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Tariff Authority for Major Ports

G.No. 626

New Delhi,

30 November 2021

NOTIFICATION

This Authority, in exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), has disposed of the proposal received from Mumbai Port Trust (MBPT) for fixation of Schedule of Rates (SOR) and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 (12 Zones) and 01.10.2017 to 30.09.2022 (09 Zones) for let out land falling under various Ready Reckoner Zones of MBPT on 01 November 2021. However, considering the time involved for notifying the Speaking Order along with the Rent Schedule prescribing Schedule of Rates (SOR) for the 12 RR Zones for the period 01.10.2012 to 30.09.2017 and for the 9 RR Zones for the period 01.10.2017 to 30.09.2022 for let out land falling under various Ready Reckoner Zones of MBPT, approved by this Authority on 01 November 2021 was notified in the Gazette of India on 12 November 2021 vide Gazette no.559. It was stated in the said Notification that this Authority will notify the Speaking Order, in due course of time. Accordingly, this Authority hereby notifies the Speaking order connected with the disposal of proposal of MBPT for fixation of Schedule of Rates (SOR) and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 (12 Zones) and 01.10.2017 to 30.09.2022 (09 Zones) for let out land falling under various Ready Reckoner Zones of MBPT as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/60/2021-MBPT

Mumbai Port Trust

Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Sunil Kumar Singh, Member (Economic)

ORDER

(Passed on this 1st day of November 2021)

This case relates to a proposal received from Mumbai Port Trust (MBPT) vide its letter dated 13 October 2021 for fixation of Schedule of Rates (SOR) and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 (12 Zones) and 01.10.2017 to 30.09.2022 (09 Zones) for let out land falling under various Ready Reckoner Zones.

2.1. The main highlights of the MBPT proposal dated 13 October 2021 are as follows:

- (i). Government has issued Policy Guidelines on Land Management for all major ports vide letter No. PD-13017/2/2014/-PD.IV dated 17.07.2015. By Clarification Circular No. 1 of 2018 dated 14.05.2018, and Clarification Circular No.1 of 2019-20 dated 29.04.2019 Ministry has extended the applicability of the PGLM 2015 to the non-home occupation / commercial areas of the township areas of Mumbai, Kolkata and Kandla Port. Clause 13 (c) of PGLM of 2015 requires the port to refix the SOR once in five years and obtain TAMP's approval thereto.
- (ii). As provided in Clause 13 of PGLM, Land Allotment Committee (LAC) has recommended rates for various Ready Reckoner Zones. Same have been approved by MBPT Board. [MBPT has furnished Board Resolution approving the LAC recommendations]
- (iii). In this backdrop, the MBPT has come up with the subject proposal for seeking approval for fixation of Schedule of Rates and revision of rent / compensation in respect of 12 Zones for the period 01.10.2012 to 30.09.2017 and in respect of 09 Zones for the period 01.10.2017 to 30.09.2022 for let out land falling under various Ready Reckoner Zones, which is submitted for approval to the SOR in terms of Clause 13 (c) of PGLM 2015.

2.2 The background and other main points made by the MBPT in its proposal dated 13 October 2021 are summarized below:

A. Background:

Mumbai Port Trust owns about 944 Ha of land in Mumbai City. The land in the Mumbai city limits falls under the jurisdiction of A, B, C, M, G-North, E, F-North and F-South Wards and letout lands in outside island city of Mumbai. The said land stretches from Colaba to Wadala, Mahim, Worli, Govandi, Pir Pau, Mahul, Titwala etc. and is divided into 15 administrative units for management of these estates. The landed estates are divided into 2 main categories, viz. (i) lettable land and (ii) non-lettable land. Non-lettable land includes areas occupied by offices of sister department, administrative offices of Mumbai Port Trust, Port Trust quarters, Port Trust hospital, etc. The lettable category includes areas let out on long term leases, 15 monthly leases, monthly tenancies and licenses. There are also a few plots which are vacant and can be let out. The Board vide various TRs of 2021

accorded approval to Schedule of Rates (SoR) for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 in respect of Mumbai Port Trust letout land falling under various remaining Ready Reckoner Zones which applicable to all the Expired leases / Fifteen Monthly leases / Monthly Tenancies / Licenses of the plots for Non-Home occupations were submitted to TAMP for notification. Further, proposal for revision of SoR for remaining zones falling in Township areas of MbPT is submitted hereby for notification by TAMP.

B. Policy Guidelines:

- (i). The Land Management Policy Guidelines for Major Ports, 2010 issued by the Ministry was adopted by the Board vide TR No.21 of 2011 read with Supreme Court Judgement. The Ministry subsequently, with the approval of the cabinet, issued Land Policy guidelines for Land Management by Major Ports 2014 (PGLM), which was applicable for all Ports except for the land relating to the township areas of Kandla, Mumbai and Kolkata Port, for which it was stated that separate policy will be formulated. The amended policy guidelines were issued in 2015.

The Ministry vide clarification Circular (Land Management) No.1 of 2018 dated 14.05.2018, Clarification No.2 of 09.03.2019 and Clarification No.1 of 2019-20 dated 29.04.2019 issued clarification circular on various issues of PGLM 2014/15 extending the applicability of the PGLM 2015 to the non-home occupation/commercial areas of the township areas of Mumbai, Kolkata and Kandla Port upto 31.03.2020 with a sunset clause. The PGLM 2015 has thus become applicable to the township areas of Mumbai Port Trust. The Ministry vide further letter dated 27.01.2021 has clarified that "since PGLM 2014 has been approved by the cabinet, it is valid until it is revised by the cabinet. Hence, compiled PGLM, 2015 issued on 29.04.2019 will be applicable for both the land of major port trust and the township area subject to the condition mentioned in the letter dated 29.04.2019."

- (ii). As per the PGLM-2015, the Land Allotment Committee is required to consider the following factors for determining the market value of the Port land:

I. Five factors:

- (a). State Government's Ready Reckoner of land values in the area, if available for similar classification/ activities.
- (b). Highest rate of actual relevant transactions registered in the last 3 years in the ports vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards) with an appropriate annual escalation rate to be approved by the Port Trust Board.
- (c). Highest accepted tender-cum-auction rate of Port land for similar transaction updated on the basis of the annual escalation rate approved by the Port Trust Board.
- (d). Rate arrived at by an approved valuer appointed for the purpose by the Port.
- (e). Other relevant factor as may be identified by the Port.

- II. The Land Allotment Committee shall, while recommending the latest market value for any land would normally take into account the highest of the factors mentioned in Para 13(a) of PGLM 2015 above. Reserve price in terms of the annual lease rent would be latest SoR determined in

accordance with Para 13(a) and 13(c) of PGLM 2015 and would in no case be less than 6% of the latest value recommended by the Port trust.

- III. The Port trust would make a proposal as outlined in Para 13 (a) of PGLM 2015 to TAMP for fixing the latest SoR of the land. The TAMP would notify the latest SoR of the land after following due process of consultation with stake holders within 45 days of the receipt of the proposal. The Port trust board will fix a rate of annual escalation which would not be less than 2 %. SoR would be refixed once in every 5 years by TAMP”.

C. Legal Issues:

- (i). TAMP had vide notification No. TAMP/10/98-Misc of 28.03.2000 issued orders dated 15.03.2000 on its jurisdiction for framing scale of rates and statement of condition on the issue of applicability of SOR to all lands of all Major Ports. The said notification was challenged by the Mumbai Port by Writ Petition 1153 of 2000. In the writ petition, by interim order dated 02.05.2000, the Bombay High Court had stayed the applicability of TAMP’s order to areas not falling within Port limit and Port approaches. The issue of withdrawal of Writ Petition and necessary advice for the same was taken up with the Ministry in the light of PGLM 2015. TAMP has since by letter dated 15th July 2019 intimated that TAMP is required to fix the SOR for all areas of Mumbai Port including Township areas with effect from 01.10.2012 onwards in terms of advisory from the Ministry of Shipping and therefore notification dated 28th March 2000 may be seen to have become infructuous. Therefore, the Writ Petition was also withdrawn by High Court order dated 08.08.2019

D. LAC Recommendations:

- (i). Revision of SoR rates for the period from 01.10.2012 to 30.09.2017 for 12 remaining Ready Reckoner zones not covered in the earlier proposals submitted to TAMP.

Earlier Board vide TR 222 of 2015 & 122 of 2021 has approved rates for 23 Ready Reckoner zones and recommended SoR based on the State Government Stamp Duty Ready Reckoner, 2012. (Para 'd' of LAC Report approved under TR 222 of 2015) and the same report was further approved by the Board vide TR 122 of 2021 and TR 153 of 2021 (for 3 Ready Reckoner zones) were submitted to TAMP for notification of SoR. Further, for remaining 12 Ready Reckoner zones falling in township areas i.e. 11/84A, 11/84B, 11/84E, 7/64, 10/78A, 3/35B, 7/66, 1/4, 13/97, 15/105, 2/34 and 3/36A, the same methodology of 6% return on land values prescribed in corresponding Ready Reckoner zones of 2012 with 4% annual escalation in every October, is adopted as base rate of SoR for the all remaining zones.

- (ii). Revision of SoR rates for the period 01.10.2017-30.09.2022 for 09 remaining Ready Reckoner zones not covered in the earlier proposals is submitted to TAMP.

LAC has recommended to adopt the land values of adjoining zones for fixation of SoR 2017-2022 (From 01.10.2017 to 30.09.2022) for the remaining 09 Ready Reckoner zones of township areas of MbPT not covered in the earlier proposals submitted to TAMP as given below:

- (a). The land rate of Rs. 53,820/- per sq.mtr. for FSI 1 for the zone 90/419 be adopted for fixation of SoR 2017-2022 for all the lettings in RR zone 96/436 and RR zone 15/105.
- (b). The land rate of Rs. 1,15,640 /- per sq.mtr. for FSI 1 for zone 14/101A be adopted for fixation of SoR 2017-2022 for all the lettings in RR zone 16/110.
- (c). The land rate of Rs. 1,71,310 /- per sq.mtr. for FSI 1 for zone 11/84A be adopted for fixation of SoR 2017-2022 for all the lettings in RR zone 11/84E.
- (d). LAC recommends the land rate of Rs. 1,13,500/- per sqm for FSI-1 for RR Zone 13/97 as on 01.10.2017.
- (e). The land rate of Rs. 2,57,500/- per sq.mtr. for FSI 1 for RR Zone 7/64 as on 01.10.2017.
- (f). The land rate of Rs. 3,38,100/- per sq.mtr. for FSI 1 for RR Zone 7/66 as on 01.10.2017.
- (g). The land rate of Rs. 3,31,600/- per sq.mtr. for FSI 1 for zone 1/3A be adopted for fixation of SoR 2017-2022 for all the lettings in RR zone 1/6.
- (h). The land rate of Rs. 11,480/- per sq.mtr. for FSI 1 for Karanja as on 01.10.2017.

- (iii). The Board vide TR 153 of 2021 has accorded approval to proposals for SoR for Home, Mixed (Home + Non-home), PT Structure occupations. The same methodology will be adopted for SOR 2012-2017 and 2017-2022 for the Home, Mixed and PT Structure occupations in these zones as approved under the said TR 153 of 2021 for such occupations in these zones, which has already been submitted to TAMP.

E. Application of FSI factor in calculation of actual quantum of compensation.

- (i). The computation of rentals/ compensation based on FSI consumed and areas will be likely to be contentious issue even after base SoR rates for one sq. mtr. of land are approved by TAMP. Linking of SoR rates of land to FSI consumed of the buildings / structures have several repercussions and complexities such as how to compute FSI, exemption of fungible FSI as per DC rules and permissible FSI, etc. To study these aspects in detail, vide TR 122 of 2021 the Board has accorded approval for formation of a committee of experts consisting of a retired Chief Engineer / Director of Planning of MCGM, Retired High Court Judge and a group of MbPT officials comprising Advisor (Planning), Chief Engineer, CLO, FA&CAO, Secretary and Estate Manager (I/C) alongwith Govt. registered Valuers on MbPT panel. Committee will give its recommendations on above issues and the matter will be brought before the LAC and Board for computation of actual rents/compensation on factors recommended by the Committee.
- (ii). Port Trust is billing the monthly tenants with MCGM Property Cesses (WBT, SBT, EGC & ED) @ 55.5% of Annual Rent as per SC Judgement and recovery of the same was MbPT's responsibility. LAC vide report dated 23.08.2021 recommended that same practice is to be followed in future, however, the MCGM cesses will be reworked out in accordance with the proposed SOR 2012-2017 as may be approved by the TAMP, in respect of all the monthly tenancies and licenses upto 11 months (non-home occupations) of all the Ready Reckoner zones of Mumbai Port Trust land. The same is approved by the Board vide TR 155 of 2021. The same will be made applicable to SoR 2012-2017 and 2017-2022.
- (iii). All the demand notices of differential arrears as per the revised SoR for 2012-2017 and 2017-2022 will be issued to all monthly tenancies, fifteen monthly leases, expired leases and licenses as a compensation for wrongful use of the premises without interest and giving time limit of 3 months from the date of receipt of demand notices and interest at the applicable rates will be charged for delayed payments subject to TAMP's approval.

2.4. Thus, MBPT has sought TAMP's approval to the SOR arrived at on the basis of various Board resolutions in respect of 12 Zones for the period from 01.10.2012 to 30.09.2017 and 09 Zones for the period from 01.10.2017 to 30.09.2022. The said rate shall be increased by 4% per annum every October. These rates will be applicable to all the Expired Leases, Fifteen Monthly Leases, Monthly Tenancies and Licenses along with vacant plots (for calculation of upfront premium for allotment) falling under the respective ready reckoner zones. The details of which are as given below:

Statement showing SOR 2012-2017 for remaining 12 ready reckoner zones falling in township areas

(in ₹.)

A	B	C	D	E	F
Sr. No.	RR Zone	Unit	Description as per Ready Reckoner	Land value of open land as per Ready Reckoner 2012 Per SqM for FSI-1.00	Proposed base rates per sqm per month for FSI 1.00 (as per 6 % return p.a. in terms of Land policy) on land Values as per Ready Reckoner 2012 01.10.12 TO 30.9.13 (6% return on Col 'E')
1	11/84A	2	On East Rafi Ahmad Kidwai Marg, on West T.Jeevraj Road upto P.Sawant Chowk on North Acharya Daunde Marg(King Edward Road) trangular portion of all the land.	40000	200
2	11/84B	2	Rafi Ahmed Kidwai Marg and Harbour railway line, narrow strip portion of land	48200	241
3	11/84E	2	Portion in between on East Harbour Railway line and on West Sewri Cross Road	58200	291
4	7/64	12	On west side Central Portion of Khamballa Hill having vertical slope on East side Javji Dadaji Marg (Tardeo Road) from Nana Chowk to Haji Ali Chowk on North Haji Ali Chowk and on South August Kranti Marg. All Portion surrounded by these Roads.	131000	655
5	10/78A	8	On West Shivdas champsi Marg and Dr. Mascrenas Road, on East BPT Railway line, on North Sant Savtamali Marg and on South Jijabhai Mulji Rathod Marg. All the portion surrounded.	34900	175
6	3/35B	9	P.D'Mello Road	46600	233
7	7/66	12	West, South and East division boundary on North August Kranti Marg and Pandita Ramabai Marg . All the portion surrounded.	241100	1206

A	B	C	D	E	F
8	1/4	14	Onavy Nagar portion and colaba portion towards south of Dr. Homi Bhabha Road Navy Nagar, Tata Institute of Fundamental Research and Colaba Point	67800	339
9	13/97	13	Towards West Sasmira Road , On East and South ward boundary and on North Worli Gaothan Boundary	64400	322
10	15/105	1	All the properties of Salt Pan Division except Zone No. 15/105A	34000	170
11	2/34	Only Township Areas excluding Custom bond areas	Lokmanya Tilak Marg part from Phule Market to P.D'Mello Chowk	61500	308
12	3/36A		Lokmanya Tilak Marg on East side of PD Mello Road	58600	293

Notes:

- (i). Actual quantum of Rent will be worked out on the base rent and factor as may be recommended by the committee appointed for the purpose of applicability of FSI.
- (ii). Taxes, service charges, penalties, interest rates are not included in the above rates.
- (iii). Rate for allotment of water bodies is applicable at 50% of the SOR rates.
- (iv). Differential Arrears, liabilities and other dues/charges for a period from 01.10.2012 to 30.9.2017 will be calculated based on above rates.
- (v). Interest would be chargeable beyond permissible period as per Board's policy from time to time.
- (vi). Whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month.

Statement showing SOR 2017-2022 for remaining 9 ready reckoner zones falling in township areas

Sr. No.	RR Zone	Unit	Division	Rates for land per Sq. Mtr. as on 01.10.2017 (in ₹.)	Rate per Sq. Mtr. per month @6% return per annum as on 01.10.17 as per PGLM 2015 (in ₹.)
1	96/436	1	Anik	53820	269
2	15/105	1	Salt Pan	53820	269
3	16/110	1	Matunga	115640	578
4	11/84E	2	Parel-Sewree	171310	857
5	13/97	14	Worli	113500	568
6	7/64	12	Malbar Hill	257500	1288
7	7/66	12	Malbar Hill	338100	1691

8	1/6	12	Colaba	331600	1658
9	Karanja	12	Karanja	11480	57

Notes:

- (i). Actual quantum of Rent will be worked out on the base rent and factor as may be recommended by the committee appointed for the purpose of applicability of FSI.
- (ii). Taxes, service charges, penalties, interest rates are not included in the above rates.
- (iii). Rate for allotment of water bodies is applicable at 50% of the SOR rates.
- (iv). Differential Arrears, liabilities and other dues/charges for a period from 01.10.2017 onwards.
- (v). Interest would be chargeable beyond permissible period as per Board's policy from time to time.
- (vi). Whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month.

2.5. The MBPT has stated that the proposal is formulated in terms of the Land Policy Guidelines for Land Management 2015. Further, the MBPT has stated that under Section 49 of MPT Act, 1963 and para 13 (c) of PGLM-2015, TAMP's approval to the SOR for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 applicable to all Non-home occupations of the Expired Leases, Fifteen Monthly Leases, Monthly Tenancies and Licenses of the plots falling under the respective Ready Reckoner zones.

3.1. With regard to the proposal of the port, this Authority had passed an Order dated 15 March 2000 setting out the legal position about the Authority's jurisdiction in respect of framing scale of Rates and Statement of Conditions for use of port properties.

3.2. The Mumbai Port Trust (MBPT) filed a Writ Petition in the Bombay High Court in April 2000 challenging the Order dated 15 March 2000 and praying, *inter alia*, that this Authority has no power to fix rates of those premises belonging to the MBPT and situated outside the port limits.

3.3. The Hon'ble Division Bench of Bombay High Court passed an interim order on 2 May 2000 restraining this Authority from giving effect to the Order dated 15 March 2000 to the extent that the decision taken therein shall not apply to any property or place not within the limits of the port or port approaches.

3.4. The efforts taken by TAMP in the past with the (then) Department of Shipping, Ministry of Surface Transport suggesting to settle the issue whether or not the Authority has jurisdiction over all the properties of a Port Trust through policy direction of the Government rather than by a judicial review did not yield result. Since the matter was in the final stage of hearing and there was no response from the Government in this regard, TAMP has engaged a legal counsel to defend the order of 15 March 2000 passed by TAMP in the High Court of Bombay based on the advice rendered by the Senior Counsel.

3.5. In this backdrop, the then Ministry of Shipping (MOS) under cover of its letter no. Secy(S)/Visit-Mumbai/Land management/ 2018(333951) dated 25 March 2019 had forwarded a copy of the Minutes of the Meeting held on 21 August 2018 at Mumbai under the Chairmanship of Secretary, MOS with regard to clarifications on the Land Policy Guidelines, 2015. Forwarding the copy of the Minutes, the Way forward forming part of the Minutes indicated that MBPT will withdraw the Writ Petition and Ministry will advise TAMP that consequent to PGLM 2015 read with clarifications dated 14th May 2018, the SOR with effect from 01.10.2012 onwards be fixed by TAMP for all areas of Mumbai Port including Township area.

3.6. In response to the then MOS letter dated 25 March 2019, we had, vide our letter dated 28 March 2019 *interalia*, communicated to the then MOS that TAMP will abide by the directions of the then MOS in the matter in reference, with regard to fixation of lease rent/ license fee for the MBPT lands for the period from 01 October 2012 onwards, subject to MBPT withdrawing the Writ Petition.

3.7. In this backdrop, the then MOS vide its e-mail dated 16 May 2019 had *interalia*, directed TAMP to fix the SOR for all areas of Mumbai Port including Township Areas with effect from 01.10.2012 onwards, consequent to the Policy Guidelines for Land Management, 2015 (PGLM 2015) read with clarification on PGLM dated 14.05.2018, only after the writ Petition is withdrawn by MBPT. Vide the said letter, the then MOS requested MBPT to withdraw the Writ Petition no. 1153 of 2000 from the Bombay High Court and intimate the same to the MOS and TAMP.

3.8. In this connection, the MBPT has withdrawn the Writ Petition and the Hon'ble Bombay High Court vide its Order dated 08 August 2019 has passed an Order disposing off the Writ Petition as withdrawn.

3.9. Thus, the MBPT has come up with a proposal seeking approval for Schedule of Rates and revision of rent / compensation in respect of 12 RR Zones for the period 01.10.2012 to 30.09.2017 and 09 RR Zones for the period 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones. In this connection, it is relevant to state that this Authority has disposed one of the proposals filed by MBPT seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 for non-home occupations in Township Areas of MBPT vide order no. TAMP/43/MBPT-2021 dated 22.10.2021. An action has already been initiated to notify the said order in the Official Gazette of India. Simultaneously, the MBPT has also filed 6 similar proposals seeking approval for Schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2020 for non-home occupations / home occupations in Township Areas of MBPT, for let out land falling under various RR Zones, which have been dealt separately by TAMP.

4.1. Considering the huge list of registered tenant / lessees as suggested by the MBPT, the MBPT was requested vide letter dated 25 October 2021 to upload subject proposal in its website and intimate to all the registered tenant / lessees about hosting of the subject proposal in the MBPT website and give the designated email address of Port as well as TAMP for furnishing comments within 07 days' time.

4.2. Accordingly, the MBPT vide its email dated 27 October 2021 has confirmed that it has informed all Tenants / Lessees about hosting of subject proposal for comments/ opinion of the users on the subject proposal in reference. The MBPT has furnished a copy its Notice No.EM/AS(G)/F-382/1925 dated 06 October 2021, wherein the MBPT has intimated the Tenants/ Lessees about hosting of subject proposal in the website of MBPT and has sought for comments/ opinion of the users on the subject proposal in reference, to be sent to this Authority as well as MBPT.

4.3. In this connection, submissions/ comments have been received from various lessees/ tenants. As intimated by MBPT in its Notice, a copy of the said comments have also been forwarded by the lessees/ tenants/ users to MBPT as well. Accordingly, the MBPT vide its email dated 31 October 2021 has responded.

5. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the comments received from the users / user organisations will be sent separately to them. These details will also be made available at our website <http://tariffauthority.gov.in>.

6.1. Before going into the analysis of the proposal, it is noteworthy to mention that MBPT in the first week of August 2021 has filed two similar proposals seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for `non-home occupations in Township Areas of MBPT. The said proposals were taken up on consultation with the relevant users/tenants/lessees. We have received numerous representations from various individual tenants/ lessees strongly objecting to the said proposal, on the ground that there is no provision under the Major Port Trust Act, 1963, permitting MBPT to charge the rent retrospectively. It has also been stated that retrospective revision will be highly destructive for all the occupants and it is likely that the same may be challenged in Court of law. Some lessee/ tenants have also stated that the retrospective revision would act as a financial shock to their business and it will be very difficult for them to sustain it financially. Further, considering the adverse impact that the COVID-19 pandemic had on the business, it has been further stated that the retrospective revision and the payment of arrears thereon, would further strain the financial condition of the lessees/ tenants. Thereafter, a joint hearing was held on 03 September 2021 on the said proposal, wherein, users/tenants/ lessees has raised similar issues no other than issues brought out in written submission. Subsequently, users/tenants/lessees were given an opportunity to submit their writing submission, if any, on the power point presentation of the proposal made by MBPT during the Joint Hearing. We have received written submission from the various user/ users/tenants/lessees reiterating the submissions made earlier and during the joint hearing, which have been duly brought to the notice of this Authority.

6.2. An action has already been initiated to notify the said orders in the Official Gazette of India. Simultaneously, the MBPT has also filed another 6 proposals seeking approval for (i). Schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 for non-home occupations/ home occupations in Township Areas of MBPT, (ii). Schedule of Rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for residential and mixed used occupations (iii). Schedule of Rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for Port Trust structures falling under various RR Zones, (iv). Schedule of rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 for non-home occupations in Township Areas of MBPT, (v), Schedule of Rates and revision of rent / compensation for the period 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT – 19 RR Zones and (vi). Schedule of Rates and revision of rent / compensation in respect of 7 plots for the period 01.10.2012 to 30.09.2017 and 7 plots for the period 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones, which are dealt separately.

6.3. The present proposal seeking approval for fixation of Schedule of Rates and revision of rent / compensation in respect of 12 RR Zones for the period 01.10.2012 to 30.09.2017 and 09 RR Zones for the period of 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones has already been taken up on consultation, which has been formulated on the similar methodology of adopting State Government Ready Reckoner value, 2012 for arriving lease rentals for the period 01.10.2012 to 30.09.2017 and considering highest market value as determined as per PGLM, 2014 for arriving lease rentals for the period 01.10.2017 to 30.09.2018. In other words, the lease rentals proposed by the MBPT for non home occupation is being adopted for 12 Zones and 09 Zones for the respective quinquennial periods. The users/tenants/lessees have made their submissions similar to that of submissions made earlier with regard to proposals of MBPT seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT, which have been forwarded to MBPT for its comments. The response of the MBPT is also similar to the response given in the earlier similar proposals.

6.4. Since, the submissions made by users/ response of MBPT thereon is akin to the earlier proposals of MBPT seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to

30.09.2022 for non-home occupations in Township Areas of MBPT and given that the proposal in reference has already been taken on consultation with stakeholders, as provided in PGLM, 2014, this Authority has decided not to hold joint hearing on the case in reference.

6.5. In this regard it may be noted that, mere non holding of Joint hearing shall not be construed as this Authority having not followed the consultation process.

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

- (i). The Mumbai Port Trust (MBPT) has large portions of land in the City of Mumbai. It is to state that the lease rentals for the Port estates was last fixed by the MBPT in the year 1982 i.e. more than a decade and a half, before this Authority had come into existence in the year 1997. From the submissions made by MBPT, it is understood that the revision of lease rentals carried out by the MBPT in the year 1982, gave rise to litigations, which eventually culminated in the Supreme Court passing an Order, wherein the lease rentals approved by the Board of Trustees for the lands of MBPT for the period from 1982 upto 30 September 2012 as per the Compromise formula, had been upheld by the Hon'ble Supreme Court of India. As such, the Government has advised the MBPT in May 2019 to fix the SOR for all areas of Mumbai Port including Township areas with effect from 01 October 2012 onwards.
- (ii). It is in this backdrop that the MBPT has come up 8 different proposals seeking retrospective fixation of Schedule of lease rentals for various Ready Reckoner Zones of MBPT Township.
- (iii). During processing of this case, numerous representations are received from various individual tenants/ lessees strongly objecting to the retrospective fixation of the lease rentals, on the ground that there is no provision under the Major Port Trust Act, 1963, permitting MBPT to charge the rent retrospectively. It has also been stated that retrospective revision will be highly destructive for all the occupants and it is likely that the same may be challenged in Court of law. Some lessee/ tenants have also stated that the retrospective revision would act as a financial shock to their business and it will be very difficult for them to sustain it financially. Further, considering the adverse impact that the COVID-19 pandemic had on the business, it has been stated that the retrospective revision and the payment of arrears thereon, would further strain the financial condition of the lessees/ tenants

In this connection, it is relevant here to mention that the lease rentals approved by the Board of Trustees for the lands of MBPT for the period from 01 October 1982 upto 30 September 2012 as per the Compromise formula had been upheld by the Hon'ble Supreme Court of India. As such, the Government has advised the MBPT in May 2019 to fix the SOR for all areas of Mumbai Port including Township areas with effect from 01 October 2012 onwards.

As pointed out by the lessees/ tenants, there is no provision under Major Port Trust Act, 1963, permitting MBPT to charge the rent retrospectively. But, at the same time, it is to be noted that the Major Port Trust Act, 1963, also does not prohibit retrospective revision of rates. In this context, it is noteworthy that this Authority also does not ordinarily give retrospective effect to the Order. But, in cases governed by special circumstances, it does require retrospective application of its Order. There are various instances, where this Authority has fixed the rates retrospectively.

To quote some few instances, in a case relating to an agreement between New Mangalore Port Trust and the Kudremukh Iron Ore Company Ltd., on the advice of Ministry of Law, the (then) Ministry of Surface Transport had vide its Communication No. PR-14011/5197-P4 dated 16 March 1998 advised this Authority to give retrospective effect. Similarly, based on a proposal received from MBPT, retrospective effect was given for recovery of way leave charges leviable as per the agreement between ONGC and MBPT. Also, based on a proposal received from MBPT, this Authority vide its Order no. TAMP/62/2019-MBPT dated 08 September 2020 has retrospectively approved levy of way leave charges for the pipelines for a period of 5 years from 01 October 2012 and upto 30 September 2017.

Further, it is to state that this Authority had passed an Order no. TAMP/15/2007-NMPT dated 16 June 2010 revising the lease rentals/ licence fee of the lands of New Mangalore Port Trust (NMPT), retrospectively with effect from 20 February 2007 i.e. on expiry of 5 years from the effective date of the implementation of the previously revised rates. The said Order was notified in the Gazette of India on 23 July 2010 vide Gazette no. 184. A batch of Writ Petitions were filed in the Hon'ble High Court of Karnataka by various parties mainly challenging the retrospective revision of the lease rentals. The Hon'ble High Court of Karnataka vide its Order dated 28 June 2013 has disposed of all the Writ Petitions. The Hon'ble High Court at paragraph no. 16 of the Order has stated the following:

“There cannot be any dispute that collection of enhanced licence fee with retrospective effect is illegal as held by the Apex Court in the case of LALA RAM (D) by L.R. & ORS. – vs – UNION OF INDIA & ANOTHER reported in 2013 SAR (Civil) 347. But if the authority at the inception itself has made it clear to the licensees that what is being charged is only a provisional licence fee after approval by the TAMP, the action of the NMPT cannot be said to be illegal. At the time of issuing the licence itself as well as the time of renewal of licence, it has been made clear by the NMPT that it has proposed revision of licence fee to the TAMP and till such time only provisional licence fee will be charged and that licensees will have to pay the revised licence fee after approval of the TAMP. The licensees having agreed for the said conditions, entered into the contract. Therefore it is not open for the licensees to go against the terms of the contract and contend that it is not open for the authorities to charge licensees revisional licence fee from 20.2.2007. In view of the above, the challenge to the Circular pertaining to revision of licence fee w.e.f. 20.2.2007 vide Annexure-H fails.”

In this context, in the proceedings relating to the case in reference, the MBPT has categorically stated that it had intimated all the stakeholders by way of a Circular issued in December 2012 itself that the lease rentals are due for revision from 01 October 2012 onwards. The MBPT has also stated that even in the bills raised by the MBPT for the tenants/ lessees, it has been indicated by way of a footnote that the bill raised by MBPT is provisional and is subject to revision with effect from 01 October 2012.

Under these circumstances and for the reasons given in the earlier paragraphs, the proposal of the MBPT for recovery of Lease rentals for the 12 plots for the period 01.10.2012 to 30.09.2017 and 9 plots for the period 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones of MBPT is taken up for consideration.

- (iv). It has been brought out by various tenants/ lessees that the revision as proposed by MBPT is contrary to the guidelines passed by the Hon'ble Supreme Court in

the matter of Jamshed Hormusji Wadia vs. The Board of Trustees of the Port of Bombay, on the ground that the Hon'ble Supreme Court had upheld the "Compromise Proposals" mooted by MBPT themselves and considerably reduced the rent and interest burden on the lessees. The lessees have also stated regarding MBPT reportedly not adhering to the Compromise proposal and resultantly some Writ Petitions being still pending before the Hon'ble High Court of Bombay. Considering that the matter is subjudice, the tenants/ lessees are of the view that the question of proposed revision of SOR for the period of 2012 to 2017 and beyond, does not arise.

In this regard, it is to state that, based on the Order passed by the Hon'ble Supreme Court in the matter of Jamshed Hormusji Wadia vs. The Board of Trustees of the Port of Bombay in January 2004, the compromise proposal covered the revision for two period spans i.e. one for the period from 01 October 1982 to 30 September 1992 and the other for the period from 01 October 1992 to 30 September 2012. Thereafter, as rightly brought by the MBPT, the MBPT has the liberty to fix the lease rentals, albeit based on the Land Policy Guidelines issued by the Government. Infact, it is relevant to mention here that the 'Compromise formula' as upheld by the Hon'ble Supreme Court allowed the port to review and revise the letting rates after 20 years (i.e. from 01 October 1992 to 31 September 2012), for good and sufficient reasons. As such, the Government has advised the MBPT in May 2019 to fix the SOR for all areas of Mumbai Port including Township areas with effect from 01 October 2012 onwards. The MBPT in its proposal has brought out in detail, the chronology of the events, which eventually has led to the submission of the present proposal under reference. Nevertheless, as a measure of abundant caution, it can be presumed that the MBPT, as a statutory body, would have kept in view the pending litigations and would have carried out due diligence on its part, before approaching this Authority with the subject proposal. Thus, the proposal filed by MBPT now for revision of rent / compensation in respect of 12 RR Zones for the period 01.10.2012 to 30.09.2017 and 9 RR Zones for the period 01.10.2017 to 30.09.2022 for let out land of MBPT, is being treated in isolation, without getting influenced by the past revision of lease rentals or the pending writ petitions.

- (v). Many of the tenants/ lessees have brought out issues relating to their particular tenancies viz., non-renewal of lease agreements, non-transfer of lease in the name of heirs, non-issuance of bills/ invoices by MBPT to lessees/ tenants etc. Even the MBPT has highlighted issues about the tenants committing breaches in their properties/ sub-letting without knowledge of MBPT and pocketing the sub-let rentals/ depriving MBPT of its rightful share/ encroachments/ carrying unauthorized constructions etc. In this regard, it is to state that this Authority is mandated under Section 49 of the Major Port Trusts Act, 1963, to frame Scale of Rates (SOR) at which, and the statement of conditions under which any property belonging to, or in possession or occupation of the Board or any place within the limits of the port approaches is used for the purposes specified u/s 49 of the said Act. As such, this Authority is required by the Act to fix the lease rentals for the port estates. Matters relating to tenancies are in the domain of the Port. This Authority has no role to play on the said matters. As such, the tenants/ lessees is advised to approach the MBPT in matters relating to their tenancies. The MBPT is also advised to look into the grievances of the tenants/ lessees and take earnest steps to sort out the issues amicably.
- (vi). The MBPT has filed its proposal in October 2021. The said proposal alongwith the submissions made by the tenants/ lessees and the information/ clarification

furnished by MBPT during the processing of the case, is considered in this analysis.

- (vii). The lessees/ tenants have extensively quoted the observations made by the Hon'ble Supreme Court in the case of Dwarkada Marfatia & Sons v/s Board of Trustees of Port of Bombay etc., so as to put forth their point that the MBPT is not expected to behave like an ordinary landlord with arbitrariness or capriciousness and indulge in rack renting, profiteering and indulging in whimsical or unreasonable bargains but is expected to behave fairly and in a reasonable manner, so as to determine the rentals.

In this regard, it is to state that this Authority is mandated to follow the Land Policy Guidelines issued by the Government from time to time for the purpose of determining lease rentals for the lands belonging to the Port Trusts. The then Ministry of Shipping in the Government of India has announced Land Policy Guidelines for Major Ports, 2014 in January 2014 which has come into effect from 2 January 2014. Subsequently, the then Ministry of Shipping has issued amended Land Policy Guidelines, 2014 for implementation with effect from 17 July 2015. The subject proposal of MBPT seeking revision of lease rentals for the period from 01 October 2012 to 30 September 2017 and for the period of 01 October 2017 to 30 September 2022 is based on the provisions of the amended Land Policy Guidelines for Major Port Trusts, 2015, as issued by the Government of India in the then Ministry of Shipping (MOS).

- (viii). As per clause 13(a) read with clause 11.2(e) of the Land Policy Guidelines 2014, a Land Allotment Committee (LAC) constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic shall determine the market value of land as per the methodology prescribed in clause 13(a). Accordingly, the MBPT has reported about constitution of a Land Allotment Committee (LAC) headed by the Dy. Chairman of the Port and the Heads of Departments of Finance, Traffic and Estate being the other members.
- (ix). (a). Para 13(a) of the Land policy guidelines of July 2015 prescribes the methodology for determination of market value of the land based on the five factors as prescribed therein. In terms of the said para of the amended Land policy guidelines of 2014, the Land Allotment Committee may normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for similar classification/ activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity with an appropriate annual escalation rate to be approved the Port Trust Board, (iii). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (iv). Rate arrived at by an approved valuer appointed for the purpose by the Port and (v). Any other relevant factor as may be identified by the Port. The amended Land Policy guidelines of 2014 also stipulates that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded.
- (b). In connection with the Valuation as per various methods as stipulated in the Guidelines, the LAC for the reasons as documented in its Report has decided to determine the market value of the land on the following basis.

- (i). Based on the State Government Ready Reckoner, 2012 as applicable for the year 2012 for the 12 RR Zones for arriving the lease rentals for the period 01.10.2012 to 30.9.2017.
- (ii). LAC has recommended to adopt the land values of adjoining Zones for fixation of SOR 2017-2022 for the 9 RR Zones for arriving the Lease rentals for the period 01.10.2017 to 30.9.2022.
- (c). Clause 13(b) of the guidelines stipulates that Reserve Price in terms of annual lease rent would be arrived, as a percentage of latest market value of land determined based on the five factors in accordance with para 13(a) and that the percentage should not be less than 6% which is to be fixed by the Port Trust Board. Accordingly, the lease rental has been arrived by MBPT at 6% of the market value of the land i.e. Ready Reckoner (RR) value as on 2012 in respect of 12 RR Zones as brought out at para no. 7 (ix) (b) (i), Land Value as recommended by the LAC for the 9 RR Zones as brought out at para no. 7 (ix) (b) (ii).
- (d). As brought out above, the LAC for the reasons as documented in its Report has recommended different methods of valuation for 12 RR Zones for 2012-2017 and 9 RR Zones for the period 2017-2022 to determine the market value of the land, and has recommended lease rentals thereon. The Board of Trustees of MBPT has also approved the lease rentals as per the recommendations of the LAC and the same has been proposed by the Port in its proposal.
- (x). In this connection, all the individual tenants/ lessees who have been taken on consultation in the case in reference have strongly objected to the lease rentals proposed by the port on the ground that the proposed rentals are manifold times higher than the current rentals that are being paid by the tenants/ lessees. The tenants/ lessees have also questioned the Valuation undertaken by the Valuer(s), based on which the subject proposal has been formulated by MBPT. Further, given that the rentals is being fixed retrospectively, the tenants/ lessees fear for the arrears that would get accumulated on account of the proposed revision. Also, given that post the COVID-19 pandemic, the global economy is just struggling back to normalcy, any retrospective revision is stated to cause a huge financial shock to the tenants/ lessees. The tenants/ lessees have also submitted that they have been duly paying their rentals and taxes on time and as such, they should not be subjected to the increase in rentals as proposed by the MBPT. The tenants have also stated that since the land allotted by MBPT lacks basic facilities/ necessities, the MBPT should not go ahead with increasing the rentals and that the port should continue with the rentals based on the 'Compromise formula' as upheld by the Hon'ble Supreme Court.

In this context, it is relevant here to mention that the Land Policy Guidelines issued by the Government, requires the lease rentals to be revised every five years based on the prevailing market value of the land. The 'Compromise formula' as upheld by the Hon'ble Supreme Court allowed the port to review and revise the letting rates after 20 years (i.e. from 01 October 1992 to 31 September 2012), for good and sufficient reasons. The market value of the land is bound to go up particularly in a metropolis, with the passage of time. Moreover, in a city like Mumbai, where land is an extremely scarce resource, the rentals show an increasing trend on a year on year basis. Further, it is noteworthy that the rentals which had been paid by the tenants/ lessees during the years from 2012 to till date is based on the 'Compromise formula' as upheld by the Hon'ble Supreme Court.

This 'Compromise formula' was not based on the then prevailing market value of the land, but was fixed at a lower level. Given that the base of the rentals fixed then was lower, even with the 4% increase in rentals per annum, the resultant rental that prevailed in the year 2012 (and based on which the tenants/ lessees have paid rentals to MBPT) is substantially lower than the rental that has been determined for the year 2012 /2017 now based on the market value of the land. Given that the rentals for the estates of MBPT is being determined based on the market value of the land following the stipulations contained in the Land Policy Guidelines, the lease rentals are bound to go up, when compared to the existing lease rentals being paid by the tenants/ lessees, which are not based on market value of the lands. It is noteworthy that the MBPT has framed its proposal following the Land Policy Guidelines and thus, the hike in the lease rentals is inevitable.

Land being a valuable resource, port must strive to ensure the maximum income from its estates. Clause 4(ii) of the LPG 2015 stipulates one of the objective of the said policy is to ensure that optimum value is realised by licensing / leasing of port land and for revision of rates to enable maximum resource generation for ports. Though the MBPT is seen to have adopted the rates based on the single factor of Stamp Duty Ready Reckoner amongst the five factors mentioned in para 13 (a), determining the market value of land based only on a single approach may not always reflect the correct position.

Nevertheless, taking into account the position that the market value of the land based on the State Government Ready Reckoner has been recommended by the LAC and given that the Board of Trustees of MBPT has approved the recommendation of the LAC, this Authority is inclined to prescribe the Lease Rent in respect of 12 RR Zones for the period 1.10.2012 to 30.9.2017 based on Stamp Duty Ready Reckoner Rates 2012, as proposed by the MBPT.

As regards to the other plots, the lease rentals determined by the Port considering the Fair Market Value (FMV) of land being highest of the 5 factors as per PGLM has been recommended by the LAC and also has been approved by the Board of Trustees of MBPT. Given that the proposal of the port for fixation of lease rentals is based on valuation taking into account the Fair Market Value (FMV) of land being highest of the 5 factors as per PGLM, which is based on the stipulations contained in the Land Policy Guidelines 2015, and has been recommended by the LAC and also has been approved by the Board of Trustees, and also as this Authority is bound by the Land Policy Guidelines, 2015, this Authority approves to prescribe the lease rentals for 9 RR Zones for the period 01 October 2017 to 30 September 2022, as proposed by the port.

- (xi). With regard to objection to the Valuation of the port land as carried out by the Valuer, it is noteworthy that Valuation of the port land is in the domain of the port and as such not within the purview of this Authority. This Authority does not have the technical expertise to delve deep into the Valuation aspects. The Land Policy Guidelines requires this Authority to fix the rentals based on the proposal filed by the port.

Some tenants/ lessees have put forth an argument that given that the MBPT has been increasing the rentals at the rate of 4% per annum, the question of MBPT now proposing increase in rentals does not arise. In this regard, it is to state that, like any other products, increase in rentals per annum is to meet the rising inflationary costs. But in the case in reference, the base of the rental is being

reviewed, so as to bring it to the level of market value of land that had prevailed in the year 2012/2017.

Given that the lease rentals are being enhanced for MBPT, the MBPT may, in consultation with the tenants/ lessees, is advised to look into the requirements of the basic amenities/ infrastructure/ facilities in the leased/ licensed plots, and take steps to make them available to the lessees/ tenants.

Further, considering that the lessees/ tenants will have to pay the arrears for the period 2012 till date and given that the economy is just coming back to normalcy, after it was hit by the COVID-19 pandemic, the MBPT is advised to grant a longer period of time to the lessees/ tenants, to pay the arrears of rent pertaining to the period beginning from the year 2012.

- (xii). Clause 13(c) of the Land Policy Guidelines of 2014 gives flexibility to the ports to fix annual escalation which would not be less than 2%. Accordingly, the MBPT in its proposal has indicated that the lease rental for the 12 RR Zones fixed for the year 2012-13 and 09 RR Zones fixed for the year 2017-18 for the period 1.10.2012 to 30.09.2017 and 1.10.2017 to 30.9.2022 respectively will be subject to 4% annual escalation. However, no note is seen to have proposed by the port in the matter. Thus, a note is, therefore, prescribed in the Schedule stating that the lease rent is subject to an increase @ 4% p.a. and that first such increase shall be effective from 01 October 2013 and 01 October 2018 respectively.
- (xiii). Clause 13 (C) of the amended Land Policy Guidelines, 2014 stipulates that the rates will be revised once in every five years by this Authority. Since the rental is being prescribed with effect from 01 October 2017, accordingly, a note is being prescribed in the Rent Schedule that the annual lease rentals may remain in force for a period of five years thereon, which is approved.
- (xiv). The MBPT has proposed a note to the effect that rent will be worked out on the basis of actual Built- Up Area, subject to minimum of FSI 1.00. Given that the base lease rent approved by this Authority shall remain intact and would be only proportionately increased based on the FSI, this Authority is inclined to approve the note as proposed by MBPT in this regard.
- (xv). The MBPT has proposed another note to the effect that the rates are exclusive of all Taxes (GST, Municipal Taxes, etc.), Service Charges, Penalties, and Interest etc. and that the same are separately payable by lessees/ tenants/ licensees, as may be applicable. In this regard, it is to state that the tariff approved by this Authority is exclusive of any taxes and statutory duties. The taxes and statutory duties are to be levied by the Port at the applicable rates on the tariff so approved by this Authority. In view of this position, the note as proposed by the Port is approved.
- (xvi). The MBPT has also proposed notes to the effect that Interest would be chargeable beyond permissible period as per Board's policy from time to time and that whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month. Since the proposed notes give clarity and would avoid ambiguity and would instill discipline amongst the tenants/ lessees in the payment of rentals, the proposed notes are approved.

(xvii). The MBPT has proposed a note to the effect that rate for allotment of water bodies is applicable at 50% of SOR. The said notes is seen to in line with the PGLM, 2014. Hence, it is approved.

(xviii). The MBPT has proposed a note to the effect that differential arrears, liabilities and other dues of charges for a period from 01.01.2017 onwards. The said note is seen to be ambiguous Hence, the proposed note is slightly modified to reflect that the differential Arrears, liabilities and other dues/charges for a respective period are calculated based on above rates.

8. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the Rent Schedule for MBPT prescribing Lease rentals in respect of 12 RR Zones for the period 01.10.2012 to 30.09.2017 and 9 RR Zones for the period 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones which has been notified separately vide Gazette No. 559 dated 12 November 2021.

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE COMMENTS RECEIVED FROM THE VARIOUS TENENTS/ LESSES/ USERS

TAMP/60/2021-MBPT	:	Proposal received from the Mumbai Port Trust (MBPT) for fixation of Schedule of Rates (SOR) and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 (12 Zones) and 01.10.2017 to 30.09.2022 (09 Zones) for let out land falling under various Ready Reckoner Zones.
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The comments which were similar in nature have been grouped together. A summary of the comments received from various tenants/ lessees and the response of MBPT thereon is tabulated below:

Sr. No.	Specific comments received from Shri. Hansraj Bahari	Response of MBPT
1.	<p>We the Tenants of SHRI HANSRAJ BAHARI BUILDING NO 3 AND 3/A, We are submitting our views about your proposed scale of rate (SOR) report sent by you vide your above referred notice. Therefore, we have to state as under:-</p> <p>(i) The MBPT plot old RR1946 having Code no. 10201107, situated at unit no 2. Jackeria Bunder Road, Sewri (W) Estate, Mumbai Port Trust falls within your Special Planning Authority (SPA) limit of your Jurisdiction bearing as appeared in annexure- A sent by you which is forwarded to us for our information hence, from said letter as we understood that your SPA will be our Planning Authority and its Development Plan (DP) will consider development permission of our occupied property, It appeared that your proposed SOR is not based on hardship created due to new SPA-DP in lieu of MCGM DP (sanctioned) and ultimately our existing MBPT sanctioned user / activity is affected the land /plot areas based on its new development control rules as your proposed SOR is related to it.</p> <p>(ii). The land Rate which is considered for valuation report is not covering the lack of facilities available to us, Such as and also further use of our land / plots &e utilization of permissible FSI for the existing development/ redevelopment of plot. The Repairs Adds / Alterations to the existing structures with or without use of permissible FSI are not permitted by you.</p>	<p>MbPT is duty bound to follow PGLM 2015 in revision of SoR.</p> <p>The contention is not correct. Valuer has given report by considering lack of amenities/ infrastructure and Board has approved the SoR as recommended by LAC based on the Valuer's Report. Any repair/alteration is not allowed without prior permission of MbPT.</p>

Sr. No.	Specific comments received from Shri. Hansraj Bahari	Response of MBPT
(iii)	As a common person in the capacity of your tenant we at least know that the value of your property to be ascertained for the rent revision which is let out to us cannot be materialized unless aforesaid points are considered on legal basis & adverse effect of your development control rules, Therefore, your pragmatic view is essential on the basis of existing site condition of un building plot size & location etc. and applicability and its feasibility to be considered as per development control rules of your SPA to avail the compromise base for finalization of SOR.	MbPT is duty bound to follow PGLM 2015 in revision of SoR. Valuer has given report by considering existing site condition, lack of amenities/ infrastructure and Board has approved the SoR as recommended by LAC based on the Valuer's Report.
(iv).	Bringing to your notice that the rent which has been paid to MPBT has been substantially increased by MPBT at the rate of 4% every year and abiding such amount we have paid such rent regularly. Hence, there is no need of SoR to be considering for increasing rent which will become exorbitant.	From 01.10.2012 onwards PGLM 2010,2014-15 guidelines issued by MoS GOI are applicable to MbPT and MbPT is free to revise the rentals on the SOR based on PGLM guidelines. Hence SOR proposed by MbPT at 6% per annum is fair reasonable and MbPT is well within its rights to revise the rents/compensation w.e.f. 01.10.2012 and 01.10.2017 onwards as per the proposed SOR.
(v).	We had paid the rent that has been charge by MBPT on the regular letting rates which work as per expectance terms and condition mentioned. Hence SoR not applicable for us.	Lease expired on 19.04.1979 and bills are preferred as compensation for wrongful Use. Further All leases/tenants were informed by Circular No. EM/ASG/F-361/5873 dated 28.12.2012 vide which it was informed to all the lessees, tenants and occupants that revision of compensation / rent in respect of all the expired leases, monthly tenancies and fifteen monthly tenancies and licences / tenancies excepting subsisting long term leases of Port Trust premises is due from 01.10.2012 onwards. Every monthly Bills/invoices are sent along with footnote "THIS BILL IS PROVISIONAL AND WITHOUT PREJUDICE TO BOARDS RIGHTS AND CONTENTION TO REVISE THE RENT/ COMPENSIOW.E.F 01.10.2012".

Sr. No.	Specific comments received from Shri. Hansraj Bahari	Response of MBPT
(vi).	<p>It may please be noted that the SOR for the period of 01-10-2012 to 30-09-2017 and 01-10-2017 to 30-09-2022 for FSI = 1.00 stated in annexure- A is not acceptable and it attracts revision by considering stop financial circle of each business and residential premises pandemic corona virus and non - availabilities of incentives facilities from you which are generally applicable to the develop plots as per the development control rules. Please give us opportunity to meet to personally for hearing.</p>	<p>Covid-19 pandemic started from March 2020 and as per present circumstances there has been substantial relaxation given by the Govt. to the trade and general public and most of the premises have been operational. Further (a) any relaxation which the Govt. of India extends under any special circumstances in the case would be applicable to the tenants/lessees, though presently there are no such directions and even in any clarification from MoPS&W, Govt. of India on giving any concession, relaxation during pandemic time. In this connection, attention is invited to Delhi High Court Judgement, Ramanad and others V/s. Dr. Girish Soni and others dated 21.05.2020 has held that the period of lockdown on account of Covid-19 does not excuse in payment of rental amounts and no concession in rental charges is admissible. b) As the parties have continued to occupy the premises and MbPT being Public body which continued to provide its services in COVID period and rendered the monthly invoices of compensation and also paid the GST on the invoice for the period there is no question of granting any relief. MbPT's expenditure on infrastructure and also liability towards salary/wages, maintenance etc. have continued even in COVID pandemic period. Since rentals from MbPT landed assets is important part of MbPT revenue which is essential for sustenance of MbPT, no such concessions are admissible on this ground in the proposed SoR w.e.f. 01.10.2012</p>

Sr. No.	Specific comments received from Smt. Gulabi Shetty	Response of MBPT
1.	This has reference to notice dated 06.10.2021 whereby comment to the proposal for Revision of Schedule of Rates (SOR) 2017-2022 as per ready reckoner zones for let out areas of Non-Home occupations in estate lands of Mumbai Port Trust.	No comments.
2.	By the present proposal the MBPT is trying to revise schedule of Rates retrospectively i.e., for the period from 2017-2022 and levy of interest for the said period which is unlawful, unjust and without any plausible reason.	Regarding MbPT refixing letting rates retrospectively after 30.09.2012, the matter was referred to respective MbPT advocate dealing in the matter in the Supreme Court for opinion and accordingly, letter dated 15.04.2014 addressed to MoS, Gol requesting them to forward copy of opinion from Ministry of Legal Affairs. Opinion from PT Advocate and AG (Mr. Mukul Rohatgi) was obtained by MbPT on applicability of Wadia Judgment Rates (SCJ) post 30.09.2012 and MbPT's rights to revise the rentals w.e.f 01.10.2012 onwards. The opinion received from PT Advocate and AG, Gol confirming the Port Trust's rights to revise rentals w.e.f 01.10.2012. Accordingly, then Chairman, directed to prepare SoR rates for Estate Lettings from 01.10.2012 onwards affected by SC Judgment. The letter dated 09.10.2014 was written to MoS, seeking Ministry's direction on revision of SoR on township areas of MbPT (Estate lettings). Meanwhile, vide TR No. 123 of 2014 committee of officers was constituted (Chairman, EM and FA) by MbPT for fixation of rentals w.e.f 01.10.2012 onwards. The Ministry sought further information from MbPT on 08.10.2015 which was forwarded to Ministry on 02.12.2015 and Ministry was once again requested to give directions on fixation of SoR from 01.10.2012 and also approve the cases settled under compromise policy by the Board in terms of SC Judgment, 2004. However, neither such approval for renewal of settled cases under compromise formula (61 cases) had been received from Ministry nor any directions received from Ministry till the

Sr. No.	Specific comments received from Smt. Gulabi Shetty	Response of MBPT
		<p>issuance of general clarification circular No. 01 of 2018, PGLM 2015 which was extended to the township areas of MbPT covering the lettings affected by SC Judgment 2004 i.e. MT, FML, Expired leases and licenses. Accordingly, Board vide TR 122/2021 forwarded SoR proposal approved by Board vide TR 222 of 2015 based on the LAC report dated 29.12.2014 which annexed as part of proposal for revision of SoR for the period 2012-17.</p>
3.	<p>The proposed revision for SOR for the period of 2017-2022 is in respect of Non-Home occupation (Commercial Occupation) and leaving all the Home - Use (Residential Occupations) and Home and Non-Home (mixed user occupations) and occupation given on nominal rents to Public Bodies and for Public amenities kept out of the purview of proposed revision. It is clearly discriminatory in nature and will affect only Non-Home occupation without any reason or rhyme given by the MBPT.</p>	<p>The revision of SOR is applicable to all MT, FML, Licenses and expired leases who are not having any running contract with MbPT. The subject revision is also applicable to all Govt. organisation and public bodies. However it is not applicable to running leases. Hence the contentions raised are incorrect.</p>
4.	<p>It is double waxing as it will affect the genuine persons who were and are regularly paying the rent. By proposed revision the MBPT is trying to recover the rent for the past period for which tenants, lessees or licensees have already paid the rent at the prevalent rate and also proposing to charge the interest thereon which is totally unjust and against the principle of natural justice.</p>	<p>All parties were made aware by Circular No.EM/ASG/F-361/5873 dated 28.12.2012 whereby it was informed to all the lessees, tenants and occupants that revision of compensation / rent in respect of all the leases / tenancies excepting subsisting long term leases of Port Trust premises is due from 01.10.2012 onwards. They were also informed that the lessees, tenants and occupants will be informed about the revised letting rates, rates of compensation, in due course of time. Also, all the lessees and tenants are billed as provisional compensation rates with footnote clearly indicating as follows – “THIS BILL IS PROVISIONAL AND WITHOUT PREJUDICE TO THE BOARD’S RIGHTS AND CONTENTIONS TO REVISE RENT/COMPENSATION w.e.f. 01/10/2012”</p>

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5.	<p>The Proposed revision of SOR Period from 01.10.2017 to 01.10.2022 is contra to the Compromise Proposal and Judgment of Hon'ble Supreme Court in the for case of Jamshed Wadia for the sake of brevity relevant part of the judgment is produced hereinafter: "The summary of the "compromise proposals", which is based on a detailed note submitted by the office of the BPT for being placed before the Board, is as under: -</p> <p>(i) Nature of occupations may continue as at present on revised rents. Development may be in accordance with the Development Plan and the Development Control Regulations and BPT Master Plan including restructuring from time to time to cater for port's and city's needs.</p> <p>(ii) Occupations may be classified for the purpose of levy of rents either as 'Non Home Occupation' or as 'Home Occupation' as defined in the Development Control Regulations on the basis of actual use.</p> <p>(iii) Letting rates for 'Non-Home Occupation' per sq. metre of floor space per month of built-up area (as derived from valuation by Kirloskar Consultants) shall be as under for the period 1.10.1982 to 30.9.1992. (a) Sassoon Dock Estate: Rs.22.03 (b) Wellington & Apollo Reclamation Estates: Rs.26.91 (c) Ballard and Mody Bay Estates : Rs.24.00 (d) Elphinstone Estates (TPS) : Rs.14.44 (e) Bunders South : Rs.21.38 (f) All other Estates: Rs.12.66 Letting rate for 'Home Occupation' may be at 20 per cent of the above rates. Letting rates for future years from 1.10.1992 to 30.9.2012 for 'Non-Home Occupation' and 'Home Occupation' shall be as given in the Annexures". Notwithstanding the fixation of letting rates for 20 years for good and sufficient reasons, Board</p>	<p>Hence all the lessees and tenant were very well aware of the revision of the rentals and had not objected to the notices issued and the invoices raised with disclaimers.</p> <p>The compromise formula modified under Wadia Judgement/Supreme Court Order dated 13.01.2004, was valid for the period of 20 years, i.e. from 1992 to 30.09.2012. MbPT had sought advice of P.T. advocate, Supreme Court regarding applicability / validity of S.C. judgement before LAC report dated 29.12.2014 and before TR 222 of 2015 were passed, which has categorically confirmed that MbPT is not bound to levy lease rentals beyond 30.09.2012 at the SoR rates applied by the Supreme Court (Wadia Judgement). The said advice was based on Addl. Solicitor General of India, Shri Trivedi opinion dated 07.02.2005 which clearly stated that compromise proposal was for period ending 2012 and therefore fresh revision is expected to be fair and reasonable, thereafter. MbPT had obtained the opinion of learned Attorney General of India Shri Mukul Rohatgi on 29.07.2016 confirmed that SC judgment Rate was valid only upto 30.09.2012 and opined that the Board is empowered to re-fix the rentals / compensation rates w.e.f. 01.10.2012.</p> <p>i. MbPT is governed by policy guidelines issued by Ministry from time to time and MbPT has honoured the Supreme Court judgement till its validity, i.e. 30.09.2012.</p> <p>ii. Also as per guidelines issued by MoSP&W, Gol, and rates approved by TAMP. The TAMP is authorised to approve the SoR retrospectively w.e.f. 01.10.2012 onwards, subject to withdrawal of Writ Petition 1153 of 2000 filed by MbPT against TAMP, which is withdrawn on 08.08.2019. These facts were rightly pointed out in para 3 of proposal for SoR 2012-17</p>

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	<p>may review and revise the letting rates All the appeals are directed to be disposed of in terms of the following directions: - (i) by this judgment and in these proceedings the controversy as to the rates of rent applicable to the lessees shall be deemed to have been resolved for the period 1.4.1994 to 31.3.2000; (ii) the 'Compromise Proposals' as approved by the Board of Trustees of the Port of Mumbai in their meeting held on 13.8.1991 which are very fair, just and reasonable, subject to the modification that the revision in rent from 1.4.1994, shall be on the basis of rates of return at 10% for non-residential uses and 8% for residential uses, based on Kirloskar Consultants' report, instead of 15% and 12% respectively as was suggested in the 'Compromise Proposals'. The 'Compromise Proposals' so modified shall bind the parties, and all the lessees even if not parties to these proceedings in view of the proceedings taken by the High Court under Order 1 Rule 8 of the C.P.C.; (iii) the rates of rent for the period upto 31.3.1994 shall remain as suggested in the 'Compromise Proposals'; (iv) the interest chargeable by the Board of Trustees of the Port of Mumbai in respect of arrears of rent for the period commencing 1.4.1994 upto the date of actual payment shall be calculated at the rate of 6% per annum, (v) subject to the abovesaid modifications, all other terms and conditions of 'Compromise Proposals', shall remained unchanged; (vi) within a period of eight weeks from today lease deeds consistently with the 'Compromise Proposals', subject to the modifications as above said, shall be executed by the lessees and even if lease deeds are not executed the terms of 'Compromise Proposals' shall bind the lessees; (vii) such of the tenants as may wish to contend that there are certain real and material distinguishing features to be considered for the purpose of carving</p>	<p>simultaneously submitted to TAMP. Thus, there is no violation of S. C. Judgement dt. 13.01.2004 and MbPT is legally within its rights and empower to revise the rates w.e.f. 01.10.2012 onwards. There is no provision of compromise proposal in PGLM 2015 issued by MoSP&W, Gol. The validity of rates under S.C. judgement was only upto 30.09.2012 and thereof MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoSP&W, Gol. PGLM 2015 guidelines are very clear in fixation of SoR/Revision of SoR as per Para 13 and MbPT is following the same. Hence the contentions raised are irrelevant.</p> <p>iii. Supreme court judgement is not an indefinite licence to lessees and tenants to go on committing the major breaches of lease terms and occupying the premises even after the expiry indefinitely and multiple transfers and still want to enjoy meagre/ concessional lease rentals based on 1980 land values and regularisation of breaches as per compromise rates of 1982 and restrict Port Trust to major revenue return on its let out land.</p> <p>Therefore, contentions raised are incorrect.</p>

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	<p>out an exception and relaxing the general terms and entitling them to reduction in the rates of rent applicable as above said, may file representations each setting out specific grounds and relevant facts precisely in that regard in the office of the Bombay Port Trust under a written acknowledgement. The Bombay Port Trust shall maintain a register of all such representations filed. No representation filed after the expiry of six weeks from today shall be received or entertained. (viii) We request the High Court to appoint a retired Judge, preferably (and not necessarily) of the rank of District Judge, as a Sole Adjudicator of the objections/representations filed in terms of the above decision. The High Court shall appoint a place of sitting and the amount of remuneration to be paid per case (and not on per day basis) to the Adjudicator. The fee shall be paid by each lessee filing the representation for decision. The requisite secretarial and clerical assistance shall be provided by the Bombay Port Trust or as directed by the High Court. The learned Adjudicator shall commence his proceedings on expiry of eight weeks from today and on the record of representations being made available to him and shall conclude the same within a period of 4 months thereafter. The Adjudicator shall not be bound to record evidence and may determine and dispose of the representations by summary hearing, receiving such affidavits and documents as required by him, and/or carrying out inspection of the leased properties, if he deems fit to do so. The Adjudicator shall examine and decide to what relief in the rate of rent and/or any other term of lease such representing lessee is entitled. The decision by the Adjudicator shall be final and binding on the parties. In case of any difficulty in implementing this procedure, directions may be sought for from the High Court. (ix) The abovesaid procedure is not to be</p>	

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	<p>utilised as justification for withholding the payment of any arrears of rent to be calculated in terms of these directions. The payments have to be made and made regularly. Any amount becoming due for refund in terms of any relief granted by the Adjudicator shall be refunded or adjusted thereafter. (x) We expect the lessees to cooperate in finalisation of the disputes. We also expect the lessees to desist from preferring immaterial or frivolous objections or objections just for their sake. If any one does so the learned Adjudicator may impose costs on him which shall be payable to and recoverable under law by the BPT as arrears of rent. (xi) For the purpose of appointing an Adjudicator and dealing with application, if any, seeking resolution of difficulties, in terms of the preceding direction, we request the learned Chief Justice of the High Court of Bombay at Mumbai to assign this matter for being placed before any learned judge of his Court. We, on our part, suggest in the interest of expeditious disposal, that the matter may be assigned to any one of the judges available in the High Court out of those who had earlier dealt with the matter (i.e., the learned Single Judge who passed the order dated 1/4-10-1990, the two learned Judges who passed the judgment dated 11/12-3-1993 and the two learned judges who passed the order dated 1-8- 2000). His acquaintance with the facts of the case would accelerate the hearing and disposal. However, this is only a suggestion and is not in any manner intended to fetter the power of the learned Chief Justice to assign the matters for hearing in the High Court. (xii) The issue as to the applicability of the Maharashtra Rent Control Act, 1999, to the Port of Mumbai and the property held by it is left open to be decided in appropriate proceedings. The appeals and all the pending applications shall stand disposed of.</p>	<p>As already stated the validity of Supreme Court Jamsedji Wadia Judgement 2004 was only up to 30.9.2012. With respect to applicability of Maharashtra Rent Control Act following are the comments</p> <p>i. The letting rates under the Compromise Proposal had been fixed taking into account the market values of the land rates prevailing in the year 1980. Apart from the fact that the Port Trust tenancies have never been covered by the Rent Control Legislation and all the entities that have now been exempted under Section 3(1) (b) of the Maharashtra Rent Control Act</p>

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	<p>There shall be no order as to costs in these proceedings.</p> <p>As per the Jamshed Wadia's judgment, the Hon'ble Supreme Court has accepted the Compromise Proposal and the controversy regarding the rate of rent applicable to the lease resolved for the period from 01.01.1994 to 31.03.2000. As per the compromise formula as produced in the said judgment the MBPT was given the liberty to review and revise the letting rates from 1.10.2021 however it does not mean to revise the rate of rent in the year 2021 (after more than 9 years). In the said judgment the issue of applicability of Maharashtra Rent Control Act, 1999 to the Port of Mumbai and the property thereof was left open to be decided in the appropriate proceedings. The said issue of applicability is pending before the Hon'ble Supreme Court in the SLP No. 20645 of 2017 (Hussainali Punjwani/MBPT). As per the Maharashtra Rent Control Act, 1999. The Rent has to be fixed by the Hon'ble designated Courts i.e., Small causes Courts, at Mumbai. At present the Number of Suits is pending for the adjudication against the tenants/occupants before the Hon'ble Small Causes Court, at Mumbai. The proposed revision for SOR will be therefore illegal. So far as the proceedings pending before the Ld. Eviction Officers, under the Public Premises Act is concerned, the proposed revision for SOR for the Period from 01.10.2017 to 01.10.2022 has to be as per the Judgment of Banatwala & Co. vs. LIC of India. In the Banatwala & Co. it is held that "In the circumstances, we hold as follows: - (a) The provisions of the Maharashtra Rent Control Act, 1999 with respect to fixation of Standard Rent for premises, and requiring the landlord not to cut off or withhold essential supply or service, and to restore the same, when necessary, are not in conflict with or</p>	<p>1999 would otherwise have been covered by and enjoyed the protection of the Rent Control Legislation then in force, even if the quondam Rent Act had applied to the Port Trust tenancies. The important factor to be considered is that the tenants of the Port Trust who have been exempted from the Maharashtra Rent Control Act are legislatively mandated, inter alia, not to have any statutory or other limitations or constraints in the fixation of payment of rents. It is further submitted that to continue to insist on levy of letting rates frozen on the basis of land values of 1980 in the year 2006-2007 or such exempted persons despite the fact such persons do not any longer enjoy even the protection of the Rent Act would be extremely unfair to the Port Trust and would be in effect be contrary to the principle laid down by the Supreme Court in the Wadia Judgement.</p> <p>ii. Even though the Maharashtra Rent Control Act (and the old Bombay Rent Act) would not and does not apply to the lettings by the Port Trust, the fact that such entities have lost the protection of the Rent Act and are now legislatively mandated to face the open market in land and rentals, such revise the letting rates for such categories of tenants.</p> <p>Contentions are incorrect as rent act is not applicable to MbPT.</p>

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	<p>repugnant to any of the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. (b) The provisions of the Public Premises Act, 1971 shall govern the relationship between the public undertakings covered under the Act and their occupants to the extent they provide for eviction of unauthorised occupants from public premises, recovery of arrears of rent or damages for such unauthorised occupation, and other incidental matters specified under the Act. (c) The provisions of the Maharashtra Rent Control Act, 1999 shall govern the relationship between the public undertakings and their occupants to the extent this Act covers the other aspects of the relationship between the landlord and tenants, not covered under the Public Premises Act, 1971. (d) The application of appellant and similar applications of the tenants for fixation of Standard Rent or for restoration of essential supplies and services, when necessary, shall be maintainable under the Maharashtra Rent Control Act, 1999.</p> <p>As per the aforesaid said Judgment by Hon'ble Supreme Court, the Maharashtra Rent Control Act, 1999 govern the relationship between the public undertakings and their occupants to the extend the rent act covers and the other aspects of the relationship between the Landlord and tenants which are not covered under the Public Premises Act, 1971. Therefore, Application for the fixation of the standard rent should be maintainable under the Maharashtra Rent Control Act, 1999. The present revision therefore is not tenable in law, in view of the provision the Maharashtra Rent Control Act, 1999.</p> <p>The Proposed revision of SOR for the Period from 01.10.2017 to 01.10.2022 is based on Ready Reckoner, whose authenticity is in question and the same</p>	<p>The issues are already clarified in para 6.</p> <p>The propose SOR 2017 is based on the valuation report submitted by the registered Valuers as per the provision of para 13 of PGLM, 2015. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts</p>

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	<p>is generic in nature and cannot be sole basis for proposed revision. The proposed revision should be based on physical verification and inspection of the conditions and circumstances of the premises and the lands in question.</p> <p>Most of the Plots of lands of the MBPT are subject matter of the litigation either before the Hon'ble Small Causes Court, at Mumbai or Ld. Eviction Officer, in short sub judice. It is therefore necessary for revision of the rent through the intervention of the Courts wherein the land is sub judice.</p> <p>On the factual aspects, since March, 2020 both Covid -19 and lockdown thereafter has made bad impact on the business of the tenants and occupants of the Non-Home occupants and constrained them to shut down their businesses. The proposed revision of SOR would add to their agonies and sufferings which may lead to the complete destruction of the business as well personal lives of the tenants, lessee, and licensees. It is therefore the question of Right to life as guaranteed by Article 21 and Article 19(1)(g) of the constitution of India is at stake. Secondly, the proposed revision of SOR would lead to the multiple litigations as several proceedings are</p>	<p>ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones.</p> <p>Hence the contentions are incorrect.</p> <p>The proposed revision is without prejudice to the MbPT's Rights and Contentions in the pending litigation and terminations notices served and MbPT's rights to take legal action against breaches /violations under the applicable laws/lease/Tenancy terms and to take further action as per applicable laws stipulated under PGLM Guidelines / directives issued by Ministry and as may be decided by the Board of Trustees of Port of Mumbai from time to time.</p> <p>The SoR was due from 01.10.2017 which was prior to pandemic. Covid-19 pandemic started from March 2020 and in the present circumstances most of the premises had been operational prior to 2017.</p> <p>i. There are no such directions from MoSP&W, Govt. of India on giving any concession, relaxation, compensation and assistance during pandemic time. In this connection, attention is invited to Delhi High Court Judgement, Ramanad and others V/s. Dr. Girish Soni and others dated 21.05.2020 which has held that the period of lockdown on account of Covid-19 does not excuse in payment of rental amounts and no concession in rental charges is admissible.</p>

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	<p>pending before Small Causes Court at, Mumbai and before the Eviction Officers at Mumbai.</p> <p>As per the Proposal available on the website of the BPT and TR 105 of 2018, the reason for excluding residential occupation (home- use) and Mixed user occupation (Home and Non-Home) and occupations given on nominal rates to public bodies for public amenities for want of New Township Policy. However, in the case of non-home occupants, the revision of SOR is proposed without the New Township Policy.</p> <p>It is also noteworthy that tenants will be further burden with the revision of Schedule of Rates (SOR) for the period 2017-2022. The revision is therefore for the 10 years all together and which will make the life of the Non-Home occupants difficult.</p> <p>In view of the aforesaid submission, it is most humbly submitted that the proposed revision is contrary to law of the land and also against the principal</p>	<p>ii. As the parties have continued to occupy the premises and MbPT being Public body had continued to provide its services during COVID period. MbPT had also rendered the monthly invoices of compensation and paid the GST on the invoice for this period. Thus there is no question of granting any relief. MbPT's expenditure on infrastructure and also liability for salary wages, maintenance etc. had continued even in COVID pandemic period.</p> <p>Since rentals from MbPT land assets is one of the important part of MbPT revenue, no such concessions are admissible on this ground in the proposed SoR w.e.f. 01.10.2017.</p> <p>The proposed revision of rentals is on policy in vogue i.e. PGLM,2015. This has no relevance to "New Township Policy".</p> <p>It is to state that the unregistered sale transactions are happening at the rate which is much higher than the proposed SOR. Also the Ready Reckoner rates of adjoining MCGM land is 3 to 4 times higher as compared to the Ready Reckoner rated in the MbPT areas. These rates are also comparable to the proposed SOR 2017-2022. MbPT being a public body is asking for the fair and just rent by undertaking valuation as per provision PGLM, 2015.</p> <p>The proposed revision is as per provision PGLM, 2015.</p>

Sr. No.	Specific comments received from Smt. Gulabi Shetty	Response of MBPT
	of natural justice and hence it should be cancelled.	

Sr.No.	Comments received from Shri. Amichandk. Zaveri & 6 Others	Response of MBPT
1	The undersigned are in receipt of your letter dated 26.10.2021 regarding purported request made by the Tariff Authority of Major Ports (TAMP), constituted under Section 47 (A) of Major Port Trust Act, 1963, to offer comments from stakeholders for Non-Home occupation falling in Unit 01 to Unit- 15 of MbPT letout land on a proposal for revision of SoR for the period from 01.10.2012 to 30.09.2017 (12 Zones) and 01.10.2017 to 30.09.2022 (09 Zones),as per Ready Reckoner Zones for letout areas of Non-Home occupations in Estate Lands of Mumbai Port Trust along with SoR table, Trustees' Resolution, and LAC Reports for comments from stakeholders. At the foremost, the undersigned states that the necessary permissions/approvals of	MbPT is duty bound to follow PGLM 2015 in revision of SoR. Valuer has given report by considering existing site condition, lack of amenities/ infrastructure and Board has approved the SoR as recommended by LAC based on the Valuer's Report. From 01.10.2012 onwards PGLM 2010,2014-15 guidelines issued by MoS GOI are applicable to MbPT and MbPT is free to revise the rentals on the SOR based on PGLM guidelines. Hence SOR proposed by MbPT at 6% per annum is fair reasonable and MbPT is well within its rights to revise the rents/compensation w.e.f. 01.10.2012 and 01.10.2017 onwards as per the proposed SOR.

Sr.No.	Comments received from Shri. Amichandk. Zaveri & 6 Others	Response of MBPT
	<p>TAMP are necessary for fixation of latest SoR 2012-17 and 2017-22. In absence of permissions/approval of TAMP, the board is not entitled for fixation of latest SoR 2012-17 and 2017-22. The undersigned further states that the proposal for revision of SoR 2012-27 and 2017-22 as per Ready Reckoner for the period from 01.10.2012 to 30.09.2017 (12 Zones) and 01.10.2017 to 30.09.2022 (09 Zones), for revision of rent/ compensation for all expired leases, monthly tenancies/ 15 monthly tenancies and Special Way Leave occupations, though was placed before the Board (constituted for enforcing the action plan of authorities), for approval to submit the SoR 2012-17 and 2017-22 to TAMP, however, the Board deferred the proposal by noting that the Government is in process of framing New Township Policy for Township areas. Since till date new Township Policy is not received from Ministry of Shipping, Government of India, therefore, approval of TAMP to the SoR 2012-17 and 2017-22 has remained to be obtained. Therefore, the board shall refrain from revising the SoR for the period from 01.10.2012 to 30.09.2017 (12 Zones) and 01.10.2017 to 30.09.2022 (09 Zones).</p>	<p>Lease expired on 19.04.1979 and bills are preferred as compensation for wrongful Use. Further All leases/tenants were informed by Circular No. EM/ASG/F-361/5873 dated 28.12.2012 vide which it was informed to all the lessees, tenants and occupants that revision of compensation / rent in respect of all the expired leases, monthly tenancies and fifteen monthly tenancies and licences / tenancies excepting subsisting long term leases of Port Trust premises is due from 01.10.2012 onwards. Every monthly Bills/invoices are sent along with footnote "THIS BILL IS PROVISIONAL AND WITHOUT PREJUDICE TO BOARDS RIGHTS AND CONTENTION TO REVISE THE RENT/COMPENSIONW.E.F 01.10.2012".</p>
2	<p>Without prejudice to whatever stated hereinabove, the undersigned states that the Board is not entitled for retrospective revision of SoR for the period from 01.10.2012 to 30.09.2017 (12 Zones) and 01.10.2017 to 30.09.2022 (09 Zones). Even otherwise, revision of SoR for the said period would put an additional liability and burden on stakeholders i.e. Registered MbPT lessees. The undersigned states that various suit are pending in respect of the units let out to the Registered MbPT lessees/tenant, in respect of which the rates are sought to be revised. The undersigned states that since the various matters are sub-judice before the Courts, the Courts are seized of the matter and therefore, the Board is not entitled for Revision of SoR pending the suit and till the final disposal of the same.</p>	<p>There are suits pending against lessees/tenants for breach/violation of lease terms and are not related to revision of SoR. TR 127/2006 is challenged by 47 Writ petitions and matter is still subjudice in High Court, there is no stay in the matter. However, it is not relevant to the present proposal.</p>
3	<p>The undersigned, therefore, states that board shall not in interest of stakeholders i.e. Registered MbPT lessees, be entitled for Revision of SoR for the period from 01.10.2012 to 30.09.2017 (12 Zones) and 01.10.2017 to 30.09.2022 (09 Zones),of</p>	

Sr.No.	Comments received from Shri. Amichandk. Zaveri & 6 Others	Response of MBPT
	MbPT Estate lands and the current/present rate of rent shall be continued to be made applicable to the stakeholders i.e. Registered MbPT lessees of MbPT letout land.	

SL. No.	Comments received from Merwanjee Poonjajee & Sons Pvt. Ltd	Response of MBPT
1.	At the outset it may be recorded that we are in occupation of RR No. 745(part) and have been paying our rent from time to time as per the compromise proposal sanctioned by the Hon'ble Supreme Court. Our lease is expired and pending renewal. Moreover, in our case, due to the existence of a super structure which is protected under the section 4(4A) of the Rent Act, the new schedule cannot be allowed as the Rent Act permits only an increase of 4% year on year with such further permitted increases as considered reasonable.	The Rent Control Legislation and all the entities that have been exempted under Section 3(1) (b) of the Maharashtra Rent Control Act 1999 would otherwise have been covered by and enjoyed the protection of the Rent Control Legislation then in force, even if the quondam Rent Act had applied to the Port Trust tenancies. The important factor to be considered is that the tenants of the Port Trust who have been exempted from the Maharashtra Rent Control Act are legislatively mandated, inter alia, not to have any statutory or other limitations or constraints in the fixation of payment of rents. It is further submitted that to continue to insist on levy of letting rates frozen on the basis of land values of 1980 in the year 2006-2007 or such exempted persons despite the fact such persons do not any longer enjoy even the protection of the Rent Act would be extremely unfair to the Port Trust and would be in effect be contrary to the principle laid down by the Supreme Court in the Wadia Judgement. Even though the Maharashtra Rent Control Act (and the old Bombay Rent Act) would not and does not apply to the lettings by the Port Trust, the fact that such entities have lost the protection of the Rent Act and are now legislatively mandated to face the open market in land and rentals, such revise the letting rates for such categories of tenants.
2.	Without prejudice to the above, at the outset, it may be recorded that as per the Supreme Court judgement of 2004 in the case of Jamshed Hormusji Wadia v/s Board of Trustees for the Port of Mumbai, the Port Trust was supposed to execute fresh leases for a period of 30 years with effect from 1994. The Port Trust has failed to do that and now, cannot take advantage of their own wrong and contend that the lease has expired. It may also be noted that in the 2004 judgement, breaches/ change of user etc. up to 2004 were to be regularized. Our Lease expired in the year	The issue raised is not relevant to present proposal. TAMP is requested not to grant additional time to stakeholders to file reply as this will negatively impact rental income to the public exchequer.

SL. No.	Comments received from Merwanjee Poonjiajee & Sons Pvt. Ltd	Response of MBPT
3.	<p>2000 and all formalities for renewal had been submitted within the stipulated period, objections to the same were also complied and set proper, however after paying all dues and several reminders over the years for transferring the property to the name of Heirs and change of registered address the same has not been done. Further, at the very outset, considering the complexities involved the time of 14 days for inviting comments seems to be very short and unreasonable. You are requested to kindly grant at least 3 months to make comments.</p> <p>Please appreciate that in the absence of such documents being uploaded it would not be possible to properly deal with the matter and make comments. For the purpose of assimilating inputs from our legal advisors/ consultants, and to go through old documents and papers it would also be advisable to hold physical meetings to understand the problems involved and the difficulties. From a lay person point of view, all we can say is that the proposed rates are absolutely arbitrary, unreasonable and not sustainable.</p>	<p>After receipt of instructions from TAMP, MbPT had uploaded the proposal on MbPT website on 06.10.2021 and time limit of 15 days was granted to the stakeholders for filing reply as per the directions of TAMP which ended on 26.08.2021. The entire proposal submitted to TAMP along with all the DA of the Proposal such as (i) supporting TRs (ii) LAC reports and (iii) statements of SOR were uploaded on MbPT website. The said information can be downloaded from MbPT website with access to all Registered lessees/ tenants/ occupants and all stake holders. (ii) All the registered lessees/tenants/occupants were served with notice informing them last date for submission of comments on 20.10.2021. Also 15 days' time granted by TAMP is more than sufficient and no further time is required for submission of comments by the Registered lessees/ tenants/ occupants, any further extension of time in the matter will unnecessarily delay the process. Therefore TAMP is requested not to grant any such extension of time for submission of comments and may proceed as per the scheduled hearing date.</p>
4.	<p>Besides, please note that the charges as calculated based on the Schedule of rates proposed by you would be unreasonable and horrendously high. The schedule of rates is based on arbitrary calculations unsubstantiated by any material and are even higher than the "market rates" i.e. the current ready reckoner values. The SOR for 2017-22 goes on an ad-hoc valuation which isn't even substantiated by any material. This is without prejudice to the</p>	<p>While computation of SoR 2017-2022 MbPT had engaged Govt. approved Valuers on panel and entrusted the work of valuation of MbPT land as per the jurisdiction of RR zones. MbPT is constituted under Major Port Act, 1963 and under supervision and control of MoSP&W. PGLM, 2015 are the statutory direction under Section 111 of Major Port Act. Hence MbPT is bound by such statutory direction for implementation of PGLM, 2015 and accordingly scrupulously followed guidelines issued by Ministry of Shipping and Waterways (MoSP&W), Government</p>

SL. No.	Comments received from Merwanjee Poonjiajee & Sons Pvt. Ltd	Response of MBPT
5.	<p>fact that such market valuation reports cannot be made the basis of the rent fixed. Further, the SOR 2012-17 takes rent on the basis of 6% return on market value. When worked at using this factor, the rates would be exponentially higher than the amounts the tenants were paying under the original contract. It may be appreciated that market rent / rack renting cannot be adopted by the MbPT which is clearly held by the Supreme Court in the case of Dwarkadas Marfatia v/s Board of Trustees of the Port of Mumbai and also in the case of Jamshed Hormusji Wadia v/s Board of Trustees for the Port of Mumbai. Moreover, market rates (ready reckoner value) for Free Hold land cannot be equated with or made a yardstick for determining the market rates of Leasehold land. Besides, it is a fact that for the collector's land- lease is being renewed by charging 0.25 % of ready reckoner rates with 4% increment year on year whereas in the case of the Port Trust, it is proposed at 6% of market value (which is even higher than ready reckoner value) with yearly increase and despite charging such heavy rates, the port trust doesn't even make a whisper if they are renewing leases by executing fresh lease deeds.</p> <p>We have been regularly paying rent as per the compromise proposals sanctioned by the Hon'ble Supreme Court which are binding on tenants as well as MbPT. In fact, we have never refused to pay whatever is reasonable and all impositions of rentals etc. must satisfy the test of reasonableness. Arbitrarily imposing such a high schedule of rates is not reasonable and conscionable and we do not welcome any such exponential increase in rents that has been arbitrarily proposed by the Port Trust. Please also appreciate, and we say this at the cost of repetition, that, as per the judgement of the Hon'ble Supreme Court in the case of Dwarkadas Marfatia v/s Board of Trustees of the Port of Mumbai, the Port Trust being a public authority cannot behave like a private landlord and cannot indulge in profiteering or levying rack-rents. The Hon'ble Supreme court has clearly held that being a public body, the Port Trust cannot resort to profiteering or rack renting like a private landlord and cannot charge market rents to existing</p>	<p>of India (GoI) for fixation of current SoR which is approved by Board of Trustees and submitted to the TAMP being statutory authority constituted under section 47 A of Major Port Act for fixation of SoR under section 49 of the said act. The para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22.</p> <p>Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. Please find enclosed herewith zone wise comparative statement in Annexure-B showing the land values as of 1980's as considered by the Kirloskar consultant in their valuation report and approved by the Board vis-à-vis land values as on 2017, which shows that on an average Kirloskar land values of Rs. 1406/- per sqm for FSI 1.33 has increased to Rs. 1,75,718/- per sqm for FSI 1.00 as on 2017, i.e. increase of almost 125 times of the land values of 1980's. Whereas in the comparison of rentals as per Supreme Court Judgement dt. 13.01.2004 as on 01.10.2017 was on an average of Rs. 35/- per sqm per month for FSI 1.00 which will be revised to on an average of Rs. 878 per sqm per month for FSI 1.00 i.e. increase by almost 25 times. It may be seen that the land values have increased by 125 times but MbPT rental have increased only by 25 times over the SC Judgments (1980 values). Infact, MbPT</p>

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	<p>tenants. Therefore, such imposition of rents based on market values and ready reckoner rates is not the solution to the current issue.</p>	<p>had fixed rent as 10% return on Kirloskar land values with 4% every year from 01.10.1994 onwards in terms of Supreme Court Wadia Judgment. However, the rental returns from 01.10.2017 onwards will be just 6% of the FMV given by valuer in MbPT estate areas. The RR values of MbPT are less as compared to abutting non-MbPT lands. Thus, it may be seen that the SoR proposed by MbPT is infact lesser than the prevailing market value. Therefore, the SoR rates are fair and reasonable and justifiable. The land values in the Ready Reckoner Zones of MbPT lands are varying from Rs. 19,400 to Rs. 2,80,000 and average value works out to Rs. 1,50,000, whereas land rates of Ready Reckoner Zones outside MbPT lands varies between Rs. 19,400 to Rs. 3,77,200 and average value works out to Rs. 1,98,000. Considering the mean value (RR 2017) of is Rs. 1,74,000 for lands in MbPT area and outside MbPT area. The MbPT valuers have recommended FMV which are average of Rs. 1,75,718 for lands which ranges between Rs. 53,820 to Rs. 3,31,600. It is further submitted that periodical revision every five years as mandated under PGLM 2014-15 is to ensure that concerned lessees/tenants do not evade payment of rentals. The Port Trust being a public body should not be deprived of its legitimate return from let out land of the Port. These revisions of SoR will be made applicable to MT, FML, Expired lese and Licenses whose period of occupation is over and lessee/tenants are continued to occupy the premises unauthorisedly beyond the leases period. In fact, the Port Trust is not seeking to charge market rents from such lessee/tenants but only seeking to charge a revised reasonable rent in accordance with the balance propounded by the Supreme Court in the Wadia Judgement fixed on the basis of the market value of land which is nearly 4 decades old and merely because MbPT as a landlord, is an instrumentality of the State. Also the comparison with the practice followed by Collector of Mumbai, State Govt. and any other PSUs is irrelevant and not applicable in this present case. Thus there is no violation of SC Judgement 2004 by effecting the revision as per SOR w.e.f. 01.10.2017 as per applicability of PGLM 2014-2015 issued by Ministry time to time which obligatory</p>

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6.	<p>It may also be recorded that the ready reckoner rates of the State Government cannot be made the parameter based on which rents are to be collected. If that be so, then the state government lease renewal is done at merely 0.25 % of that rate. The Schedule of rent/lease charges has to be decided in accordance with the COMPROMISE PROPOSAL sanctioned by The Hon'ble Supreme Court in case of Jamshed H Wadia vs. The Board of Trustee of the Port of Bombay (2004) (3) SCC 214 and based on the principles of the said judgement, the rates need to be computed with 4% yearly enhancement or in any event, they can be decided now by working out a fresh compromise proposal by and between the tenants/ lessees on the one hand and the Port Trust on the other. As of recently, after working 4% increment of rent year on year, the current rent as per the current regime works out to about Rs. 37.50 per square meter per month , inclusive of GST AS of October 2021, bill which is already very high and enough to take care of the charges of the port trust. Looking at the SOR, one can observe that the rental for the zone associated with RR No. 1289 i.e. the ready reckoner entry corresponding to our plot, is likely to be R.244.50 /- as of Rs. 1.10.2012 and Rs.286.03 /- per square meter as of 1.10.2017 and after 2017 is several times per square meter per month till 2022.</p>	<p>directives under Section 111 of MPT act and is bound by the said directives for implementation.</p> <p>The contents are incorrect and unacceptable, MbPT is bound by PGLM 2015 issued by MoSP&W, Gol which have been scrupulously followed by MbPT while computing SoR. The comparison with the practice followed by Collector of Mumbai, State Govt. and any other PSUs is irrelevant and not applicable in this present case. The Hon'ble Supreme Court order dated 13.01.2004, Board's compromise formula was only valid upto 30.09.2012 (only for 20 years i.e. 01.10.1992 to 30.09.2012) and such there is no violation of S. C. and no permission of S. C. Judgement is necessary for revision of rate from 2012. The Para 13 of PGLM, 2015 has stated the methodology of calculation of latest market value of port land and accordingly as stated in para 4 above, MbPT fixed SoR 2017-22. There is no provision of compromise proposal in PGLM 2015 issued by MoSP&W, Gol. The validity of rates under S.C. judgement was up to 30.09.2012 and thereof MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoSP&W, Gol. The renewal of lease shall be granted as per the procedure laid down in Para 11, 12 and 13 of PGLM 2015 guidelines.</p>
7.	<p>We fail to understand how the return of 6% has been made a benchmark for residential users. It is submitted that the Trust resolutions uploaded on the website are not clear and are full of legal jargons which are impossible for ordinary tenants to comprehend and it would be appreciated if there is more clarity and simplicity in the manner in which the Port Trust proposes to levy rents/ lease charges. Such charges and schedules from 2012 onwards should be based on a factor of what was being paid up to 2012</p>	<p>MbPT is constituted under Major Port Act, 1963 and under supervision and control of MoSP&W. PGLM, 2015 are the statutory direction under Section 111 of Major Port Act. Hence MbPT is bound by such statutory direction for implementation of PGLM, 2015 and accordingly scrupulously followed guidelines issued by Ministry of Shipping and Waterways (MoSP&W), Government of India (Gol) for fixation of current SoR which is approved by Board of Trustees and submitted to the TAMP being statutory authority constituted under section 47 A of Major Port Act for fixation of SoR under section 49 of the said act. Hence the suggestion given by stakeholder cannot be accepted.</p>

SL. No.	Comments received from Merwanjee Poonjiajee & Sons Pvt. Ltd	Response of MBPT
8.	<p>as per the Hon'ble Supreme Court's sanctioned compromise formula and should be based on some reasonable percent increment taking the amount of rent paid in 2012 as a benchmark. The port trust is seeking to impose rates which are exponentially higher than those charged by similar land owners and order of magnate times higher than the current rates.</p> <p>It is also requested that clarity be got in so far as the amounts are concerned pertaining to each of the units owned by the Port Trust, separately. We suggest that every property would have a different calculation based on the merits of the matter of such property and hence a generic working and a one-size-fits-all approach is not possible nor desirable. It is also a matter of concern as to how the residents residing on land allegedly owned by BPT since 80-100 years are served these notices with just about a couple of weeks' time to respond</p>	<p>TAMP is authorize to fix the SoR Rates for the entire land of MbPT falling under the respective Ready Reckoner zones for FSI 1.00 as a base rate and Board will accordingly decide SoR/Rental on case to case basis. Land values of any plot in Mumbai city is directly linked to its potential permissible FSI and consumed FSI of authorised structure since the FSI on MbPT land varies from 0.5 to 5 or even more in some exceptional cases. MBPT has proposed the SOR rates for FSI 1 as a base rate for TAMP's approval. The calculation of higher FSI/ more than FSI 1 or less than FSI 1 shall be worked out as per para 5 of TR 122 of 2021 approved by the board on 03.08.2021 which stated that a committee will be constituted for working out appropriate factor for determination of actual rental based on FSI consumed by Authorised structure on the premises. The final rental will be worked out on case to case basis as decided by the Board. Also the lessee/ tenants and unauthorised occupants had been enjoying the occupation of MbPT premises by payment of rent fixed as per 1980's valuation report. All parties were made aware by Circular No.EM/ASG/F-361/5873 dated 28.12.2012 whereby it was informed to all the lessees, tenants and occupants that revision of compensation / rent in respect of all the leases / tenancies excepting subsisting long term leases of Port Trust premises is due from 01.10.2012 onwards. They were also informed that the lessees, tenants and occupants will be informed about the revised letting rates, rates of compensation, in due course of time. Also, all the lessees and tenants are billed as provisional compensation rates with footnote clearly indicating as follows – "THIS BILL IS PROVISIONAL AND WITHOUT PREJUDICE TO THE BOARD'S RIGHTS AND CONTENTIONS TO REVISE RENT/COMPENSATION w.e.f. 01/10/2012" Hence the contention raised are incorrect.</p>
9.		<p>In cases of subletting, assignment etc., by the tenants of the Port Trust ought not to be allowed to profiteer at the cost of the public</p>

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10.	<p>The Port Trust ought to be conscious of the fact that there are tenants who are occupying properties since 80-100 years and there are complete eco systems and markets thriving on such properties. Rack renting would totally finish and eradicate running eco – systems which is against the public policy. “Housing for All” is a part of the national policy and it is surprising that where on the one hand the Central Government is coming up with schemes like “Pradhan Mantri Awaas Yojana”, on the other hand, instrumentalities of the central government like the Board of Trustees for the Port of Mumbai are proposing rates which will lead to mass scale eviction of lakhs of tenants thereby running contrary to the national policy. Tenants are also adding to the exchequer by paying rent from time to time. Further, these tenants are not just directly but also indirectly contributing to the nation in the form of taxes, revenue and employment which is likely to suffer if tenants are put under such enormous stress.</p> <p>Moreover, please note that in so far as the Schedule of rates from 2012-2017 that is proposed is concerned, the same cannot be enhanced retrospectively as the same is opposed to the constitutional scheme. In recent judgements, the Hon’ble Supreme Court has struck down retrospective taxations. The same ratio is applicable to levy of retrospective rents. The legal opinions obtained by the Port Trust which have been referred to in the proposals are not shared on the website and hence in the interest of transparency, equity and fair play, the Port Trust is requested to put up all the relevant material on the official website of the Port Trust. It is not legally possible for the port trust to enhance rates and levy them retrospectively. The aspects of issuance of valid commercial invoices shall also have to be examined and the liability of MbPT as regards Goods and Service Tax (GST) etc. also has to be worked out. All this is only possible through physical meetings in a participatory manner by inviting representatives of stakeholder groups to sit and negotiate with the authorities of the Port Trust and the Shipping Ministry.</p>	<p>exchequer and any tenant who has sublet or assigned his premises does not in any event, deserve any sympathy from this Honourable Authority. There is no violation of SC Judgement 2004 by effecting the revision as per SOR w.e.f. 01.10.2017 as per applicability of PGLM 2014-2015 issued by Ministry time to time which obligatory directives under Section 111 of MPT act and is bound by the said directives for implementation. Therefore, contentions raised are incorrect.</p> <p>Regarding MbPT refixing letting rates retrospectively after 30.09.2012, the matter was referred to respective MbPT advocate dealing in the matter in the Supreme Court for opinion and accordingly, letter dated 15.04.2014 addressed to MoS, Gol requesting them to forward copy of opinion from Ministry of Legal Affairs. Opinion from PT Advocate and AG (Mr. Mukul Rohatgi) was obtained by MbPT on applicability of Wadia Judgment Rates (SCJ) post 30.09.2012 and MbPT’s rights to revise the rentals w.e.f 01.10.2012 onwards. The opinion received from PT Advocate and AG, Gol confirming the Port Trust’s rights to revise rentals w.e.f 01.10.2012. Accordingly, then Chairman, directed to prepare SoR rates for Estate Lettings from 01.10.2012 onwards affected by SC Judgment. The letter dated 09.10.2014 was written to MoS, seeking Ministry’s direction on revision of SoR on township areas of MbPT (Estate lettings). Meanwhile, vide TR No. 123 of 2014 committee of officers was constituted (Chairman, EM and FA) by MbPT for fixation of rentals w.e.f 01.10.2012 onwards. The Ministry sought further information from MbPT on 08.10.2015 which was forwarded to Ministry on 02.12.2015 and Ministry was once again requested to give directions on fixation of SoR from 01.10.2012 and also approve the cases settled under compromise policy by</p>

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11.		<p>the Board interms of SC Judgment, 2004. However, neither such approval for renewal of settled cases under compromise formula (61 cases) had been received from Ministry nor any directions received from Ministry till the issuance of general clarification circular No. 01 of 2018, PGLM 2015 which was extended to the township areas of MbPT covering the lettings affected by SC Judgment 2004 i.e. MT, FML, Expired leases and licenses. Accordingly, Board vide TR 122/2021 forwarded SoR proposal approved by Board vide TR 222 of 2015 based on the LAC report dated 29.12.2014 which annexed as part of proposal for revision of SoR for the period 2012-17.</p>
12.	<p>In order to decide the further road map, we request the Port Trust to hold meetings so as to workout Compromise Proposals as has been done successfully earlier in the 1994. TAMP is requested to kindly fix up workable rates through participatory process. A win-win situation in the form of compromise proposal by and between the Port trust on the one hand and the Tenants on the other hand is the only way going forward and a second compromise formula can be arrived at taking the Supreme Court's formula of 2004 as a benchmark and guiding force.</p>	<p>There is no provision of compromise proposal in PGLM 2015 issued by MoSP&W, Gol. The validity of rates under S.C. judgement was up to 30.09.2012 and thereof MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoSP&W, Gol. The renewal of lease shall be granted as per the procedure laid down in Para 11, 12 and 13 of PGLM 2015 guidelines.</p>
13.	<p>We also observe that in order to avoid GST liability, the Port Trust has been reluctant in raising commercial invoices. Therefore, no interest nor liability can be fastened upon the tenants in the absence of any debit note/ commercial invoice raised by the Bombay Port Trust. Without prejudice to what has been stated above, we would like to submit that If 2012 is taken as a benchmark, the revision in rent from 2012 to 2013 should be reasonable and cannot be arbitrary. The rent suggested in 2013 cannot be exponentially higher than the rent of 2012. Taking ready reckoner calculations leads to preposterous results. In our opinion, the basis should be the Supreme Court</p>	<p>The issues raised are already justified in para 4 and 5 above.</p> <p>The issue is irrelevant and cannot to be acceded too by MbPT as they are contrary to the PGLM 2015.</p>

SL. No.	Comments received from Merwanjee Poonjiajee & Sons Pvt. Ltd	Response of MBPT
14.	<p>compromise proposal and not ready reckoner rates/ ad-hoc market valuations.</p> <p>In the circumstances stated hereinabove, it is requested to kindly upload the relevant material on the website of the Port Trust and work out the Schedule of rates based on the rents paid in 2012 and not based on ready reckoner values and then seek proposals from the Tenants.</p> <p>Without prejudice to the above, it is also requested that pending the negotiation and decision making process, no coercive steps be taken based on new proposed rates in the interest of equity, justice and fair play.</p>	<p>So far, MbPT has not resorted to any litigation or coercive action for recovery of dues as per proposed SoR. As proposed by the Board in Para 4(c) of TR 122/2021 three months' time is given for payment of differential arrears as per the final approved SoR and not interest will be levied on the same for the said period. MbPT is duty bound and obligated to follow the due process of law for resorting to eviction action under PPE provision only in respect of major violation of breaches and default in payment of MbPT dues of lease terms. Legal action for recovery of dues as per proposed SoR notified by TAMP can be initiated if there is violation of orders of TAMP. MbPT is revising the charges payable for compensation for wrongful use of the premises even after the expiry of the lease and even though validity of occupation period is over for MT, FML and expired leases even after termination notices issued. The renewal of leases will be strictly in accordance with PGLM issued by MoSP&W, GOI and as per extant policy/rules.</p>
15.		<p>TAMP is requested cannot to entertain the demands from the stakeholders as they are contrary to provisions of PGLM, 2015.</p>
16.	<p>We request a physical meeting with the officers of the TAMP, the Shipping Ministry and the Port Trust so as to try to arrive at a win- win situation. For the purpose of records, the Schedule of Rates proposed for 2012-17 and 2017-22 are not acceptable to us for the reasons stated hereinabove and for other reasons that we shall argue in person or through our counsel, if a personal hearing is provided by TAMP.</p> <p>Needless to say, should the port trust seek to arbitrarily impose the schedule of rates suggested and should such arbitrary and unreasonable SOR be allowed without paying heed to any of the inputs received from tenant groups, leading to horrendously high unreasonable rents, we</p>	<p>TAMP is requested cannot to entertain the demands from the stakeholders as they are contrary to provisions of PGLM, 2015.</p>

SL. No.	Comments received from Merwanjee Poonjiajee & Sons Pvt. Ltd	Response of MBPT
	shall be left with no other option but to seek judicial recourse at the sole risks, costs and consequences of the Port Trust which please note.	

Sr. No.	Comments received from Sugar Supply Company	Response of MBPT
1.	At the outset it may be recorded that we are in occupation of RR No. 1627 (Old) of Elphinstone East Estate and have been paying our rent from time to time as per the compromise proposal sanctioned by the Hon'ble Supreme Court.	Rates under SCJ 2004, is no more valid and applicable to MbPT and MbPT is well within the rights to revise SoR from w.e.f 01.10.2012 (i.e.) post validity of SCJ rates.
2.	At the outset, please note that the charges as calculated based on the Schedule of rates proposed by you would be unreasonable and horrendously high. The schedule of rates is based on arbitrary calculations unsubstantiated by any material and are even higher than the "market rates" i.e. the current ready reckoner values. The SOR for 2017-22 goes on an ad-hoc valuation which isn't even substantiated by any material. This is without prejudice to the fact that such market valuation reports cannot be made the basis of the rent fixed. Further, the SOR 2012-17 takes rent on the basis of 6% return on market value. When worked at using this factor, the rates would be exponentially higher than the amounts the tenants were paying under the original contract.	While computation of SoR 2017-2022 MbPT had engaged Govt. approved Valuers on panel and entrusted the work of valuation of MbPT land as per the jurisdiction of RR zones (36 nos.). MbPT is constituted under Major Port Act, 1963 and under supervision and control of MoSP&W. PGLM, 2015 are the statutory direction under Section 111 of Major Port Act. Hence MbPT is bound by such statutory direction for implementation of PGLM, 2015 and accordingly scrupulously followed guidelines issued by Ministry of Shipping and Waterways (MoSP&W), Government of India (GoI) for fixation of current SoR which is approved by Board of Trustees and submitted to the TAMP being statutory authority constituted under section 47 A of Major Port Act for fixation of SoR under section 49 of the said act. The para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor.
3.	We have been regularly paying rent as per the compromise proposals sanctioned by the Hon'ble Supreme Court which are binding on tenants as well as MbPT. In fact, we have never refused to pay whatever is reasonable and all impositions of rentals etc. must satisfy the test of reasonableness. Arbitrarily imposing such a high schedule of rates is not reasonable and conscionable and we do not welcome any such exponential increase in rents that has been	The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present

<p>4.</p>	<p>arbitrarily proposed by the Port Trust. Please also appreciate that as per the judgement of the Hon'ble Supreme Court in the case of Dwarkadas Marfatia v/s Board of Trustees of the Port of Mumbai, the Port Trust being a public authority cannot behave like a private landlord and cannot indulge in profiteering or levying rack-rents. The Hon'ble Supreme court has clearly held that being a public body, the Port Trust cannot resort to profiteering or rack renting like a private landlord and cannot charge market rents to existing tenants. Therefore, such imposition of rents based on market values and ready reckoner rates is not the solution to the current issue.</p> <p>It may also be recorded that the ready reckoner rates of the State Government cannot be made the parameter based on which rents are to be collected. The Schedule of rent/lease charges has to be decided in accordance with the COMPROMISE PROPOSAL sanctioned by The Hon'ble Supreme Court in case of Jamshed H Wadia vs. The Board of Trustee of the Port of Bombay (2004) (3) SCC 214 and based on the principles of the said judgement, the rates need to be decided now by working out a fresh compromise proposal by and between the tenants/lessees on the one hand and the Port Trust on the other. As of recently, after working 4% increment of rent year on year, the current rent as per the current regime works out to about Rs. 62 per square meter per month which is also on the higher side. Looking at the SOR, one can observe that the rental for the Unit 9 associated with RR No. 1627, is likely to be Rs. 265/- per square metre per month as of Rs. 1.10.2012 which works out to about Rs. 37630/- per month considering an area of 142 sq. meter (approx.) and Rs. 310/- per square meter per month as of 1.10.2017 which works out to Rs. 44020/- per month for our area and after 2017 a flat rate of Rs. 938/- per</p>	<p>infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones.</p> <p>Mere occupation and continuous possession of the premises do not constitute legal rights of the parties unless there is a lease agreement entered with party by MbPT by extending the expired leases / extension of tenancy rights by agreement clearly stating that the total period lease granted. As pointed out by MbPT in the proposal and PPT, the proposal for revision of SoR is only limited MT, FML , Expired Leases and valid running leases which are yet to expired are kept out of proposed SoR revisions.</p> <p>MbPT, it is to place on record that , the MbPT has been sending the invoices to all MT, FML, Expired leases and licenses as a compensation for wrongful use of the premises, without prejudice to MbPT rights to take legal action against breaches and also without prejudice to revised SoR for compensation w.e.f 01.10.2012 onwards as per applicable polices. All the payments made by the parties are accepted by the MbPT as compensation for wrongful use of the premises by parties with provisional acknowledgement. Thus , there is no written commitment of MbPT for extending the leases or protecting and allowing the occupations of defaulters of FML / MT/ Expired Leases / licences. Since, the revision of SoR is</p>
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<p>5.</p> <p>6.</p> <p>7.</p>	<p>square meter per month till 2022 which works out to Rs. 133196/- per month. Further, it may be seen that even the ready reckoner entry for the RR No. 2/13 as of date is far lesser than what the port trust has taken into account as valuation.</p> <p>It is submitted that the Trust resolutions uploaded on the website are not clear and are full of legal jargons which are impossible for ordinary tenants to comprehend and it would be appreciated if there is more clarity and simplicity in the manner in which the Port Trust proposes to levy rents/ lease charges. Such charges and schedules from 2012 onwards should be based on a factor of what was being paid up to 2012 as per the Hon'ble Supreme Court's sanctioned compromise formula and should be based on some reasonable percent increment taking the amount of rent paid in 2012 as a benchmark. IT cannot be based on the ready reckoner value as of 2012. It may be appreciated that the collectors land leases are being renewed with yearly rentals of 2% of 25% (i.e. 0.5%) of the ready reckoner rates in so far as properties having area above 500 sq. meters is concerned and with rentals of 4% of 25% (i.e. 1%) of ready reckoner rates in so far as properties having up to 500 sq. meters is concerned, for commercial use. The port trust is seeking to impose rates which are exponentially higher than those charged by similar land owners and order of magnate times higher than the current rates.</p> <p>It is also requested that clarity be got in so far as the amounts are concerned pertaining to each of the units owned by the Port Trust, separately. We suggest that every property would have a different calculation based on the merits of the matter of such property and hence a generic working and a one-size-fits-all approach is not possible nor desirable.</p>	<p>pending MbPT has not raised / sending demand notices for differential arrears which is due from 01.10.2012 onwards. There is no provision of compromise proposal in PGLM 2015 issued by MoPS&W, Gol.</p> <p>The suggestions are not acceptable and contentions are denied. There is not provision of compromise proposal in the PGLM 2015 and its clarifications issued by MoPS&W and MbPT is bound to implement PGLM 2015 Guidelines issued by MoPS&W, Gol which are mandatory directions to MbPT under section (III) of MPA Act 1963.</p> <p>MbPT is bound by TAMPs final order in the matter and directives given under PGLM 2015 issued by MoPS&W</p>
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<p>8.</p>	<p>The Port Trust ought to be conscious of the fact that there are tenants who are occupying properties since 80-100 years and there are complete eco systems and markets thriving on such properties. Rack renting would totally finish and eradicate running eco – systems which is against the public policy and is neither desirable nor possible. We are providing employment to several people. WE are also adding to the tax exchequer. Therefore, we are not just directly but also indirectly contributing to the nation in the form of taxes and revenue and employment.</p>	
<p>9.</p>	<p>Moreover, please note that in so far as the Schedule of rates from 2012- 2017 that is proposed is concerned, the same cannot be enhanced retrospectively as the same is opposed to the constitutional scheme. The legal opinions obtained by the Port Trust which have been referred to in the proposals are not shared on the website and hence in the interest of transparency, equity and fair play, the Port Trust is requested to put up all the relevant material on the official website of the Port Trust. It is not legally possible for the port trust to enhance rates and levy them retrospectively. The aspects of issuance of valid commercial invoices shall also have to be examined and the liability of MbPT as regards Goods and Service Tax (GST) etc. also has to be worked out. All this is only possible through physical meetings in a participatory manner by inviting representatives of stakeholder groups to sit and negotiate with the authorities of the Port Trust and the Shipping Ministry.</p>	
	<p>In order to decide the further road map, we request the Port Trust to hold meetings so as to workout Compromise Proposals as has been done successfully earlier in the 1994. TAMP is requested to kindly fix up workable rates through participatory process. A win-win situation in the form</p>	

10.	<p>of compromise proposal by and between the Port trust on the one hand and the Tenants on the other hand is the only way going forward and a second compromise formula can be arrived at taking the Supreme Court's formula of 2004 as a benchmark and guiding force.</p>	
11.	<p>We also observe that in order to avoid GST liability, the Port Trust has been reluctant in raising commercial invoices. Therefore, no interest nor liability can be fastened upon the tenants in the absence of any debit note/ commercial invoice raised by the Bombay Port Trust. Without prejudice to what has been stated above, we would like to submit that If 2012 is taken as a benchmark, the revision in rent from 2012 to 2013 should be reasonable and cannot be arbitrary. The rent suggested in 2013 cannot be exponentially higher than the rent of 2012. Taking ready reckoner calculations leads to preposterous results. In our opinion, the basis should be the Supreme Court compromise proposal and not ready reckoner rates/ ad-hoc market valuations.</p>	
12.	<p>In the circumstances stated hereinabove, it is requested to kindly upload the relevant material on the website of the Port Trust and work out the Schedule of rates based on the rents paid in 2012 and not based on ready reckoner values and then seek proposals from the Tenants.</p> <p>Without prejudice to the above, it is also requested that pending the negotiation and decision making process, no coercive steps be taken based on new proposed rates in the interest of equity, justice and fair play.</p> <p>We request a physical meeting with the officers of the TAMP, the Shipping Ministry and the Port Trust so as to try to arrive at a win-win situation. For the purpose of records, the Schedule of Rates proposed for 2012-17 and 2017-22 are not acceptable to us for the</p>	

13.	<p>reasons stated hereinabove and for other reasons that we shall argue in person or through our counsel if a personal hearing is provided by TAMP.</p> <p>Needless to say, should the port trust seek to arbitrarily impose the schedule of rates suggested without paying heed to any of the inputs received from tenant groups, leading to horrendously high unreasonable rents, we shall be left with no other option but to seek judicial recourse at the sole risks, costs and consequences of the Port Trust which please note.</p>	
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The MbPT while furnishing reply to the comments received from various users/tenants/ lessees/ has stated that the MbPT's Rights and Contentions in the pending litigation and termination notices served and MbPT's rights to take legal action against breaches /violations under the applicable laws/lease/Tenancy terms and to take further action as per applicable laws stipulated under PGLM Guidelines / directives issued by Ministry and as may be decided by the Board of Trustees of Port of Mumbai from time to time.

The MBPT has further stated that the reply is prepared considering the following issues:

- 1) The revision of SoR is based on the Hon'ble Supreme Court Orders in Jamshedji Wadia case and subsequent clarification and opinion received from Shri Mukul Rohatagi, the former Attorney General for India.
- 2) Ministry's clarification and directions to TAMP to fix the rates from 01.10.2012
- 3) The provisions in PGLM 2014-15 and subsequent clarifications received thereto
- 4) Due intimation given by Estate Manager to the tenants/lessees regarding revision from time to time.
- 5) The Major Port Trust Act, 1963 does not restrict the retrospective revision of any rates.
- 6) The revision sought by MbPT is justifiable and reasonable.
- 7). TAMP is not concerned with any administrative and legal issues pertaining to specific plot.

2. Comments received from various users after the case was disposed by the Authority:

(i). Tata Power Company Limited

General Comments -

- (1). The Govt. of Maharashtra undertakes its annual exercise to analyse and publish the land rates applicable to the different zones in the Ready Reckoner after due consideration of all aspects. The land rates so fixed are uniformly used by all public bodies (State Govt and Central Govt.) for valuation purposes including stamp duty, property tax etc. These rates also cover MbPT lands. Thus, the exercise which is now undertaken by MbPT is an exercise in duplication. If all public bodies (State & Central) undertake such kind of exercise, there will be multiple rates applicable to the same parcel of land and hence the rates determined by the State Govts. Should be adopted for uniform application.
- (2). MbPT has adopted an arbitrary approach while deciding to carry out valuation of certain properties for certain RR Zones & completely skip this exercise for other

RR Zones such as 1/6 etc. Also, in respect of certain RR Zones MbPT has completely done away with the need to carry out any valuation exercise at all, such as for RR Zone 7/64, wherein it has decided that the RR rate represents FMV of that area without any valuer's recommendation or any other basis.

- (3). No distinction has been made by incorporating suitable factors that should be multiplied with the proposed rate so as to distinguish between the lands used for commercial and infrastructure utilities which are regulated such as power utilities. These costs are essentially borne by the retail power consumers resulting in undue burden on them since electric tariffs go up.
- (4). In the valuation reports, while adopting rent capitalization method, the comparable properties have been selected at 2 - 2.7 kms. away from the property being evaluated, no evidence has been supplied about the sanctity of this distance (2-2.7 kms). Therefore, the rates proposed are doubtful in integrity.
- (5). As the rates that may be adopted will have a direct linkage with the way-leave fees, it is submitted that Tata Power is a Telegraph Authority as per the Gazette Notification of 7th April 1955. Accordingly, the relevant provisions of Indian Telegraph Act & its Right of Way Rules- 2016 are applicable. In terms of these Rules, the underground utilities are not chargeable for any way leave fees except for administrative and restoration charges and in case of overhead lines, charges are permitted to be recovered only if the land beneath is unlikely to be used for any purpose. Thus, in case of HT lines through CRZ / mangroves / creek/ sea/salt pan, no way leave charges is chargeable. The applicability of Indian Telegraph Act & its ROW Rules, 2016 is also confirmed by the Ministry of Shipping, GOI, under clarification No.14 (i) of clarification circular (land management) No.1 of 2019-20 wherein it is specifically mentioned that "...where there is a specific Central Act./ Statutes which governs such ROW permissions provisions of such Statutes shall over ride these guidelines. A case in point in Indian Telegraph Act, 1885 and Indian Telegraph Act - ROW Rules. 2016".

(6). Supreme Court & High Court judgements on revision of rates:

The Supreme Court in its judgment dt.13/1/2004 appeal (Civil) 5559 of 2001 J.H. Wadia Vs. MbPT had interalia answered the following questions as to status of MbPT as a landlord; the rent that it can charge being exempted from the Rent Control Act and to act in a fair and reasonable manner.

The following principals have been laid down in the judgment:

- i. The position of law is settled that the State and its Authority including instrumentalities of States have to be fair and reasonable in all its activities including those in the field of contract.
- ii. There is a need to maintain distinction between a private landlord and MbPT when it comes to charging market rates.
- iii. Excepting the current market rates of real estate and working out a return on such rate by reference to the market trends would tantamount to indulging into profiteering.
- iv. The exemption from the provisions of Rent Control Law casts and obligations on the State and its instrumentalities and Authorities to comply with public policy of ensuring a fair return of investments without charging exorbitant rates based on prevailing market price of the land.
- v. The only consideration which prevailed with the High Court and the Supreme Court was one of the reasonability and the need for striking the balance before taking a long leap in the direction of an upward revision of rate.

Accordingly, the Supreme Court moderated the market rate otherwise proposed by MbPT. In that the market rates of 1982 was applied from 1994 similar to that provided in the Rent Act.

- (7) The adoption of rates based on market valuation shall have due consideration to the policy approved by GOM in Govt. Resolution dt. 12/12/2012 which was based on the principals laid down by the Hon'ble High Court order dt.25/8/2004 for revising the rates of lease etc. that the share of State Govt. as a landlord has to be limited to 25% of the Ready Reckoner rate on which GOM proceeded to fix the rate of

return as 2%, 4%, 5% for Residential, Industrial and Commercial purposes respectively.

It is therefore submitted that any increase by way of revision of land rate should be limited to 25% of the previous rate spread over 5 years.

- (8). In terms of GOM's GR dr.8/3/2019, a policy decision has been taken to convert the Govt. leasehold premises into ownership by recovering 50% / 60% of the Ready Reckoner rate if the amounts have been paid within 3 years/beyond 3 years respectively. Therefore, due consideration should be accorded to the fact that only 50% of the Ready Reckoner value has been considered for an occupied property as its market value.

Specific Comments:

a). RR 1206, RR 1388 and RR 1868 at Colaba (Sassoon Dock) Estate, fixation of SOR – 2017- 22 Zone 1/6 by Land Allotment Committee thereof.

1. At the outset it is submitted that the land rate for zone 1/6 proposed to be adopted is Rs. 3,31,600/- per Sqm which is – 166% of the ready reckoner rate of FY 20. It is not only exorbitant but also against the principles laid down by the Hon'ble Supreme Court as cited above & therefore not acceptable.
2. We reiterate our comments on the Valuer report for Zone 1/3 in our letter dt. 20th Oct. 2021 Sr. no. 19 & for the sake of convenience the same are reproduced herein below.
 - a. Pg. 4 of valuer report is not legible. MbPT to please upload for our review & comments.
 - b. Pg. 6 of valuer report has wrongly considered the Ready Reckoner rate for FY 2017-18 Zone 1/3A as Rs.2,29,670/-. It is Rs. 2,39,300/- Rate of open land (Copy attached Ann.3) Hence valuer evaluated valuation is wrong as per Ready Reckoner rate. Such factual inconsistencies make the report unreliable.
 - c. Pg. 8 Method of valuation (iv)
 - Under head feasibility method loading of 20% on permissible built up and without any basis being provided.
 - Similarly, under total cost of the project – cost of construction is taken as Rs.30,250/- per sq.mtr, other expenses 7% Architect fees 3%, plan approval 3%, interest, developer profit for such variables. No evidence or rules or any valuer's guidebook have been.
 - d. Pg. 10 Method of valuation table (IV).
 - Valuer has considered the area ranging from 118 sqft to 4420 sqft & at dist. 3 KM away from subject property as valuation to be done for 508.18 sqm, such disproportionate sizes cannot have been used to derive at the valuation.
 - Valuation table not derived/mentioned the sale of Residential/Commercial. The attached index II from pg.10 to 13 not legible. Hence MbPT to submit the legible copy to review.
 - e. Pg. no. 15 of valuer report, Valuer has considered several assumptions to derive the rate of the land;
 - 25% profit of the developer – This number, in case of Karanja Valuation, has been taken as 30% by valuer reflecting arbitrary assumptions.
 - Deduction of Rs.30,000/- sqm
 - 7% out of pocket expense
 - 7% for lack of basic facilities on the land.No evidence has been supplied as to the applicability of these assumptions as any change in these parameters will completely alter the derived land rates per sq.mtr. Hence cannot be relied upon having doubtful basis.

3. As stated in para 1 of LAC report dt.8.10.2021, location mat & property card no uploaded. MbPT requested to submit these to check & give comments.

4. For the following reasons, the FMV adopted for Zone 1/6 as that of Zone 1/3A is arbitrary

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- a. It may be seen that the RR rate for Zones 1/3 is Rs. 2,67,850/-, 1/3A is Rs.229670/- ^ 1/6 is 199550/-. Thus, as compared to Zones 1/3 & 1/3A, rates for 1/6 is only 74% & 87% resp.
- b. LAC report does not provide any basis way rate for 1/3A, i.e. Rs.3,31,600/- has been adopted & not that for Zone 1/3 of Rs.2,90,635/-
- c. Neither Trustee Resolution (unnumbered) nor LAC report indicates that Valuer has recommended that SoR of Zone 1/3A shall be taken same as that for Zone 1/6.

Clearly, rate of Zone 1/6 should have been separately ascertained.

5. In the absence of property cards of RR 1206, RR 1388 and RR 1868 of zone 1/6, it is not possible to ascertain whether they belong to be Ready Reckoner zone 1/6.
6. As per LAC report para no 7, TR 61 of 2018 & TR 105 of 2018 are not uploaded. Request MbPT to submit these TRs to review and give comments.

Conclusion –In view of the above, the rate recommended in the valuation/LAC report i.e. Rs.3,31,600/- adopted for Zone 1/6 cannot be relied upon for application & is liable to be rejected.

b). RR. No. 1417 & 1942 at Cumbala Hill Division fixation of SOR – 2017-22 Zone 7/64 by Land Allotment Committee thereof.

MbPT has not adhered to the laid down policy under PGLM requiring them to consider 5 factors & give final recommendation for FMV/SoR in terms of PGLM policy guidelines under para 13(a) (I, ii, iii, iv, vi), (b) & (c).

Conclusion –In view of the above, the rate recommended in the LAC report i.e. Rs.2,57,500/- for Zone 7/64 same as Ready Reckoner rate of 2017 for 7/64 Zone being against the laid down policy under PGLM is arbitrary and is liable to be rejected.

c). C.S.No. 929 and 930 at Malabar Hill Division, fixation of SOR – 2017-22 Zone 7/66 by Land Allotment Committee thereof.

1. MbPT has not adhered to the laid down policy under PGLM requiring them to consider 5 factors & give final recommendation for FMV/SoR in terms of PGLM policy guidelines under para 13(a) (I, ii, iii, iv, vi), (b) & (c).
2. The approach taken by MbPT to simply adopt the SOR rate as FMV is arbitrary being without any basis, by merely adducing a statement that “The market rate of the area is very high & which can be considered for the said two lettings. Therefore, no separate valuation is carried out in the subject RR zones.” Such subjective approach is arbitrary & is liable to be rejected.
3. It is seen that following reasons have been given to adopt RR rate as FMV-
 - a. The plots bearing CS no. 292 & 930 are not regular land but fishponds or the foreshore land which are under sea water;
 - b. The FSI obtained from these foreshore lands has been used on the adjoining private lands;
 - c. The foreshore lands are not reclaimed as was required under the lease terms.

On a comparison with FMV adopted for Zone 90/419 wherein Tata Power operates its captive coal berth within the port limit of MbPT (land not owned by MbPT) which is also under sea water & no FSI whatsoever is utilized on the land portion, FMV is adopted at 274% of RR rate which is clearly arbitrary as two sets of different standards are being used to arrive at FMV.

Conclusion –In view of the above, the rate recommended in the LAC report i.e. Rs.3,38,100/- for Zone 7/66 same as Ready Reckoner rate of 2017 for 7/66 Zone is without basis & arbitrary and is liable to be rejected.

d). Fixation of Scale of Rates (SoR) and Revision of Rent/Compensation w.e.f. 1.10.2012 to 30.9.2017 for 12 remaining zones in MBPT areas.

(i). We reiterate our comments for MbPT's notice No. EM/AS F-361/F-382 dt. 27/8/2021 by our letter dt. 1.9.2021 on subject " Comments on Revision of Schedule of Rates for the period from 1/10/2021 to 30/9/2017 (SoR) 2012-2017) for Ready reckoner zones of MbPT Estate lands for the sake of convenience the same are reproduced herein below:-

- No distinction has been made by incorporating suitable factors that should be multiplied with the proposed rate so as to distinguish between the lands used for commercial and infrastructure utilities which are regulated such as power utilities. These costs are essentially borne by the retail power consumers resulting in undue burden on them since electric tariff go up.
- As the rates that may be adopted will have a direct linkage with the way-leave Notification of 7th April 1955. Accordingly, the relevant provisions of Indian Telegraph Act & it's Right of Way rules, 2016 are applicable. In terms of these Rules, the underground utilities are not chargeable for any way leave fees except for administrative and restoration charges and in case of overhead lines, charges are permitted to be recovered only if the land beneath is unlikely to be used for any purpose. Thus, in case of HT lines through CRZ/Mangroves/Creek/ Sea/ Saltpan no way leave charge is chargeable. The applicability of Indian Telegraph Act & it's ROW Rules, 2016 is also confirmed by the Ministry of Shipping, GOI, under clarification No. 14(i) of clarification circular (land management) No.1 of 2019-20 wherein it is specifically mentioned that "....where there is a specific Central Act/ Statutes which governs such ROW permissions provisions of such statutes shall over ride these guidelines. A case in point in Indian Telegraph Act, 1885 and Indian Telegraph Act – ROW Rules, 2016".
- The adoption of rates based on market valuation shall have due consideration to the policy approved by GOM in Govt. Resolution dt. 12/12/2012 which was based on the principals laid down by the Hon'ble High Court order dt.25/8/2004 for revising the rates of lease etc. that the share of State Govt. as a landlord has to be limited to 25% of the Ready Reckoner rate on which GOM proceeded to fix the rate of return as 2%, 4%, 5% for Residential, Industrial and Commercial purposes respectively. It is therefore submitted that any increase by way of revision of land rate should be limited to 25% of the previous rate spread over 5 years.
- In terms of GOM's GR dt.8/3/2019, a policy decision has been taken to convert the Govt. leasehold premises into ownership by recovering 50% / 60% of the Ready Reckoner rate if the amounts have been paid within 3 years / beyond 3 years respectively. Therefore, due consideration should be accorded to the fact that only 50% of the Ready Reckoner value has been considered for an occupied property as its market value. Therefore, SOR shall be derived from 50% of the Ready Reckoner rate for computation of rent/license.
- **Retrospective fixation of rates** – The proposal is for fixation of rates from 1/10/2012 to 30/09/2017 being for the retrospective period is not permissible. Without prejudice, it is also impermissible to recover any interest on arrears.
- The rationale for adopting the rate for water bodies at 50% of the SOR rates as mentioned at sl. No. 4 of Annexure-1 at Page 6 has not been explained as water bodies do not have any development. Potential and are barred by the Development Plan of MCGM for any such development. This being the case, the land rates cannot be applied to the water bodies even with 50% discount. If at all the land rates have to be applied to water bodies, analogy of Rules laid down by MCGM for working out capital values should be adopted wherein such disadvantaged locations, a factor of 1% is applied to determine the market value.
- No justification has been provided to adopt 6% annual return on SOR rates to derive rent/license fees, since these derived values also increase at 4% p.a. cumulatively. At no place this percentage is more than 3-4% of the market value and should be accordingly so restricted.

(ii). MbPT is requested to Submit TR 222 of 2015, TR 122 of 2021 and TR 153 of 2021 for our review & give comments.

e). **Consideration of Valuation Report of Mumbai Port Trust land at Worli Bunder for fixation of SoR 2017-22 (RR Zone 13/97 of Worli Division).**

1. MbPT has not adhered to the laid down policy under PGLM requiring them to consider 5 factors & give final recommendation for FMV/SoR in terms of PGLM policy guidelines under para 13(a) (I, ii, iii, iv, vi), (b) & (c).
2. MbPT to Submit TR 122 of 2021 for review & give comments.

Conclusion –In view of the above, the rate recommended in the LAC report i.e. Rs.1,13,500/- for Zone 13/97 same as Ready Reckoner rate of 2017 for 13/97 Zone with 4% increase every year is without basis & arbitrary and is liable to be rejected.

f). **Consideration of rate of Sor 2017-2022 or all the plots in RR zones 96/436, 15/105, 16/110 and 11/84E.**

Part I of Ready Reckoner Zone 96/436 & Ready Reckoner Zone 15/105.

1. LAC has considered Zone 90/419 SoR valuation report rate for FY 2017 for Zone 96/436 & for Zone 15/105 without giving any basis, justification & logic, hence it is liable to be rejected.
2. Further the RR values of Zone 96/436-Rs 45200/- & that of Zone 15/105 is Rs. 46,000/- whereas that of Zone 90/419 is only Rs.19400/- which is merely 42-43% thereof. Thus, the basis of adopting FMV of Zone 90/419 is clearly arbitrary.
3. Going by the above logic of MbPT, it is our submission that the FMV of zone 90/419 needs to be discounted by 42-43%, i.e. Rs.22,876/-; if FMV of Rs.53,200/- is adopted for the zone 96/436 & 15/105.
4. We reiterate our comments for Valuer report for Zone 90/419 in our **letter no. BP/225-A/360 dt.26th August, 2021 Sr. no.2.** for the sake of convenience the same are reproduced herein below-
 - In the valuer's report No. V.MBPT.0401.2019 dt.17/4/2019 (Part IV – Declaration at Srl. No. 5) @ P30, it is declared that the validity of the value worked out regarding the concerned property is for a period of 1 year from the date of the Report i.e. 17/04/2019. This being the case, the validity of the relied upon for adopting the rate of Rs.53,820/- per sq.mtr. It is surprising to note that while the validity of Valuation Report No. V.MBPT.SOR.0404.2019 dt.27/4/2019 is only for 3 months, no basis is supplied for the reason of validity of this report as 1 year. Such inconsistencies raise severe doubt about the integrity of the report.
 - In part 1 questionnaire at Sr. No. A34 of page No.15, against amount of property tax it is mentioned that the land owned by MbPT. Accordingly, no effect of this amount is considered in the working. It should be noted that all statutory outgoes including property tax is the responsibility of the Lessees/Tenants of MbPT. This being the case, amount of property tax should have been considered in the working, thereby arriving at the lower land rate.
 - It is seen from page 23 of valuer's report, while considering highest rate of actual relevant transaction registered in last 3 years in the Port's vicinity, Leave & License agreement between RCF & All is considered. This document is not enclosed and therefore we are not in a position to see whether the same are registered documents for their authenticity. Further, what is considered is Leave & License fees as against long term rent applicable. The objective of the exercise is to arrive at valuation which has long term validity of 5 years. Secondly, the transaction should have been for the year 2017, 2018 and 2019, being last 3 years from the date of valuation. Thus, the transactions considered for the years 2013, 2014 and 2015 do not fit in the prescribed criteria and hence should not have been

considered. It is also seen that the license fees is for 2018-19 is derived value and hence cannot be relied upon.

- The capitalized net rent is arrived at by considering a factor of 6% without supplying evidence or documents why it should not have been lower or higher.
- The rates arrived at by the Valuer supplied by two private Cos. Viz. Aegis Logistics and IMC Ltd. Is based on the rates on Rs. 350/- to Rs.400/- per KL per month for derived from rental on tanks for liquid logistics. In the Valuer's report it is mentioned that this information is collected orally through telephonic communication and there is no written evidence available for the same (Page 24). Further it needs to be noted that the tanks are provided on rental only to limited customers on temporary basis for short term usage. Further there is also reference of these Cos. Having tank farms at JNPT. The linkage between Tank farms at JNPT and in Mahul is not understood. It is also stated that the tanks are provided on lease without any documentary evidence. The Tank farms are let out to their customers on license/ leave & license basis being very short term. Thus. These rate cannot have long term application for a period of 5 years by any stretch of imagination. The Storage capacity of the tank is taken as 15000 MT without any evidence.
- As regards the rate of Rs. 350-400 per month rent is product specific. If a product such as LPG is required to be stored in such a tank farm should have a refrigerating infrastructure. Similarly, for HFO will have a steam coil heating arrangement with insulation infrastructure, such additional infrastructure will add to the cost and the rent p.m. will be way beyond Rs.400/- per KL. Similarly, for storage of Lube Oil, Diesel Oil, no such infrastructure is required, and the rental will be lower than Rs.350/- per KL p.m. Thus, there is no sanctity to Rs.350/- to Rs.400/- per KL p.m. having extremely limited application to select customers.
- In the table of valuation working at page 24, the depreciated cost is taken as `412,74,850/- without any evidence.
- In valuer's conclusion (Srl. No. 2 of Page 24) it is written that the plot is in dis-use and non-operational for last many years and future lessee will have to make them operational to generate income. It clearly implies that instead of depreciated cost of structure the cost of new structure required to make it operational should have been considered. Had it been so considered, the rate arrived at would be far lower. The discounting factor of 40% is again without any basis and actual cost of new infrastructure should have been considered.
- It may be noted that we have our Public utility Thermal Generating Plant at Mahul supplying electricity to Mumbai & Suburbs including MbPT. As infrastructure requirement we have 25 special way leaves/License taken from MbPT. These infrastructure utilities pass through NDZ/CRZ and underwater. Since they are in CRZ, mangroves, Creek, underwater, there is no justification to charge such high rates for public infrastructure utilities at such commercially disadvantaged location, where rent capitalization cannot be applied to determine the land rate. In such cases, the rates should be applied to determine the land rate. In such cases, the rates should be restricted to 1% of the rates applicable at land on the analogy of CV rules adopted by MCGM for working of proper tax.
- It is clearly seen that the valuation exercise at Page 24 is applicable only to a plot having a tank farm and cannot have general applicability across Ready Reckoner Zone of 90/419 (Unit-1).

Conclusion –In view of the above, the rate recommended in the LAC report i.e. Rs.53,200/- for Zone 96/436 & Zone 15/105 cannot be relied upon for application & is liable to be rejected.

Part II of Ready Reckoner Zone 16/110.

1. LAC has considered Zone 14/101A SoR valuation report rate for FY 2017 for Zone 16/110 without any basis, hence it is liable to be rejected.
2. At the outset it is submitted that the land rate proposed to be adopted of Zone 14/101A is Rs.1,15,640/- per Sqm which is – 177% of the ready reckoner rate. It

is not only exorbitant but also against the principles laid down by the Hon'ble Supreme Court as cited above.

3. With reference to our letter no. BP/225-A/443 dt. 20.10.2021 Sr. no. 1 of Specific Comments we have mentioned that FOR Zone 14/101A LAC report & Valuation report are not uploaded. Hence unable to give any comments. We still await MbPT response for the same.

Hence, we are unable to give any comments for valuer report for Zone 14/101A.

Conclusion – In view of the above, the rate recommended in the LAC report i.e. Rs.1,15,640/- for Zone 16/110 cannot be relied upon for application & is liable to be rejected.

Part III of Ready Reckoner Zone 11/84E.

1. LAC has considered Zone 11/84A SoR valuation report rate for FY 2017 for Zone 11/84 E without giving any basis, justification & logic, hence it is liable to be rejected.
2. At the outset as per Valuer report derived value of Rs.1,71,310/- per Sqm for zone 11/84A of Parel-Sweree is -300% of the ready reckoner rate. It is not only too exorbitant but also against the principles laid down by the Hon'ble Supreme court as cited above & therefore not acceptable.

(g). We reiterate our comments for Valuer report for Zone 11/84A in our **letter no. BP/225-443 dt.20th October, 2021 (Specific Comments Sr. no.6)** for the sake of convenience the same are reproduced herein below-

- At the outset as per Valuer report derived value of Rs.1,71,310/- sqm for zone 11/84A of Parel-Sewree is – 300% of the ready reckoner rate. It is not only too exorbitant but also against the principles laid down by the Hon'ble Supreme Court as cited in our letter no. BP/225-A/360 dt. 26.8.2021 & therefore not acceptable.
- No basis is adduced for the average rate of land for Parel – Sewri Zone at Rs.2,85,516/- how it is arrived at, is not understood since not explained. Valuer has not checked any sale transactions for last 3 years to derive the value. It is therefore arbitrary & liable to be rejected.
- Pg. no. 4 of valuer report, Valuer has considered several assumptions to derive the rate of the land;
 - i. 30% profit of the developer
 - ii. Deduction of Rs.30,000/- sqm
 - iii. Recommendation for Deduction of 40%

No evidence has been supplied as to applicability of these assumptions as any change in the parameters will completely alter the derived land rates per sqm.

- Pg. no. 7 Sr. no. 34 it is mentioned that Property tax is borne by Owner i.e. MbPT, which is factually incorrect as the tax for any property is liable to be borne by Lessee/Tenant of MbPT. The quantum needs to be deducted appropriately which is not done and hence the report cannot be relied upon.
- **In the Valuer's report dt.21/12/2019, at Page 8 it is declared that the report is valid for 1 year from the date of the report. One year having expired on 21/11/2020, this report cannot be relied upon to adopt the land rate for Reddy Reckoner Zone of 11/84A at Rs. 1, 71, 310/-.**

Conclusion – In view of the above, the rate recommended in the LAC report i.e. Rs.1,71,310/- for Zone 11/84A cannot be relied upon for application & is liable to be rejected.

7. Fixation of rates as per PGLM Policy for proposed Jetty at Karanja inside Port Limit- Reg. Approval by Land Allotment Committee thereof.

1. It is seen that RR rate of commercial building of SEZ at Uran has been adopted by the valuer with assumptions to determine the rate of the basin under water by discounting the same by 50%. This approach is clearly arbitrary when compared with valuation methodology for zone 90/419 wherein a property situated within land

was valued at Rs. 53,200/- per sqm & same was transposed to Tata Power's coal jetty, i.e. Approach channel (50% discounting) & Berthing pocket (No discounting), though both properties are underwater. Thus, in one case RR rate has been taken as base to adopt as FMV whereas in the other case, in complete contrast a different approach has been adopted.

2. Pg. no 3 of valuer report Karanja Part II Sr. no. 4 Rate Approved by approved valuer, Valuer has considered several assumptions to derive the rate of the land; Deduction of Rs. 30,000/- sqm for construction cost 30% for profit margin No evidence has been supplied as to the applicability of these assumptions as any change in these parameters will completely alter the derived land rates per sq.mtr. & hence it is liable to be rejected.
3. LAC report Sr. no. 8:- MbPT not uploaded TR 61 of 2018 & TR 105 of 2018. Requesting to submit for our review 7 to give our comments.

Conclusion –In view of the above, the rate recommended in the LAC report i.e. Rs.11,480/- per sqm for fixation of SoR for land & Rs.5740/- per sq.mtr. for basin for Zone Zone 11/84E cannot be relied upon for application & is liable to be rejected.

The above submission is Without Prejudice to our Rights & Contentions in the matter and we reserve our rights to adduce to our submission as appropriate based on the future developments in the matter.

(ii). Hindustan Petroleum Corporation Limited

At the outset, we deny that MBPT is entitled to seek revision of schedule of rates of rent payable retrospectively for the period of 01.10.2012 up to 30.09.2022. The descriptions of the relevant leased lands for Mumbai Petrol pump sites are more particularly set out as follows:

Sn	Plot No. (RR No.)	Area (in SQM)	Locations	RR Zone	Lease start date	Lease deed date upto	Remarks
1.	OLD R.R. 2054 Code:20801618	883.04	Mazgaon Sewree Reclamation	Not Provided in proposal 7 of MbPT	13.10.1939	31.10.1990	Lease renewed vide BPT Estate dept letter dated 01.10.1991 for 30 years. Hence valid upto 30.6.2021
2.	OLD RR No.1841 Code:10203120	865.95	Mazgaon Sewree Reclamation	Not provided in proposal 7 of MbPT	01/01/1973	31.10.1990	
3.	RR 1880 Code:30901234	540.6	Elphinestone Estate	Not provided in proposal 7 of MbPT	15.12.1953	17.11.2045	
4.	25 BEARING RR NO.1923 Code:31101128	807.51	Ballard Estate	Not provided in proposal 7 of MbPT	08.10.1963	31.10.1990	
5.	RR 2015 (OLD RR 1682) Code: 30901228	531.59	Elphinestone Estate	3/35 B	14.06.1967	31.10.1990	
6.	R.R.NO.1951 Code:30901312	549.06	Elphinestone Estate	3/35 B	14.08.1963	31.10.1990	
7.	R.R.No.2039 Code:30901313	98.94	Elphinestone Estate	3/35 B	14.08.1963	31.10.1990	
8.	OLD R.R.1644 Code:30901334	51.93	Elphinestone Estate	3/35 B	14.08.1963	31.10.1990	

9.	RR.1796 Code:41401109	26.38	Sassoon Dock	Not provided	-	-	
10.	RR 1862 Code:41401110	14.21	Sassoon Dock	Not provided	-	-	
11.	RR 1954 Code:41401111	11.61	Sassoon Dock	Not provided	-	-	

Thus a total area of 4380.82 Sqmt has been leased to HPCL by MbPT for our retail outlets at Mumbai to enable our Corporation to supply and sale petroleum products, which are also an essential commodity under the Essential Commodity Act.

It is submitted that lease for land at RR 1880 Code: 32901234, admeasuring 540.60 Sqmt is valid upto Nov 2045 while the other leases continued to be valid during most of the period of revised SOR period i.e. 2012-2017 as per the MbPT letter dated 01.10.1991. We state that as our leases for land at Plot No. RR 1644, 1841, 2054, 1796, 1862, 1923, 1954, 2015, 1951 and 2039 were valid till date 30.06.2021 therefore, the rentals will be governed by the allotment letter dated 01.10.1991.

We are regularly paying the monthly rental based on the invoices raised by MbPT and all the payment has been made till 31.10.2021. We also state that acceptance of rentals by MbPT without any objections/demands confirms that the rentals paid by our Corporation till 30.09.2021 were accepted by MbPT and therefore, they cannot change the rentals retrospectively and unilaterally.

In this regard, we wish to bring to your notice few of the various letters written to MbPT by our Corporation:

1. Letter dated 14.02.2019 on the renewal of lease of all plots for petrol pumps. Thus, it is evident that much before the expiry of lease period we have requested MbPT to come forward for renewal of lease so as the parties can come to a mutual consensus for terms and conditions of lease to be entered into between them.
2. Letter dated 26.08.2019 on the renewal of lease of plots no. RR 1644, 1841, 2054, 1796, 1862, 1923, 1954, 2015, 1951 and 2039 for petrol pumps.
3. Vide letter dated 07.01.2020 we had requested that 1841, 2015, 1951 and 2039
4. Vide letter dated 03.11.2020 we had once again requested MbPT to renew leases for land at plot no. 1951, 2039, 2015, 1796, 1862, 1954 and 1841.

During such period no attempt was made on the part of MBPT either to respond to such requests or to come forward for execution of lease.

It was only vide letter dated 27.11 2019, that MbPT for the first time demanded arrears of rentals for plot no RR no 1841 amounting to Rs.596 lakhs for the period of Sep 2006 to Sep 2019. We state that said determination of rental was unilateral and retrospective, therefore the said demand was is bad in law, moreover due process was not followed prior to raising the said demand,

Thereafter vide letter dated 03.12.2019 (Attached as Annexure 7), that MbPT for the first time demanded arrears of rentals for plot no. RR no 1951, 2039 and 1951 amounting to Rs. 814.29 lakhs for the period of Sep 2006 to Sep 2019. We state that said determination of rental was unilateral and retrospective, therefore the said demand was is bad in law, and moreover due process was not followed prior to raising the said demand.

Subsequently vide letter dated 02.03.2020 (Attached as Annexure 8) that MbPT for the first time demanded arrears of rentals for plot no. RR no 1954, 1796, 1862, amounting to Rs.3.45 lakhs for the period of Sep 2006 to Jan 2020. We state that said determination of rental was unilateral and retrospective, therefore the said demand was is bad in law, moreover due process was not followed prior to raising the said demand,

MbPT in its aforesaid letters had stated that as per clarification from Ministry of Shipping PGLM 2015 lease can be renewed for further 30 years on nomination basis subject to payment of revised rent at the latest SoR determined as per para 13 of PGLM, 2015.

In this regard we draw your attention to clause 11.3 (d) of PGLM, 2015. In respect of lease agreements with renewal option, the lease can be renewed by the Port Trust Board by treating it as a fresh lease at the latest SoR notified as per para 13(c).

Thus it is amply clear that such leases are to be considered as a fresh lease and SoR as per para 13(c) is to be made applicable from the date of execution of fresh lease. It is submitted that the SoR provided in PGLM 2015 does not mention that the same are to be applicable retrospectively. Therefore, the demand made by MbPT is against the law and applicable guidelines.

We also draw your attention to clause 11.2 (j) PGLM 2015 wherein it is stated that "The process of renewal of existing leases should be initiated by the respective Ports well in advance, before the term of lease expires. The automatic renewal of existing leases should be preferably done within three months of receipt of such application for renewal. Liability to pay compensation for wrongful use by the lessee will not arise, if the delay in renewing such leases is wholly attributable to the Port."

Thus the applicable policy itself states that it will be the obligation of respective port to initiate action for renewal of lease before it expires, whereas in the present matter while no action was taken by MbPT when HPCL issued letters much before the expiry of the lease the same was not responded even after repeated reminders and meeting with officials of MbPT. As the delay in renewal of lease is solely attributable to Port, demand for arrear of rentals is not valid and legal. It is reiterated that revision of rentals cannot be done retrospectively as a tenant is to be made aware of the financial obligations arising out of a lease agreement. Moreover, in the absence of any agreement or understanding recorded between HPCL and MBPT to the effect that MBPT would be entitled to seek revision of rates retrospectively; it is not open now for MBPT to seek revision of schedule of rates retrospectively. It deserves to be noted here only that the agreed lease rent has been paid for the subject period and even till date i.e. up to 31.10.2021 and there has been no grievance raised by MBPT in this regards, moreover on the contrary MbPT has been giving assurances to Corporation that its proposal for renewal of lease will be submitted to the competent authority at earliest as per our meeting on date 12.02.2019 for the lease renewal and letter dated 14.02.2019.

Without entering into the merits of such claim to revise the schedule of rates, it must be pointed out here only that the same would be expressly barred by law of limitation.

The Limitation Act, 1963 and the provision thereunder prohibit any predated claims and or passed claims beyond the period of limitation. Hence any action by MBPT to demand at revised rates retrospectively for the subject period would be barred under the said Act.

The principles of estoppel would also come into play where under MBPT is estopped from seeking any revision to the schedule of rates retrospectively, having accepted the amount duly and diligently paid by HPCL during the said subject period and even thereafter from month to month till date.

In the absence of any enabling provision either as an by way of an agreement for understanding with HPCL or der any law in force, MBPT is precluded from proceeding with the exercise by virtue of the present notice to invite comments on proposed revision of rates.

In any event, the proposal to revise rent can only be done prospectively i.e. for future period. MBPT in the instant case has accepted the terms of the lease and have continued in light thereof to honor the obligations set out therein to be performed the parties. In effect, the terms and condition of the original lease have been continued although on revised terms (with reference to the rentals).

The provision of the Transfer of Property Act, 1882 would govern the leases executed by and between the parties. In particular, sections 105 up to section 117 of the said act would be applicable.

In the instant cases i.e. the leases in question although have expired by efflux of time/expiry of term, the principle of promissory estoppel entitles HPCL to occupy and continue in the lease premises on payment of the rent.

Although, MBPT has never finalized the rates and / or rentals beyond the original period of lease, or any proposal of what so ever nature for renewal of the lease for the subject period, and during subsistence of the said period, now does not give any right to MBPT to retrospectively finalise the rates and rentals.

In view of the actions and / or inactions on the part of MBPT during the relevant period, to not seek revision through renewal of the lease, to now demand revised rates for the period which has passed. It can only be done with reference to future period and that too on renewed terms.

The Indian Contract act, 1872 and the provision there under cannot be ignored and overlooked by MBPT. In the absence of express agreement by and between the parties the proposal for revision is ill founded and without any basis.

The internal notes, circulars or notifications issued by MBPT, would not be binding on HPCL, more so if the same are contrary or inconsistent with any prevalent law.

Hence, the demand raised vide notice by MBPT is contrary to the settled principles of law, opposed to equity and are arbitrary and unreasonable and therefore being beyond the purview of law, not tenable. The express terms of the lease agreement also do not contemplate such revision.

Needless to state that the entire exercise sought to be carried out belatedly by MBPT is not in line with any agreement or understanding arrived at between the parties, therefore, the same is not tenable.

Apart from the grounds of maintainability of the notice as setout herein above, we wish to provide brief comments without prejudice as under :

- a). Repeated requests for renewal of lease, which has expired on 30.06.2021 are yet to be answered by MBPT.
- b). There is no basis, rational or justification for the arbitrary proposed revision of rates retrospectively. Moreover, there is no provision under the existing applicable law for revision of SOR retrospectively.
- c). The instance in the nature of industrial premises cannot be referred to and relied upon in any manner to justify proposed revision of rates. The valuation are neither realistic nor based on thorough research. An exorbitant rate has been determined erroneously by MBPT in placing reliance on such reports. Not a single instance sought to be relied upon by MBPT pertains to any land nearby to the leased premises. The instances of lease / license / sale are neither comparable with the leased premises nor are anywhere even close to or in proximity in terms of distance and/or size of the lands. In fact industrial gala, and or flat cannot be taken into account for any purpose much less in determining lease rentals value and rates. Thus in the absence of any like, comparable land instances and reports of valuation providing realistic values, the same cannot be even considered. Hence, we strongly object to such documents (valuation reports and instances) being taken account of in determining lease rental rates.

- d). Base perusal of the notice reveals that MBPT is proceeding with predetermined intention to revise the schedule of rates and comments have been invited only with a view to record that the rates have been determined after due notice to all concerned.
- e). The proposed rates are not only exorbitant but also without rational or basis and therefore cannot be accepted.
- f). We have strong objection to any demand for interest and/or penalty raised/proposed to be raised. The same cannot be raised in the absence of any agreement to begin with coupled with a demand at the relevant point of time raised for payment of lease rentals.
- g). It is undisputed fact that no demand was ever raised by MBPT for the subject period. Hence, it is not open now to demand and/or penalty. Not only such demand for penalty or additional rents would be contrary to law but also unjust and unfair.
- h). As per DCR of MCGM the said lands can be used only for the purpose of fuel station and end use of land cannot be changed. Copy of relevant gazette notification is being attached.
- i). The petrol pumps are facilities for the general public. Any cost towards lease rentals will have a direct impact on the viability of the petrol pump. The rentals paid during the last 30 years has already been accounted for and our account books are closed. Any arrears due to revision of rentals cannot be apportioned to the earlier productions, which have already been consumed.
- j). Since there was no communication from MBPT that there may be a revision of rentals retrospectively, being a CPSE unit no budgetary provision has been made for paying any arrears.
- k). We had already paid the monthly rentals during the period 2012-17, which are and the same has been increased to almost 93%.
- l). All the plots have gone under major road widening since last 10-15 years and hence joint visit to be done for the final area ascertaining at the petrol pumps before rental calculation.

We, therefore, request that our strong objection to the proposed revision be recorded and accepted. We further request that the notice / proposal to impose lease rental retrospectively and inters/penalty levied thereon be dropped/withdrawn with immediate effect.

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