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**Tariff Authority for Major Ports**

G.No.296

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 amendment in the Storage schedule approved by this Authority vide Order No.TAMP/58/2008-VPT dated 11 January 2013 notifying Scale of Rates (SOR) in the name of Vizag General Cargo Berth Pvt. Ltd. (VGCBPL) for mechanized handling of coking coal and steam coal at General Cargo Berth of VPT on DBFOT basis as in the Order appended hereto.

**(T.S. Balasubramanian)**  
Member (Finance)

**Tariff Authority for Major Ports**  
**Case No. TAMP/9/2019-VPT**

Visakhapatnam Port Trust

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Applicant

**QUORUM**

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

**O R D E R**

(Passed on this 24<sup>th</sup> day of July 2019)

This case relates to a proposal dated 7 December 2018 received from the Visakhapatnam Port Trust (VPT) for amendment in the Storage Charges approved by this Authority vide Order No.TAMP/58/2008-VPT dated 11 January 2013 notifying Scale of Rates (SOR) in the name of Vizag General Cargo Berth Pvt. Ltd. (VGCBPL) for mechanized handling of coking coal and steam coal at General Cargo Berth of VPT on DBFOT basis.

2. The main points made by the VPT in its proposal are as follows:

- (i). Upfront tariff for the project has been fixed by TAMP vide its Order dated 27 November 2009 for berth hire, cargo handling charges, storage charges and miscellaneous charges.
- (ii). This project was awarded by VPT to VGCBPL at VPT. The project is completed and operational with effect from April 2013.
- (iii). It has been represented by the VGCBPL that the project is being operated in stressed condition due to various constraints like high storage charges resulting in migration of traffic to the nearby private ports leading to very low capacity utilization.
- (iv). The issue 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 utilization of the facility created.

3. The directions of the Ministry were communicated by the VPT to the VGCBPL for remarks. In response, the VGCBPL vide their letters dated 17.10.2018, 02.11.2018 and 12.11.2018 (Annexure-1, 2 & 3) has furnished the relevant data as per the criteria for classification of "Stressed Project" as per the report of the committee. The VGCBPL has also requested to declare VGCBPL as Stressed Asset and to rationalise the storage charges by extending the existing free period by an additional 35 days making the total free period as 45 days.

4. The submissions made by VGCBPL in its letter dated 17 October 2018, 2 November 2018 and 12 November 2018 addressed to VPT are as follows:

**A. The VGCBPL in its letter dated 17 October 2018 addressed to VPT and forwarded by VPT along with its proposal has made the following main points:**

- (i). In respect of projects that are identified as "Stressed Projects" due to abnormal storage charges, it was suggested that the rationalization of storage charges levied at PPP terminals should be achieved as per Tariff

Guidelines, 2008 to make them competitive with neighboring Non-Major Ports which are run by private organization.

- (ii). The Norms for apportionment of total revenue requirement as per upfront tariff guidelines for coal terminal are as follows:

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

Before explaining the proposed model for idle storage charges, it is worth discussing the current market scenario.

(iii). **Current market scenario**

- (a). The Coal import in the region has increased sharply due to non-availability of domestic coal for Captive power plants, Sponge iron producers, cement manufactures etc. The present market is significantly supporting imports on CAPE vessels to capitalize the freight advantage.
- (b). The availability of rakes is a key factor for evacuation of cargo and thereby the free storage period is key commercial for assessing the commercial feasibility of handling from the terminal. Gangavaram port operates with free storage period of 90-120 days with flexibility for the traders for stock and sale and for end users as just in delivery for easing their working capital. In this competitive environment, VGCBPL is forced to offer a free storage period from 30 to 60 days (average 45 days).
- (c). Despite the market for acute demand of coal, the customers are preferring for more storage period to mitigate the risk of non-availability of rakes. However, in view of optimum usage of our terminal facility VGCBPL have derived the feasible storage period required for various capacity of vessels.

(iv). (a). **Data/inputs from the current markets:**

Particulars	Values	UOM
Average number of rakes available per day	3.50	Rakes
Average capacity of cargo loaded per rake	3,850	MT
Average Cargo dispatch per day through rakes	13,475	MT
Average Cargo dispatch per month through rakes	404250	MT
Days of operation	30	Days
Exchange Rate (₹/US\$)	72	₹/\$

(b). **Vessels handing combination – Assumption**

Vessels	No. of vessels	Qty	Total Qty	Average Discharge	Days for operation per Vessel	GRT per vessels
Cape	1	165,000	165,000	25,000	7	90,000
Panama	3	75,000	225,000	25,000	3	40,000
Total	4		390,000		16	

From the above data, it is clear that a maximum of 400,000 MT can be handled in VGCBPL yard with an average free storage

period of 30 days. It is imperative that only VGCBPL is bearing the cost of additional 20 free storage period currently. Beyond this free storage period also, there is a gap between the daily storage charges fixed by TAMP and the actual storage rates collected by VGCBPL. VGCBPL had been providing additional free storage period in order to serve/ retain the customers of the port.

- (v). In line with the Ministry of Shipping guidelines, VGCBPL have worked out a business model which will benefit both M/s.VGCBPL and VPT as well which is summarized below:

**Proposed Business Model**

- (a). The port authorities were given an opportunity to extend the free period depending on the local conditions with a view to optimize the capacity utilization of the berth with clause for periodical review.

VGCBPL proposes to extend the free period by 35 days (extended free days) beyond the existing 10 free storage days (i.e. 45 days of total free storage period).

- (b). For the cargo staying beyond the extended free days (i.e. 45 days), a maximum tariff of ₹1/- per MT per day would be charged. The other major assumptions of the model are:

Particulars	Values	UOM
Average number of rakes available per day ( <b>Assumptions</b> )	4.50	Rakes
Average quantity of cargo loaded per rake	3,850	MT
Average Cargo dispatch per day through rakes	17,325	MT
Average Cargo dispatch per month through rakes	519750	MT
Days of operation	30	Days
Exchange Rate (₹/US\$)	72	₹/\$

(vi). **Final conclusion & proposal**

The following are the proposal proposed by VGCBPL based on the above business model:

- (a). To extend the free period by 35 days (extended free days) beyond the existing 10 free storage days (i.e. total free storage period of 45 days).
- (b). A tariff which is less than or equal to ₹1/- PMT per day would be charged on the cargo stored beyond the free storage period of 45 days (Benchmarking as against the current tariff of (₹0.10 PMT per day in VPT plots and zero for 90 to 120 days in Gangavaram port).

[The rate prescribed in the existing SOR of VPT for stacking in core operational area is ₹6.21/ sq. mtr./ week for stacking cargo. ₹0.10 PMT per day in VPT plots is not prescribed in the SOR of VPT.]

- (c). The underlying assumption of fixing the dwell time may change dynamically depending upon the market conditions and availability of logistics and can be reviewed periodically (every 6 months or so) for optimum utilization of the facilities.
- (d). The VGCBPL has requested port for remedial actions of notifying the proposal by the Visakhapatnam Port Trust in consultation with the Tariff Authority of Major Ports, Ministry of Shipping on

immediate basis so as to provide immediate relief to the terminal operators.

**B. Letter dated 2 November 2018 by VGCBPL addressed to VPT gives the rationale behind the proposed free period of 45 days:**

- (i). Cape Vessels: For a Cape Vessels, average quantity is 1,65,000 MT. In today's rake availability scenario, not more than one rake per day is allotted for this category of vessel/ customer cargo evacuation. For evacuating the entire cape vessels cargo, VGCBPL would need a total of 42 rakes (@ 3900 MT per rake) and would accordingly need 42 days.
- (ii). Panamax vessels: For a Panamax vessels, average discharge quantity is 75,000 MT. In today's rake availability scenario, not more than one rake per every two days is allotted for this vessel/ customers cargo evacuation. For evacuating the entire panamax vessels cargo, VGCBPL would need a total of 19 rakes (@ 3900 MT per rake) and would accordingly need 38 days.
- (iii). With the above analysis, it is clear that VGCBPL would need a total of 40 to 45 day for evacuating the total cargo (either Cape vessels or panamax vessels) with the current rake availability. It is worth mentioning that the average evacuation time may further increase in case the rakes are not available beyond the above assumptions.

**C. The VGCBPL vide its letter dated 12 November 2018 has forwarded Financial Statement of VGCBPL for the years 2016-17 and 2017-18 certified by Chartered Accountant (CA) as regards cash losses/ net worth as given below:**

- (i). The cash losses incurred by the VGCBPL in the past have eroded the net worth from ₹151.53 crores in the FY 2012-13 to ₹21.70 crores in the FY 2017-18.
- (ii). The cash losses and net worth of the VGCBPL duly certified by the Chartered Accountant are as under:

Sl. No.	Particulars	FY 2016-17 (₹ in crores)	FY 2017-18 (₹ in crores)
1	Cash Losses incurred by the company	(7.16)	(26.97)
2	Net worth of the company	76.00	21.70

5.1. The VPT has placed the request of VGCBPL in the Board of Trustees meeting of VPT held on 16 November 2018 and the Board has resolved the following:

- (i). Consider the proposal of M/s.VGCBPL for classification of the said project as "Stressed Project" and to treat the project as stressed project in compliance with the direction of Ministry's order dated 11 July 2018.
- (ii). Approach TAMP under the provision 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.VGCBPL so as to achieve the ARR as per the TAMP guidelines/ notifications.
- (iii). Fix the free time for storage of cargo from the existing 10 days as stipulated in the Concession Agreement to 20 days as the same is mutually agreed by both Concessionaire and the Concessioning 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.

- (iv). 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.
- (v). Consider the proposal for a period of one year and to review thereafter.

5.2. The VPT has communicated the decision of VPT Board to VGCBPL. The VGCBPL has furnished revised proposal dated 13 December 2018 addressed to VPT, which is summarised below:

- (i). VGCBPL proposes for modification of the notification of Scale of Rates approved by this Authority vide Order No.TAMP/58/2008-VPT dated 27 November 2009 notified on 18 December 2009 vide Gazette No.250 pertaining to mechanized handling of coking and steam coal at the General Cargo Berth on DBFOT basis at Visakhapatnam Port in pursuance of the guidelines for upfront tariff setting for Public Private Participation (PPP) projects at Major Ports notified by this Authority vide Notification No.TAMP/52/2007-Misc. dated 26 February 2008.
- (ii). The current SOR has a free storage period of 10 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 20 to 25 days. The storage charges worked out as a % of overall handling charges are much higher than the envisaged 1% in the policy guidelines on Annual Revenue Requirement (ARR) notified by TAMP vide notification dated 26 February 2008.
- (iii). VGCBPL 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 as per clause 3.8.2. of the upfront tariff guidelines.
- (iv). For the identified stressed assets, it was informed by the MOS vide its letter dated 11 June 2018 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.
- (v). As per the present condition, VGCBPL is to be declared as Stressed Project and same has been confirmed by VPT in its letter dated 12 December 2018.
- (vi). After, having multiple rounds of discussions, it has been decided to increase the free storage period from existing 10 days (as per the Concession Agreement) to 20 days which is agreed by the VPT also. The justification for the increase proposed in free period is given below:
  - (a). As per the signed Concession Agreement, the free storage period offered is 10 days. This was part of upfront tariff fixed by TAMP vide its Order dated 27 November 2009. The same was decided at the time of bidding based on the market dynamics prevailing that time. Whereas, in actual practice it has been observed that the current market dynamics are completely different than those which are thought of in 2009.
  - (b). Describing the current market situations including the rake availability, VGCBPL submitted a letter to VPT vide letter dated 2 November 2018, asking for a revised free storage period of 45 days. Later, in the meeting held with Deputy Chairman and other senior officials of VPT, it has been advised to check the current dwell time of the vessels. In line with the inputs received from VPT, VGCBPL had worked out the dwell time of vessels handled in the past 6 months (data submitted to VPT vide its letter dated 15 November 2018) and noticed that the average dwell time is ranging from 20 to 25 days. Based on the past trend of dwell time, it has

been mutually agreed by both the Concessionaire & Concessioneing authority to extend the free period upto 20 days.

- (vii). The VPT has informed VGCBPL confirming that the free storage period (which is currently 10 days) has been extended to 20 days (i.e. 10 extended free period) by VPT in pursuance of this authority given by MOS guidelines vide their letter dated 11 July 2018. Accordingly, as per the MOS guidelines VGCBPL will ensure the following:
- (a). No Storage Charges and hence no Royalty if cargo is cleared within the free period as per executed concession agreement (i.e. 10 days).
- (b). If the cargo is cleared after the expiry of free period as per 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 20 days), concessionaire shall pay Royalty equal to quoted percentage on actual storage charges recovered or 1% of ARR whichever is higher for the period beyond the extended period.

- (viii). Accordingly, the current vs proposed Scale of Rates would be as follows:

Sl. No.	Particulars	Units	Current Scale of Rates	Proposed Scale of Rates
1.	Berth Hire Charges	₹ / GRTH	0.851	0.851
2.	Cargo Handling Charges	₹ / MT	171.69	171.69
3.	Storage Charges (0-10 days)	₹ / MT per day	<b>No Charges</b>	<b>No Charges</b>
4.	Storage Charges (11-15 days)	₹ / MT per day	<b>2.06</b>	<b>No Charges</b>
5.	Storage Charges (16-20 days)	₹ / MT per day	<b>4.11</b>	<b>No Charges</b>
6.	Storage Charges 21 <sup>st</sup> Day onwards	₹ / MT per day	<b>8.22</b>	<b>8.22</b>
7.	Misc. charges (charges for sweeping, dust suppression and environment, etc.	₹ / MT	1.76	1.76

[The amendment is proposed in storage charges only.]

- (ix). Further, the current vs proposed royalty on Storage charges would be as under:

Sl. No.	Particulars	Units	* Current Royalty	* Proposed Royalty
1.	Storage Charges (0-10 days)	₹ / MT per day	No royalty	No royalty
2.	Storage Charges (11-15 days)	₹ / MT per day	38.1% of Gross revenue	1% of ARR
3.	Storage Charges (16-20 days)	₹ / MT per day	38.1% of Gross revenue	1% of ARR
4.	Storage Charges 21 <sup>st</sup> Day onwards	₹ / MT per day	38.1% of Gross revenue	Royalty equal to 38.1% on actual storage charges recovered or 1% of ARR whichever is higher.

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

- (x). Accordingly, VGCBPL has requested VPT to obtain such orders in consultation with the TAMP which is not inconsistent with the basic features of 2008 Guidelines

as may be necessary for removing the difficulty, as per para 1.4 of the upfront tariff guidelines of 2008.

5.3. The VPT has requested this Authority to consider the proposal submitted by VGCBPL and notify the same at the earliest to avoid diversion of cargo to the neighbouring private port and to attract additional volumes so that the capacity utilisation of the facility can be approved. The VPT has further stated that it shall review the proposed rationalisation after one year of notification by this Authority in compliance of VPT Board Resolution and shall approach this Authority for continuation of the proposal or further revision, as the case may be.

6. In accordance with the consultative procedure prescribed, the proposal of VPT dated 7 December 2018 along with enclosures was forwarded to the concerned users/ user organisations seeking their comments. We have received comments only from Steel Authority of India Limited (SAIL) which was forwarded to VPT for feedback information. The VPT has not furnished its reply till this case was finalised.

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

8. The relevant extract of storage charges schedule and relevant note(i) prescribed in the upfront tariff Order 27 November 2009 and in the tariff Order dated 11 January 2013 notifying indexed SOR in the name of VGCBPL is given below:

(i). Order No.TAMP/58/2008-VPT dated 27 November 2009:

**“4. STORAGE CHARGES:**

The Storage charges for the cargo stored in the stack yard beyond the free period 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 <sup>th</sup> day to 10 <sup>th</sup> day for the balance cargo	Rate for 11 <sup>th</sup> onwards for the balance cargo
1.	Coking coal and Steam coal	1.58	3.16	6.32

Note:

10 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/58/2008-VPT dated 11 January 2013:

**“4. STORAGE CHARGES:**

The Storage charges for the cargo stored in the stack yard beyond the free period 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 <sup>th</sup> day to 10 <sup>th</sup> day for the balance cargo	Rate for 11 <sup>th</sup> onwards for the balance cargo
1.	Coking coal and Steam coal	1.80	3.59	7.19

Note:

10 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. ”

9.1. The MOS vide e-mail dated 11 July 2018 has issued the letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 regarding Stressed PPP project along with copy of report of the Committee chaired by Chairman, IPA on the issues pertaining to Stressed PPP projects. The said Committee has recommended the following criteria for classification of PPP project as “**Stressed Projects**”:

- (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 preceding financial years and
- (c). That the losses incurred by concessionaire has caused atleast 50% erosion of its peak Net Worth during the operation period.

9.2. 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 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 concessionaire so as to achieve the ARR as per the TAMP guidelines/ notification. This Authority has to consider such proposal on merit. The Committee also recommended review of the situation by the Concessioneing Authority periodically for optimum utilization of the facility created.

9.3. Referring to the said letter of MOS, the VPT has filed the current proposal for modification of storage schedule approved by this Authority in the Order No.TAMP/58/2008-VPT dated 11 January 2013 notifying indexed tariff in the name of the VGCBPL based on the upfront tariff approved by this Authority vide Order dated 27 November 2009 for the mechanized handling of coking coal and steam coal at the general cargo berth on DBFOT basis at VPT.

10.1. The proposal of the VPT for increase in free period and amendment in the storage schedule based on approval of its Board of Trustees would have matured for notification 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, in-principle approval was accorded to the proposal of VPT for amendment in the existing storage schedule of VGCBPL as given below pending approval of this Authority and its notification in the Gazette of India after following the consultation process prescribed and was conveyed to the VPT vide our letter dated 21 January 2019:

**Storage Charges:**

(in ₹ per tonne per day or part thereof)

Sl. No.	Storage Days	Existing Rate of VGCBPL as per Current SOR	Amended Storage Charges
1.	0-10 days	NIL	NIL
2.	11-15 days	2.06	No Charge
3.	16-20 days	4.11	No Charge
4.	21 <sup>st</sup> day onwards	8.22	8.22

10.2. As regards the proposal of the VPT which also included the revenue share payable by the VGCBPL, 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.

11. Subsequently, the VPT vide its e-mail dated 5 July 2019 has clarified the following as regards the first criteria prescribed in the MOS letter dated 11 July 2018:

- (i). Criteria 3(a) for classification of a PPP project as 'Stressed Project' stipulates that "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."
- (ii). In this regard, VPT Board in its meeting held on 16.11.2018 opined to consider the VGCB as Stressed Project. Statement showing the utilisation of VGCB considered by VPT Board for classification of the project as stressed project with reference to the said criteria is given as under:

Year	Quantity (MMT)	% Utilization
2016-17	4.25	42%
2017-18	5.53	54%

12.1. Further, the submissions of VGCBPL vide its letter dated 10 July 2019 are summarised below:

- (i). TAMP has completed the public consultation for amendment in the Storage Schedule approved by the Authority vide Order No.TAMP/58/2008-VPT dated 11.01.2013 notifying the Scale of Rates (SOR) in the name of VGCBPL. The public consultation was conducted at VPT offices on 17.06.2019.
- (ii). This project by VGCBPL had commenced its commercial operations from 08.04.2013 and was envisaged with a daily unloading capacity of 42000 to 70000 metric tons depending on the size of vessel, with a free storage period of 10 days, and with an anticipated availability of ten railway rakes per day.
- (iii). As per the TAMP guidelines on Annual Revenue Requirement (ARR) of 2008, the coal handling terminal has to earn 98% revenue through handling charges, 1% revenue through Storage Charges and 1% towards miscellaneous charges. However, since the commencement of operations from 08.04.2013, all stakeholders including Ministry of Shipping, VPT and TAMP have noted that the revenue from storage charges at the VGCBPL terminal in VPT is around 25 to 45 percent (instead of 1%) which is abnormal and driving away the customers from this terminal to the neighbouring minor ports.
- (iv). In July 2018 when the Ministry of Shipping vide their letter No.PD-13/1/2018-PPP cell dated 11.07.2018 has recommended the Major Ports to adopt procedures for rationalisation of storage charges in consultation with the Concessionaires so as to achieve the ARR as per the TAMP guidelines/ notification and TAMP was asked to consider the proposal on merit.
- (v). While amending, VGCBPL has requested to do the needful by asking both the Concessioning Authority and the Concessionaires to have a mutually agreeable effective date for computing the impact of the change in scale of rates.

12.2. The new point made by the VGCBPL in the said communication is point no.(v).

13. 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>.

14. 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, Vizag General Cargo Berth Pvt. Ltd. (VGCBPL) operating in the VPT who 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/58/2008-VPT dated 27 November 2009 passed an Order relating to fixation of upfront tariff for the mechanised handling of coking coal and steam coal at its General Cargo Berth (GCB) on Design Built Finance Operate and Transfer (DBFOT) basis at VPT under the upfront tariff guidelines of 2008 in compliance with the upfront tariff guidelines of 2008 issued by the MOS and effective from 26 February 2008.

The VPT has awarded the project to M/s.VGCBPL. In compliance of the said provisions of Guidelines, the SOR was notified in the name of VGCBPL vide Order No.TAMP/58/2008-VPT dated 11 January 2013 after indexing the notified upfront tariff approved by this Authority in the tariff Order of 27 November 2009.

- (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 9.1. above and hence not reiterated for the sake of brevity. The Board of Trustees of the VPT has declared the project handled by the VGCBPL 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 VGCBPL 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	Quantity (MMT) of cargo handled	% Utilization
2016-17	4.25	42%
2017-18	5.53	54%

- (b). As regards the other two parameters, the port has furnished the certificate issued by the Chartered Accountant reporting cash loss continuously for two preceding financial years and erosion of net worth beyond 50% in the preceding two years:

Sl. No.	Particulars	FY 2016-17 (₹ in crores)	FY 2017-18 (₹ in crores)
1	Cash Losses incurred by the company	(7.16)	(26.97)
2	Net worth of the company	76.00	21.70

From above it is seen that the cash losses has increased from ₹7.16 crores in the financial year 2016-17 to ₹26.97 crores in the year 2017-18. Further, the net worth of the VGCBPL has eroded from ₹76 crores in financial year 2016-17 to ₹21.70 crores in financial year 2017-18 which is 71% i.e. more than at least 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 27 November 2009 and the SOR approved by this Authority and notified in the name of the VGCBPL prescribes the following provision as regards free period under Schedule 4 Note no.1.

*“10 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 10 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 27 November 2009, as per SOR notified in the name of the VGCBPL vide Order dated 11 January 2013, 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 this Authority vide Order dated 27 November 2009	Storage Charges in the SOR notified in the name of VGCBPL vide Order dated 11 January 2013 after applicable indexation factor	Storage Charges applicable for the year 2018-19 after applicable indexation	Proposed Storage Charge by VPT vide its letter dated 7 December 2018	Storage Charges proposed by VPT based on existing rate approved after updating it with applicable annual indexation factor for the year 2019-20 applicable from 1 April 2019
1.	Storage Charges (0-10 days)	Nil	Nil	No Charges	No Charges	No Charges
2.	Storage Charges (11-15 days)	1.58	1.80	2.06	No Charges	No Charges
3.	Storage Charges (16-20 days)	3.16	3.59	4.11	No Charges	No Charges
4.	Storage Charges 21 <sup>st</sup> day onwards	6.32	7.19	8.22	8.22 *	8.22 * (from 21.01.2019 upto 31.03.2019) # # 8.43 # (from 01.04.2019 till 20.01.2020)

(\* The storage charge applicable for the year 2018-19 is arrived after applying applicable compounded indexation of 27.49% over the base year 2009 till 2017-18 and annual indexation of 2.07% for the year 2018-19.

# 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.)

# # 21.01.2019 is the date of communication of in-principle approval.

(vi). 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 mutually accepted by both the parties i.e. VPT and VGCBPL 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 December 2018. 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. ₹8.43/ tonne/ day or part thereof instead of ₹8.22/ 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 7 December 2018 vide our letter dated 21 January 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 21 January 2019 till 20 January 2020. The amended storage schedule would stand lapsed automatically and the original storage schedule as notified vide Order dated 11 January 2013 with applicable indexation would come into effect from 21 January 2020 unless reviewed by VPT and approved by this Authority.

- (viii). As regard the point made by VGCBPL to do the needful by asking both VPT and VGCBPL to have a mutually agreeable effective date of hearing, it is to state that the MOS has issued letter No.PD-13/1/2018-PPP Cell dated dated 11 July 2018 to all Major Ports on Stressed PPP Projects. The said letter of the MOS requires the Major Port Trusts to file an appropriate proposal for rationalization of storage charges in consultation with concessionaire as regards stressed project based on the criteria for stressed project prescribed by the MOS. The VPT has filed the proposal dated 7 December 2018 in pursuance of the said letter of the MOS and with the approval accorded by its Board on 16 November 2018. For the reasons stated in the earlier paragraphs of this Order, the proposal of the VPT for increase in free period and rationalised storage charge has been recommended for approval from 21 January 2019 for period of one year till 20 January 2019 and it shall automatically lapse unless reviewed by VPT and approved by this Authority. As regards the point made by the VGCBPL for mutually agreeable effective date between the VGCBPL and VPT, it is for the VPT and the VGCBPL to look into the matter.
- (ix). 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 VGCBPL 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 21 January 2019.
- (x). 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 VGCBPL 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 10 days to 20 days and amended storage schedule proposed by the VPT separately instead of tinkering with the existing Scale of Rates of the VGCBPL approved by this Authority in the Order No.TAMP/58/2008-VPT dated 11 January 2013. Note nos.(ii) and (iii) relating to storage charge as per the schedule 4 in the SOR notified in the said Order is prescribed herein for ease of application.

15.1. 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/58/2008-VPT dated 11 January 2013 notifying the SOR in the name of the VGCBPL with the following schedule:

(in ₹ per tonne per day or part thereof)

Sl. No.	Particulars	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 21.1.2019 till 31.3.2019	Amended Storage Charges from 1.4.2019 till 20.1.2020
1.	Storage Charges (0-10 days)	No Charges	No Charges	No Charges	No Charges
2.	Storage Charges (11-15 days)	2.06	2.11	No Charges	No Charges
3.	Storage Charges (16-20 days)	4.11	4.21	No Charges	No Charges

4.	Storage Charges 21 <sup>st</sup> Day onwards	8.22	8.43	8.22	8.43
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**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 20 January 2020 and it shall automatically lapse and the original storage schedule as approved in the Order dated 11 January 2013 with appropriate indexation rates shall come into effect from 21 January 2020, unless reviewed by VPT and approved by this Authority.

15.2. The VGCBPL 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 COMMENTS RECEIVED FROM THE PORT USERS/ USER ORGANIZATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY**

F.No. TAMP/9/2019-VPT - Proposal received from Visakhapatnam Port Trust (VPT) for amendment in the Storage schedule approved by the Authority vide Order No.TAMP/58/2008-VPT dated 11 January 2013 notifying Scale of Rates (SOR) in the name of Vizag General Cargo Berth Pvt. Ltd. (VGCBPL) for mechanized handling of coking coal and steam coal at General Cargo Berth of VPT on DBFOT basis in pursuance of the Ministry of Shipping letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on Stressed PPP Projects.

A summary of the comments received from the Steel Authority of India Limited (SAIL) is summarised below:

- (i). The proposal of TAMP is for enhancement of free storage time for cargo discharged from vessels berthing at VGCBPL. From the documents enclosed, the spirit of the proposal appears to be to attract more business at VGCBPL to mitigate their present stressed financial conditions. However, it appears that the root cause of the stressed financial condition is not addressed by this proposal i.e. enhancement of infrastructural facility for higher volume of handling.
- (ii). At present, VGCBPL is operating at only around 40-50% capacity. This is mainly due to issues in evacuation of the cargo discharged from vessels berthing at VGCBPL. The terminal is dependent on railways for evacuation. For a volume turnover of 10 MMTPA, atleast 7-8 rakes of cargo evacuation are necessary per day. However, the rake availability at VGCBPL is only about 3.5 rakes per day on average.
- (iii). In view of the above fact, this proposal may not help to improve VGCBPL's present stressed financial condition unless an expansion of storage area allocated for VGCBPL is considered by VPT.

2. A joint hearing on this case in reference was held on 17 June 2019 at VPT premises. At the joint hearing, the VPT and VGCBPL 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 VGCBPL 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 VGCBPL has sought 45 days free period as against the existing free period of 10 days prescribed in the upfront tariff Order of the Authority. Though, the operator sought 45 days free period, the Board of VPT has approved only 20 days.
- (viii). VGCBPL has subsequently revised their proposal to the port wherein they have proposed revised free period of 20 days.
- (ix). Port seeks approval for increase in free period to 20 days for the said project which is declared stressed project for a period of one year and to review thereafter.

**Vizag General Cargo Berth Pvt. Ltd. (VGCBPL)**

- (i). Please give approval retrospectively from when Ministry gave approval. We have given more free time. We will give all records.  
[Dy. Chairman, VPT: You gave more free time without permission of port.]  
[Member, TAMP: VPT has to decide on the retrospective effect.]

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