Private Participation (PPP) projects at Major Ports vide this Authority’s Notification No.TAMP/36/2014-VPT dated 28 January 2015.
- (ii). The upfront tariff for this project has been notified by this Authority vide Order No.TAMP/36/2014-VPT dated 2 January 2015 in the name of AVCTPL. The current Scale of Rates prescribes a free storage period of 5 days which is as envisaged at the time of bidding based on the conditions prevailing at the time of conceiving the project, whereas in actual practice it has been observed that the average dwell time is around 45 to 50 days. The storage charges worked as a % of overall handling charges are much higher than the envisaged 1% in the policy guidelines notified by this Authority vide notification dated 26 February 2008.
- (iii). As per the guidelines issued by Ministry of Shipping (MOS) vide letter dated 11 July 2018, each such operator who has fulfilled each of the following criteria was to be declared as a Stressed Asset, which would qualify for rationalization of the storage charges.
 - (a). The project is sub-optimally utilized as evidenced by the actual cargo handled by the operator during two preceding financial years being less than 70% of the projection as per DPR/ Feasibility report forming part of the bid document.

- (b). Project SPV incurring cash loss continuously for two preceding financial years and
- (c). That the losses incurred by Concessionaire has caused at least 50% erosion of its peak Net Worth during the operation period.
- (iv). AVCTPL has not been able to achieve the proposed ARR through realization of tariff. The tariff cap for different individual services is, therefore, to be set appropriately by TAMP in such a way as to achieve the ARR Clause 3.8.2. of the TAMP guidelines.
- (v). As per the present conditions, AVCTPL qualifies to be declared as a Stressed Project and the same has been confirmed by VPT in its letter dated 12 December 2018.
- (vi). As per the Annexure III of the upfront tariff guidelines (which is relevant for a Coal handling terminal), the norms for apportionment of total revenue requirement is as follows:

Tariff Group	Percentage of Total revenue allocated
Coal Handling Charges	98
Storage Charges	1
Miscellaneous Charges	1

- (vii). For the identified stressed assets, it was informed by the MOS that necessary authority has been granted to the VPT for extending the free period depending on the local conditions with a view to optimize the capacity utilization of the berth with periodical review.
- (viii). Accordingly, AVCTPL had requested VPT to increase the free period (which is currently 5 days as per the Concession Agreement). After having multiple rounds of discussions, it has been decided by VPT to increase the free storage period to 20 days. To that extent AVCTPL was part of the meeting where this decision was made. AVCTPL also participated in the meeting wherein the decision was made by the Concessioning Authority.
- (ix). The current business of AVCTPL requires that AVCTPL to give free storage period of approximately 45-50 days, and the 20 days period decided by VPT would not be sufficient for AVCTPL to be able to improve its viability. AVCTPL have been informed vide letter confirming that the free storage period (which is currently 5 days) has been extended to 20 days (i.e. 15 extended free period) by VPT in pursuance of the authority given by MOS guidelines vide their letter dated 11.07.2018. However, as per the same guidelines VPT, as Concessioning Authority, can fix number of free storage days that would make for optimal utilization of the port, and AVCTPL submitted that at 20 days free storage, AVCTPL would not be able to do so, and in order to have the true spirit of the order followed, AVCTPL has requested that the free storage days be increased from 5 to 45 days.
- (x). As per the MOS guidelines, AVCTPL will ensure the following:
 - (a). No Storage charges and hence no Royalty is payable to VPT if cargo is cleared within the free period as per executed concession agreement (i.e. 5 days).
 - (b). If the cargo is cleared after the expiry of free period as per the executed concession agreement; but, within the extended free period, no storage charges will be there but the concessionaire shall pay Royalty equal to 1% of ARR and

- (c). If the cargo is cleared after extended free period (i.e. beyond 45 days), concessionaire shall pay Royalty equal to quoted % on actual storage charges recovered or 1% of ARR whichever is higher for the period beyond the extended period.

(xi). Accordingly, AVCTPL has submitted the current vs proposed rates as follows:

Sl. No.	Particulars	Units	Current Scale of Rates (This is after applying annual indexation as applicable)	Proposed Scale of Rates
1.	Berth Hire Charges (foreign going vessel)	₹ / GRTH	0.676	0.676
2.	Cargo Handling Charges (foreign cargo)	₹ / MT	203.93	203.93
3.	Storage Charges (0-5 days)	₹ / MT per day	NIL	NIL
4.	Storage Charges (6-10 days)	₹ / MT per day	2.06	NIL
5.	Storage Charges (11-15 days)	₹ / MT per day	4.05	NIL
6.	Storage Charges (16-45 days)	₹ / MT per day	8.09	NIL
7.	Storage Charges 46 th day onwards	₹ / MT per day	8.09	8.09
8.	Misc. charges (charges for sweeping, dust suppression and environment, etc.	₹ / MT	2.08	2.08

(xii). Further, the current vs proposed royalty on storage charges would be as under:

Sl. No.	Particulars	Units	Current Royalty	Proposed Royalty
1.	Storage Charges (0-5 days)	₹ / MT per day	No royalty	No royalty
2.	Storage Charges (6-10 days)	₹ / MT per day	40.29% on Gross revenue	1% ARR
3.	Storage Charges (11-15 days)	₹ / MT per day	40.29% on Gross revenue	1% ARR
4.	Storage Charges (16-45 days)	₹ / MT per day	40.29% on Gross revenue	1% ARR
5.	Storage Charges 46 th day onwards	₹ / MT per day	40.29% on Gross revenue	Royalty equal to 40.29% on actual storage charges recovered or 1% ARR whichever is higher.

(xiii). Accordingly, AVCTPL has requested VPT to allow for free storage days till 45 days and to obtain orders with such free storage days in consultation with the TAMP.

4.1. However, the VPT has revised the proposal dated 9 January 2019 of AVCTPL considering free period of 20 days in compliance with the decision of VPT Board Resolution No.125/2018-19. The comparative position of the existing storage charge, proposed tariff and the royalty in respect of storage charges, as revised by VPT and proposed by the port is tabulated below:

Sl. No.	Storage days	Storage charge/MT/Day		% Royalty to VPT *	
		Current SOR	Revised proposal	Current Royalty	Proposed proposal
1.	0 to 5 days	No charges	No charges	No Royalty	No Royalty
2.	6 to 10 days	2.02 #	No charges	40.29%	1% of ARR
3.	11 to 15 days	4.05 #	No charges	40.29%	1% of ARR
4.	16 to 20 days	8.09 #	No charges	40.29%	1% of ARR
5.	21 st day onwards	8.09	8.09	40.29%	Royalty equal to 40.29% on actual storage charges or 1% of ARR whichever is higher

[# Correct rate is 2.06, 4.13, 8.26 for the year 2018-19.

* The mandate of this Authority is to fix SOR. TAMP does not have mandate on Royalty matter which is between port and concerned BOT operator.]

4.2. The VPT has stated that the revised proposal for increase in free period and rationalisation of storage charges is in line with the suggestions of the Committee communicated vide MOS letter No.PD-13/1/2018-PPP Cell dated 11.07.2018. The VPT has, therefore, requested to consider the proposal for rationalisation of storage charges as envisaged and notify the same at the earliest to improve the viability of the EQ-1 facility and to attract additional volumes so that the capacity utilisation of the facility can be improved. The VPT has further stated that it shall review the proposed rationalisation in storage charge after one year of notification by TAMP in compliance of VPT Board Resolution No.125/2018-19 and shall approach TAMP for notification for continuation of the proposal or further revision as the case may be.

5. In accordance with the consultative procedure prescribed, the proposal of VPT dated 12 February 2019 was forwarded to the AVCTPL and concerned users/ user organisations/ Applicants who were consulted while passing the upfront tariff Order dated 4 May 2010 seeking their comments. Only Steel Authority for India Limited has informed that they have no comments to offer with regards to the subject matter. Apart from this, we have not received comments from any other users/ user organisations.

6. A joint hearing on this case in reference was held on 17 June 2019 at VPT premises. At the joint hearing, the VPT and AVCTPL have made their submissions.

7. The relevant extracts of storage charges schedule and relevant Note(i) prescribed in the upfront tariff Order 4 May 2010 issued to VPT and in the tariff Order dated 2 January 2015 notifying SOR in the name of AVCTPL are given below:

(i). Order No.TAMP/54/2009-VPT dated 4 May 2010:

“4. STORAGE CHARGES:

The Storage charges for the cargo stored in the stack yard beyond the free period of 5 days shall be as below:

(Rate in Rs. per tonne per day or part thereof)

Sl. No.	Commodity	Rate for first 5 days for the balance cargo remaining after the free period	Rate for 6 th day to 10 th day for the balance cargo	Rate for 11 th onwards for the balance cargo
1.	Steam coal	1.61	3.22	6.44

Note:

(i). 5 free days shall be allowed. Free period shall commence from the day following the day of complete discharge of vessel cargo. For the purpose of calculation of free period, Custom notified holidays and Terminal's non-working days shall be excluded.”

(ii). Order No.TAMP/36/2014-VPT dated 2 January 2015:

“4. STORAGE CHARGES:

The Storage charges for the cargo stored in the stack yard beyond the free period of 5 days shall be as below:

(Rate in ₹ per tonne per day or part thereof)

Sl. No.	Commodity	Rate for first 5 days for the balance cargo remaining after the free period	Rate for 6 th day to 10 th day for the balance cargo	Rate for 11 th onwards for the balance cargo
1.	Steam coal	1.97	3.95	7.89

Note:

- (i). 5 free days shall be allowed. Free period shall commence from the day following the day of complete discharge of vessel cargo. For the purpose of calculation of free period, Custom notified holidays and Terminal's non-working days shall be excluded."

8.1. The MOS vide its e-mail dated 11 July 2018 has issued the letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on stressed PPP project along with a copy of the report of the Committee chaired by Chairman, IPA on the issue pertaining to Stressed PPP projects.

8.2. Based on the recommendation of the Committee, the MOS has prescribed the following criteria for classification of PPP project as "Stressed Project":

- (a). The project is sub-optimally utilised as evidenced by the actual cargo handled by the operator during two preceding Financial years being less than 70% of the projection as per DPR/ Feasibility report forming part of the bid document and
- (b). Project SPV incurring cash loss continuously for two proceeding, financial years and
- (c). That the losses incurred by concessionaire has caused atleast 50% erosion of its peak Net Worth during the operation period.

8.3. Para 6 of the MOS letter dated 11 July 2018 states that whenever issue of abnormal storage charges emerges in stressed projects as defined in the said MOS letter, the Ports may approach TAMP under the provisions of "Agreements, modification or alternations" to the terms and conditions of the concession agreement with an appropriate proposal for rationalization of storage charges in consultation with concessionaires so as to achieve the ARR as per the TAMP guidelines/ notification. TAMP has to consider such proposals on merit. The Committee also recommended review of the situation by the Concessioneing Authority periodically for optimum utilization of the facility created.

8.4. Referring to the said letter of MOS, the VPT has now filed the current proposal for increase in free period and amendment in the storage schedule approved by this Authority in Order No.TAMP/36/2014-VPT dated 2 January 2015 notifying the upfront Scale of Rates for mechanised terminal for handling Steam coal at East Quay 1 approved by this Authority vide Order dated 4 May 2010 in the name of BOT operator AVCTPL. The VPT has furnished a copy of resolution of the Board of Trustees of the VPT held on 16 November 2018.

9.1. The proposal of the VPT for increase in free period and amendment in the storage schedule based on approval of its Board of Trustees could have been notified only after following the consultation process prescribed, which would have taken time. Hence, keeping in view the approval accorded by the Board of Trustees of VPT for the increase in free period for storage of cargo and keeping in view the urgency expressed by the VPT, while acknowledging the proposal, in-principle approval was accorded vide our letter dated 20 February 2019 to the proposal of VPT after correction in the rate proposed by VPT (as port has not applied indexation factor of 2.07% for the year 2018-19) for amendment in the existing storage schedule of VGCBPL as given below pending its notification in the Gazette of India after following the consultation process prescribed, subject to AVCTPL complying with the conditions imposed by the Board of Trustees of VPT in the Board Resolution No.125/2018-19:

Storage Charges:

(in ₹ per tonne per day or part thereof)

Sl. No.	Storage Days	Existing Rate of AVCTPL as per Current SOR as given by VPT	Existing Rate after applying correct indexation factor as per our letter dated 1 August 2018	Amended Storage charges
1.	0-5 days	Nil	Nil	Nil
2.	6-10 days	2.02	2.06 #	Nil

3.	11-15 days	4.05	4.13*	Nil
4.	16-20 days	8.09	8.26*	Nil
5.	21 st day onwards	8.09	8.26*	8.26

[* The VPT has not applied 2.07% indexation factor for the year 2018-19 as communicated by TAMP vide letter No.TAMP/12/2009-Misc. dated 1 August 2018. Hence, corrected existing rate is given. For example, for the last slab the rate should be $8.09 \times 1.0207 = 8.26$]

[# There was minor typographical error in our letter dated 20 February 2019 prescribing rate at ₹2.10 which is corrected here as ₹2.06 for the slab 6-10 days. This will not have any impact as amended storage charge proposed and in principle approval accorded is nil for the slab 6-10 days.]

9.2. As regards the proposal of the VPT which also included the revenue share payable by the AVCTPL, it was brought to the notice of the VPT that the percentage of Revenue share on the storage charges payable by the VGCBPL to VPT will be governed as per MOS letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 issued on Stressed PPP Projects.

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

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

(i). The proposal mooted by the Visakhapatnam Port Trust (VPT) seeks approval of this Authority for increase in existing free period and amendment in the existing Storage schedule in the SOR of the BOT operator, Adani Vizag Coal Terminal Pvt. Ltd. (AVCTPL) operating in the VPT which is governed by the upfront tariff guidelines of 2008, in pursuance of Ministry of Shipping (MOS) letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 issued to all Major Ports to deal with Stressed PPP projects.

(ii). As already brought out in the earlier paragraphs, this Authority had vide Order No.TAMP/54/2009-VPT dated 4 May 2010 fixed upfront tariff for mechanised terminal for handling Steam coal at East Quay 1 on Design, Built, Finance, Operate and Transfer (DBFOT) basis at VPT under the upfront tariff guidelines of 2008.

The VPT has awarded the project to AVCTPL. In compliance of the said provisions of Guidelines, the SOR was notified in the name of AVCTPL vide Order No.TAMP/36/2014-VPT dated 2 January 2015 after indexing the notified upfront tariff approved by this Authority in the tariff Order of 4 May 2010.

(iii). The current proposal of VPT is taken up for processing because it is filed in pursuance of the MOS letter dated 11 July 2018 to the Major Port Trusts as regards the stressed PPP project.

(iv). The MOS in its letter dated 11 July 2018 has prescribed the three criteria for classification of PPP project as Stressed Projects by Major Port Trusts which has been brought out in para 8.2. above and hence not reiterated for the sake of brevity. The Board of Trustees of the VPT has declared the project handled by the AVCTPL as Stressed Project. The port has furnished the following as regards the three criteria prescribed in the MOS letter which has been considered by the Board of Trustees of the VPT for declaring the project of AVCTPL as Stressed Project:

- (a). As regards the first parameter, the capacity utilisation for the preceding two years furnished by the VPT being below 70% as exhibited by VPT is tabulated below:

Year	Cargo Handled (MMT)
2014-15	1.01
2015-16	0.85
2016-17	Nil
2017-18	Nil

[The port has not furnished capacity utilisation in terms of percentage. The Port has, however, stated that this project was awarded to AVCTPL at VPT on DBFOT basis on 8.8.2012 with a capacity of 6.41 MTPA as per the upfront tariff approved by this Authority. The traffic handled by the AVCTPL in the preceding two years reported by the VPT as tabulated above is nil i.e. nil capacity utilisation.]

- (b). As regards the other two parameters, the port has furnished the Certificate of Chartered Accountant from the Auditors of AVCTPL certifying the cash losses and net worth of AVCTPL for the preceding two financial years as tabulated below:

(₹ in lakhs)			
Sr. No.	Particulars	FY 2016-17	FY 2017-18
	Net Loss as per Statement of Profit and Loss	(4,020.51)	(18,528.60)
	Add - Depreciation	2,258.21	1,676.81
	Add - Exceptional Items (impairment provision)	-	15,518.00
1.	Cash Loss incurred by the Company	(1,762.30)	(1,333.79)
2.	Net Worth of the Company	(1855.84)	(20384.44)

From above, it is seen that there has been cash losses of ₹17.62 lakhs crores in the financial year 2016-17 and ₹13.34 crores in the year 2017-18. Further, the net worth of the AVCTPL is reported to be negative to the tune of (-)₹18.56 crores in financial year 2016-17 which has increased to (-)₹203.84 crores in financial year 2017-18 which is 999% i.e. more than 50% erosion prescribed as one of the criteria for declaring the project as stressed project.

- (v). The upfront SOR approved by this Authority vide Order dated 4 May 2010 and the SOR approved by this Authority and notified in the name of the AVCTPL prescribes the following provision as regards free period under Schedule 4 Note no.1.

“5 free days shall be allowed. Free period shall commence from the day following the day of complete discharge of vessel cargo. For the purpose of calculation of free period, Custom notified holidays and Terminal’s non-working days shall be excluded.”

The proposal of the port is to increase the free period from existing 5 days to 20 days and consequently amend the existing storage schedule. Accordingly, a comparative position of storage schedule as per the upfront tariff approved by this Authority vide its Order dated 4 May 2010, as per SOR notified in the name of the AVCTPL vide Order dated 2 January 2015, existing applicable rate after applicable automatic indexation for the year 2018-19 and current year 2019-20 from April 2019, and the storage charges proposed by VPT and that approved by this Authority after minor correction in the rate are given below:

(₹/MT tonne per day or per day)						
Sl. No.	Particulars	Storage Charges approved by Authority	Storage Charges in the SOR notified in the name of AVCTPL vide	Storage Charges applicable for the year 2018-19	Proposed Storage Charge by VPT vide its letter dated	Storage Charges proposed by VPT based on existing rate approved after updating it with applicable annual

		vide Order dated 4 May 2010	Order dated 02 January 2015 after applicable indexation factor	after applicable indexation	12 February 2019	indexation factor for the year 2019-20 applicable from 1 April 2019
1.	Storage Charges (0-5 days)	Nil	Nil	No Charges	No Charges	No Charges
2.	Storage Charges (6-10 days)	1.61	1.97	2.06	No Charges	No Charges
3.	Storage Charges (11-15 days)	3.22	3.95	4.13	No Charges	No Charges
4.	Storage Charges (16-20 days)	6.44	7.89	8.26	No Charges	No Charges
5.	Storage Charges 21 st day onwards	6.44	7.89	8.26	8.09	8.26 * (from 20.02.2019 upto 31.03.2019) # # 8.47 # (from 01.04.2019 till 19.02.2020)

(* The storage charge applicable for the year 2018-19 is arrived after applying applicable compounded indexation of 25.67% over the base year 2010 till 2017-18 and annual indexation of 2.07% for the year 2018-19. The VPT has not applied annual escalation for the year 2018-19 at 2.07%.

The storage charge applicable for the year 2019-20 is arrived after applying applicable annual indexation of 2.56% announced by this Authority vide letter No.TAMP/12/2009-Misc. dated 29 March 2019 for the year 2019-20.)

20.02.2019 is the date of communication of in-principle approval.

(vi). The AVCTPL has sought VPT to consider to increase free period from existing 5 days to 45 days citing that current business of AVCTPL requires that AVCTPL to give free storage period of approximately 40-42 days due to evacuation problem. The AVCTPL has contended that the proposed increase by the VPT in free period from existing 5 days to 20 days would not be sufficient for AVCTPL to be able to improve its viability.

In this regard, the port has retained its proposal for increase in the free period from existing 5 days to 20 days in compliance with the approval of the Board of Trustees of VPT for increase in free days to 20 days for a period of one year and to review thereafter. The port has viewed that if free period is increased to 45 days, it will impact cargo volume of the terminal and on AVCTPL achieving the guarantee Minimum Guaranteed Throughput. It is noteworthy that the amended storage schedule with 20 days free period has been implemented with effect from 20 February 2019 by AVCTPL.

Thus, in short the proposal of the VPT is to increase the free period from existing 5 days to 20 days as per the approval accorded by the Board of Trustees of the VPT for a period of one year and to review thereafter.

Recognizing that the proposal filed by the VPT is based on the approval of the Board of Trustees of the VPT and is based on the MOS letter dated 11 July 2018 on the Stressed Project and is for a period of one year and to be reviewed thereafter by the Board of Trustees of the VPT and is intended to improve the utilization of the facility created, this Authority is inclined to approve the current proposal of the port. The VPT had filed the proposal in February 2019. Since the automatic annual indexation in the upfront tariff notified by this Authority is applicable for the year 2019-20 from 1 April 2019 as per letter No.TAMP/12/2009-Misc. dated 29 March 2019, the updated storage charge after applying the applicable annual indexation factor of 2.56% from 1 April 2019 as announced by this Authority needs to be incorporated i.e. ₹8.47/ tonne/ day or part thereof (i.e.

8.09 proposed by port x 2.07% indexation for the year 2018-19 and 2.56 % indexation for the year 2019-20) instead of ₹8.09/ tonne/ day or part thereof proposed by VPT.

- (vii). As brought out in the preceding paragraph, for the reasons stated, in principle approval was accorded to the proposal of the VPT dated 12 February 2019 after updating amended storage charge proposed by the port with the indexation factor applicable for the year 2018-19 vide our letter dated 20 February 2019. The port has also confirmed that amended storage charge has been implemented from 20 February 2019. As stated earlier, the Board of VPT has accorded approval to the proposal for one year and review thereafter. That being so, validity of the amended storage schedule is approved by this Authority for the period of one year from 20 February 2019 till 19 February 2020. The amended storage schedule would stand lapsed automatically and the original storage schedule as notified vide Order dated 2 January 2015 with applicable indexation would come into effect from 20 February 2020 unless reviewed by the VPT and approved by this Authority.
- (viii). The proposal of VPT also proposes the royalty payable as brought out in an earlier paragraph. In this regard, it is to state that the mandate of this Authority is to fix Scale of Rates. This Authority does not have the mandate on Royalty matter which is between the port and the concerned BOT operator. Thus, as regards the proposal of the VPT covering percentage of revenue share on the storage charges payable by the AVCTPL to VPT, it is stated that the port will be governed by the MOS letter No.PD-13/1/2018-PPP Cell dated 11 July 2018. This position was already brought out in our letter dated 20 February 2019.
- (ix). Since the current proposal of the VPT is for a limited period of one year and recognizing that the storage charge and the free period prescribed in the SOR notified in the name of the AVCTPL is for the entire project subject to annual escalation, it is found appropriate to prescribe the existing note (i) as regards increase in free period from 5 days to 20 days and amended storage schedule proposed by the VPT separately instead of tinkering with the existing Scale of Rates of the AVCTPL approved by this Authority in the Order No.TAMP/36/2014-VPT dated 2 January 2015. Note nos.(ii) and (iii) relating to storage charge as per the schedule 4 in the SOR notified in the said Order are prescribed for ease of application.

12.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority replaces the existing schedule as per the Schedule 4 in Order approved by this Authority vide Order No.TAMP/36/2014-VPT dated 2 January 2015 notifying the SOR in the name of the AVCTPL with the following schedule:

(in ₹ per tonne per day or part thereof)

Sl. No.	Storage Days	Storage Charges applicable for the year 2018-19 after applicable indexation	Existing Storage Charges applicable for the year 2019-20 after applicable indexation	Amended Storage Charges from 20.02.2019 till 31.3.2019	Amended Storage Charges from 1.4.2019 till 19.02.2020
1.	0-5 days	No Charges	No Charges	No Charges	No Charges
2.	6-10 days	2.06	2.11	No Charges	No Charges
3.	11-15 days	4.13	4.23	No Charges	No Charges
4.	16-20 days	8.26	8.47	No Charges	No Charges
5.	21 st day onwards	8.26	8.47	8.26	8.47

Notes:

- (i). 20 free days shall be allowed. Free period shall commence from the day following the day of complete discharge of vessel cargo. For the purpose of calculation of free period, Custom notified holidays and Terminal's non-working days shall be excluded.
- (ii). Storage charges shall be payable for all days including Terminal's non-working days and Customs notified holidays for stay of cargo beyond the prescribed free days.
- (iii). Storage charges on cargo shall not accrue for the period when the terminal operator is not in a position to deliver / ship the cargo when requested by the user due to reasons attributable to the Terminal operator.
- (iv). The above storage schedule shall be valid till 19 February 2020 and it shall automatically lapse and the original storage schedule as approved in the Order dated 2 January 2015 with appropriate indexation rates shall come into effect from 20 February 2020.

12.2. The AVCTPL is also directed to furnish the quarterly physical performance including the cargo-wise volume handled through VPT within 15 days on the end of each quarter and annual performance, both physical and financial, within 2 months at the end of the financial year to this Authority.

(T.S. Balasubramanian)
Member (Finance)

**SUMMARY OF THE ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING
BEFORE THE AUTHORITY**

F.No. TAMP/14/2019-VPT - Proposal received from Visakhapatnam Port Trust for amendment in the storage schedule approved by the Authority vide Order No.TAMP/36/2014-VPT dated 2 January 2015 notifying Scale of Rates in the name of Adani Vizag Coal Terminal Pvt. Ltd. for mechanised handling of steam coal at East Quay-1 berth at inner harbor on DBFOT basis.

A joint hearing on this case in reference was held on 17 June 2019 at VPT premises. At the joint hearing, the Visakhapatnam Port Trust (VPT) and Adani Vizag Coal Terminal Pvt. Ltd. (AVCTPL) have made the following submissions:

Visakhapatnam Port Trust (VPT)

- (i). As regards the issues relating to PPP projects in Major Ports, the MOS had constituted a Committee under the Chairmanship of Chairman, Indian Ports Association. The Report submitted by the IPA Committee was considered by an internal Committee constituted by the Ministry.
- (ii). The Ministry has vide letter dated 11 July 2018 addressed to all Major Ports forwarded the report of the IPA on stressed PPP Projects.
- (iii). The IPA report forwarded by MOS lays down procedure for identifying stressed project and how the storage charge can be modified without impacting ARR.
- (iv). The current project operated by the BOT operator AVCTPL is declared stressed by the VPT Board following the methodology laid down in the report.
- (v). Due to environment pollution, road movement beyond 10% of the traffic is not allowed through the VPT.
- (vi). As regards Rail movement, there is rake constraint.
- (vii). The AVCTPL has sought 45 days free period as against the existing free period of 5 days prescribed in the upfront tariff Order of the Authority. The Board of VPT has approved free days of 20 days for a period of one year and to review thereafter.
- (viii). Port seeks approval for increase in free period from 5 days to 20 days for a period of one year for the stressed project and to review thereafter.

Adani Vizag Coal Terminal Pvt. Ltd. (AVCTPL)

- (i). Due to evacuation problem, the time required is 40 to 42 days. 20 days free period will not be sufficient. We request to increase the free period to 45 days.
[VPT, Dy. Chairman: If we increase free period to 45 days, it will impact cargo volume of the terminal. How will the AVCTPL guarantee Minimum Guaranteed Throughput?]
- (ii). We can handle 3.6 MTPA.
- (iii). Evacuation is the main constraint for us here.
- (iv). In contract itself, users request for 30 days free period. We, therefore, request to increase the free period to 30 days.

- (v). We have given free days for 40 to 42 days. We, therefore, request VPT to give approval of the increased free period with retrospective effect from date of IPA Report.
[VPT, Dy. Chairman: There is no record of 40-42 days free period given by AVCTPL. Giving retrospective effect shall be a problem.]

- (vi). We will give all records to the port of free period given by us.
[VPT, Dy. Chairman: We have to examine it.]
