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Tariff Authority for Major Ports

G.No. 226

New Delhi,

12 June 2018

NOTIFICATION

In compliance of the Order dated 14 December 2017 passed by the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in the Writ Petition No.28595 of 2017 and in exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby considers and disposes of the representations dated 16 June 2017 and 30 June 2017 of the West Quay Multiport Private Limited (WQMPL) after giving opportunity to the WQMPL and the Visakhapatnam Port Trust (VPT) as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No.TAMP/85/2017-VPT

M/s.West Quay Multiport Private Limited

-

Applicant

QUORUM

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

O R D E R

(Passed on this 18th day of May 2018)

This tariff case arises from the direction given by the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh to this Authority in the Writ Petition No.28595 of 2017 filed by M/s.West Quay Multiport Private Limited (WQMPL).

2. With reference to the above said matter, brief background relating to the tariff approved by this Authority upfront before inviting bids for WQ6 Project at VPT is given below:

- (i). This Authority passed an Order No.TAMP/39/2008-VPT dated 12 February 2009 based on the proposal of the VPT approving tariff for the WQ-6 Berth in the Northern Arm of inner harbour of Visakhapatnam Port upfront before inviting bids for operating multi cargo berth following the Upfront Tariff Fixation Guidelines, 2008.
- (ii). This Authority passed an Order issuing a Corrigendum No.TAMP/39/2008-VPT dated 27 June 2009 rectifying the typographical error noticed in second last sub-para in para 10(vii) (e) of the Order No.TAMP/39/2008-VPT. The words "₹76.20 per sq. metre per annum" appearing in the said paragraphs of the Order was modified as "₹76.20 per sq. yard per annum" instead of "₹76.20 per sq. metre per annum" in the said Corrigendum.
- (iii). (a). Subsequently, the VPT vide its letter dated 18 July 2009 intimated about change in capital cost of the project from ₹114.37 crores (estimated by VPT as per its final revised proposal dated 31 December 2008 and considered by this Authority while passing the upfront tariff Order dated 12 February 2009) to ₹114.50 crores. The modification done by VPT was on account of modification in the estimated capital cost of berth.
The capital cost of berth estimated by VPT at ₹49.98 crores in the total project cost of ₹114.37 crores was modified by VPT to ₹50.11 crores in the modified project cost of ₹114.50 crores. The VPT furnished revised cost statement in view of the above modification along with its letter dated 18 July 2009. The VPT had reworked the berth hire and the revised upfront tariff for berth hire proposed by VPT was 0.77 paisa per GRT vis-à-vis 0.76 paisa per GRT per hour approved by this Authority in February 2009 Order based on the then proposal filed by VPT. The VPT requested this Authority to approve the above revised upfront tariff in respect of berth hire.
- (b). Since the revised rate proposed by VPT was found to be lower than the inflation adjusted rate and also recognising that the revision in the capital cost proposed by VPT was not found to be significant, the VPT was requested to examine once again the application filed by it for revision in the upfront berth hire vide letter No.TAMP/39/2008-VPT dated 27 August 2009.
- (c). The VPT vide its reply letter dated 24 September 2009 stated that its proposal dated 18 July 2009 may be treated as withdrawn.

- (iv). The VPT has awarded the development of the West Quay-6 berth to the West Quay Multiport Private Limited (WQMPL) for handling identified cargo on DBFOT basis at VPT for a period of 30 years.
- (v). The WQMPL approached this Authority for Notification of Scale of Rate (SOR) in its name. Accordingly, the SOR was notified in its name vide Order No.TAMP/49/2015-VPT dated 4 September 2015.

3. The WQMPL had filed a Writ Petition No.28595 of 2017 impleading this Authority as Respondent No.1, Visakhapatnam Port Trust (VPT) as Respondent No.2 and Union of India as Respondent No.3 before Hon'ble High Court of Judicature at Hyderabad in the State of Telangana and the State of Andhra Pradesh. In the said Writ Petition, the WQMPL has prayed to quash Tariff Order No.TAMP/39/2008-VPT dated 12 February 2009 and Tariff Order No.TAMP/49/2015-VPT dated 4 September 2015 to the extent of berth hire and storage charges on the ground that the tariff Orders are illegal, arbitrary, unjust, unreasonable and against the Upfront Tariff Guidelines 2008 and to direct this Authority to fix a fresh tariff for berth hire and storage charges at WQ6 berth. The WQMPL had also sought for interim stay on the above matter pending disposal of the writ petition.

4.1. Subsequently, Office of TAMP received a letter dated 20 December 2017 from Counsel of the petitioner forwarding a copy of the Order dated 14 December 2017 passed by the Hon'ble Justice S.V. Bhatt on the Writ Petition No.28595 of 2017 filed by WQMPL and conveyed the following:

- (i). The subject matter was heard and disposed of by the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh on 14 December 2017.
- (ii). The Hon'ble High Court in its Order has directed that the TAMP shall consider and dispose of the representation dated 16 June 2017 and 30 June 2017 of the WQMPL after affording an opportunity of being heard to the petitioner i.e. WQMPL and to the VPT within eight (8) weeks from the date of receipt of the copy of this Order.

4.2. The operative part of the Order passed by the Hon'ble Justice is reproduced below:

"The 1st Respondent considers and disposes of representations dated 16.06.2017 and 30.06.2017 after affording opportunity to Petitioner and 2nd Respondent within eight (8) weeks from the date of receipt of a copy of this Order. The Petitioner is given liberty to communicate the Order to 1st and 2nd Respondents within one week from today.

No order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed."

4.3. The said copy of the Order forwarded by the Counsel of the Petitioner was received in the Office on 20 December 2017. Hence, as per the Order of the Single Judge, the representations of WQMPL dated 16 June 2017 and 30 June 2017 needed to be disposed of within eight weeks from the date of receipt of the High Court Order i.e. **by 13 February 2018** after giving an opportunity of hearing to WQMPL and VPT.

5. In compliance of the Order of the Hon'ble Judge, the representations of WQMPL dated 16 June 2017 and 30 June 2017 of WQMPL were taken up as a separate tariff case.

6.1. In compliance of the Order dated 14 December 2017 of the Hon'ble Judge which requires this Authority to consider the representations of WQMPL dated 16 June 2017 and 30 June 2017 after affording an opportunity of hearing to WQMPL and VPT, a copy each of the representation of WQMPL dated 16 June 2017 and 30 June 2017 was forwarded to the VPT for its comments with a copy endorsed to the WQMPL vide our letter dated 16 January 2018. While doing so, a copy of letter dated 20 December 2017 of the Counsel of the WQMPL along with the Judgment dated 14 December 2017 was also forwarded for information to the VPT.

6.2. The VPT has furnished its comments vide its letter dated 18 January 2018. The comments received from VPT were forwarded to WQMPL vide our letter dated 1 February 2018 for information and for its comments, if any. The WQMPL has furnished its comments on the comments of VPT vide its letter dated 13 March 2018. A summary of points made by the WQMPL in its representations dated 16 June 2017 dated 30 June 2017, comments of VPT on the representations of WQMPL and comments of WQMPL thereon is tabulated below:

Sl. No.	Points made WQMPL in its representation dated 16 June 2017	Comments of VPT vide its letter dated 18 January 2018	Comments of WQMPL vide letter dated 13 March 2018 on comments of VPT																				
	<p>(i). Pursuant to the proposal dated 10 July 2008 filed by VPT for fixation of upfront tariff for multipurpose cargo handling at WQ-6 berth in VPT, an Order was passed by the Authority approving the tariff caps for the multipurpose cargo berth (WQ-6).</p> <p>(ii). In respect of the tariff caps for berth hire charges and storage charges, the conditionalities prescribed along with the tariff caps following the extant policy guidelines and the position obtaining at the concerned Major Port (VPT) are not the conditionalities that exist at the concerned Major Port (VPT).</p> <p>(iii). In accordance with clause 3.8.5. of the 2008 Tariff Guidelines, WQMPL submit herein below the conditionalities prescribed by TAMP along with the tariff caps versus the conditionalities that exist at VPT:-</p>	---	---																				
A.	<u>Conditionalities pertaining to Berth Hire Charges</u>																						
I.	<p>Capital cost for Berthing Services: The details of the capital cost for berthing services based on the conditionalities that exist at VPT are in the table below:</p> <table border="1" data-bbox="323 1615 730 1933"> <thead> <tr> <th data-bbox="323 1615 371 1704">Sr. No.</th> <th data-bbox="371 1615 563 1704">Particulars</th> <th data-bbox="563 1615 651 1704">Conditionalities prescribed by TAMP</th> <th data-bbox="651 1615 730 1704">Conditionalities that exist at VPT</th> </tr> </thead> <tbody> <tr> <td data-bbox="323 1704 371 1742">(ii).</td> <td data-bbox="371 1704 563 1742">Capital Cost for Berthing Services</td> <td data-bbox="563 1704 651 1742"></td> <td data-bbox="651 1704 730 1742"></td> </tr> <tr> <td data-bbox="323 1742 371 1854"></td> <td data-bbox="371 1742 563 1854">(a). Cost of construction of Berth plus ₹10.51 crores towards the cost of constructed berth of 40 mtrs. length</td> <td data-bbox="563 1742 651 1854">47.06</td> <td data-bbox="651 1742 730 1854">36.55</td> </tr> <tr> <td data-bbox="323 1854 371 1892"></td> <td data-bbox="371 1854 563 1892">(b). Cost of dredging alongside berth</td> <td data-bbox="563 1854 651 1892">2.92</td> <td data-bbox="651 1854 730 1892">2.92</td> </tr> <tr> <td data-bbox="323 1892 371 1933"></td> <td data-bbox="371 1892 563 1933">Total Capital cost for berthing services</td> <td data-bbox="563 1892 651 1933">49.98</td> <td data-bbox="651 1892 730 1933">39.47</td> </tr> </tbody> </table> <p>WQMPL has stated that the cost of construction of the berth of</p>	Sr. No.	Particulars	Conditionalities prescribed by TAMP	Conditionalities that exist at VPT	(ii).	Capital Cost for Berthing Services				(a). Cost of construction of Berth plus ₹10.51 crores towards the cost of constructed berth of 40 mtrs. length	47.06	36.55		(b). Cost of dredging alongside berth	2.92	2.92		Total Capital cost for berthing services	49.98	39.47	<p>An upfront amount of ₹10.51 crores was included in the total capital cost of ₹114.37 crores for the WQ-6 project while submitting proposal for <u>upfront tariff fixation</u>. The upfront cost was <u>towards cost of 40 meters of quay and for other infrastructure already developed by VPT</u>. TAMP has accordingly notified tariff on 12.2.2009. Subsequently, Development Adviser, MOS during his visit on 18.5.2009 opined that it is ideal to dismantle the existing 40 meters length of WQ-7 keeping in view the proposed ultimate dredging depth. Accordingly, <u>the upfront cost</u></p>	<p>We have no further comments apart from those already contained in our written submissions dated 5 February 2018.</p> <p>[The written submission made by the WQMPL at the joint hearing is brought out in the subsequent paragraphs].</p>
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	<p>₹47.06 crores at serial no.II(ii)(a) in Annex-I is overstated by an amount of ₹10.51 crores. It is submitted that this amount of ₹10.51 crores pertains to the amount previously incurred by VPT in constructing a berth length of 40 mtrs. The current WQ-6 berth was constructed on top of the existing berth length of 40 mtrs. and therefore, this amount of ₹10.51 crores cannot be added to the Capital Cost for Berthing Services. Moreover, this amount of ₹10.51 crores was neither claimed nor recovered from WQMPL by VPT.</p> <p>Further, the relevant portion Article 9.1 of the Concession Agreement, of which is reproduced below: <i>In addition to the above a lump sum amount of ₹68.00 (Rupees sixty eight) Million shall be payable by the Concessionaire as upfront fee as other facilities viz. Lightening, roads, drains, culverts, dredging, etc. made available by the Concessioneing Authority and towards the amount spent for infrastructure development.</i></p> <p>No doubt that as per the provisions of the Concession Agreement, VPT did recover an upfront fee of ₹6.8 crores but, this fee was towards other facilities viz. Lightning, roads, drains, culverts, dredging, etc. made available by the Concessioneing Authority and not for the existing berth length of 40 mtrs.</p> <p>Therefore, neither the amount of ₹10.51 crores nor the upfront fee of ₹6.8 crores can be added to the capital cost of berthing services. Accordingly, the correct capital cost for berthing services ought to be (₹49.98 – ₹10.51 crores) = ₹39.47 crores instead of ₹49.98 crores considered by TAMP.</p>	<p><u>was revised from ₹10.51 crores to ₹6.80 crores and the total capital cost of the project increased marginally to ₹114.50 crores from ₹114.37 crores.</u></p> <p><u>Due to the revision in capital cost, a proposal for revising berth hire from ₹0.76 to ₹0.77 per GRT per hour was sent to TAMP vide Lr.No.QRNP/WQ-6/TARIFF/2009 dated 20.7.2009. TAMP vide Lr.No.TAMP/39/2008-VPT dated 27.8.2009, stated that “recognising that the revision in the capital cost now proposed by VPT is not found to be significant, VPT may examine once against the application filed by it for revision in the upfront berth hire”. Therefore, VPT vide Letter No.QRNP/WQ-6/Tariff/2009 dated 24.9.2009 has withdrawn the revised proposal sent to TAMP. Copies of the above three letters are enclosed for ready reference. As such the capital cost considered for fixation of berthing services is in order.</u></p>													
II.	<p>Conditionalities pertaining to GRT (Estimated V/s. Actual): The GRT considered by TAMP in framing the WQMPL 2009 Tariff Order is reproduced in the table below:</p> <table border="1" data-bbox="319 2004 726 2033"> <thead> <tr> <th>Particulars</th> <th>Unit</th> <th>CP Coke</th> <th>LAM Coke</th> <th>Steel</th> <th>Granite</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Particulars	Unit	CP Coke	LAM Coke	Steel	Granite							<p>The <u>upfront tariff proposal was submitted by VPT in the year 2008 considering the highest average GRT recorded during 2005-06,</u></p>	
Particulars	Unit	CP Coke	LAM Coke	Steel	Granite										

	<table border="1" data-bbox="327 197 726 241"> <tr> <td>Average GRT per vessel</td> <td>Tonnes</td> <td>18550</td> <td>29000</td> <td>11300</td> <td>15000</td> </tr> </table> <p>The <u>GRT per vessel of the vessels that actually called at the WQ-6 terminal since COD in August 2015</u> is reproduced in the table below:</p> <table border="1" data-bbox="327 398 726 477"> <thead> <tr> <th>Particulars</th> <th>Unit</th> <th>CP Coke</th> <th>AM Coke</th> <th>Steel</th> <th>Granite</th> </tr> </thead> <tbody> <tr> <td>Average GRT per vessel</td> <td>Tonnes</td> <td>32058</td> <td>38207</td> <td>28863</td> <td>19528</td> </tr> </tbody> </table> <p>From the aforesaid tables, it is a fact that the conditionalities of GRT considered by TAMP is <u>incorrect</u>. The result of using a much lower GRT has resulted in <u>significantly higher Berth hire charges for the WQ-6 berth</u>.</p>	Average GRT per vessel	Tonnes	18550	29000	11300	15000	Particulars	Unit	CP Coke	AM Coke	Steel	Granite	Average GRT per vessel	Tonnes	32058	38207	28863	19528	<p><u>2006-07 and 2007-08 duly obtaining the latest trends in vessel sizes and for forecast</u>. The tariff proposal was submitted as per the TAMP Guidelines 2008. Therefore, the <u>observation of M/s.WQMPL that the conditionalities of GRT is incorrect is not tenable</u>.</p> <p><u>TAMP after following the due procedure which includes Joint Hearing involving all the stake holders has notified the tariff vide its Order dt. 12.2.2009</u>. As such, the Concessionaire has the complete <u>knowledge/information about the parameters considered by the TAMP prior to bidding</u>. Further, it may be stated the <u>WQ-6 berth was made operational in the year 2015 after more than six years of notification of upfront tariff and the actual sizes of vessels handled at the terminal, post CoD may not exactly agree with the sizes of vessels considered at the time of submission of tariff proposal</u>.</p>	
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<p>III.</p>	<p>Escalation Factor: 2008 Tariff Guidelines provide that tariff caps will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2008 and 1 January of the relevant year. Such automatic adjustment of tariff caps will be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31 March of the following year. Therefore, the escalation factor approved by TAMP to be applied to the WQMPL 2009 Tariff Order is 35.08%.</p> <p><u>Therefore, the tariff caps towards Berth hire charges requires to be rectified by TAMP and TAMP is requested to issue an order rectifying the tariff caps towards the Berth hire charges as per the table below:</u></p>	<p>(a). <u>The escalation factor of 35.08% to obtain tariff applicable with effect from 1st April 2017 is correct and is in accordance with the notification available in the website of TAMP.</u></p>																			

	<p>Rectified Berth Hire Charges:</p> <table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Particulars</th> <th>Berth hire charges calculation as per TAMP</th> <th>Rectified Berth hire charges</th> </tr> </thead> <tbody> <tr> <td>(ii).</td> <td>Berth Hire Charges</td> <td></td> <td></td> </tr> <tr> <td></td> <td>Revenue Requirement</td> <td></td> <td></td> </tr> <tr> <td>(a).</td> <td>Operating Cost</td> <td></td> <td></td> </tr> <tr> <td></td> <td>(i). Maintenance Charge (1% on cost of construction of berth)</td> <td>0.47</td> <td>0.39</td> </tr> <tr> <td></td> <td>(ii). Depreciation</td> <td>1.67</td> <td>1.32</td> </tr> <tr> <td></td> <td>(iii). Insurance (1% on berth cost)</td> <td>0.47</td> <td>0.39</td> </tr> <tr> <td></td> <td>Subtotal (a)</td> <td>2.61</td> <td>2.11</td> </tr> <tr> <td>(b).</td> <td>Return on Capital Employed @ 16%</td> <td>8.00</td> <td>6.32</td> </tr> <tr> <td></td> <td>Total Revenue requirement from berthing services (a+ b)</td> <td>10.61</td> <td>8.42</td> </tr> <tr> <td></td> <td>Berth hire charge per GRT per hour</td> <td></td> <td></td> </tr> <tr> <td></td> <td>Foreign going vessel (Rate per GRT per hour) in ₹ (Without Escalation)</td> <td>₹0.76</td> <td>₹ 0.37</td> </tr> <tr> <td></td> <td>Coastal vessel (Rate per GRT per hour) in ₹ (Without Escalation)</td> <td>₹ 0.46</td> <td>₹0.22</td> </tr> <tr> <td></td> <td>Foreign going vessel (Rate per GRT per hour) in ₹ (With Escalation)</td> <td>₹ 1.03</td> <td>₹0.50</td> </tr> <tr> <td></td> <td>Coastal vessel (Rate per GRT per hour) in ₹ (Without Escalation)</td> <td>₹ 0.62</td> <td>₹0.30</td> </tr> </tbody> </table> <p>The detailed calculations of capital cost of berthing services as prescribed by TAMP and the corresponding rectified capital cost of berthing services and the detailed calculations for arriving at the above berth hire charges duly accounting for the existing conditionalities at VPT is furnished as Annexure-I.</p>	Sr. No.	Particulars	Berth hire charges calculation as per TAMP	Rectified Berth hire charges	(ii).	Berth Hire Charges				Revenue Requirement			(a).	Operating Cost				(i). Maintenance Charge (1% on cost of construction of berth)	0.47	0.39		(ii). Depreciation	1.67	1.32		(iii). Insurance (1% on berth cost)	0.47	0.39		Subtotal (a)	2.61	2.11	(b).	Return on Capital Employed @ 16%	8.00	6.32		Total Revenue requirement from berthing services (a+ b)	10.61	8.42		Berth hire charge per GRT per hour				Foreign going vessel (Rate per GRT per hour) in ₹ (Without Escalation)	₹0.76	₹ 0.37		Coastal vessel (Rate per GRT per hour) in ₹ (Without Escalation)	₹ 0.46	₹0.22		Foreign going vessel (Rate per GRT per hour) in ₹ (With Escalation)	₹ 1.03	₹0.50		Coastal vessel (Rate per GRT per hour) in ₹ (Without Escalation)	₹ 0.62	₹0.30	(b). Revision of upfront tariff does not arise in view of the above.	
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I.	<p>(a). Annex – V – 2.0 of the 2008 Upfront Tariff Guidelines, prescribes Norms of apportionment of total revenue requirement which is reproduced below:</p> <p>The total requirement determined as per these guidelines is apportioned among the aforesaid major tariff groups in the following manner and rates for individual tariff items under each of the groups can be determined.</p> <table border="1"> <thead> <tr> <th>Tariff Group</th> <th>Percentage of total revenue allocated</th> </tr> </thead> <tbody> <tr> <td>Cargo Handling Charges</td> <td>90</td> </tr> <tr> <td>Storage Charges</td> <td>5</td> </tr> <tr> <td>Miscellaneous Charges</td> <td>5</td> </tr> </tbody> </table> <p>(b). Further, point no.10(viii)(b) of the 2009 Tariff Order is reproduced below:</p> <p><i>In view of the position explained by the VPT, this Authority accepts the apportionment of the total</i></p>	Tariff Group	Percentage of total revenue allocated	Cargo Handling Charges	90	Storage Charges	5	Miscellaneous Charges	5	---	---																																																				
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<p>revenue requirement between the three tariff heads as proposed by the port. Based on the revised requirement estimated by this Authority, the revenue requirement apportioned to handling charge is ₹2571 lakhs, ₹54 lakhs from storage charge and ₹54 lakhs from miscellaneous charge.</p> <p>(c). In view of the above, TAMP and VPT have confirmed the conditionality that the revenue requirement apportioned to storage charge and miscellaneous charge is the same.</p> <p>(d). Further reference is drawn to point 4 and point 5 of Annex IV of WQMPL 2009 Tariff Order, which is reproduced below:</p> <p>4. Storage Charges per tonne per day: The storage charges for the cargo stored in the stackyard beyond the free period allowed shall be as below:</p> <p>(A). Free period: Import cargo 5 days free Export cargo 15 days free</p> <p>(B). Storage charges after free period (per tonne per day)</p> <table border="1" data-bbox="319 1299 734 1467"> <thead> <tr> <th>Description</th> <th>Rate in ₹ per tonne per day</th> </tr> </thead> <tbody> <tr> <td>First week after expiry of free period</td> <td>₹ 8.60</td> </tr> <tr> <td>2nd week after expiry of free period</td> <td>₹ 12.90</td> </tr> <tr> <td>Beyond 2nd week</td> <td>₹ 17.20</td> </tr> </tbody> </table> <p>Notes: (i). For the purpose of calculation of free period Customs notified holidays and Terminal's non-working days shall be excluded. (ii). Free period for export cargo shall commence from the actual date of the receipt of goods in the operator's premises. (iii). Free period for import cargo shall be reckoned from the day following the day of completion of final discharge from the vessel. (iv). Storage charge on cargo shall not accrue for the period when the terminal operator is not in a position to deliver / ship the</p>	Description	Rate in ₹ per tonne per day	First week after expiry of free period	₹ 8.60	2 nd week after expiry of free period	₹ 12.90	Beyond 2 nd week	₹ 17.20	<p>---</p> <p>---</p> <p>---</p> <p>---</p> <p>---</p> <p>---</p>	<p>---</p> <p>---</p> <p>---</p> <p>---</p> <p>---</p> <p>---</p>
Description	Rate in ₹ per tonne per day									
First week after expiry of free period	₹ 8.60									
2 nd week after expiry of free period	₹ 12.90									
Beyond 2 nd week	₹ 17.20									

	<p><i>cargo when requested by the user due to reasons attributable to the terminal operator.</i></p> <p>5. Miscellaneous Charges: <i>₹2.60 per tonne is a composite charge for all miscellaneous services such as environment and management, sweeping of cargo on the wharf, safety measures, etc.</i></p>	---	---								
II.	<p>Both the 2008 Tariff Guidelines and WQMPL 2009 Tariff Order recognize and accept the conditionality that the revenue requirement from Miscellaneous Charges and Storage Charges should be the same. However, in the tariff order there is an obvious mistake in the conditionalities requiring rectification, in that, whilst the tariff for Miscellaneous Charges is ₹2.60 per tonne, the tariff for Storage Charges comes to a staggering ₹339.7 per tonne, viz. 130 times the tariff for Miscellaneous Charges (assuming the cargo is stored for a period of 30 days, which is the accepted dwell time).</p>	<p>As per TAMP upfront Tariff Guidelines of 2008, norms for apportionment of revenue requirement towards handling charges, storage charges and miscellaneous charges are 90%, 5% and 5% of the total revenue requirement from cargo handling activity. However, VPT has considered 96%, 2% and 2% for the same basing on the feedback from the local C&F Agents and actual position at the port to ensure that the concessionaire realises the total revenue requirement envisaged. Accordingly, the revenue requirement from storage charges and miscellaneous charges is reckoned as ₹0.54 crores per annum. The basis for calculation of per tonne charge for storage and miscellaneous activity is not the same. Therefore, <u>the per tonne storage charge and per tonne miscellaneous charge may not be the same, though the revenue requirement for both the activities remains the same i.e., ₹0.54 crores.</u></p> <p>As such, the opinion of M/s.WQMPL that the actual <u>storage charges and miscellaneous charges per tonne should be the same as conditionality is not tenable.</u></p>	---								
III.	<p>Therefore, the tariff for Storage Charges should be the same as Miscellaneous Charges i.e. the tariff for Storage Charges should be ₹2.60 per tonne. The 2008 tariff guidelines prescribed that only 30% of the cargo would attract Storage Charges. Therefore, the Storage Charges per tonne should be $(₹2.60 * 100/30) = ₹8.67$ per tonne per month. After applying this escalation factor of 35.08%, the applicable tariff for Storage Charges for the current year should be $(₹8.67 + 35.08\%) = ₹11.71$ per tonne per month.</p> <p>Conclusion: TAMP is therefore requested to immediately notify reduction to the tariff caps by an order of rectification towards Berth Hire Charges and Storage Charges as below, failing which grave injustice and prejudice and serious hardship shall be caused to WQMPL.</p> <p>Berth Hire Charges:</p> <table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Particulars</th> <th>At Present</th> <th>Rectified</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Sr. No.	Particulars	At Present	Rectified						---
Sr. No.	Particulars	At Present	Rectified								

	1.	Foreign going vessel (Rate per GRT per hour) in ₹ (With Escalation)	₹1.03	₹0.50		---
	2.	Coastal Vessel (Rate per GRT per hour) in ₹ (With Escalation)	₹0.62	₹0.30		
	Storage Charges:					
		Description	At present (per tonne / per day)	Rectified (per tonne / per day)		
		First week after expiry of free period	₹8.60	₹0.30		
		2 nd week after expiry of free period	₹12.90	₹0.45		
		Beyond 2 nd week	₹17.20	₹0.60		
Sl. No.	Points made WQMPL in its representation dated 30 June 2017					
1.	The WQMPL referring to its representation dated 16 June 2017 requests the Authority to immediately notify reduction to the tariff caps by an order of rectification towards Berth Hire Charges and Storage Charges.			No comments of VPT		---

6.3. The VPT, while furnishing its comments on the representation of WQMPL, has also furnished its remarks on WQMPL letter date 6 July 2017 relating to request of WQMPL for allowing handling of additional cargo. The WQMPL has also vide its letter dated 13 March 2018 furnished its comments thereon. The direction of the Hon'ble High Court is to consider the representation of WQMPL dated 16 June 2017 and 30 June 2017 which are related to review of storage charges and berth hire charges. The direction does not cover the point made by WQMPL in its letter dated 6 July 2017 about handling of additional cargo. Hence, the remarks of VPT on WQMPL letter dated 6 July 2017 and comments of WQMPL thereon do not form part of this tariff Order.

7.1. It is relevant here to state that even prior to the Writ Petition filed by the Petitioner, the representation of WQMPL dated 16 June 2017 for reduction of the upfront tariff for berthing services and storage approved by this Authority in the Order dated 12 February 2009 was forwarded to VPT requesting to furnish its comments on the representation of WQMPL. However, we did not receive any response from VPT then and hence the representation of WQMPL could not be processed further at that point of time in the absence of comments from VPT. Now, the direction of the Hon'ble Justice in the Order dated 14 December 2017 is received which is binding on this Authority. At the same time, the upfront tariff including storage charges and berth hire charges fixed by TAMP for the WQ6 berth follow the upfront tariff setting guidelines of 2008 issued by the MOS under Section 111 of the Major Port Trusts Act, 1963. As per clause 2.8 of the tariff guidelines of 2008, the tariff caps fixed upfront are subject to only indexation during the entire project period of 30 years. The 2008 upfront tariff guidelines do not lend any scope to revise the upfront tariff fixed by TAMP during the project period. The 2008 guidelines issued to TAMP under Section 111 of the Major Port Trusts Act, 1963 is also binding on TAMP.

7.2. In view of the above position, the Ministry of Shipping (MOS) was requested to advise further course of action in the matter to enable us to take further necessary action vide our letter dated 22 December 2017 followed up by a reminder dated 16 January 2018.

7.3. In this regard, the MOS vide its letter no.8(4)/2015-TAMP dated 30 January 2018 has forwarded a copy of OM No.PD-19020/1/2018-PD-V dated 25 January 2018. In the said OM, MOS has stated that the representation of WQMPL dated 16 June 2017 and 30 June 2017 addressed to this Authority has not been duly disposed. The VPT has now vide its letter dated 18 January 2018 furnished its comments in the matter to this Authority. The MOS requested this Authority to dispose of the petition of M/s.WQMPL in the light of comments received from VPT and as per the direction of Hon'ble High Court. The MOS has also requested this Authority to note that

neither the policy of the Government has been challenged in the W.P. under consideration nor any Order to this effect been passed by the Court.

8. A joint hearing in this case was held on 5 February 2018 at the VPT premises. At the joint hearing, the VPT and WQMPL have made the following submissions:

Visakhapatnam Port Trust

- (i). Under what provision of Concession Agreement, is this revision in storage charge and berth hire charge sought?
- (ii). Change of sizes of vessels is a business risk. Had it been pointed out at pre-bid stage, it could have been rectified.
- (iii). Upfront tariff is determined and made known to shortlisted bidders before bidding. Based on the upfront tariff approved by TAMP, the bidders have quoted.
- (iv). Lighting, roads, drainage referred under clause 9.1. of the CA, may be few lakhs. Dredging is also there under the said clause.
- (v). It appears WQMPL has considered the highest GRT of vessel in its calculation.
[WQMPL, CEO: We have given the average GRT in the revised berth hire calculation. We have not considered the highest GRT. Largest vessel handled is 225 mtrs. length. We have handled vessels of 35,000 to 40,000 GRT]
- (vi). There are no errors in the calculation of Berth hire furnished by VPT to TAMP. It is only on account of error in conceptual understanding.
- (vii). The concluding Para 10(vi)(a) of the TAMP Order of February 2009 states that though port has referred this payment as upfront fee, it has to be recognized that it is the part of the constructed berth made available to the operator which otherwise the operator would have incurred for construction. In the instant case since the berth hire would be collected by the operator, it is logical to consider the total cost of the berth which includes ₹10.51 crores payable to the VPT as part of the berth cost.
- (viii). We have done our own calculation. As per our calculation, had WQMPL constructed the 40 meters of constructed berth made available by VPT, it would have been around ₹10 crores. We will share the calculation with TAMP and WQMPL.
- (ix). After notification of upfront tariff by TAMP in February 2009, Development Advisor visited the port. Development Advisor suggested to dismantle 40 metres of length of WQ-7 in view of proposed dredging to be carried out and reconstruct it as a part of WQ-6. We have, therefore, filed a proposal to TAMP reducing upfront fee from ₹10 crores to ₹6.8 crores. We have revised upfront cost to ₹6.8 crores in the revised working given to TAMP in July 2009. As per revised working furnished by VPT to TAMP in July 2009, the berth hire worked out to 0.77 paise per GRT hour as against 0.76 paise per GRT approved by TAMP in February 2009 Order. We subsequently withdrew the proposal after examining.
- (x). 255 mtrs. is berth length of WQ-6. VPT considered the maximum GRT of vessel that could be handled at that point of time for 255 mtrs. berth length.
- (xi). In the notified storage charge, small error has crept in. The storage charge approved should have been divided by 7 days i.e. ₹8.61/ tonne/ day for the first slab should be divided by 7 days to arrive as per tonne per day rate.
[WQMPL: If it is divided by 7, it will solve 1/7th of the problem.]

- (xii). We had in our proposal proposed ₹8/ tonne/ week. But, TAMP has notified it as ₹8.61/ tonne/ day.
- (xiii). For arriving at storage charge for EQ-1, EQ-1A berths, the storage charge was arrived by VPT by dividing the storage charge by number of days. The same has not happened while arriving at storage charge for WQ-6 berth.
- (xiv). The Concession Agreement stipulates that the Concessionaire shall not seek any relief from Concessioneing Authority or any government except in accordance with the express provision of the agreement. As per the CA, the Concessionaire has acknowledged and accepted risk and inadequacy, mistake or error of facts, assumptions or projections in tariff Order issued by TAMP.
[This argument was not acceptable to Chairman, VPT.]
- (xv). There is some mistake in storage charge working.
- (xvi). Change of size of vessel is business risk. Further, during 30 years of the projects there can be uncertainties.
- (xvii). If bidder representing WQMPL had put their concern during pre-bid stage, we could have forecasted increasing size of vessel. Neither WQMPL has objected nor had VPT felt that capacity of 2 million tonnes / annum is low.
- (xviii). Larger issue of storage charges is being looked into for solution at Government level for rationalization of storage charges. If any calculation errors are there, we can request TAMP to consider. In business, so many things can change during the project period. Concession Agreement does not allow mid-term review due to change in business scenario.
- (xix). Once WQ-7 will come, WQ-6 may not have that comfort zone to handle such bigger size vessel.

West Quay Multiport Private Limited

- (i). In our case, berth hire and storage charges are extremely high as compared to VPT berths and the BOT terminal operators like Vizag Seaport Pvt. Ltd., Adani Vizag Coal Terminal Private Ltd. Vizag General Cargo Berth Pvt Ltd., operating in VPT.
- (ii). We have gone through the upfront tariff guidelines of 2008. We feel the guidelines have not been applied correctly.
- (iii). As per the guidelines, capital cost of berth to be considered in upfront berth hire comprises of cost of construction of berth and cost of dredging, if any, carried out alongside the berth.
- (iv). In the capital cost of berth for WQ6 berth at VPT, TAMP has considered an excess amount of ₹10.51 crores towards cost of 40 mtrs. length of constructed berth by the VPT. This ₹10.51 crores is included as upfront fee payable to VPT towards 40 mtrs. length of constructed berth by VPT.
- (v). As per Concession Agreement, the Article 9, clause 9.1., 68 million is payable by the Concessionaire as upfront fee towards lighting, roads, drains, dredging, etc. made available by the Concessioneing Authority and towards amount spent for infrastructure development. The said clause does not mention about payment to be made to the Concessioneing Authority towards berth construction cost.
- (vi). We have no road, no drainage inside our terminal. It is one-time cost paid to VPT.
- (vii). Further, GRT of vessels considered at the time of upfront tariff fixation is between 11,300 tonnes for steel, 18550 tonnes for CP coke, 29000 tonnes for Lam coke and

15000 tonnes for Granite. Presently, vessels arriving at WQ6 berth are bigger size. Actual GRT of vessels berthed at WQ6 berth is 28,863 tonnes for Steel 32,058 tonnes for CP coke, 38,207 tonnes for Lam coke and 19,528 tonnes for Granite.

- (viii). Now since actual GRT is higher, the same ship has to pay higher amount at existing approved rate.
- (ix). Based on average GRT of vessels which came at WQ-6 berth, total GRT hours as per our calculation comes to 22,97,98,992 GRT berth hours as against 14,09,62,800 GRT berth hours considered in upfront berth hire calculation.
- (x). Consequent to above, we have reworked the berth hire charges and given in our representation dated 16 June 2017. The rectified berth hire comes to ₹0.37/ GRT/ hour for foreign going vessel and ₹0.22/ GRT/ hour for coastal vessel as against ₹0.76/ GRT/ hour and ₹0.46/ GRT/ hour approved by TAMP.
- (xi). This anomaly in berth hire has to be corrected else trade will go to the neighbouring ports.
- (xii). Dredging across the berth upto 50 mtrs. was done by us.
- (xiii). As regards storage charge, as per upfront tariff guidelines of 2008, total ARR is to apportioned in the ratio of 90:5:5 between cargo handling, storage charge and miscellaneous services to arrive at upfront tariff for these services.
- (xiv). As against the above guidelines, the VPT has apportioned the estimated ARR in ratio of 96:2:2 between cargo handling, storage charge and miscellaneous services to arrive at upfront tariff for these services.
- (xv). Since the apportionment of ARR between the storage charge and miscellaneous services is the same, Miscellaneous charge and storage charge should be the same.
- (xvi). Miscellaneous charge is prescribed at ₹2.60 per tonne.
- (xvii). As regards storage charge, free days of 5 days for import and 15 days for export cargo is prescribed. Beyond the free period, the storage charge prescribed is ₹8.60/ tonne/ day for first week after free period, ₹12.90/ tonne/ day and ₹17.20/ tonne/ day for second and 3rd slab respectively. The storage charge prescribed is not same as miscellaneous charge.
- (xviii). The storage charge works out to ₹339.70 per tonne per month. Due to exorbitant storage rate, no cargo is coming to storage yard.
- (xix). We have done some calculation. Storage charge should be ₹8.67/ tonne/ month.
- (xx). To summarise, if error in capital cost and GRT of vessel as per current trend is considered and following the methodology followed by TAMP, the berth hire in tariff Order will come to ₹0.50/ GRT for foreign going vessel and ₹0.30/ GRT for coastal vessel in the Tariff Order of 2015 notified in the name of WQMPL after applying the then escalation of 35.08%.
- (xxi). We are aware a separate forum is looking into storage issue. We want our case to be looked in isolation.

9.1. At the joint hearing, WQMPL agreed to share information to be sought by this Authority. Accordingly, as agreed at the joint hearing, the WQMPL vide our letter dated 15 February 2018 was requested to furnish documents/ information/ clarification on a few points.

9.2. The WQMPL vide its letter dated 20 February 2018 intimated that the WQMPL is in the process of collating the documents/ information, requested to be furnished by way of the letter and the same will be furnished to TAMP at the earliest. The WQMPL also referring to the Order of the Hon'ble High Court of Judicature at Hyderabad has stated that the delay on the part of TAMP in disposing off the representations within the stipulated time period has caused grave prejudice to the interest of WQMPL.

9.3. In response, we have vide our letter dated 28 February 2018 brought out the factual position to the notice of WQMPL about the immediate action taken by us in compliance of the directions of the Hon'ble High Court of initiating the consultation proceedings with the VPT and joint hearing held on 5 February 2018 to given an opportunity of hearing to the WQMPL and VPT in compliance with direction of the Hon'ble High Court. At the joint hearing, the WQMPL had agreed to furnish information to be sought by us. Accordingly, additional information/ clarifications was sought from WQMPL vide our letter dated 15 February 2018 and the WQMPL was requested to furnish the information/ clarifications positively by 20 February 2018. The response of WQMPL was pending at that point of time. Further, response of VPT on the written submissions given by WQMPL at the joint hearing was also awaited at that point of time. Thus, the pleadings of the respective parties i.e. WQMPL and VPT before this Authority were yet to be completed. Hence, it was brought to the notice of WQMPL that the question of delay on the part of this Authority in disposing of the representation does not arise. The WQMPL was requested to co-operate and furnish the requisite information at the earliest to enable us to proceed further. This was again followed up by reminder dated 13 March 2018. The WQMPL was requested to expedite its response as the case is to be disposed of in a time bound manner as per the direction of this Hon'ble High Court.

9.4. In this backdrop, the WQMPL has furnished information/ clarification vide its letter dated 13 March 2018. A summary of the additional information/ clarifications sought by us and reply furnished by WQMPL thereon is tabulated below:

Sl. No.	Information / clarification sought by us vide our letter dated 15 February 2018	Response received from WQMPL vide its letter dated 13 March 2018
A.	At the joint hearing, the WQMPL has agreed to furnish information to be sought by TAMP. Accordingly, WQMPL is requested to furnish information / clarification on the following points immediately:	
(i).	Audited Annual Accounts from the date of commencement of operation i.e. for the year 2015-16, 2016-17 and actuals for the year 2017-18 i.e. from April 2017 to 31 December 2017.	The Audited Accounts for the years 2015-16 and 2016-17 is furnished. The actuals for the year 2017-2018 i.e. from April 2017 to December 2017 is also furnished.
(ii).	Revised berth hire charges furnished by WQMPL in its representation dated 16.6.2017:	
	(a). The berth length of WQ-6 constructed by WQMPL.	The berth length of WQ-6 berth constructed by WQMPL is 255 mtrs.
	(b). The actual expenditure incurred by WQMPL for construction of berth No. WQ-6 linking it to the capex reported in Gross Block in Audited Annual Accounts.	The actual expenditure incurred by WQMPL for construction of berth no.WQ-6 as reported in Gross Block in Audited Annual Accounts is ₹1,98,69,01,458/-. Please refer to Page No.22 of Exhibit-I (Audited Annual Accounts 2015-2016).
	(c). At the joint hearing the VPT has stated that, after notification of upfront tariff by TAMP in February 2009, Development Adviser has visited the port and suggested to dismantle 40 meters of length of WQ-7 in view of proposed dredging to be carried out and reconstruct it as a part of WQ-6. In this connection, the WQMPL is requested to clarify whether the construction of the said berth length of 40 mtrs forms part of WQ-6 berth and whether the said 40 meters of berth length earlier part of WQ7 was re-constructed after dismantling as part of WQ6 project? If so, furnish the capex incurred for the same along with detailed break up. The WQMPL to also clarify as to who has incurred the capex for the same.	The berth length of 40 mtrs was not dismantled and reconstructed.

	<p>(d). The average GRT considered by the Authority in the berth hire calculation in upfront tariff approved vide Order No.TAMP/39/2008-VPT dated 27 August 2009 is based on the average GRT estimated by the VPT as given at Sl. No.(iii) at Annex III of the said Order in the two tables a and B. For ease of reference the average GRT furnished by VPT and considered by the Authority is given below:</p> <table border="1" data-bbox="327 443 847 501"> <thead> <tr> <th>Particulars</th> <th>Unit</th> <th>CP Coke</th> <th>LAM Coke</th> <th>Steel</th> <th>Granite</th> </tr> </thead> <tbody> <tr> <td>Average GRT per vessel</td> <td>Tonnes</td> <td>18550</td> <td>29000</td> <td>11300</td> <td>15000</td> </tr> </tbody> </table> <p>As reported by VPT the upfront tariff proposal was submitted by VPT in the year 2008 considering the highest average GRT recorded during 2005-06, 2006-07 and 2007-08 duly obtaining the latest trends in vessel sizes and for forecast.</p> <p>The original proposal of VPT dated 10 July 2008 which was circulated for comments to the users/ user organisations and prospective bidders including M/s.ABG Infralogistics Ltd. (who has stake in the WQMPL) vide our letter No.TAMP/39/2008-VPT dated 9 September 2008, wherein VPT has estimated average GRT as given above for berth hire calculation. It is seen from our records, M/s ABG Infralogistics Ltd has not furnished any comments on the GRT considered by VPT in the berth hire calculation during the consultation process initiated by the Authority with the stake holders for fixation of upfront tariff for the multipurpose berth WQ6 at VPT. The submissions made now by WQMPL of considering higher GRT of vessels at 32058 tonnes for CP coke, 38207 tonnes for Lam coke, 28863 tonnes for steel and 19528 tonnes for Granite was not pointed out during the consultation process for fixation of upfront tariff for this project.</p>	Particulars	Unit	CP Coke	LAM Coke	Steel	Granite	Average GRT per vessel	Tonnes	18550	29000	11300	15000	<p>WQMPL agrees that the Average GRT estimated by VPT in 2008 was based on the previous years highest GRT recorded. However, since the commencement of operations abnormal variations are seen in the average GRT per vessel.</p> <p>The average GRT furnished by VPT & considered by TAMP is as follows:</p> <table border="1" data-bbox="869 443 1394 568"> <thead> <tr> <th>Particulars</th> <th>Unit</th> <th>CP Coke</th> <th>LAM Coke</th> <th>Steel</th> <th>Granite</th> </tr> </thead> <tbody> <tr> <td>Average GRT per vessel</td> <td>Tonnes</td> <td>18550</td> <td>29000</td> <td>11300</td> <td>15000</td> </tr> </tbody> </table> <p>The above average GRT furnished by VPT corresponds to annual GRT berth hours of 14,09,62,800. Please find attached herewith and marked as Exhibit - III, copy of Annex - III (Page No. 29) of Tariff Order dated 12.02.2009.</p> <p>The actual GRT of vessels that berthed at the WQ6 berth since COD is as follows:</p> <table border="1" data-bbox="869 808 1394 943"> <thead> <tr> <th>Particulars</th> <th>Unit</th> <th>CP Coke</th> <th>LAM Coke</th> <th>Steel</th> <th>Granite</th> </tr> </thead> <tbody> <tr> <td>Average GRT per vessel</td> <td>Tonnes</td> <td>32058</td> <td>38207</td> <td>28863</td> <td>19528</td> </tr> </tbody> </table> <p>Applying the same calculation as TAMP has in Tariff Order dated 12.02.2009, the actual annual GRT berth hours are 22,97,98,992.</p> <p>The variation observed in the actual annual GRT berth hours and the estimated annual GRT berth hours is to the tune of 63%. $\frac{(22,97,98,992 - 14,09,62,800)}{14,09,62,800} \times 100 = 63\%$</p> <p>While it is reasonable to expect a variation of +/- 5%, such abnormal variations to the tune of 63% are unfathomable even after exercising proper due diligence.</p> <p>Therefore, it is essential that such abnormal variations, which are threatening the very viability of the project be forthwith rectified.</p>	Particulars	Unit	CP Coke	LAM Coke	Steel	Granite	Average GRT per vessel	Tonnes	18550	29000	11300	15000	Particulars	Unit	CP Coke	LAM Coke	Steel	Granite	Average GRT per vessel	Tonnes	32058	38207	28863	19528
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(iii).	<p><u>Revised Storage charges by WQMPL in its representation dated 16.6.2017:</u></p>																																					
	<p>(a). Furnish detailed working for the revised storage charge proposed by WQMPL in its representation dated 16 June 2017 at ₹0.30/tonne / day for the first slab viz. first week after expiry of the prescribed free period (5 days for import cargo and 15 days for export cargo).</p>	<p>The detailed working for the revised storage charges proposed by WQMPL in its representation dated 16.06.2017 is furnished and attached as Exhibit – IV. [Due to paucity of space in the table the detailed working of revised storage charges is furnished in subsequent paragraphs.]</p>																																				
	<p>(b). Para B(II) of the representation of WQMPL dated 16 June 2017, in the last sentence states “(assuming the cargo is stored for a period of 30 days which is the accepted dwell time)”. The basis of this assumption may be explained.</p>	<p>We refer to Annex II and Annex III, being the norms for fixation of the upfront tariff for the services rendered at iron ore terminal and coal terminal respectively, to the Guidelines for upfront tariff setting for PPP projects at Major Port Trusts, 2008.</p> <p>In Article 3.2 under table 2 of both Annex II and Annex III, the norms for the calculation of optimal yard capacity states that Turnover ratio of the plot in an year (T) is 12. Turnover ratio of 12 translates into dwell time of 30 days.</p>																																				

		Exhibit-V , Annex II and Annex III of the Guidelines for upfront tariff setting for PPP projects at Major Port Trusts, 2008 is attached.
(c). Furnish a detailed working of the estimated revenue from the revised storage charge proposed by WQMPL for the three slabs in its representation dated 16 June 2017 and establish that it is within the ARR estimated from storage at ₹0.54 crores per annum in the upfront tariff Order dated 27 August 2009 approved by the Authority.		The detailed working for the revised storage charges proposed by WQMPL in its representation dated 16.06.2017 is furnished as Exhibit - IV . [Detailed working has been brought out in next para.]
(d). The WQMPL in Para B(III) of the representation of WQMPL dated 16 June 2017 has stated that the 2008 guidelines prescribed only 30% of the cargo would attract storage charge. The WQMPL may note that the tariff guidelines of 2008 does not prescribe so and hence the above position is not factually correct.		We refer to para no. 10 (viii) (d) of the Tariff Order dated 12.02.2009 wherein, it is stated that : <i>This tariff did not factor the cargo which will stay in the yard beyond the prescribed free period and contribute towards revenue from this tariff item. The VPT has subsequently revisited its calculation. It has assumed 30% of the total cargo will attract demurrage and accordingly, proposed the storage charge at ₹8 per tonne for the first week, ₹12 per tonne for the second week and ₹16 per week thereafter so as to meet the revenue requirement.</i> From the above, it is clear that only 30% of the total cargo will attract demurrage (storage charges). WQMPL has therefore strictly followed the same approach as TAMP has in its Tariff Order dated 12.02.2009.
(e). Para B(III) of the representation of WQMPL dated 16 June 2017 gives some calculation of $(₹2.60 * 100/30) = ₹8.67$ per tonne per month. Please explain each parameter considered in the calculation with basis thereof.		Exhibit-IV contains detailed working for the revised storage charges proposed by WQMPL in its representation dated 16.06.2017.

9.5. The detail working of revised storage charge furnished by WQMPL as Exhibit – IV is given below:

Detailed working for the revised storage charges

Key Particulars			Reference
Annual Volume (MT)	a	2,080,000	Please refer to page No.16, para no.10(v)(c) of the Tariff Order dated 12.02.2009, attached herewith & marked as Exhibit-VI
Monthly volume (MT)	$B = a / 12$	1,73,333	
Volume attracting storage charges per month is 30% of the total cargo (MT)	$C = b * 30\%$	52,000	Please refer to para No.10 (viii)(d) of the Tariff Order dated 12.02.2009, attached herewith & marked as Exhibit-VI
Turnover ratio of the plot in an year	d	12	Annex II & III of the Guidelines for upfront tariff setting for PPP projects at Major Port Trusts, 2008 (Please refer to Exhibit V)
Average dwell time (in days)	e	30	There being 12 months in a year, a turnover ratio of 12 in a year implies that each time cargo enters the yard, it will be completely evacuated within a period of 1 month, i.e. 20 days
Annual Revenue Requirement from Storage (₹)	f	5,400,000	Please refer to para No.10 (viii) (b) of the Tariff Order dated 12 February 2009, attached herewith & marked as Exhibit - VI
Monthly Revenue Requirement (₹)	$g = f / 12$	4,50,000	

From the above it is clear that the monthly volume to be handled is 1,73,333 MT (b). Of this, in accordance with the Tariff Order, only 30% will attract storage charges, i.e. 52,000 MT (c). Therefore, this volume of 52,000 of MT will be required to generate a revenue of ₹4,50,000 (g) per month.

Proposed Storage Tariff				
Period	No. of days	Tonnage (MT) attracting storage charges	Proposed Storage Tariff in ₹ per MT per day	Storage Revenue for the Period in ₹
0-5	5	1,73,333	0	0
6-12 (First week after expiry of free period)	7	52,000	0.222	80,808
13-18 (2 nd week after expiry of free period)	7	52,000	0.333	1,21,212
20-30 (Beyond 2 nd week)	11	52,000	0.444	2,53,968
Total	30		h	4,55,988
It can be observed from the above table that the monthly storage revenue (h) at the proposed storage tariff is equal to the monthly revenue requirement from storage (g)				
[(h) which is ₹4,55,988 is to be considered equal to (g) which is 4,50,000 on account of rounding up]				

Storage charges after applying escalation factor as per TAMP Notification No.TAMP/12/2009/Misc dated 08.04.2015			
Description	Proposed storage charges from Table above in ₹ per MT per day	Escalation factor as per TAMP Notification No.TAMP/12/2009/Misc dated 08.04.2015	Proposed storage tariff after duly applying the escalation factor in ₹ per MT per day
First week after expiry of free period	0.222	35.08%	0.30
2 nd week after expiry of free period	0.333	35.08%	0.45
Beyond 2 nd week	0.444	35.08%	0.60

10.1. As agreed at the joint hearing, the VPT vide our letter dated 15 February 2018 was requested to take action on the following points, followed by reminders dated 28 February 2018 and 13 March 2018.

- (i). At the Joint hearing, the WQMPL has furnished its written submission. A copy of written submission made by WQMPL was forwarded to VPT for its comments.
- (ii). At the joint hearing, the VPT agreed that they will file a proposal for correction required in storage charge. The VPT to file its proposal alongwith detailed calculations by 20 February 2018. The detailed working to be furnished by VPT may also include the estimated revenue from the revised storage charge (to be) proposed by VPT. The VPT to establish that the estimated revenue from revised storage charge (to be) proposed by VPT meets the ARR estimated from storage at ₹0.54 crores per annum in the upfront tariff Order dated 27 August 2009 approved by this Authority.
- (iii). At the joint hearing, VPT agreed to share the berth hire calculation done by the port had WQMPL constructed the 40 meters of constructed berth made available by VPT to WQMPL with TAMP and WQMPL. The VPT to share the same with TAMP and WQMPL by 20 February 2018.

10.2. With reference to point of action brought out at 10.1. (i). above, the VPT has vide its letter dated 26 March 2018 furnished its comments on the written submissions made by the WQMPL at the joint hearing. A summary of the written submissions of WQMPL and comments of VPT thereon is tabulated below:

Sl. No.	Written submission made by WQMPL	Comments of VPT vide its email dated 26 March 2018
1.	TAMP has misinterpreted the Tariff Guidelines 2008 and committed errors in calculating and fixing the (A Berth Hire Charges and B Storage	No comments of VPT.

	Charges) of WQ6 berth in Tariff Order of 2009 as explained below:							
A.	BERTH HIRE CHARGES:							
(i).	<p>At Sr. No. II (ii) (a) in Annex –I of the Tariff Order 2009, TAMP erroneously considered the cost of construction of the WQ6 berth as ₹47.06 crores. TAMP has considered an excess amount of ₹10.51 crores to be expended by WQMPL whereas, the said amount was in fact incurred by VPT for construction of the 40 meters berth length prior to the date of award of concession. In Appendix 4 (Project Requirements) of the Agreement, it was mentioned that WQMPL has to plan, design and construct berth of 255 meters length and dismantle the existing berth of 40 meters length constructed as part of WQ7 berth by VPT. TAMP vide its letter dated 19.10.2009 had enclosed the statement showing the queries raised by the bidders wherein SI. Nos.2 and 28, VPT has stated that the proposed length of WQ6 berth is 255 meters and existing berth length of 40 meters constructed with steel sheet pile wall type of construction to be dismantled and constructed afresh. As mentioned in the Agreement, WQMPL dismantled the berth of 40 meters length and constructed the WQ6 berth of length 255 meters. This amount of ₹10.51 Crores was neither claimed nor recovered by VPT from WQMPL. The correct capital cost for berthing services of WQ6 berth is ₹39.47 Crores and not ₹49.98 Crores.</p> <p>[WQMPL has furnished a copy of Google Map showing berth no.WQ-7, WQ-6 and 40 m berth constructed by VPT.]</p> <p>[It has furnished a copy of TAMP Order 2009.]</p> <p>[It has also furnished a copy of Page No.47 of the Concession Agreement (Clause no.9.1), which indicates the amount of ₹68.00 Million payable by WQMPL to VPT as upfront fee towards other facilities like lightning, roads, drains, culverts, dredging, etc., made available by VPT and the amount spent for infrastructure development.]</p>	<p>VPT in its proposal dated 31.12.2008 for fixation of upfront tariff for the subject project, considered a length of 255 meters quay to be developed as per the scope of project of which 40 meters of the berth already constructed by VPT would be made available to the operator. Accordingly the cost of 255 meters quay worked out to ₹47.06 crores as detailed below:</p> <p style="text-align: right;">(₹ in Crores)</p> <table border="1"> <tr> <td>Cost of construction of berth of 21 5 meters length</td> <td>36.55</td> </tr> <tr> <td>Cost of 40 meters of berth and the infrastructure thereon already developed by VPT</td> <td>10.51</td> </tr> <tr> <td>Total</td> <td>47.06</td> </tr> </table> <p>TAMP has considered the cost of ₹47.06 crores towards construction of berth of 255 meters and ₹2.92 crores towards cost of dredging alongside the berth adding up to ₹49.98 under "Berthing services" and determined the berth hire. This position was clearly brought out in the TAMP notification dated 23.2.2009 vide para" 10(vi) Capital Cost".</p> <p>Subsequent to the notification of upfront tariff by TAMP, the Development Advisor and Director(Engg.), Ministry of Shipping carried out visit of project site on 18.5.2009 and held discussions with the officials of VPT and opined that:</p> <p>(a). Dismantling of the existing 40 mtrs. Length of We-7 (which was constructed as return for the berth to act as a retaining structure) is ideal, keeping in view that dredging in front of the berth is proposed to be carried out upto (-) 14.00 mtrs. level ultimately.</p> <p>(b). In view of the modification in the proposal with regard to dismantling of the existing 40 mtrs. length of the quay as mentioned above and construction of WQ-6 including the 40 mtrs. length, the upfront fee as indicated in the estimated cost amounting to ₹5.10 crores may be accordingly reduced keeping only the remaining cost towards development of the project components already taken up by the port;</p> <p>Copy of letter from Development Advisor, MoS dated 20.5.2009 is at Appendix-I(A).</p>	Cost of construction of berth of 21 5 meters length	36.55	Cost of 40 meters of berth and the infrastructure thereon already developed by VPT	10.51	Total	47.06
Cost of construction of berth of 21 5 meters length	36.55							
Cost of 40 meters of berth and the infrastructure thereon already developed by VPT	10.51							
Total	47.06							

		<p>(c). As per the opinion of the Development Advisor, VPT had revised the upfront cost from ₹10.51 crores to ₹6.80 crores, capital cost from ₹114.37 crores to 114.50 crores and berth hire charges from ₹0.76 to ₹0.77 per GRT per hour and submitted a revised proposal to TAMP vide LT.No.QRNPA/VQ-6/TARIFF/2009 dated 20.07.2009 (Appendix-I(B)).</p> <p>(d). In response, TAMP vide Lr. No.TAMP/39/2008-VPT dated 27.8.2009, inter alia opined that the revision in the capital cost proposed by VPT is not found to be significant, and suggested VPT to examine once again the application filed by it for revision in the upfront berth hire.</p> <p>(e). VPT vide its letter No.QRNPA/Q-6/Tariff/2009 dated 24.9.2009 requested TAMP that the revised proposal may be considered as withdrawn in view of the opinion of TAMP.</p> <p>(f). As such the <u>Capital Cost of ₹49.98 crores considered by TAMP for fixation of upfront berth hire charges is in order.</u> The statements showing comparative upfront cost, comparative capital cost and comparative calculation of berth hire charges are attached at Appendix I(C) I(D) and I(E) respectively.</p> <p>(g). Provision for payment of upfront fee of ₹6.8 crores by the Concessionaire exists vide clause 9.1(a) of Article 9 of the concession Agreement. Provision to Plan, design and construct 255 m length of berth (including dismantling the existing 40m berth length already constructed as part of WQ7) to cater to the berthing requirement of 14 m draft vessels exists under Project Requirements at Appendix 4 of the Concession Agreement.</p>
(ii).	<p>(a). Clause No. 4.4. of Annexure –V of the Tariff Guidelines 2008, stipulates the calculation of berth hire charges and the same is extracted herein below: <u>“Calculation of Berth Hire:</u> For arriving at tariff for berth hire, the revenue requirement is to be calculated. The revenue requirement is operating cost plus 16% ROCE. The Capital cost will comprise of the following: (i) Cost of construction of berth (ii) Cost of dredging if any carried out alongside the berth.</p>	<p>Conditionalities pertaining to GRT</p> <p>The upfront tariff proposal submitted by VPT to TAMP in the year 2008 considered the highest average GRT recorded during 2005-06, 2006-07 and 2007 -08 duly obtaining the latest trends in vessel sizes and for forecast. The tariff proposal accordingly was prepared as per the TAMP Guidelines 2008.</p> <p>TAMP after following the due procedure and after conducting Joint Hearing</p>

The above two costs are to be obtained from the estimates given by the Port Trust. The operating cost is only the maintenance charges for which the norm is 1% the above capital cost (items (i) and (ii) above).

After calculating the revenue requirement as above, the berth hire per GRT is formulated taking into account the values of GRT of vessels considered for calculation of capacity. For arriving at per hour berth hire rate, the annual revenue requirement is to be divided by total GRT hours.

TAMP has also committed an error / mistake by considering the GRT furnished by VPT for calculating the berth hire charges. The GRT per vessels furnished by TAMP is as follows:

Particulars	Unit	CP Coke	LAM Coke	Steel	Granite
Average GRT per vessel	Tonnes	18550	29000	11300	15000

Therefore, GRT berth hours per year considered by TAMP are 14,09,62,800. The actual GRT of vessels that actually berthed at the WQ6 berth since COD is as follow:

Particulars	Unit	CP Coke	LAM Coke	Steel	Granite
Average GRT per vessel	tonnes	32058	38207	28863	19528

Therefore, the actual GRT berth hours per year are 22,97,98,992. From the above it is clear that the conditionality's of GRT considered by TAMP are incorrect.

[WQMPL has furnished a copy of diagram (specifying the size of various types of vessels) and a copy of the GRT calculation.]

involving all the stake holders has notified the tariff vide its order dt. 12.2.2009. Adequate scope was provided for all the prospective bidders to represent their views including the conditionalities considered for determining upfront tariff during joint hearing. As such, the concessionaire has the complete knowledge/information about the parameters considered by the TAMP prior to bidding.

The variations in actual position attained in respect of any parameter after CoD to the estimated parameters considered for fixation of upfront tariff in the current PPP arrangement can only be viewed as part of project risks and may not be construed as error.

In view of the above, there appears no rationale for considering revision of berth hire charges notified by TAMP as claimed by the concessionaire.

(iii). As per serial No. 4.4. of Annexure –V of the Tariff Guidelines 2008, TAMP shall fix the berth hire charges based on the revenue requirement from berthing services. The revenue requirement is the operating cost plus 16% Return on Capital Employed (“ROCE”). ROCE is earning before interest and tax divided by capital employed. Due to the wrong calculations done by TAMP the capital investment of WQMPL is erroneously considered as ₹49.98 Crores instead of 39.47 Crores and total GRT berth hours are erroneously underestimated at 14,09,62,800 instead of 22,97,98,992. Consequently ROCE of WQMPL and revenue requirement from berthing services which is the basis for calculation of berth hire charges are also increased. Therefore, WQMPL’s Tariff Order 2009 with regard to berth hire charges is incorrect. The rectified berth high charges should be as follows:

Rectified Berth Hire Charges:

Sl. No.	Particulars	Gazette Berth Hire Charges (as per Gazette No. 26)	Rectified berth hire charges (to be notified by TAMP)
	Revenue Requirement		
i)	Berth Hire charges	(₹ in crores)	(₹ in crores)
(a)	Operating cost		
	(i). Maintenance charge (1% on cost of construction of berth)	0.47	0.39
	(ii) Depreciation	1.67	1.32
	(iii) Insurance (1% on berth cost)	0.47	0.39
	Subtotal (a)	2.61	2.11
(b)	Return on Capital Employed % 16%	8.00	6.32
	Total Revenue requirement from berthing services (a + b)	10.61	8.42
	GRT berth hours per year	14,09,62,800	22,97,98,992
Tariff Order 2015	Foreign going vessel (Rate per GRT per hour) in ₹ (Without Escalation)	₹0.76	₹0.37
	Coastal vessel (Rate per GRT per hour) in ₹ (Without Escalation)	₹0.46	₹0.22
Tariff Order 2015	Foreign going vessel (Rate per GRT per hour) in ₹ (With escalation of 35% mentioned in Gazette No. 338)	₹1.03	₹0.50
	Coastal vessel (Rate per GRT per hour) in ₹ (With Escalation of 35% mentioned in Gazette No. 338)	₹0.62	₹0.30

Therefore, the rectified Berth hire charges for foreign going vessels should be ₹0.50 per

	GRT per hour and for coastal vessels should be ₹0.30 per GRT per hour. [WQMPL has furnished a copy of Writ Petition dated 23.08.2017.]																																																																													
(iv).	Due to the errors committed by TAMP in assessing the correct construction cost of WQ6 berth and correct GRT per vessel of the vessels at the WQ6 berth, the calculation of berth hire charges on which WQMPL has been paying Royalty has been increased abnormally. Due to the collection of exorbitant berth hire charges in comparison with WQMPL's competitor at VPT, WQMPL is unable to compete with VPT itself and other berth operators at VPT and therefore, has been suffering heavy loss.																																																																													
(v).	As a corollary, comparative charts of berth hire charges fixed by TAMP to the various operators including WQMPL at VPT and graphical representation of the comparison of berth hire charges among the operators is given below: COMPARATIVE CHAT OF BERTH HIRE CHARGES AT VPT	It is not realistic to compare the berth hire of WQ-6 with that of other berths in VPT. The berth hire at VPT owned berths is determined by scale of Rates based on a different set of guidelines of TAMP which considers the depreciated value as compared to a relatively new quay of WQ-6 berth with deeper draft.																																																																												
	<table border="1"> <thead> <tr> <th rowspan="2">Sr. No</th> <th rowspan="2">Operator</th> <th rowspan="2">Type of Berth</th> <th rowspan="2">Berth No.</th> <th colspan="3">Berth Hire Charges notified by TAMP (per GRT per hour or part thereof)</th> </tr> <tr> <th>Foreign going vessel (in US \$)</th> <th>Foreign going vessel Equivalent in INR @ Exchange Rate - ₹ 64.34)</th> <th>Coastal Vessel (in INR)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Visakhapatnam Port Trust (VPT)</td> <td>Non-crane berths</td> <td rowspan="3">WQ 1 to WQ 5 & EQ 3 to EQ 5</td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td>-Upto 30000 GRT</td> <td>0.00230</td> <td>0.147</td> <td>0.0614</td> </tr> <tr> <td></td> <td></td> <td>-Above 30000 GRT</td> <td>0.00306</td> <td>0.196</td> <td>0.0818</td> </tr> <tr> <td></td> <td></td> <td>Crate Berths</td> <td rowspan="3">EQ 6</td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td>-Upto 30000 GRT</td> <td>0.00568</td> <td>0.365</td> <td>0.1518</td> </tr> <tr> <td></td> <td></td> <td>-Above 30000 GRT.</td> <td>0.00764</td> <td>0.491</td> <td>0.2042</td> </tr> <tr> <td>2</td> <td>Vizag Seaport Pvt. Ltd (VSPL) (BOT in VPT)</td> <td>Crane berths (For all GRT)</td> <td>EQ 8 & EQ 9</td> <td>0.0072 subject to a minimum of US \$ 144</td> <td>0.463</td> <td>0.1897 subject to a minimum of ₹3794/-</td> </tr> <tr> <td>3</td> <td>Adani Vizag Coal Terminal Pvt Ltd. (AVCTPL) (BOT in VPT)</td> <td>Crane berth (For all GRT)</td> <td>EQ 1</td> <td>-</td> <td>0.646 *</td> <td>0.387</td> </tr> <tr> <td>4</td> <td>Vizag General Cargo Berth Pvt. Ltd (VGCBPL) (BOT in VPT)</td> <td>Crane berth (For all GRT)</td> <td>GCB</td> <td>-</td> <td>0.744 *</td> <td>0.446</td> </tr> <tr> <td>5</td> <td>West Quay Multiport Pvt Ltd (WQMPL) (BOT in VPT)</td> <td>Crane berth (For all GRT)</td> <td>WQ6</td> <td>-</td> <td>1.03*</td> <td>0.62</td> </tr> </tbody> </table>	Sr. No	Operator	Type of Berth	Berth No.	Berth Hire Charges notified by TAMP (per GRT per hour or part thereof)			Foreign going vessel (in US \$)	Foreign going vessel Equivalent in INR @ Exchange Rate - ₹ 64.34)	Coastal Vessel (in INR)	1	Visakhapatnam Port Trust (VPT)	Non-crane berths	WQ 1 to WQ 5 & EQ 3 to EQ 5						-Upto 30000 GRT	0.00230	0.147	0.0614			-Above 30000 GRT	0.00306	0.196	0.0818			Crate Berths	EQ 6						-Upto 30000 GRT	0.00568	0.365	0.1518			-Above 30000 GRT.	0.00764	0.491	0.2042	2	Vizag Seaport Pvt. Ltd (VSPL) (BOT in VPT)	Crane berths (For all GRT)	EQ 8 & EQ 9	0.0072 subject to a minimum of US \$ 144	0.463	0.1897 subject to a minimum of ₹3794/-	3	Adani Vizag Coal Terminal Pvt Ltd. (AVCTPL) (BOT in VPT)	Crane berth (For all GRT)	EQ 1	-	0.646 *	0.387	4	Vizag General Cargo Berth Pvt. Ltd (VGCBPL) (BOT in VPT)	Crane berth (For all GRT)	GCB	-	0.744 *	0.446	5	West Quay Multiport Pvt Ltd (WQMPL) (BOT in VPT)	Crane berth (For all GRT)	WQ6	-	1.03*	0.62	
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	Denominated in INR CALCULATION OF BERTH HIRE CHRGES PAYABLE BY A SMPLE VESSEL OF 32,000 GRT AT VPT's BERH & WQMPL's BERTH:																																																																													

Sr. No.	Berth	GRT	Applicable berth hire charges as notified by TAMP (in INR)	Berth Hire Charges for 24 hrs (in INR)
1	VPT(WQ berths)	32,000	0.196	1,50,528
2	VPT (EQ berths)	32,000	0.491	3,77,088
3	WQMPL	32,000	1.03	7,91,040

From above it is clearly demonstrate that the berth hire charges fixed for WQ6 berth is indiscriminately higher by 500% than the berths operated by VPT. WQMPL have to offer steep discounts to attract few to none vessels at the berth, but is also obligated to pay Royalty to VPT on the basis of the unreasonably high berth hire charges fixed by TAMP.

(B) STORAGE CHARGES:-

(i). In clause 2.0 of Annex V of the Tariff Guidelines 2008, TAMP apportioned the total revenue requirement among the said three major groups as follows:

Tariff Group	Percentage of total revenue allocated
Cargo Handling Charges	90
Storage Charges	5
Miscellaneous Charges	5

As against the above guidelines, VPT considered 96% of the revenue requirement from handling charge, 2% from storage charge and 2% from miscellaneous charge while arriving at the upfront tariff. TAMP in Para 10 (viii) (b) of the Tariff Order 2009 accepted the aforesaid apportionment of the total revenue requirement as considered by VPT and the revenue requirement apportioned to handing charge is ₹2571 Lakhs, storage charge is ₹54 Lakhs and miscellaneous charge is ₹54 Lakhs. It is clear that TAMP has confirmed Clause 2.0 of Annexure V of the Tariff Guidelines 2008 and proportioned the storage charges and miscellaneous equally.

(ii). Whereas, TAMP has not proportioned the storage and miscellaneous charges equally in the Tariff Order 2009 and violated the terms of the Tariff Guidelines 2008. TAMP erred in fixing the storage and miscellaneous charges.

(iii). As per Clause 4 & 5 of Annex IV of Tariff Order 2009, the free period for storage of import cargo is 5 days and export cargo is 15 days. The storage charge for the cargo after the said period is as follows:

Storage Charges:

Description	Rate in ₹ per ton per day
First week after expiry of free period	₹8.60
2 nd Week after expiry of free period	₹12.90
Beyond 2 nd week	₹17.20

As per Clause 4 & 5 of Annex IV of Tariff Order 2009, ₹2.60 per tonne is a composite charge for all miscellaneous services such as environment and management, sweeping of cargo on the wharf, safety measures, etc.

TAMP vide its Order dated 12.2.2009 has apportioned a revenue requirement of ₹0.54 cores towards storage charges and ₹0.54 crores for miscellaneous charges equally @ 2% of the total Annual Revenue Requirement of Cargo handling activity.

It should be noted that miscellaneous charge is applicable to the total capacity of 2.09 MTPA of the terminal and per tonne rate is reckoned by dividing the ARR of ₹0.54 crores for miscellaneous activities with capacity of 2.09 MTPA.

Though the ARR for storage charges and miscellaneous charges is equally apportioned as ₹0.54 crores per annum, storage charges are assumed to be applicable only to 30% of the cargo i.e., 6.2 lakh tonnes. The storage chargers to be reckoned depending upon the number of days of storage beyond free period duly ensuring realisation of ARR of ₹0.54 crores, Thus, the per tonne charges for Storage and Miscellaneous activity cannot be equal. As such it is not prudent to conclude that TAMP has not proportioned the storage and miscellaneous charges equally and violated the terms of the Tariff Guidelines

		2008 and erred in fixing the storage and miscellaneous charges.																	
(iv).	<p>In violation of the Clause 2.2 of Annex-V of Tariff Guidelines 2008 and 10 (viii) (b) of the Tariff Order 2009, TAMP has not proportioned/ fixed the same storage and miscellaneous charges. The storage charges are 130 time the miscellaneous charges. The calculation of storage charges for period of 30 days, which is the accepted dwell time, is as follows:</p> <p>Storage Charges:</p> <table> <tr> <td>First 5 days</td> <td>5 x 0</td> <td>=</td> <td>0</td> </tr> <tr> <td>Next 7 days</td> <td>7x 8.60</td> <td>=</td> <td>60.20</td> </tr> <tr> <td>Next 7 days</td> <td>7 x 12.90</td> <td>=</td> <td>90.30</td> </tr> <tr> <td>Next 11 days</td> <td>11 x 17.20</td> <td>=</td> <td>189.20</td> </tr> </table> <hr/> <p>No. of days 30 = 339.70 MT/per month (30 days)</p> <p>The above calculation shows that the tariff for storage and miscellaneous charges are not the same. The storage Charges Should be ₹2.60 per tonne per month. The Tariff Guidelines 2008 prescribed that only 30% of the cargo would attract Storage Charges. Therefore, the Storage Charges per tonne should be $(₹2.60 \times 100/30) = ₹8.67$ per tonne per months. After applying this escalation factor of 35.08%, the applicable tariff for storage Charges for the current year should be $(₹8.67 + 35.08\%) = ₹11.71$ per tonne per month.</p>	First 5 days	5 x 0	=	0	Next 7 days	7x 8.60	=	60.20	Next 7 days	7 x 12.90	=	90.30	Next 11 days	11 x 17.20	=	189.20	The contention of the Concessionaire that the storage charges are 130 times the miscellaneous charges is not tenable. The calculations furnished by the concessionaire vide para iv) Storage Charges considered a dwell time of 30 days appears to be arbitrary.	
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Next 7 days	7 x 12.90	=	90.30																
Next 11 days	11 x 17.20	=	189.20																
	<p>C. <u>CONCLUSION</u></p> <p>In view of the aforesaid, the rectified berth hire charges and storage charges are given in the table below:</p> <p>Berth Hire Charges:</p> <table border="1"> <thead> <tr> <th>Sl. No.</th> <th>Particulars</th> <th>Rectified Charges</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Foreign going vessel (Rate per GRT per hour in ₹ (With escalation)</td> <td>₹0.50</td> </tr> <tr> <td>2</td> <td>Coastal Vessel (Rate per GRT per hour) in ₹ (With Escalation)</td> <td>₹0.30</td> </tr> </tbody> </table> <p>Storage Hire Charges:</p> <table border="1"> <thead> <tr> <th>Description</th> <th>Rectified Charges per tonner per day</th> </tr> </thead> <tbody> <tr> <td>First week after expiry of free period</td> <td>₹0.30</td> </tr> <tr> <td>2nd week after expiry of free period</td> <td>₹0.45</td> </tr> <tr> <td>Beyond 2nd week</td> <td>₹0.60</td> </tr> </tbody> </table>	Sl. No.	Particulars	Rectified Charges	1	Foreign going vessel (Rate per GRT per hour in ₹ (With escalation)	₹0.50	2	Coastal Vessel (Rate per GRT per hour) in ₹ (With Escalation)	₹0.30	Description	Rectified Charges per tonner per day	First week after expiry of free period	₹0.30	2 nd week after expiry of free period	₹0.45	Beyond 2 nd week	₹0.60	
Sl. No.	Particulars	Rectified Charges																	
1	Foreign going vessel (Rate per GRT per hour in ₹ (With escalation)	₹0.50																	
2	Coastal Vessel (Rate per GRT per hour) in ₹ (With Escalation)	₹0.30																	
Description	Rectified Charges per tonner per day																		
First week after expiry of free period	₹0.30																		
2 nd week after expiry of free period	₹0.45																		
Beyond 2 nd week	₹0.60																		

10.3. With reference to point of action flowing from the joint hearing brought out in para 10.1.(ii) above, the VPT vide its letter dated 26 March 2018 has furnished proposal for revision in storage charges duly meeting the ARR of ₹0.54 crores per annum estimated and notified in the upfront tariff order dated 27.8.2009. The submissions of VPT, in this regard alongwith its proposal for revision in storage charges is given below:

- (i). A meeting was held by VPT with the concessionaire M/s.WQMPL on 19.10.2015 for amicable settlement of issues vide article 19.10 of the Concession Agreement. During the meeting, among other issues, WQMPL informed that there is an error in the TAMP notification regarding storage charges as the same was notified as per "per day" against "per week" and requested VPT to inform TAMP accordingly. It was decided that WQMPL shall make an application to TAMP mentioning the error through VPT and VPT shall forward the same to TAMP with its recommendations. A copy of the minutes of the meeting between VPT and WQMPL dated 19.10.2015 is furnished as Appendix – II(A).
- (ii). The decisions taken in the meeting on 19.10.2015 with WQMPL were put upto the VPT Board in its meeting No.4 held on 6.11.2015. The VPT Board has resolved to approve vide point No.3 of Resolution No.180/2015-16 "to forward the M/s.West Quay Multi Port Pvt. Limited application to TAMP mentioning the error noticed regarding storage charges". The port has furnished a copy of the Board Resolution as Appendix-II(B).
- (iii). The concessionaire M/S.WQMPL vide Lr. No.WQMPLA/PTA/ 5P1201511462 dated 24.11.2015 (Appendix-II(C) has informed that the storage charges "per ton/per week" are notified by TAMP as "per ton/ per day". M/s.WQMPL further informed that to arrive at the correct storage charge, the notified tariff has to be divided by 7 (seven).

VPT vide letter No.IENG/EE(PPP)AivQ-6/2016142 dated 20.1.2016 (Appendix-II(D) has requested TAMP to revise the storage charges accordingly.

[With reference to the VPT letter dated 20 January 2016, it is relevant to state that we have vide our letter dated 4 March 2016 to VPT stated that since the upfront storage charge approved by this Authority is solely based on the proposal filed by the VPT and based on the methodology adopted by the port, the port is requested to examine the representation made by the WQMPL at its end. If the VPT on such examination finds there is merit in the representation made by the WQMPL warranting review of the storage charge, in the post bid scenario, then the VPT may seek necessary approval of the Ministry of Shipping to review the storage charges prescribed in its Order No.TAMP/39/2008-VPT dated 12 February 2009 and file a well analysed proposal before this Authority for the limited purpose of reviewing the storage charge maintaining the ARR from storage charge at ₹0.54 crores as estimated in the said Order.]

- (iv). **Proposal of VPT:**
In view of the decision taken during the joint hearing held by TAMP on 5.8.2018, the storage charges for WQ-6 berth may be revised as detailed below, duly maintaining the ARR (Annual Revenue Requirement) from storage Charges at ₹0.54 crores as estimated in the TAMP Order No.TAMP/39/2008-VPT dated 12.2.2009.

- (v). **Extracts contained in Annex-I of TAMP Order dated 12.2.2009:**

(b). Storage charge	Estimates modified by TAMP
	Rate per tonne / per day or part thereof (in ₹)
First week	8.60
Second week	12.60
Thereafter	17.20

- (vi). (a). **Methodology for arriving at the revised Storage Charges:**

Revenue requirement from storage = ₹54 lakhs
 % of cargo to attract storage charge = 30%
 Cargo likely to pay storage charge (lakh tonnes) = 6.24
 Free period = Export: 15 days; Import: 5 days.
 Calculation=54/ 6.24/ 7 = ₹1.24

- (b). **Calculations of revised storage charges:**

Cargo	Volume (lakh tonnes)	Handling rate per day (Tones)	Parcel (Tonnes)	Handling time (days)	Free period (days)	Dwell time (days)	Weighted average (lakh tonne days)
(1)	(2)	(3)	(4)	(5) (4)/(3)	(6)	(7) (5)+(6)	(8) (7)x(2)
CP Coke	7.49	10000	24000	2.4	5	7.40	55.43
LAM Coke	7.49	10000	28000	2.8	5	7.80	58.42
Steel	3.74	4000	10000	2.5	15	17.5	65.45
Granite	2.08	2500	10000	4	15	19.00	39.52
	20.8					Total	218.82
						Wt. Avg.	11(218.82/20.8)

Thus, weighted average of dwell time (handling and free period) without considering Storage time works out to 11 days.

Extent of area provided for storage of cargo : 50000 sq. mtrs.

Capacity of the storage area : 1.04 lakh tonnes

Number of turns for 2.09 MTPA : 20

Cargo dwell time : 365/20 = 18 days

Storage days : 18-11=7days

Volume of cargo requiring storage = 30% of 2.09 MTPA = 6.2 lakh tonnes per annum

Annual revenue requirement for storage activity = ₹0.54 crores

Storage days required = 18 - 11=7

Storage charge = 54/6.2/7 = ₹1 .24 per tonne per day

10.4. With reference to point of action at paragraph 10.1 (iii), the VPT has furnished the berth hire calculation giving comparison of estimates considered in the upfront tariff Order dated 12 February 2009 and estimates as per revised cost including dismantling cost and reduced upfront fee. A summary of statements furnished by VPT relating to upfront fee, comparative capital cost and comparative calculation of berth hire charges as furnished by VPT is given below:

(i). **Statement Showing Comparative Upfront Fee – WQ6 Berth:**

STATEMENT SHOWING COMPARATIVE UPFRONT FEE – WQ-6 BERTH			
Sr. No.	Component	Break up of Upfront fee of ₹10.51 crores	Break up of reduced upfront fee of ₹6.80 crores excluding cost of 40 mtrs. of berth length of WQ7
A.			
	Cost of Steel pile walling	2.52	0.00
	Cost of Slope protection	0.07	0.00
	Cost of berth (40 meters)	1.12	0.00
	Total A	3.71	0.00
B.			
	Lighting of berth	0.12	0.12
	Cost of road	0.43	0.43
	Cost of drain	0.14	0.14
	Cost of culvert	0.12	0.12
	Paving	0.22	0.22
	Land excavation	0.10	0.10
	Dredging	0.26	0.26
	Total B	1.39	1.39
C.	Total (A+B)	5.10	1.39
D.	Soil investigation, Customs C wall, TEFR, etc.	5.41	5.41
E.	Total upfront fee (C+D)	10.51	6.80

(ii). **Statement showing comparison of capital cost:**

Sr. No.	Particulars	Estimates as per TAMP Order dt. 12.02.2009 Gazette No.26; dt. 24.02.2009.	Estimates as per the Revised cost (including dismantling cost & reduced upfront fee)
Capital cost for cargo handling activity			
A.	Capital Cost for cargo handling activity (No charge from the estimates in February 2009 Order)	64.39	64.39

B.	Capital cost of Berth Activity		
(i).	Cost of Construction of berth (215 meters length)	36.55 *	36.55
(ii).	Upfront fee on cost of 40 m length berth and other facilities [from Sl. No. 04 (i)]	5.10 *	1.39
(iii).	Upfront fee on the amount spent on infrastructure development [From Sl. No. 14 D]	5.41 *	5.41
2	Total upfront fee	10.51	6.80
3	Cost of dismantling & reconstruction of 40 mtrs length of WQ.7 berth	0.00 *	3.84
4	Total berth cost (1+2+3)	47.06 *	47.19
5	Cost of dredging	2.92	2.92
6	Total cost for berthing activity (4+5)	49.98	50.11
C	TOTAL CAPITAL COST FOR THE PROJECT (A + B)	114.37	114.50

[* The Order dated 12 February 2009 indicates cost of construction of berth plus ₹10.51 crores towards cost of constructed berth of 40 mtrs length at ₹47.06 crores.]

(iii). **Statement showing comparative Berth Hire for WQ-6 berth.**

STATEMENT SHOWING COMPARATIVE BERTH HIRE FOR WQ-6 BERTH			
			(₹ Crores)
Sr. No.	Particulars	Estimates as per TAMP Order dt. 12.02.2009 Gazette No.26; dt. 24.02.2009	Estimates as per the Revised cost (including dismantling cost & reduced upfront fee)
1	Capital Cost		
	Total berth cost (255 meters including upfront)	47.06	47.19
	Cost of dredging	2.92	2.92
	Total capital cost for berthing activity	49.98	50.11
2	Operation & Maintenance cost		
	Maintenance charge (1% on cost of construction of berth)	0.47	0.47
	Depreciation	1.67	1.77
	Insurance (1% on cost of construction of berth)	0.47	0.47
	Total Operating Cost	2.61	2.71
3	Return on capital employed @ 16%	8.00	8.02
4	Total revenue requirement from berthing services (2+3)	10.61	10.73
5	Total estimated GRT hours (in crores)	14.07	14.07
6	Rate per GRT per hour or part thereof (4 ÷ 5)	0.754 #	0.763 *
	Rounded figure	0.76	0.77

(# ₹10.61 crores ÷ 14.07 GRT hours in crores, * ₹10.07 crores ÷ 14.07 GRT hours in crores)

10.5. The VPT was also requested to furnish information / clarification on the following points vide our letter dated 15 February 2018. The VPT has furnished information/ clarification vide its letter dated 26 March 2018 after our reminder dated 28 February 2018 and 13 March 2018.

Sl. No.	Information / clarification sought by us vide our letter dated 15 February 2018	Response from VPT vide its letter dated 26 March 2018
1.	(i). Audited Annual Accounts of WQMPL from the date of commencement of operation i.e. for the year 2015-16, 2016-17 and actuals for the year 2017-18 i.e. from April 2017 to 31 December 2017. (ii). Physical and Financial Performance of WQMPL for the year 2017-18 i.e. from April 2017 till December 2017 as per format attached as Annex.	A Copy of Audited Annual Accounts of WQMPL for the years 2015-16 and 2016-17 is furnished. Physical and Financial Performance of WQMPL for the year 2017-18 i.e., from April 2017 to December 2017 is furnished.

	(iii). Revised berth hire charges proposed by WQMPL in its representation dated 16.6.2017:													
	(a). The berth length of WQ-6 constructed by WQMPL.	The berth length of WQ-6 constructed by M/s.WQMPL is 255 meters as per Appendix-4 of the Concession Agreement.												
	(b). The actual expenditure incurred by WQMPL for construction of berth No. WQ-6 linking it to the capex reported in Gross Block in Audited Annual Accounts of WQMPL	The actual expenditure incurred by M/s.WQMPL for construction of berth No.WQ-6 linking it to the Capex reported on Gross Block in the Audited Annual Accounts, it is seen from the audited Annual Accounts that there is no specific / separate mention about berth cost. In the Balance Sheet, it may be seen that for Berth and other civil works, an amount of ₹114.96 crores was mentioned at Gross Block and ₹107.28 crores as Net Block for the Financial Year 2016-17. However, a letter is being addressed to M/s.WQMPL to furnish the details of actual expenditure incurred for construction of the berth.												
	(c). At the joint hearing the VPT has stated that, after notification of upfront tariff by TAMP in February 2009, Development Adviser has visited the port and suggested to dismantle 40 meters of length of WQ-7 in view of proposed dredging to be carried out and reconstruct it as a part of WQ-6. In this connection, the VPT is requested to clarify whether the construction of the said berth length of 40 mtrs forms part of WQ-6 berth and whether the said 40 meters of berth length earlier part of WQ7 was reconstructed after dismantling as part of WQ6 project? If so, furnish the capex incurred for the same along with detailed break up. Also clarify, as to who has incurred the capex for the same.	It is to clarify that, the construction of the berth length of 40 m forms part of WQ-6 berth of total length 255 meters. The 40 m berth length earlier part of WQ-7 was reconstructed by the concessionaire WQMPL. The estimated capital cost towards dismantling and reconstruction of the 40 m berth length was ₹3.84 crores. The expenditure towards reconstruction of the 40 m berth length was incurred by WQMPL as per the scope of the project.												
	<p>(d). The average GRT considered by the Authority in the berth hire calculation in upfront tariff approved vide Order No.TAMP/39/2008-VPT dated 27 August 2009 is based on the average GRT estimated by the VPT as given at Sl. No.(iii) at Annex III of the said Order in the two tables a and B. For ease of reference the average GRT furnished by VPT and considered by the Authority is given below:</p> <table border="1" data-bbox="327 1668 845 1780"> <thead> <tr> <th>Particulars</th> <th>Unit</th> <th>CP Coke</th> <th>LAM Coke</th> <th>Steel</th> <th>Granite</th> </tr> </thead> <tbody> <tr> <td>Average GRT per vessel</td> <td>Tonnes</td> <td>18550</td> <td>29000</td> <td>11300</td> <td>15000</td> </tr> </tbody> </table> <p>The VPT vide its letter dated 18 January 2018 in its comments on the representation of WQMPL letter dated 16 June 2017 has stated that the upfront tariff proposal was submitted by VPT in the year 2008 considering the highest average GRT recorded during 2005-06, 2006-07 and</p>	Particulars	Unit	CP Coke	LAM Coke	Steel	Granite	Average GRT per vessel	Tonnes	18550	29000	11300	15000	The upfront tariff proposal submitted by VPT to TAMP in the year 2008 considered the highest average GRT recorded during 2005-06, 2006-07 and 2007-08 duly obtaining the latest trends in vessel sizes and for forecast. It may not be possible to estimate and envisage the accurate size of the vessels that would actually be deployed after development of any facility. The variations in actual position attained in respect of any parameter after CoD to the estimated parameters considered for fixation of upfront tariff in the current PPP arrangement can only be viewed as part of project risks and may not be construed as error.
Particulars	Unit	CP Coke	LAM Coke	Steel	Granite									
Average GRT per vessel	Tonnes	18550	29000	11300	15000									

	2007-08 duly obtaining the latest trends in vessel sizes and for forecast. The VPT is requested to clarify as to why higher GRT of vessel now brought out by WQMPL in its representation dated 16 June 2017 was not envisaged by the VPT in its proposal for fixation of upfront tariff for multipurpose berth at WQ8 in the year 2008.	
2.	<u>Revised Storage charges by WQMPL in its representation dated 16.6.2017:</u>	
	(a). The comments furnished by VPT vide its letter dated 18 January 2018 does not comment on all the points made by the WQMPL in its representation dated 16 June 2017. The VPT is, therefore, requested to furnish point wise comments on each of the points made by WQMPL in its representation dated 16 June 2017 as regards storage charge.	TAMP vide its Order dated 12.2.2009 has apportioned a revenue requirement of ₹0.54 crores towards storage charges and ₹0.54 crores for miscellaneous charges equally @ 2% of the total Annual Revenue Requirement of Cargo handling activity. It should be noted that miscellaneous charge is applicable to the total capacity of 2.09 MTPA of the terminal and per tonne rate is reckoned by dividing the ARR of ₹0.54 crores for miscellaneous activities with capacity of 2.09 MTPA.
	(b). The WQMPL in its representation dated 16 June 2017 has arrived at revised storage proposed at ₹0.30/ tonne / day for the first slab viz. first week after expiry of the prescribed free period (5 days for import cargo and 15 days for export cargo). The VPT is requested to furnish its comments on the revised storage charge proposed by WQMPL.	Though the ARR for storage charges and miscellaneous charges is equally apportioned as ₹0.54 crores per annum, storage charges are assumed to be applicable only to 30% of the cargo i.e., 6.2 lakh tonnes. The storage charges to be reckoned depending upon the number of days of storage beyond free period duly ensuring realization of ARR of ₹0.54 crores, Thus, the per tonne charges for Storage and Miscellaneous activity cannot be equal. As such it is not prudent to conclude that TAMP has not proportioned the storage and miscellaneous charges equally and violated the terms of the Tariff Guidelines 2008 and erred in fixing the storage and miscellaneous charges.
	(c). The WQPL in Para B(II) of the representation of WQMPL dated 16 June 2017, in the last sentence has stated "(assuming the cargo is stored for a period of 30 days which is the accepted dwell time). The VPT is requested to comment upon the above assumption made by WQMPL. The VPT may also confirm that the optimal capacity estimated by VPT at 2.09 million tonnes per annum for the WQ6 berth for fixation of upfront tariff which was considered in the August 2009 can be achieved with this assumption made by WQMPL.	The contention of the Concessionaire that the storage charges are 130 times the miscellaneous charges is not tenable. <u>The calculations furnished by the concessionaire vide para iv) Storage Charges considered a dwell time of 30 days appears to be arbitrary.</u>

11. In the meanwhile, since VPT has stated at the joint hearing that they will file a proposal for correction required in storage charge and also agreed to share with TAMP and WQMPL the berth hire calculation done by the port had WQMPL constructed the 40 meters of constructed berth made available by VPT to WQMPL and in view a few issues thrown at the Joint hearing calling for further clarification/ additional information on some of points from the Petitioner and VPT, it was felt that all this will take a minimum period of 6 weeks. On completion of the above, the case is to be analysed and considered by this Authority for passing a Speaking Order on the representations filed by WQMPL which may take about 6 weeks. Bringing out that the pleadings of respective parties are yet to be concluded, steps were taken through our Legal Counsel vide letter dated 12 February 2018 to take necessary steps to seek extension of time of 12 weeks from 13 February 2018 from the Hon'ble High Court of Judicature of Hyderabad for the State of Telangana and the State of Andhra Pradesh to take decision on the representation filed by WQMPL. In this regard, we have vide our letter dated 20 February 2018 forwarded Interim Application duly signed and notarized to

our Advocate-on-record to file before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh High Court. The Advocate-on-record vide its email dated 8 March 2018 has intimated that extension petition has been filed into the Registry.

12. On perusing the reply furnished by WQMPL vide its letter dated 13 March 2018, it is found that WQMPL has not specifically addressed on one of the points raised in our letter dated 15 February 2018. The WQMPL was, therefore, requested vide our letter dated 28 March 2018 to furnish the additional information/ clarification arising out of the response of WQMPL. This was followed up by reminder dated 5 April 2018. Further, a copy of the proposal for revision of storage charges furnished by the VPT and berth hire calculation furnished by VPT vide its letter dated 26 March 2018 were forwarded to WQMPL vide our letter dated 5 April 2018 for comments of WQMPL. The WQMPL was required to furnish information/ comments by 10 April 2018 followed by reminder dated 17 April 2018 and letter dated 3 May 2018. The WQMPL has furnished its response vide its email dated 7 May 2018. A summary of information gap arising out of reply of WQMPL letter dated 13 March 2018 and the comments of WQMPL sought on the proposal of VPT of storage charge and berth hire calculation is tabulated below:

Sr. No.	Additional information sought in view of gaps in WQMPL reply dated 13 March 2018 vide our letter dated 28 March 2018	Comment of WQMPL
(i).	With reference to information sought on A(iii) (b) above of our letter dated 15 February 2018, the WQMPL has stated that the actual expenditure incurred by WQMPL for construction of berth No.WQ6 as reported in Gross Block in Audited Accounts of the year 2015-16 is ₹1,98,69,01,458/- (₹198.69 crores). It is seen from the Audited Accounts for the year 2015-16 furnished by WQMPL that, gross block figures referred by WQMPL is the total Gross block which includes Plant & Machinery, Office Equipment, Leasehold Land etc. The information sought in para 2(iii)(b) of our letter is the actual expenditure incurred by WQMPL for construction of WQ6 berth linking it to capex reported in gross block in the Audited Accounts. The schedule 10 – Tangible Asset in the Audited Accounts 2015-16 of WQMPL reports gross block of berth and Civil Work at ₹112.99 crores. The WQMPL to furnish actual expenditure incurred by WQMPL exclusively towards construction of WQ6 berth.	We reiterate that the schedule10 – Tangible Asset in the Audited Accounts 2015-16 of WQMPL reports gross block of berth and civil work at ₹112.99 crores. Therefore, the actual expenditure incurred for construction of berth & civil works is ₹112.99 crores. [WQMPL has not disclosed the actual expenditure incurred by WQMPL exclusively for construction of WQ-6 berth.] [VPT has also reported vide its letter dated 4 May 2018 that WQMPL has not furnished the information, as brought out in subsequent paragraph.]
(ii).	Comments of WQMPL sought vide our letter dated 5 April 2018 in view of detailed working of storage charge and comparative berth hire calculation furnished by VPT vide its letter dated 26 March 2018 (page nos.738-739)	
(a).	As agreed at the joint hearing, the VPT has vide its letter dated 26 March 2018 shared the berth hire calculation done by the port had WQMPL constructed the 40 meters of constructed berth made available by VPT to WQMPL. It is seen from the letter of the VPT that the port has not shared the said berth hire calculation with WQMPL. Therefore, a copy of berth hire calculation furnished by VPT as Annex I(D) and I€ is	We have already furnished our comments vide our letter dated 13 March 2018. We have no further comments.

	attached herewith for comments of WQMPL, if any.	
(b).	Further, the VPT vide its letter dated 26 March 2018 has also furnished proposal for revised storage charges along with storage calculation as Annex – II. A copy of the proposal of VPT for revised storage charges along with storage calculation furnished by VPT as Annex – II is attached herewith for comments of WQMPL, if any,	
(c).	On perusing the working of revised storage charges furnished by WQMPL vide its letter dated 13 March 2018 at Exhibit (IV), some points arise requiring clarification. The WQMPL to, therefore, furnish clarification on the following points arising from the calculation of revised storage charge now furnished by WQMPL.	
	<p>(i). It is seen in Table 1 of Exhibit (IV) that, while arriving at the estimated revenue from storage charge (after 5 days free period), at the revised proposed storage rate of ₹0.22 per tonne/ day for the first slab (6-12 days), ₹0.333 / tonne/ day for the second slab (13-18 days) and ₹0.444 per tonne / day for the third slab (20-30 days and beyond), the WQMPL has considered the tonnage of cargo attracting storage charge constantly at 52,000 tonne i.e. 30% of the monthly cargo capacity attracting storage charge (173333*30%) for each of the slabs. Reckoning that some quantity of cargo may be evacuated during each of the three slabs, the cargo attracting the storage charge in the second slab and third slab may have to be suitably reduced to that extent considering the cargo likely to attract storage charge in respective slabs.</p> <p>The WQMPL may examine the storage calculation furnished in Exhibit- IV in the light of the above observation and make necessary modification, if required. The WQMPL is also requested to also share a copy of the modified storage calculation with the VPT for its comments to TAMP within 3 days from its receipt.</p>	We have no further comments on the storage calculation furnished in Exhibit-IV and that no modification is required.
	(ii). The WQ6 berth is for a multipurpose cargo berth. Annex-V of the Upfront tariff Guidelines prescribes norms for Multipurpose cargo berth which was followed by the VPT while seeking upfront tariff for the WQ6 project. In the said Annex, no turn over norm is prescribed. The Turnover ratio considered by WQMPL is 12 and average dwell time arrived is 30 days. The WQMPL has drawn reference to the Annex – II and Annex – III of the upfront tariff Guidelines for adopting the parameter of 12 as turnover ratio. In this context, it is	Our previous response has addressed the issue and no further comments to furnish.

	to state that Annex II and Annex – III of the upfront tariff guidelines are guidelines for upfront tariff for Iron Ore and Coal Terminal respectively. Hence the relevance of considering the turnover norm prescribed for iron ore and coal for multipurpose cargo berth WQ6 may be explained. The WQMPL may justify the turnover norm of 12 considered in its calculation with respect to the operations carried out by WQMPL since commencement of its operations at WQ6.	
	The WQMPL is well aware that this case has to be disposed of by the Authority in a time bound manner in view of the direction from the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana. The WQMPL is, therefore requested to furnish its response on the above points within the time stipulated to enable us to proceed further in this matter.	No comments

13. On perusing the reply furnished by VPT vide its letter dated 26 March 2018, it is found that VPT has not addressed a few specific points raised in our letter dated 15 February 2018. The VPT was, therefore, requested vide our letter dated 5 April 2018 to furnish the additional information/ clarification arising out of the VPT letter dated 26 March 2018. Further, the storage calculation furnished by WQMPL vide its letter dated 13 March 2018 was also forwarded to VPT for its comments. The VPT was requested to furnish its reply by 10 April 2018, followed by reminder dated 17 April 2018 and d.o. letter dated 3 May 2018. The VPT has furnished its response vide its letter dated 4 May 2018. A summary of additional information sought from VPT arising from the VPT reply dated 5 April 2018 and comments of VPT sought on revised storage calculation furnished by WQMPL is tabulated below:

Sr. No.	Additional information sought in view of gaps in VPT reply dated 26 March 2018	Comment of VPT
(i).	Proposal for revision of storage charges for WQ6 attached by VPT as Annex – II to its letter dated 26 March 2018	
(a).	Para 2.2. of Annex – II attached to the said letter states “Methodology proposed by WQMPL”. Please confirm the said methodology is of WQMPL or VPT in the title as the rate proposed by WQMPL is not ₹1.24 / tonne / day as indicated in para 2.2.	The methodology adopted is in accordance with the methodology indicated by M/s.WQMPL vide their letter dated 24 November 2015.
(b).	Para 2.3. Calculation of storage charge furnished by VPT: In the calculation of storage charge furnished by VPT, the port in column no 7 has taken dwell days as free period plus handling time in days and arrived at weighted average (free) days of 11. It is understood from the working that considering the dwell time of cargo at 18 days, the port has arrived at chargeable storage days of 7 i.e. 18 days – 11 days weighted average (free) days. In this context, it is to state that the free period for import cargo and export cargo prescribed in upfront tariff SOR in Order No.TAMP/39/2008-VPT dated 12 February	The calculation of weighted average is in respect of dwell time of cargo at operator's premises during (i) cargo handing operations of vessel and (ii) free time. It is to inform that the calculation of storage charges strictly conforms to the Notes (ii) and (iii) of SOR in Order No.TAMP/39/2008-VPT dated 12 February 2009. The weighted average of 11 days reckoned thus, includes the free time as well as the cargo loading / unloading time during which some of the cargo will be dwelling in the storage area. As some quantities of cargo will be dwelling in the storage area during vessel operations, this time is considered as part of overall dwell time but the free time is

	<p>2009 as per the upfront tariff guidelines of 2008 is 5 days and 15 days respectively for multi purpose cargo berth. Further, as per note no.(ii) and (iii) of the schedule 4 prescribed of the said SOR, free period for export cargo shall commence from the actual date of the receipt of goods in the operator's premises and free period for import cargo shall be reckoned from the day following the day of completion of final discharge from the vessel. In this context, the handling time in days considered by the VPT in column no 5 for arriving at the weighted average free days is not found to be in line with the prescribed notes in the upfront SOR. The VPT to, therefore, examine and make suitable corrections in the calculation of storage charge to be in line with the provisions in the SOR approved in the said upfront tariff Order. The corrected storage calculation, (to be) furnished to TAMP may be simultaneously furnished to the Petitioner WQMPL also to furnish their comments to TAMP within 3 days from its receipt.</p>	<p>reckoned only after receipt / evacuation of total cargo at the operator's premises.</p> <p>It is therefore to confirm that the calculation of storage charges is in line with the SOR and no corrections/ changes are necessitated.</p>
(c).	<p>In the meanwhile, the WQMPL vide its letter dated 13 March 2018 while furnishing information/ clarification sought by TAMP has furnished calculation for revised storage charge proposed by WQMPL as Exhibit - IV. A copy of the relevant storage calculation furnished by WQMPL as Exhibit - IV vide its letter dated 13 March 2018 is attached herewith. The VPT to furnish its immediate comments thereon.</p>	<p>Tariff guidelines 2008 for upfront tariff fixation at multipurpose berth envisages a free storage of 5 days for import cargo and 15 days for export cargo. However, it is seen that the calculation of revised storage charges as contained in the letter of M/s.WQMPL dated 13 March 2018 considered the free storage of 5 days for the entire cargo that is likely to attract storage irrespective of export cargo or import cargo. The proportion of import cargo envisaged in the total terminal capacity of 2.09 MTPA constitute 72% and export cargo 28%.</p>
(ii).	<p>With reference to the information sought at Item 4(iii) (b) to our letter dated 15 February 2018, the VPT has stated that WQMPL is being requested to furnish the actual expenditure incurred for construction of berth No WQ6. We have not received any further reply from VPT in this regard. The VPT is once again requested to furnish the requisite information sought at item 4(iii)(b) of our letter dated 15 February 2018.</p>	<p>The details of cost / actual expenditure incurred for construction of berth, the Concessionaire has not yet furnished the information. The estimated capital cost of project as per TEFR is ₹114.50 crores of which ₹50.11 crores is towards berthing activity and ₹64.39 crores is towards cargo handling activity.</p>
(iii).	<p>With reference to information sought in item 4(iii)(c) of our letter dated 15 February 2018, the VPT has clarified that cost of berth length of 40 mtrs (dismantling cost and reconstruction of WQ7) forms part of the WQ6 berth length of total 255 mts. Annex (I)D at Sr no B (3) furnished by VPT in response to the information sought at item 3.2. shows that the capital cost of dismantling & reconstruction of 40 mtrs length of WQ7 berth at ₹3.84 crores is</p>	<p>The Concessionaire M/s.WQMPL vide letter dated 8 March 2017 stated that as per approved design of IIT, it requires that the new berth is to be constructed on top of the existing WQ-7 return end (approximately 40 mtrs). The Concessionaire also clearly stated that some amount of dismantling required for the existing deck slab as per the approved design was carried out actually.</p>

<p>captured in the berth hire calculation of WQ6 at ₹0.77/ GRT/ hour in Annex I(E) furnished by the VPT. The WQMPL has, however, vide its letter dated 13 March 2018 stated that the berth length of 40 mtrs of WQ-7 was not dismantled and reconstructed. Thus, there is contradiction in the information furnished by the port and the WQMPL. The VPT to ascertain the factual position and furnish the clarification. The information/ clarification sought earlier is, therefore, reiterated.</p> <p>In case the information / clarification (to be) furnished by VPT, is different from the information furnished by the VPT vide its letter dated 26 March 2018, the VPT may consider to modify the berth hire calculation furnished at Annex (I) (D) to (E). A copy thereof may also be shared with WQMPL as agreed at the joint hearing.</p>	<p>In view of the above, the information furnished vide VPT letter No.IRNP/Std./WQ-6 Tariff/2018 dated 26 March 2018 holds good and no further modifications are necessitated.</p>
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14. With reference to the totality of the information collected during the processing of the case, the following position emerges:

- (i). This case is processed in compliance of the Order dated 14 December 2017 of the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh disposing of the Writ Petition No.28595 of 2017 filed by West Quay Multiport Private Limited (WQMPL) and directing this Authority to consider and dispose of representations dated 16 June 2017 and 30 June 2017 filed by WQMPL before this Authority affording an opportunity of hearing to the Petitioner i.e. WQMPL and to the Visakhapatnam Port Trust (VPT).
- (ii). Before proceeding to analyse the representations dated 16 June 2017 and 30 June 2017 of WQMPL, it is relevant here to state that the tariff Order No.TAMP/39/2008-VPT dated 12 February 2009 passed by this Authority is based on the then proposal of the VPT seeking approval of upfront tariff for the WQ-6 Berth in the Northern Arm of inner harbour of Visakhapatnam Port for handling multi cargo berth. The said Order was passed by this Authority following the Upfront Tariff Fixation Guidelines, 2008 issued by the Ministry of Shipping (MOS) under Section 111 of the Major Port Trusts Act, 1963 vide its letter No.PR-14019/25/2007-PG dated 12 February 2008 for upfront tariff setting for Public Private Participation (PPP) Projects at Major Ports. The VPT has awarded the development of the West Quay-6 berth to the West Quay Multiport Private Limited (WQMPL) on Design, Build, Finance, Operate and transfer (DBFOT) basis at VPT for a period of 30 years. As per clause 2.9.1. and 2.9.2. of the said guidelines of the 2008, the WQMPL approached this Authority for Notification of Scale of Rate (SOR) in its name before commencement of its operations in May 2015. As per clause 2.8 of the upfront tariff setting guidelines of 2008, the tariff caps fixed upfront are subject to indexation during the entire project period of 30 years. In compliance of the said provisions of Guidelines, the SOR was notified in the name of WQMPL vide Order No.TAMP/49/2015-VPT dated 4 September 2015 after indexing the notified upfront tariff approved by this Authority in the tariff Order of 12 February 2009.

It is also relevant here to state that even prior to the Writ Petition filed by the Petitioner, the representation of WQMPL dated 16 June 2017 for reduction of the upfront tariff for berthing services and storage charges approved by this Authority in the Order dated 12 February 2009 was forwarded to VPT requesting to furnish its comments on the representation of WQMPL. However, the VPT did not respond at that point of time. Hence, the said representation of the WQMPL could not be processed at that point of time in the absence of comments from VPT. Now, the

direction of the Hon'ble Justice in the Order dated 14 December 2017 is received which is binding on this Authority. At the same time, the clause 2.8 of the upfront tariff setting guidelines of 2008 issued by the MOS under Section 111 of the Major Port Trusts Act stipulates that the upfront tariff once determined by this Authority is subject to only indexation during the entire project period of 30 years and do not lend any scope to revise the upfront tariff fixed by this Authority during the project period. When advice of the MOS was sought in the matter, the MOS has vide its letter no.8(4)/2015-TAMP dated 30 January 2018 requested this Authority to dispose of the petition of WQMPL in light of comments now received from VPT and as per the direction of Hon'ble High Court.

As brought out in the preceding paragraphs, in compliance of the Order dated 14 December 2017 of the Hon'ble High Court requiring this Authority to consider the representation of WQMPL dated 16 June 2017 and 30 June 2017 after affording an opportunity of hearing to WQMPL and VPT, a copy each of the representation of WQMPL dated 16 June 2017 and 30 June 2017 was forwarded to the VPT for its comments. The comments received from the VPT was also forwarded to the WQMPL for its comments thereon. Further, in compliance of the Order of the Hon'ble High Court dated 14 December 2017, a joint hearing was held on 5 February 2018 and an opportunity of hearing to both WQMPL and to the VPT on the representation of WQMPL dated 16 June 2017 and 30 June 2017 was given at the joint hearing.

The WQMPL had not furnished detailed working for the revision of storage charge proposed by WQMPL after expiry of the prescribed free period (5 days for import cargo and 15 days for export cargo) in its representation dated 16 June 2017 at ₹0.30/ tonne/ day for the first slab viz. first week, ₹0.45 per tonne per day for the second slab (second week) and ₹0.60 per tonne per day beyond second slab. On being pointed out, the WQMPL has subsequently vide its letter dated 13 March 2018 furnished working for the revised storage charge proposed by it in its representation dated 16 June 2017. There were some gaps observed in the information furnished by WQMPL vide its letter dated 13 March 2018. The WQMPL was vide our letter dated 28 March 2018 requested to furnish additional information/ clarification arising out of the WQMPL letter dated 13 March 2018. The WQMPL has responded on 7 May 2018 after reminders dated 5 April 2018 and 17 April 2018.

Further, during the consultation proceeding of the case, the VPT has also vide its letter dated 26 March 2018 furnished berth hire calculation and proposal for revision of storage charge in view of error in the storage charge approved in the Order dated 12 February 2009. There were some gaps observed in the information and storage calculation furnished by VPT vide its letter dated 26 March 2018. The VPT was, therefore, vide our letter dated 5 April 2018 requested to furnish additional information/ clarification arising out of the VPT letter dated 26 March 2018. This was followed by reminders dated 17 April 2018 and d.o. letter dated 3 May 2018. The VPT has furnished its response on 4 May 2018.

Thus, this case could be processed for finalisation by this Authority only after completion of the pleadings of WQMPL and the licensor port (VPT) which was last received on 7 May 2018 and 4 May 2018 respectively. This Authority thus now proceeds to consider and dispose of the representations of WQMPL dated 16 June 2017 and 30 June 2017 as directed by the Hon'ble High Court.

- (iii). (A). The WQMPL in its representation dated 16 June 2017 has requested this Authority to consider the following -
 - (a). Rectify the upfront tariff caps towards berth hire charges approved by this Authority in the Order No.TAMP/39/2008-VPT dated 12 February 2009 and consequently in the indexed SOR notified in the name of WQMPL in the Order No.TAMP/49/2015-VPT dated 4 September 2015 based on the detailed calculation of berth hire charges furnished by WQMPL duly accounting for the existing conditionalities at VPT. A summary of the berth hire charges

approved in the Order dated 12 February 2009, indexed berth hire notified in the Order dated 4 September 2015 vis-à-vis revised (reduced) berth hire charges proposed by WQMPL in its representation dated 16 June 2017 as brought out in an earlier paragraph is tabulated below for ease of ready reference:

(Rate per GRT per hour in ₹)

Sl. No.	Tariff Order No. and date	Particulars	Berth Hire Charges approved vide Order dated 12 February 2009 (as per Gazette No.26) relevant for Serial no.1	Berth hire charges as proposed by WQMPL in its representation dated 16 June 2017
1	Tariff Order No.TAMP/39/2008-VPT dated 12 February 2009 approved by this Authority approving upfront tariff for WQ6 berth based on proposal of the VPT	Foreign going vessel	₹0.76	₹0.37
		Coastal vessel	₹0.46	₹0.22
2	Tariff Order No.TAMP/49/2015-VPT dated 4 September 2015 notifying the SOR in the name of WQMPL after applying the applicable indexation of 35.08%	Foreign going vessel	₹1.03	₹0.50
		Coastal vessel	₹0.62	₹0.30

- (b). To rectify i.e. reduce the storage charge approved by this Authority in the Order No.TAMP/39/2008-VPT dated 12 February 2009 and consequently in the indexed SOR notified in the name of WQMPL in the Order No.TAMP/49/2015-VPT dated 4 September 2015. The rectified storage charge sought by WQMPL vide its letter dated 30 June 2017 is given below:

(Rate in ₹ per tonne per day)

Description	Storage charges as proposed by WQMPL in its representation dated 16 June 2017
First week after expiry of free period	₹0.30
2 nd week after expiry of free period	₹0.45
Beyond 2 nd week	₹0.60

It is seen from the subsequent working of storage charge furnished by the WQMPL that the above storage charge sought by WQMPL is with reference to the storage charge notified in the SOR in the name of WQMPL in the Tariff Order of September 2015.

- (c). In the representation dated 30 June 2017, the WQMPL has referred to its representation dated 16 June 2017 and requested this Authority to immediately notify reduction in tariff caps by an order for rectification of Berth Hire Charges and Storage Charges.

(iii). (B). **Analysis on the Revision (i.e. reduction) in berth hire charges approved by this Authority in upfront tariff Order of 12 February 2009 and Order dated 12 September 2015:**

- (a). As per clause 4.4 of Annex-V to the guidelines, capital cost of berth to be considered in upfront berth hire comprises of cost of construction of berth and cost of dredging, if any, carried out alongside the berth. The upfront amount of ₹10.51 crores towards cost of 40 meters of constructed berth length and other infrastructure already developed by VPT was included by the port in the total capital cost of ₹114.37 crores for the WQ-6 project while submitting its proposal for upfront tariff fixation. As brought out in para 5.2. (vi) (a) of the tariff Order of February 2009 the port had, during processing of the case, clarified that the length of the

proposed WQ-6 berth is 255 mtrs. Out of the total berth length of 255 mtrs., a berth length 40 mtrs. already constructed along with the WQ-7 berth as shore protection was to be handed over for WQ6 project. The remaining berth length of 215 mtrs. is to be constructed by the BOT operator. Therefore, the cost of ₹10.51 crores already incurred by VPT for construction of 40 mtrs. length of berth forming part of WQ-6 berth length of 255 mtrs. and other infrastructure already developed by port such as, construction of customs compound wall, development of alternative coal stacking area, soil investigations etc. was proposed as Upfront fee to be paid by the Concessionaire.

This Authority, while passing the upfront tariff Order of February 2009, considered this item as part of capital cost of berth as proposed by the VPT. Further, as recorded in para 10(vi)(a) of the said Order, though the port referred the payment as upfront fee, it is the part of the constructed berth made available to the operator which otherwise the operator would have incurred for construction. Since the berth hire was to be collected by the operator, this Authority had held that it is logical to consider the total capital cost of the berth including ₹10.51 crores. Therefore, the contention of WQMPL that the upfront tariff fixation guidelines of 2008 have not been applied correctly is not seen to be correct.

- (b). The plea of the WQMPL is to exclude the upfront fee of ₹10.51 crores considered in the calculation to fix the berth hire charges at ₹0.76 per GRT per hour in the tariff Order of February 2009. The upfront fee of ₹10.51 crores was incurred by VPT to construct the berth length of 40 mtrs. and infrastructure facilities developed by VPT, as stated above. The upfront fee of ₹10.51 crores consists of two cost elements; one cost element of ₹3.71 crores towards cost of 40 mtrs. berth (including cost of steel pile walling and cost of slope protection) and another cost element of ₹6.80 crores towards infrastructure facilities like road, drainage, lighting, culvert, land excavation, dredging, etc., apparently associated with the berth length of 40 mtrs. The plea of the WQMPL to exclude ₹10.51 crores is based on the position that the upfront fee of ₹6.80 crores paid by them is for other facilities viz. lightning, roads, drains, culverts, dredging, etc. made available by VPT and not for the existing berth length of 40 mtrs. and the remaining amount of ₹3.71 crores is to be excluded on the grounds that WQ-6 berth was constructed on top of existing berth length of 40 mtrs. for which WQMPL claims that they have not made any payment. Since the amount of ₹6.80 crores incurred by VPT and reimbursed by WQMPL for developing the associated infrastructure facilities claimed by VPT to be relevant for WQ-6 berth, it does not appear to be appropriate to exclude the amount of ₹6.80 crores from calculation to arrive at the berth hire charges. As regards the remaining amount of ₹3.71 crores, the WQMPL has constructed the WQ-6 berth of 255 mtrs. length either partially or fully dismantling the 40 mtrs. existing berth length provided by VPT. It is noteworthy that the VPT has confirmed that the 40 mtrs. berth length which was earlier a part of WQ-7 berth was reconstructed by WQMPL. The VPT has further submitted that had the WQMPL constructed the 40 mtrs. of berth made available to WQMPL, the cost would have been around ₹10 crores. There is no doubt that this 40 mtrs. berth length forms part of the WQ-6 berth of 255 mtrs. now being operated by WQMPL. That being so, the estimated cost of 40 mtrs. berth length which is ₹3.71 crores considered in the berth hire calculation was in order. Further, it has not been substantiated by WQMPL that the actual

cost of construction of WQ-6 berth was ₹39.47 crores instead of ₹49.98 crores considered in the 2009 tariff Order based on which WQMPL has sought reduction in berth hire charges.

It is further relevant here to state that the total capital cost of the project estimated by the VPT in the upfront tariff fixation of WQ6 berth and considered by this Authority in February 2009 Order is ₹114.37 crores which consists of capital cost towards berth at ₹49.98 crores and ₹64.39 crores towards cargo handling activity. 16% Return on capital employed at ₹18.29 crores on ₹114.37 crores was allowed while determining the upfront tariff in the said Order. As against that, the actual total capital for the year 2015-16 reported in the Audited Annual Accounts for the year 2015-16 of WQMPL is ₹198.69 crores. For the purpose of like to like comparison the actual capital of the year 2015-16 is de-indexed by 35.08% (adopted from the indexation factor applied to notify the Scale of Rates in the name of WQMPL in the September 2015), the capital figure works out to ₹147.09 crores which is found to be higher than the total capital cost of the project considered at ₹114.37 crores in the upfront tariff fixation.

In view of the above reasons, there is no justification to consider the capital cost of berth at lower level of ₹39.47 crores as sought by WQMPL.

- (c). The other point made by the WQMPL in the berth hire calculation is about average GRT of vessel. The average GRT of vessel considered by this Authority in the berth hire calculation while arriving the upfront tariff in February 2009 Order is based on the proposal of VPT. The original proposal of VPT dated 10 July 2008 which was circulated for comments to the users/ user organisations and prospective bidders including M/s.ABG Infralogistics Ltd. (who has stake in the WQMPL) vide our letter No.TAMP/39/2008-VPT dated 9 September 2008, wherein VPT has estimated average GRT at 18550 for CP coke, 29000 for Lam coke, 11300 for Steel and 15000 for granite for berth hire calculation. It is seen from our records that M/s.ABG Infralogistics Ltd. has not furnished any comments on the GRT considered by VPT in the berth hire calculation during the consultation process initiated by this Authority with the stake holders for fixation of upfront tariff for the multipurpose berth WQ6 at VPT. The submissions made now by WQMPL to consider higher GRT of vessels at 32058 tonnes for CP coke, 38207 tonnes for Lam coke, 28863 tonnes for steel and 19528 tonnes for Granite was not pointed out during the consultation process for fixation of upfront tariff for this project, which culminated into the tariff Order of February 2009.

When sought comments of the proposer port being the licensor during processing of this case, the VPT has stated that the average GRT of vessel considered by the port in the year 2008 in the upfront tariff proposal is highest average GRT recorded during 2005-06, 2006-07 and 2007-08 duly obtaining the latest trends in vessel sizes and for forecast. The VPT has contended that at the time of fixing upfront tariff in 2008, it may not be possible to estimate and envisage the accurate size of the vessels that would actually be deployed after development of any facility. As rightly stated by VPT, the WQ-6 berth was made operational in the year 2015, after more than six years of notification of upfront tariff and the actual sizes of vessels handled at the terminal may not exactly agree with the sizes of vessels considered at the time of submission of tariff proposal. The VPT has emphatically stated that variations in actual

position attained in respect of any parameter from the estimated parameters considered for fixation of upfront tariff can only be viewed as part of project risks and may not be construed as error and; therefore, found the observation of WQMPL that the conditionalities of GRT is incorrect as not tenable.

It is relevant here to state that whilst the WQMPL has, in its berth hire calculation, modified the average GRT of vessel, it has not modified the other parameters like the parcel size of vessel, handling rate, no. of days of vessel stay at berth, etc., which may also vary with the change in average GRT of vessel. The VPT has stated that once WQ-7 berth comes, WQ-6 berth may not have the comfort zone to handle bigger size vessels. The size of vessel during the long project horizon of 30 years may not remain constant for the entire project period as also observed by the VPT. In view of the above position and the point made VPT that there is no error in the average GRT of the vessel, review of the GRT of vessel considered in the February 2009 Order in berth hire calculation is not warranted.

- (d). Based on the above analysis and recognising that there are no errors as such pointed out by the WQMPL in the calculation of Berth hire charges approved in the February 2009 Order, there is no case found warranting rectification i.e. reduction in the upfront tariff caps in the berth hire charges approved in the February 2009 Order.

As per note 1.2. (vii) of the upfront tariff order, the rates prescribed in the Scale of Rates of WQMPL are ceiling levels. The WQMPL may charge lower rates. Thus, as per the approved Scale of Rates, the WQMPL has flexibility to charge lower rate of berth hire charges, if it so desires.

- (e). As regards the comparison drawn by the WQMPL with the berth hire charges prescribed in the berths of VPT, Vizag Seaport Pvt. Ltd. (VSPL), Adani Coal Terminal Pvt. Ltd. (AVCTPL) (BOT in VPT) and Vizag General Cargo Berth Pvt. Ltd. (VGCBPL), it is clarified that berth hire at VPT owned berths and VSPL is determined by taking into account the depreciated value as compared to a relatively new quay of WQ-6 berth with deeper draft. Further, the berth hire charges at VGCBPL and AVCTPL are based on different level of estimated capital investments, Annual Revenue Requirement, optimal capacity etc., as envisaged in those project and hence comparison of berth hire drawn by WQMPL is not a like to like comparison.

(iv). **Analysis on the WQMPL proposal to reduce storage charges:**

- (a). In the instant case, there is specific direction from the Hon'ble High Court to this Authority to consider the representation of the WQMPL in which one of the items relates to rectification of storage charge and the matter has to be disposed of in a time bound manner. During the processing of the case, VPT while pointing out that though larger issue of storage charges fixed under the upfront tariff guidelines of 2008 is being looked into for solution at Government level for rationalization of storage charges, the VPT has specifically requested this Authority to consider rectification in the approved storage charge, if there are any calculation errors in the storage calculation at the storage tariff prescribed by this Authority for this project in February 2009 Order.

The VPT has subsequently pointed out that the error has crept in the storage calculation approved in February 2009 Order and has furnished proposal for rectification of storage tariff approved in the said Order as

brought out in an earlier paragraph. That being so, this Authority considers the representation of the WQMPL for rectification of storage charge so as to remove the error crept in the then proposal of the VPT and flowing from the tariff Order of February 2009.

- (b). The point made by VPT during the processing of the case that the VPT in its proposal had proposed “₹8/ tonne/ week”, but, this Authority has notified it as “₹8.61/ tonne/ day” for the first slab is not factually correct. In this regard, reference is drawn to Para 8 (v)(c) of the Order dated 12 February 2009 wherein the storage charge proposed by VPT has been tabulated. As per the said para, the VPT in the revised proposal dated 31 December 2008 had proposed ₹8/ tonne/ day for the first slab i.e. first week after expiry of free period, ₹12/ tonne/day for the second slab i.e. 2nd week after expiry of free period and ₹16/ tonne/day for the third slab after expiry of 3rd week. This Authority has followed the same approach as done by the VPT for arriving at the storage charge and the slight difference in the approved rate in February 2009 Order is only on account of modified annual revenue requirement estimated by this Authority at ₹26.78 crores as against ₹25.32 crores estimated by the VPT for reasons stated in the said tariff Order.
- (c). As pointed out by the VPT for arriving at storage charge under upfront tariff guidelines of 2008 for other PPP projects of VPT at EQ-1, EQ-1A berths proposals for which fixation of tariff were filed subsequent to the tariff proposal for WQ-6 project, the storage charge for the first slab was arrived by VPT by dividing the revenue requirement apportioned to storage activity/ share of optimal capacity to attract storage charge by number of days of attracting storage charge for the first slab to arrive at the storage charge per tonne per day. In the instant case, the last divisible factor i.e. dividing by number of days has not been done by VPT in its proposal while arriving at storage charge for WQ-6 berth. The VPT admits that error has crept in the storage charge arrived for WQ6 project and has now furnished revised storage calculation to rectify the error.
- (d). As stated earlier, as per clause 2.8 of the upfront tariff guidelines of 2008, the tariff caps fixed upfront are subject to only indexation during the entire project period of 30 years. The 2008 upfront tariff guidelines do not lend any scope to revise the upfront tariff fixed by this Authority during the project period. In the instant case, in view of specific direction from the Hon'ble High Court to consider the representation of the WQMPL dated 16 June 2017 and 30 June 2017 and also in view of the port recommending to rectify the error in the storage charge in the February 2009 Order, this Authority agrees to rectify the error. This exercise is limited to rectify the error observed in the storage charge calculation by both WQMPL and the licensor port (VPT) in the February 2009 Order.
- (v). (a). As regards the revised storage calculation furnished by the WQMPL, it is seen that the WQMPL and VPT have considered 30% of the optimal cargo capacity which would attract storage charge in line with the approach followed in the storage calculation by VPT and considered by this Authority in February 2009 Order. The another parameter which goes into storage calculation is the number of days cargo shall avail the storage facility (i.e. dwell time) beyond the prescribed free period.

For arriving at this, the WQMPL, in the revised storage calculation, has considered turn over norm of 12. The turnover ratio of 12 translates into dwell time of 30 days as per calculation of the WQMPL (i.e. 365/12), including free period of 5 days. When sought the basis of arriving at 30 days average dwell time, the WQMPL has drawn reference to the turn over norms prescribed in the upfront tariff guidelines for Coal terminal and Iron Ore terminal (at Annex-II and III of the upfront tariff guidelines of 2008 issued by the MOS).

It is relevant here to state that for iron ore and coal terminal, whilst turn over norm of 12 is prescribed, the norm prescribed for free days is 25 days. For multipurpose berth, the upfront tariff guidelines prescribe the norm for free days at 5 days for import and 15 days for export cargo. The same has been prescribed in the upfront Scale of Rates in the February 2009 Order. The upfront tariff guidelines do not prescribe turnover norm for multipurpose berth as it does not prescribe calculation of optimal yard capacity for multipurpose berth unlike for iron ore and coal terminal. The norm of free days at 5 days for import and 15 days for export cargo has been prescribed in the upfront Scale of Rates in the February 2009 Order. The port has stated that 30 days dwell time considered by the WQMPL considering the turn over norm of 12 is arbitrary.

When all the parameters considered by the VPT for arriving at the upfront tariff is from the norms prescribed in the upfront tariff guidelines for multipurpose berth, no reason or justification is furnished by WQMPL to adopt only one parameter of turn over norm from the norms prescribed for coal and iron ore terminal for the current WQ6 multipurpose cargo berth.

It is relevant here to reiterate that the norm of free period for import cargo is 5 days and export cargo is 15 days and the same is prescribed in the SOR notified in the upfront tariff Order of February 2009 Order. As rightly pointed out by the VPT, it is seen that in the calculation of revised storage charges, the WQMPL has considered the free storage of 5 days for the entire cargo (that is likely to attract storage) irrespective of export or import category. The VPT has stated that the proportion of import cargo envisaged in the total terminal capacity of 2.09 MTPA constitute 72% and export cargo 28%. The WQMPL has not considered the dwell time of cargo taking into consideration different free period for import and export cargo prescribed in its Scale of Rates.

In view of the above problems in the parameters adopted by WQMPL and in view of specific observation of VPT that turnover norm of 30 is arbitrary, this Authority is not in a position to consider these parameter adopted by WQMPL.

The dwell time of cargo arrived by VPT in the revised storage calculation furnished by the port appears to be more scientific and logical and is explained in subsequent paragraphs.

- (b). On perusing the estimated revenue from storage charge (after 5 days free period) furnished by WQMPL, at the revised proposed storage rate of ₹0.22 per tonne/ day for the first slab (6-12 days), ₹0.333/ tonne/ day for the second slab (13-18 days) and ₹0.444 per tonne/ day for the third slab (20-30 days and beyond), it is seen that the WQMPL has considered the quantum of cargo attracting storage charge uniformly at 52,000 tonne i.e. 30% of the monthly cargo capacity to attract storage charge (173333*30%) for each of the slabs. Since some quantity of cargo may be evacuated during each of the three slabs, the cargo attracting the storage charge in the second slab and third slab may have to be suitably reduced to that extent considering the cargo likely to attract storage charge in respective slabs. On being pointed out, the WQMPL has maintained that there is no modification required in the calculation furnished in its proposal dated 13 March 2018. This means that as per calculation of WQMPL, 30% of cargo capacity will stay at the terminal for all the 30 days covering the relevant free period and chargeable slab periods. But, the VPT has categorically pointed out that dwell time of 30 days is arbitrary. The port has furnished the working of revised storage calculation taking into consideration the storage area, the quantity that can be stacked, etc.

- (vi). Before examining the proposal of revised storage charge along with calculation furnished by VPT, it is relevant here to state that even during the processing of the February 2009 Order as brought out in para 5.2. under the heading Scale of Rates at point (vi)(b) and (c) of the said Order, it was pointed out to VPT that while arriving at the upfront storage fee, the factor of dwell time of import / export cargo at the storage area does not seem to have been considered by VPT and that the VPT may review and rework the storage charge taking into consideration the stay of cargo beyond the free period to meet the expected revenue requirement from this tariff item. The port was requested to furnish a calculation to show that at the proposed storage rate (beyond the free period), the estimated revenue requirement from the storage charge will be realised by the operator.

The VPT had then stated that an analysis of dwell time from April to June 2008 revealed that the dwell time of all the vessels which handled C.P. Coke (Exp) is less than 10 days where as allowable free period in case of exports is 15 days. In case of LAM coke, dwell time of some of the vessels is about 6 days as against the proposed norm of 7 days. Since the facility was proposed on BOT basis, the VPT had then stated that port considered that the operator will ensure faster clearance so as to increase the optimal capacity of the berth. As such, the dwell time was not factored in storage area by the port.

Now, during the processing of the representation of WQMPL, the VPT has stated that the error has crept in the storage calculation of WQ6 berth and has furnished the rectified storage calculation maintaining the estimated ARR from storage charges at ₹0.54 crores and after taking into consideration the dwell time of cargo which was not captured by the VPT during February 2009 Order.

For arriving at the revised storage charge, the port has considered the extent of area provided for storage of cargo at 50,000 sq. mtrs. as considered in para 2(iii)(a) of the Order dated 12 February 2009 and capacity of storage area as 1.04 lakh tonnes. Based on this parameter and considering the optimal capacity of 2087435 tonnes (2.09 MTPA), the port has arrived at number of turns (i.e. turnover) at 20 (2.09 MTPA/ 1.04 lakh tonnes). The port has arrived at the weighted average dwell time of cargo at 11 days and has furnished detailed working which has been brought out in the earlier paragraphs.

Considering total number of days in a year at 365, the port has assessed the cargo dwell time of 18 days (i.e. 365 days/ 20 turns). Chargeable storage days is worked out at 7 days being 18 days - 11 days. It is seen from the calculation of storage charge furnished by VPT that the port has taken dwell days as free period plus handling time in days and arrived at weighted average (free) days of 11.

As per note no.(ii) and (iii) of the schedule 4 prescribed of the SOR approved in February 2009 Order, free period for export cargo shall commence from the actual date of the receipt of goods in the operator's premises and free period for import cargo shall be reckoned from the day following the day of completion of final discharge from the vessel.

The port has confirmed that calculation of storage charges furnished by the port strictly conforms to the Notes (ii) and (iii) prescribed in upfront tariff SOR in Order No.TAMP/39/2008-VPT dated 12 February 2009. The port has clarified that weighted average of 11 days reckoned thus, includes the free time as well as the cargo loading / unloading time during which some of the cargo will be dwelling in the storage area. The port has clarified that as some quantities of cargo will be dwelling in the storage area during vessel operations, this time is considered as part of overall dwell time but the free time is reckoned only after receipt/ evacuation of total cargo at the operator's premises.

Thus, for the cargo capacity of 6.2 lakh tonnes likely to attract storage charge at 30% of the optimal cargo capacity assessed in February 2009 Order and maintaining this parameter at the level considered in February 2009 Order, the VPT has arrived at the storage rate for the 1st slab at ₹1.24 tonne per days (i.e. 2.09 MTPA *30%= 6.2 lakh tonnes/ annum) (₹0.54 crore ARR from storage charge/ 6.2 lakhs tonnes/ 7 days for the first slab). The rate for the second and the third slab is arrived at 1.5 time and 2 times the rate proposed for the first slab maintaining the ratio as in February 2009 Order.

The revised storage calculation furnished by the VPT vide its letter dated 26 March 2018 was also forwarded to WQMPL for its comments. The WQMPL has no comments to offer. It is seen that the WQMPL has not made any adverse comment on the revised storage calculation furnished by the VPT.

The working furnished by the VPT appears to be rational. The port has broadly maintained the parameters as considered in the February 2009 Order except for capturing the cargo dwell time in number of days for the first slab which was not considered by VPT earlier.

In view of the above revised storage calculation furnished by VPT, this Authority rectifies the storage charge approved in upfront tariff schedule for multipurpose berth in the Order No.TAMP/39/2008-VPT dated 12 February 2009 under Schedule 4 B - Storage Charges per tonne per day based on the proposal now furnished by VPT. The storage charge approved in the said Order and modified storage charge are tabulated below:

“B. Storage charges after free period (per tonne per day)

As approved in Order No.TAMP/39/2008-VPT dated 12 February 2009	
Description	Rate in Rs. per tonne per day
First week after expiry of free period	Rs.8.60
2 nd week after expiry of free period	Rs.12.90
Beyond 2 nd week	Rs.17.20

”

“B. Storage charges after free period (per tonne per day)

Storage charge approved in Order No.TAMP/39/2008-VPT dated 12 February 2009 as rectified now by this Authority	
Description	Rate in Rs. per tonne per day
First week after expiry of free period	Rs.1.24
2 nd week after expiry of free period	Rs.1.86
Beyond 2 nd week	Rs.2.48

”

Consequent to above revision in the storage charge, the indexed storage charges included in the Scale of Rates notified in the name of WQMPL in Order No.TAMP/49/2015-VPT dated 4 September 2015 applying indexation factor of 35.08% are also rectified in Schedule 4 B - Storage Charges per tonne per day prescribed in the SOR attached to the said Order. The storage charged notified in the said Order dated 4 September 2015 and revised rectified storage charge are tabulated below:

“B. Storage charges after free period (per tonne per day)

As approved in Order No.TAMP/49/2015-VPT dated 4 September 2015 applying indexation factor of 35.08% on the rates approved in February 2009 Order	
Description	Rate in ₹ per tonne per day
First week after expiry of free period	₹11.62
2 nd week after expiry of free period	₹17.43
Beyond 2 nd week	₹23.23

”

Revised rectified Storage charge with reference to storage charge approved in Order No.TAMP/49/2015-VPT dated 4 September 2015 after applying indexation factor of 35.08% on the modified storage charge	
Description	Rate in ₹ per tonne per day
First week after expiry of free period	₹1.67

2 nd week after expiry of free period	₹2.51
Beyond 2 nd week	₹3.34

- (vii). As stated earlier, as per note 1.2. (vii) of the upfront tariff order, the rates prescribed in the Scale of Rates are ceiling levels. The WQMPL may charge lower rates. Thus, as per the approved Scale of Rates the WQMPL has flexibility to charge lower rate of berth hire charges as well as storage charges, if it so desires. If there are any issues arising on account of this on the revenue share, the port and WQMPL may sit together and sort it out.

15. It is brought out that the modification done in the storage charge in the current exercise is in compliance of the direction of the Hon'ble High Court to this Authority to consider the representation dated 16 June 2017 and 30 June 2017 made by WQMPL and in view of the proposal of the VPT on the said representation requesting this Authority to rectify the storage charge approved by this Authority in February 2009 Order which was based on the then proposal of the VPT. It is stated by way of abundant caution that this shall not be referred as precedent in any other case seeking for review of the upfront tariff approved under the upfront tariff Guidelines of 2008.

16.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the modified storage charges as given below:

- (i). **Storage charge approved in upfront tariff schedule for multipurpose berth in the Order No.TAMP/39/2008-VPT dated 12 February 2009 under Schedule 4 B - Storage Charges per tonne per day shall stand modified as follows:**

Description	Rate in ₹ per tonne per day
First week after expiry of free period	₹1.24
2 nd week after expiry of free period	₹1.86
Beyond 2 nd week	₹2.48

- (ii). **Storage charge under Schedule 4 B - Storage Charges per tonne per day notified in the Order No.TAMP/49/2015-VPT dated 4 September 2015 notifying the Scale of Rates in the name of WQMPL shall stand modified as follows:**

Description	Rate in ₹ per tonne per day
First week after expiry of free period	₹1.67
2 nd week after expiry of free period	₹2.51
Beyond 2 nd week	₹3.34

16.2. The VPT and WQMPL are directed to make necessary changes in the respective Scale of Rates notified by this Authority.

17. Accordingly, the representations of the WQMPL dated 16 June 2017 and 30 June 2017 stand disposed of.

(T.S. Balasubramanian)
Member (Finance)