

(Published in Part - III Section 4 of the Gazette of India, Extraordinary)
Tariff Authority for Major Ports

G.No.210

New Delhi,

18 June 2020

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963) and in pursuance of Ministry of Shipping letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on Stressed PPP Projects, the Tariff Authority for Major Ports hereby disposes of the proposal received from the Deendayal Port Trust (DPT) for rationalization i.e. reduction of indexed storage charges approved in the SOR for Dry Bulk Terminal developed by the BOT operator M/s.Adani Kandla Bulk Terminal Pvt. Ltd. (AKBTPL) on Build, Operate and Transfer (BOT) basis under Public Private Partnership (PPP) model with DPT as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No.TAMP/64/2019-DPT

Deendayal Port Trust

Applicant

QUORUM

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

O R D E R

(Passed on this 1st day of June 2020)

This case relates to a proposal dated 21 December 2019 received from the Deendayal Port Trust (DPT) in pursuance of the Ministry of Shipping (MOS) letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on "Stressed PPP Projects" for rationalisation of indexed upfront tariff for storage charges for Dry Bulk Terminal off Tekra near Tuna approved by the Authority vide Order No.TAMP/59/2014-KPT dated 02 January 2015 while notifying the SOR for Dry Bulk Terminal developed off Tekra near Tuna outside Kandla creek by the BOT operator M/s. Adani Kandla Bulk Terminal Pvt. Ltd. (AKBTPL) on Build, Operate and Transfer (BOT) basis under Public Private Partnership (PPP) model with DPT.

1.2. A copy of the said MOS letter dated 11 July 2018 on Stressed PPP Projects is attached by the DPT to its proposal dated 21 December 2019.

2. The main points made by the DPT in the proposal dated 21 December 2019 are as follows:

- (i). The Authority has passed the Order No.TAMP/42/2009-KPT dated 02 November 2010 vide Gazette No.285 notifying the upfront tariff for the project of development of Dry Bulk Terminal off Tekra near Tuna in accordance with the Upfront Tariff Guidelines of 2008.
- (ii). As per the aforesaid notified Order, the approved upfront tariff for storage, beyond free period, is as under:

(A). **For Import / Export:**

(Rate in ₹ per MT per Day)

Commodity	Rate from 1 st day to 10 th day	Rate from 11 th day to 20 th day	Rate from 21 st day onward
All types of cargo	₹2.07	₹4.14	₹6.21

- (iii). Subsequently, DPT had entered into Concession Agreement with M/s.Adani Kandla Bulk Terminal Pvt. Ltd. (AKBTPL) on 27 June 2012 to develop the project on BOT basis for 30 years Concession Period. Subsequent to construction of the Project by the Concessionaire, the Project is currently under operation since 10 February 2015.
- (iv). MOS vide letter bearing no.PD-13/1/2018-PPP Cell dated 11 July 2018 alongwith Report (dated 4 April 2018) of the Committee chaired by Chairman, IPA, communicated to all the Major Port Trusts the Guidelines & Directives for removal of the Stress of the "Stressed Projects".
- (v). As per the criteria for classification of a PPP project for 'Stressed Project' laid down in the MOS letter, the subject project is classified as a 'Stressed Project'.
- (vi). Para 6 of the MOS letter bearing No.PD-13/1/2018-PPP Cell dated 11 July 2018 states-
"The Committee headed by AS&FA, MOS is of the view that wherever such issue of abnormal storage charges emerges in stressed projects as defined in Para 3 above, the Ports may approach TAMP under the provision of "Amendments, modifications or alternations" to the terms and conditions of the concession agreement with an appropriate proposal for rationalization of storage charges in consultation with concessionaires so as to achieve the ARR as per the TAMP guidelines /notification. TAMP has to consider such proposals on merit. The Committee also recommended

review of the situation by the Concessing Authority periodically for optimum utilization of the facility created.”

- (vii). Accordingly, for removal of the stress of the Project, as per the MOS directive, it is proposed to rationalize the tariff for storage for this project. Based on the actual evacuation of cargo from this project, during the years 2015-16, 2016-17 and 2017-18 and by keeping the revenue requirement for storage for the project same as per the originally approved tariff for the project, the proposed tariff for storage, beyond free period, is worked out and the same is given below:

- (A). Average storage of cargo in different slab period based on actual evaluation in 3 years.

As per TAMP Order for TEKRA	₹ in Lakhs
Revenue Requirement as per approved TAMP Order	1168.70
Revenue Requirement in Amt. ₹	116870000

Particulars	2015-16	2016-17	2017-18	Total	Average
Total Dry Bulk Cargo	37,27,851.44	4456100.00	4205212.94	12389164.38	100%
Free Period	13,88,894.61	1350381.99	2008611.60	4747888.20	38.32%
1 st day to 10 th day after free period	7,14,302.28	1032021.31	502241.40	2248564.99	18.15%
11 th day to 20 th day after free period	567432.46	779791.50	517145.10	1864369.06	15.05%
21 st day to 30 th day after free period	442151.38	492321.26	445842.70	1380315.33	11.14%
31 st day to 40 th day after free period	341767.71	280367.64	256686.46	878821.80	7.09%
41 st day to 50 th day after free period	143820.48	197825.18	191029.57	532675.23	4.30%
51 st day to 60 th day after free period	53836.59	133618.25	88028.43	275483.27	2.22%
61 st day to 70 th day after free period	9054.52	148112.25	59323.12	216489.90	1.75%
71 st day to 80 th day after free period	43084.80	22167.89	40818.15	106070.84	0.86%
81 st day onwards after free period	23506.60	19492.74	95486.42	138485.76	1.12%

(B). Period wise storage of cargo after free period:

Storage Cargo belonging to									Total	Assumed
81 st day onwards after free period	71 st day to 80 th day after free period	61 st day to 70 th day after free period	51 st day to 60 th day after free period	41 st day to 50 th day after free period	31 st day to 40 th day after free period	21 st day to 30 th day after free period	11 th day to 20 th day after free period	1 st day to 10 th day after free period	Stored	As Stored
1.12%	0.86%	1.75%	2.22%	4.30%	7.09%	11.14%	15.05%	9.07%	52.60%	1 st day to 10 th day after free period
1.12%	0.86%	1.75%	2.22%	4.30%	7.09%	11.14%	7.52%		36.00%	11 th day to 20 th day after free period
1.12%	0.86%	1.75%	2.22%	4.30%	7.09%	5.57%			22.91%	21 st day to 30 th day after free period
1.12%	0.86%	1.75%	2.22%	4.30%	3.55%				13.79%	31 st day to 40 th day after free period
1.12%	0.86%	1.75%	2.22%	2.15%					8.09%	41 st day to 50 th day after free period
1.12%	0.86%	1.75%	1.11%						4.83%	51 st day to 60 th day after free period
1.12%	0.86%	0.87%							2.85%	61 st day to 70 th day after free period
1.12%	0.43%								1.55%	71 st day to 80 th day after free period
0.56%									0.56%	81 st day onwards after free period

(C). Slab Rate Calculation:

Existing Slab Rate for 1 st day to 10 th day after free period	2.07	X
Existing Slab Rate for 11 st day to 20 th day after free period	4.14	2x
Existing Slab Rate for 21 st day onwards	6.21	3x

(D). Revised storage charge calculation:

1	Annual Revenue Requirement from storage activity as per approved TAMP Order No.TAMP/42/2009-KPT dated 17 August 2010 relating to fixation of upfront tariff for dry bulk terminal	₹11,68,70,000 (₹11.68 crores)		-
2	Optimal capacity as per TAMP Order dated 17 August 2010 relating to fixation of upfront tariff for dry bulk terminal	1,41,12,000 (14.112 million tonnes p.a.)		
3	Quantity of cargo to be stored for 1 st to 10 th day after free period	52.60%*	X	7423246
4	Quantity of cargo to be stored for 11 th to 20 th day after free period	36.00%*	2X	14846492
5	Quantity of cargo to be stored from 21 st day and onwards after free period	54.58%* (22.91% + 13.79% + 8.09% + 4.83% + 2.85% + 1.55% + 0.56%)*	3X	22269738
6	No. of days in a slab			10
7	Total optimal capacity to attract storage charge			44539476
8	Revised storage rate calculation for the first slab 1 st day to 10 th day after free period	=(116870000/14112000)/ (44539476/10)	*	0.29
9	11 th day to 20 th day after free period	=0.29X2		0.57
10	21 st day onwards	=0.29X3		0.86

* % of cargo availing storage after free period is arrived by DPT based on actual evacuation pattern for the years 2015-16 to 2017-18 for which detailed working given in Annex-A of the proposal by the DPT.

(E). Based on the revised calculation, the revised proposed storage charges after the prescribed free period is as follow:

For Import / Export:

(Rate in ₹ per MT per day)

Commodity	Rate from 1 st day to 10 th day	Rate from 11 th day to 20 th day	Rate from 21 st day onward
All types of cargo	₹0.29	₹0.57	₹0.86

(viii). The computation of revenue estimation at the revised proposed storage charges matching with the ARR estimates to be recovered from storage charges in original upfront tariff Order dated 2 November 2010 is given below:

Particulars	% Qty.	Qty.	Rate for days per tonne per day	₹ in lakhs
Total optimal cargo capacity as assessed in Original Order dated 17.8.2010		14112000	10	-
1 st day to 10 th after free period	52.60%	7422912	0.29	215.26
11 th day to 20 th after free period	36.00%	5080320	0.57	289.58
21 st day to 30 th after free period	22.91%	3233059	0.86	278.04
31 st day to 40 th after free period	13.90%	1961568	0.86	168.70
41 st day to 50 th after free period	8.09%	1141661	0.86	98.18
51 st day to 60 th after free period	4.83%	681610	0.86	58.12
61 st day to 70 th after free period	2.85%	402192	0.86	34.59
71 st day to 80 th after free period	1.55%	218736	0.86	18.81
81 st day to 90 th after free period	0.56%	79027	0.86	6.80
Total Revenue				1168.58

[Arithmetical errors corrected]

(ix). On the request of DPT vide its letter dated 31 January 2019, M/s.AKBTPL vide its letter dated 01 February 2019 has furnished the consent to the proposed revised tariff for storage.

(x). The revised calculations for the proposed tariff for storage were also presented in detail and discussed in the Board of DPT in its meeting held on 06 December 2019. Based on that, the Board has resolved vide Resolution No.94 to approve the above proposed rationalisation of storage tariff for the project. The DPT Board of Trustees in the meeting held on 06 December 2019 has resolved the following points:

(a). In consistence with directives of the MOS letter dated 11 July 2018, the Board resolves to approve the rationalized tariff of Storage Charges (achieving the ARR as per already approved TAMP Notification) based on the actual evacuation of cargo from the project during the years 2015-16, 2016-17 and 2017-18 as given below:

(₹ per MT per day)

Reference	Rate from 1 st day to 10 th day	Rate from 11 th day to 20 th day	Rate from 21 st day onwards
Revised proposed tariff	₹0.29	₹0.57	₹0.86

The above tariff will be indexed to inflation of 60% of variation in WPI occurring between 01 January 2010 and 1st January of relevant year.

(b). To approach TAMP for approval of the above proposed rationalized tariff of Storage Charges as per the directive issued by MOS provided under its letter

dated 11 July 2018. Also, to send the submission of AKBTPL vide letter dated 01 February 2019 to TAMP alongwith the Tariff proposal for storage;

- (c). The proposed Rationalized Tariff for storage will be effective from 11 July 2018;
- (d). The proposed Rationalized Tariff for storage will be reviewed after one year from date of Notification i.e., the proposed tariff will be effective for initial period of one year or approval of revised tariff, if any, post review whichever is later.
- (xi). In view of above and in consistence with directives of the MOS letter dated 11 July 2018, DPT requests the Authority to approve the following revised proposed tariff for storage beyond the prescribed free period:

(A). **Import / Export:**

(Rate in ₹ per MT per day)

Commodity	Rate from 1 st day to 10 th day	Rate from 11 th day to 20 th day	Rate from 21 st day onwards
All types of cargo	₹0.29	₹0.57	₹0.86

- (a). The above tariff will be indexed to inflation of 60% of variation in WPI occurring between 01 January 2010 and 1st January of relevant year.
- (b). The proposed Rationalized Tariff for storage will be effective from 11 July 2018.
- (c). The proposed Rationalized Tariff for storage will be reviewed after one year from date of Notification i.e., the proposed tariff will be effective for initial period of one year or approval of revised tariff, if any, post review whichever is later.

3.1. Since there were gaps in proposal of DPT dated 21 December 2019, the DPT was vide our letter dated 3 January 2020 requested to furnish requisite information/ documents on a few points. In response, the DPT vide its email dated 07 January 2020 has furnished its reply to us. Based on submissions of DPT vide its letter dated 07 January 2020, as regards seeking retrospective revision of proposed SOR from 11 July 2018, while acknowledging the proposal, DPT was vide our letter dated 13 January 2020 requested to furnish further clarification on the said matter. The DPT has responded vide its letter dated 23 January 2020.

3.2. A summary of the information/ document sought by us and reply furnished by DPT are tabulated below:

Sr. No.	Information / documents sought by us	Reply furnished by DPT
(i).	Requisite details with documentary evidence to establish that said project fulfils the 3 criteria prescribed in the MOS letter dated 11 July 2018 in para 3 read with 6 for categorization of PPT Project as "Stressed Project".	The documentary evidence establishing that subject project is fulfilling 3 criteria as per MOS letter dated 11 July 2018 towards categorization as "Stressed Project" are furnished which is brought out in subsequent paragraph. [Refer Page Nos.597-604 of Agenda item No.29 of DPT's Board Meeting held on 06 December 2019.]
(ii).	The said details to be substantiated by a Certificate from a practicing Chartered Accountant certifying the requisite details as per para 3 (ii) and (iii) of the MOS letter for categorization of the said PPP Project as Stressed Project by the DPT. This is in line with the approach followed by other Major Port Trusts as well like VPT who had filed proposal in pursuance of MOS letter dated 11 July 2018.	A certificate issued by the Chartered Accountant certifying Cash Loss, Net Loss and Net Worth for the details as per para 3 (b) and 3 (c) of MOS letter dated 11 July 2018 is furnished which is brought out in subsequent paragraph. [Refer Page Nos.602-604 of Agenda Item No.29 of DPT's Board Meeting held on 06 December 2019.]
(iii).	Approval of Board of Trustees of DPT for categorization of the said PPP project as	In the DPT's letter dated 23 December 2019, by enclosing the resolution No.94 of Board

	<p>Stressed Project based on the 3 criteria prescribed in the MOS letter dated 11 July 2018.</p>	<p>Meeting dated 06 December 2019, it was submitted that the proposed rationalization of storage tariff for the project has been approved by Board of DPT. The aforesaid approval of the Board is on the proposal submitted under Agenda item no.29 (copy furnished). Under the Agenda item by submitting the documents specified in response to the above observations as Sr. Nos.1 & 2 and by furnishing the detailed examination of such documents by Transaction Advisor of DPT for PPP Projects [Page Nos.605-607 of Agenda item no.29 submitted by DPT to its Board], it was submitted to Board of Trustees of DPT that the subject project fulfills the criteria(s) as specified by MOS vide its directives dated 11 July 2018, hence, the subject project is classified as "Stressed Project" [para 19.1 at Page No.552 of Board Agenda item No.29 submitted by DPT to its Board.]</p> <p>By considering above, the Board of Trustees of DPT has approved the proposal of rationalization of Storage tariff. By this it is construed that the Board of Trustees of DPT has also approved categorization of the subject PPP Project as "Stressed Project" based on the 3 criteria prescribed in the MOS letter dated 11 July 2018.</p>
(iv).	<p>(a). The DPT proposal dated 21 December 2019 in concluding paragraph states that proposed Rationalized storage Tariff will be effective from 11 July 2018 i.e. DPT seeks retrospective amendment from 11 July 2018. It is relevant here to state that the said MOS letter dated 11 July 2018 does not contain any provision for retrospective effect of rationalisation in storage charges of Stressed PPP project. The DPT to suitably amend its proposal for considering it prospectively.</p>	<p>The proposal of rationalization of Storage Tariff for the Project will be effective from 11 July 2018, the date on which the MOS have communicated the Guidelines/ directives for "Stressed Project", viz., removal of stress including of rationalization of storage charges of Stressed PPP Projects. Hence, the subject proposal of DPT towards rationalization of storage tariff may not be construed as retrospective for the purpose of its effectiveness.</p> <p>Accordingly, as approved by DPT Board, the proposed rationalization of Storage Tariff is approved w.e.f. 11 July 2018, the date on which the MOS has communicated the Guidelines/ directives for Stressed Project.</p>
	<p>(b). With reference to the above submission, the DPT is requested to give reference to the relevant para in the MOS letter dated 11 July 2018 prescribing that proposal of Major Port Trusts for rationalisation in storage tariff for Stressed PPP Project shall come into effect from 11 July 2018 (i.e. retrospective effect as far as DPT proposal filed in January 2020 is concerned)</p>	<p>The DPT has vide its letter dated 22 January 2020 has clarified that in general, the directives of issuing Authority become effective / come into force from the date of issuing such directives until otherwise specifically mentioned about date of its effectiveness in the directives itself.</p> <p>In the instant case, as the MOS directives dated 11 July 2018 does not spell specific date of effectiveness of the directives, the present proposal of rationalization of storage tariff for the project will be effective from 11 July 2018, the date on which the MOS have communicated the Guidelines / directives for Stressed project. Hence, the subject proposal of DPT towards rationalization of storage tariff</p>

		<p>may not be construed as retrospective for the purposed of its effectiveness.</p> <p>Accordingly, as approved by DPT Board, the proposed rationalization of Storage Tariff is approved w.e.f. 11 July 2018, the date on which the MOS have communicated the Guidelines / directives for Stressed project.</p>
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4.1. As stated by the DPT, the MOS vide its e-mail dated 11 July 2018 has issued the letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 regarding Stressed PPP project along with copy of report of the Committee chaired by Chairman, IPA on the issues pertaining to Stressed PPP projects

4.2. The said letter of MOS at Para 3 states that the MOS has formed a Committee under the chairmanship of Chairman IPA to take timely decision on port issues i.e. stressed PPP project and issues such as MGT, Permissions, Port charges, Storage charges etc. of PPP users. The said committee after detailed examination of various issues including the issue of storage charges faced in the PPP projects of various major ports has submitted its report to the MOS. The said Committee has recommended the following criteria for classification of PPP project as "**Stressed Projects**":

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

4.3. The MOS has, subsequently, formed a Committee under the Chairmanship of AS&FA, MOS alongwith JS (P) and Chairmen of DPT, VPT and KOPT for examination of IPA Report for suggesting future course of action.

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

4.5. Para 7 of the MOS letter states that the Major Ports are directed to adopt the aforesaid procedure including review of the situation periodically for optimum utilization of the facility created.

4.6. Referring to the said letter of MOS, the DPT has filed the current proposal for amendment in the storage schedule approved by the Authority in upfront tariff Order No.TAMP/42/2009-KPT dated 17 August 2010 for the Dry Bulk Terminal off Tekra near Tuna at Port of Kandla to be developed under PPP mode in accordance with the guidelines for upfront tariff setting for PPP projects at Major Ports and notify the SOR in the name of BOT operator AKBTPL. The DPT has furnished a copy of board resolution of its Trustees held on 06 December 2019 proposing for amendment/ modification/ alteration with an appropriate proposal for rationalization of storage charges in consultation with AKBTPL so as to achieve the ARR as per the TAMP guidelines/ notification under the provisions available at Article 21.9 of the Concession Agreement.

4.7. The DPT vide its letter dated 7 January 2020 has drawn reference to the relevant Page Nos of the Agenda note submitted by the DPT to its Board of Trustees, wherein necessary documents are submitted to show that subject project is fulfilling 3 criteria as per MOS letter dated 11 July 2018 for categorization of the project as "Stressed Project":

- (A). (i). Cargo handled as per the Cargo Handling Certificates issued by DPT's Traffic Department in FY 2016-17 is 4.45 MMT and in FY 2017-18 is 4.2 MMT. Copies

of cargo handling certificates issued by DPT's Traffic Department are furnished along with the proposal by the DPT.

- (ii). Cash loss incurred for 2 preceding financial years i.e. FY 2016-17 is ₹3,374.32 lakhs and for FY 2017-18 is ₹5,566.75 lakhs. The cash loss figures are certified by AKBTPL's Statutory Auditor (copy furnished).
- (iii). Auditor's certificate giving the statement of year-wise cash loss and net worth during the operation period furnished for the financial years 2014-15 to FY 2017-18 along with the notes are given below:

(₹ in lakhs)

Year	Cash Loss (Refer note 2 below)	Net Worth	Net Loss
2014-15	Note 3 below	1,420.30	-580.42
2015-16	Note 3 below	-4,022.20	-15,442.50
2016-17	-3,374.32	-13,137.74	-9,130.13
2017-18	-5,566.75	-24,531.42	-11,393.68

Notes in the Certificate issued by the Auditor:

- (i). The Company started its commercial operations from 17 March 2015 and accordingly, net loss and net worth have been considered from 2014-15 onwards
- (ii). Cash Loss = Total Comprehensive Income+ Depreciation and Amortization Expense
- (iii). In terms of letter from DPT dated July 17, 2018 to the company, the cash loss details are required for preceding two financial years.

5. In view of the above position and considering that in principle approval for similar proposal of other two stressed projects of Visakhapatnam Port Trust (VPT) viz., Vizag General Cargo Berth Pvt. Ltd. (VGCBPL) and Adani Vizag Coal Terminal Pvt. Ltd. (AVCTPL) was approved pending final order, this Authority granted adhoc approval to the proposal of the DPT on 20 February 2020 subject to final decision of this Authority after completion of prescribed consultation process with stakeholders was communicated to the DPT vide our letter dated 24 February 2020.

6. In accordance with the prescribed consultation process, a copy of DPT proposal dated 21/23 December 2019 and subsequent DPT letter dated 07 January 2020 was forwarded to the concerned stakeholders on 13 January 2020 and on 22 January 2020 for their comments. We have received comments only from Indian National Shipowners Association (INSA) which was forwarded to DPT as feedback information. The DPT vide its email dated 16 March 2020 have furnished its reply.

7. A joint hearing in this case was held on 12 March 2020 at the DPT premises. The DPT made a brief Power Point presentation of its proposal. At the joint hearing, the DPT and the concerned users/ user organizations have made their submissions.

8.1. The Board of Trustees of DPT has approved the rationalised storage charge with effect from 11 July 2018 after considering that this project meets the 3 prescribed criteria for project to be declared as "Stressed Project".

8.2. The DPT has proposed the rationalized storage charge with reference to the upfront tariff Order dated 17 August 2010. The DPT has not updated the revised storage charge with the applicable indexation factors to arrive at the current revised storage charge after the applicable indexation. The applicable indexation factor under the upfront tariff guidelines of 2008 is cumulative indexation of 25.67% upto the year 2018-19 for the base year 1 January 2010, and thereafter annual indexation factor of 2.07% and 2.56% for the years 2018-19 and 2019-20 respectively. A comparative position of the storage charge approved by this Authority in the upfront tariff Order dated 17 August 2010, storage charge notified in the name of the AKBTPL in the Order dated 2 January 2015, the revised rationalized storage proposed by the DPT and the revised rationalized storage approved by this Authority on ad hoc basis for import / export cargo after the applicable indexation factor are given below:

- (i). **Storage Charges prescribed in the tariff Order No.TAMP/42/2009-KPT dated 17 August 2010:**

(Rate in ₹ Per MT per day)

Commodity	Rate for 1 st day to 10 th day	Rate for 11 th day to 20 th day	Rate for 21 st onwards
All types of cargo	2.07	4.14	6.21

- (ii). **Indexed Storage Charges notified in the name of AKBTPL in the tariff Order No.TAMP/59/2014-KPT dated 02 January 2015**

(Rate in ₹ per MT per day)

Commodity	Rate for 1 st day to 10 th day	Rate for 11 th day to 20 th day	Rate for 21 st onwards
All types of cargo	2.54	5.07	7.61

- (iii). **Revised rationalized Storage charge proposed by the DPT with reference to the original tariff Order dated 17 August 2010**

(Rate in ₹ per MT per day)

Commodity	Rate for 1 st day to 10 th day	Rate for 11 th day to 20 th day	Rate for 21 st onwards
All types of cargo	₹0.29	₹0.57	₹0.86

- (iv). **Revised rationalized Storage charge proposed by the DPT indexed with applicable indexation factor to arrive at the rates as on the date of the approval by the Authority (25.67 %+ 2.07%+2.56%)**

(Rate in ₹ per MT per day)

Commodity	Rate from 1 st day to 10 th day	Rate from 11 th day to 20 th day	Rate from 21 st day onwards
All types of cargo	₹0.38	₹0.75	₹1.13

9. As stated earlier, the DPT in its proposal dated 21 December 2019 has proposed the rationalized storage charge. The rate proposed by DPT is with reference to the upfront storage tariff approved in the upfront tariff Order dated 17 August 2010. The DPT has not applied the applicable indexation factor with reference to the rationalised (i.e. reduced) storage charge to arrive at the revised storage charge after the applicable indexation. Subsequent to joint hearing, the DPT vide its email dated 13 March 2020 has furnished the proposed rationalised indexed storage charges beyond free period after applying applicable indexation factor as given below:

Revised proposed tariff w.e.f.	Rate from 1 st day to 10 th Day	Rate from 11 th Day to 20 th Day	Rate from 21 st Day onwards
11.07.2018 to 31.07.2018	0.36	0.73	1.09
01.08.2018 to 31.03.2019	0.37	0.74	1.12
01.04.2019	0.38	0.76	1.14

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

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

- (i). The proposal mooted by the Deendayal Port Trust (DPT) seeks approval of this Authority for rationalisation of indexed upfront tariff for storage charges for Dry Bulk Terminal off Tekra near Tuna approved by this Authority vide Order No.TAMP/59/2014-KPT dated 02 January 2015 while notifying the SOR for Dry Bulk Terminal developed off Tekra near Tuna outside Kandla creek by the BOT operator M/s. Adani Kandla Bulk Terminal Pvt. Ltd. (AKBTPL) on Build, Operate and Transfer (BOT) basis under Public Private Partnership (PPP) model with DPT which is governed by the upfront tariff guidelines of 2008, in pursuance of Ministry of Shipping (MOS) letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 issued to all Major Ports to deal with Stressed PPP projects.
- (ii). As already brought out in the earlier paragraphs, this Authority had vide Order No.TAMP/42/2009-KPT dated 17 August 2010 fixed upfront tariff for the Dry Bulk

Terminal developed off Tekra near Tuna outside Kandla creek on BOT basis under PPP model with DPT under the upfront tariff guidelines of 2008.

The DPT has awarded the project to AKBTPL. In compliance of the provisions of Guidelines, the SOR was notified in the name of AKBTPL vide Order No.TAMP/59/2014-KPT dated 2 January 2015 after indexing the notified upfront tariff approved by this Authority in the tariff Order of 17 August 2010.

- (iii). The current proposal of DPT is taken up for processing because it is filed in pursuance of the MOS letter dated 11 July 2018 to the Major Port Trusts as regards the stressed PPP project.
- (iv). The MOS in its letter dated 11 July 2018 has prescribed the three criteria for classification of PPP project as Stressed Projects by Major Port Trusts which has been brought out in para 7.2 above and hence not reiterated for the sake of brevity. The Board of Trustees of the DPT has declared the project handled by the AKBTPL as Stressed Project. The port has furnished the following as regards the three criteria prescribed in the MOS letter which has been considered by the Board of Trustees of the DPT for declaring the project of AKBTPL as Stressed Project:

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

Year	Cargo Handled (MMT)
2016-17	4.45
2017-18	4.20

[The port has not furnished capacity utilisation in terms of percentage. The Port has, however, stated that this project was awarded to AKBTPL at DPT on BOT basis with a capacity of 14.112 MTPA as per the upfront tariff approved by this Authority. The capacity utilization at traffic reported to have been handled by the AKBTPL in the preceding two years as tabulated above works out to 31.53% in the year 2016-17 and 29.76% in the year 2017-18 i.e. capacity utilization is below 70%.]

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

Year	Cash Loss (Refer note 2 below)	₹ in lakhs	
		Net Worth	Net Loss
2014-15	Not furnished	1,420.30	-580.42
2015-16	Not furnished	-4,022.20	-15,442.50
2016-17	-3,374.32	-13,137.74	-9,130.13
2017-18	-5,566.75	-24,531.42	-11,393.68

From above, it is seen that there has been cash losses of ₹33.74 crores in the financial year 2016-17 and ₹55.67 crores in the year 2017-18. Further, the net worth of the AKBTPL is reported to be negative to the tune of (-)₹131.38 crores in financial year 2016-17 which has increased to negative net worth of (-)₹245.31 crores in financial year 2017-18 which is more than 50% erosion prescribed as one of the criteria for declaring the project as stressed project.

- (v). (a). The Board of Trustees of DPT has approved the rationalised storage charge with effect from 11 July 2018 after considering that this project meets the 3 prescribed criteria for project to be declared as "Stressed Project". The underutilisation of capacity below 70% is supported by the DPT letter and the cash loss for preceding two years 2016-17 and 2018-19 and erosion of net worth of at least 50% is supported by the Certificate from practicing Chartered Accountant furnished by AKBTPL and considered by the Board of Trustees of the DPT. The same is relied upon.

The DPT has for removal of the stress of the Project, as per the MOS directives, proposed to rationalize the tariff for storage for this project. Based on the actual evacuation of cargo from this project, during the years 2015-16, 2016-17 and 2017-18 and by keeping the revenue requirement for storage for the project same as per the originally approved tariff for the project at ₹11.68 crores, the proposed tariff for storage, beyond free period, is worked out by the DPT. The DPT has also furnished the revenue estimation at the proposed rationalised storage charge to show that at the proposed rationalised storage charge, the revenue matches with the ARR estimated from storage in the original tariff Order No.TAMP/42/2009-KPT dated 17 August 2010 relating to fixation of upfront tariff for dry bulk terminal. The detailed calculations for the proposed tariff for storage is furnished by the DPT which is brought out in the earlier para of this order and hence not reiterated here for the sake of brevity.

The proposal filed by the DPT is based on the approval of the Board of Trustees of the DPT; it fulfills the three criteria prescribed in the MOS letter dated 11 July 2018 on the Stressed Project and the proposal of the DPT is to help to remove one project of the DPT from stress and to revive it. Therefore, this Authority is inclined to approve the indexed rationalised storage charge proposed by the DPT. There is slight mismatch in the indexed rationalised storage arrived by the DPT in the second decimal point vis-à-vis the indexed rationalised storage arrived by us applying the applicable indexation factor. The indexed rationalised storage proposed by the DPT is corrected to that extent considering the applicable indexation factor announced by this Authority.

- (vi). The DPT has in its proposal dated 21 December 2019 sought approval of the rationalised storage charge with retrospective effect from 11 July 2018 i.e. from the date the MOS issued the letter dated 11 July 2018 as regards stressed PPP Projects. The proposal of the DPT is based on the approval accorded by the Board of Trustees of DPT for retrospective effect from 11 July 2018.

Ordinarily this Authority does not approve to rates with retrospective effect. It is relevant here to state that the said MOS letter dated 11 July 2018 does not contain any provision for retrospective effect of rationalisation in storage charges of Stressed PPP project. When sought clarification in this regard with a request to DPT to propose the rationalised rate with prospective effect as per the ordinary practice followed by this Authority, the DPT has stated that its proposal towards rationalization of storage tariff may not be construed as retrospective for the purpose of its effectiveness and be approved w.e.f. 11 July 2018, the date on which the MOS has communicated the Guidelines/ directives for Stressed Project.

As regards retrospective effect of the proposed rationalised storage charge sought by the DPT, it is relevant here to draw reference to the proceedings of the joint hearing wherein the AKBTPPL has stated that it has given an undertaking dated 3 December 2019 to DPT wherein it has undertaken to pay the revenue share @ 25.09% as per the Concession Agreement on storage charge accrued till 10 July 2018 (i.e. 1 day prior to the MOS letter dated 11 July 2018) calculated as per approved upfront tariff along with interest thereon and from 11 July 2018 onwards the AKBTPPL have undertaken to pay revenue share to the DPT on storage charge based on rationalised storage charge to be approved by this Authority along with interest thereon or on ARR considered to arrive at the storage charge in the TAMP Order of the 2010, whichever is higher. The DPT has also confirmed this position and categorically stated that this arrangement is a win-win situation for the port and the AKBTPPL. The DPT has further stated that AKBTPPL is expected to reach 6.5 MTPA in the current financial year 2019-20 and have promised to handle 10 MTPA traffic in the next year 2020-21 and this proposal will help to revive the this stressed project and has also been highlighted this aspect as one of the achievements of the DPT to the Ministry of Shipping.

In view of the above position and also recognizing that the Board of Trustees of the DPT have vide resolution dated 6 December 2019 approved the rationalised storage

charge with retrospective effect from 11 July 2018, this Authority approves the proposal of the DPT for retrospective effect from 11 July 2018 i.e. from the date of MOS letter till 19 February 2020 i.e. the adhoc approval granted by this Authority to the amended rationalised storage charge proposed by the DPT.

- (vii). The DPT had in the original proposal proposed the rate arrived at the level of 2010 without indexation and had proposed a note for annual indexation. However, subsequently, DPT has proposed the indexed rationalised storage charge which is to be prescribed subject to minor correction in the second decimals. Hence the note proposed by the DPT for indexation of the rate is not found relevant.

It is relevant here to state that the indexed amended storage charge proposed by the DPT captures the indexation factor applicable for the year 2019-20. The BOT operators governed under the 2008 guidelines are entitled for annual indexation @ 60% of the WPI announced by this Authority. The AKBTPPL is governed under the upfront tariff guidelines of 2008 and hence is entitled for annual indexation for the year 2020-21 announced by this Authority on the rationalised amended storage charge approved in the Order dated 24 July 2019. The indexation factor announced by this Authority for the year 2020-21 under the upfront tariff under 2008 guidelines @ 60% of the WPI is 1.13%. Therefore, the indexed rate applying 1.13% indexation factor shall be applicable from 1 April 2020 till 19 February 2021 and accordingly is included in the schedule of rationalised storage charge.

- (viii). Since the current proposal of the DPT is for a limited period of one year and recognizing that the storage charge and the free period prescribed in the SOR notified in the name of the AKBTPPL is for the entire project period of 30 years subject to annual escalation, the existing note nos.(i) to (iii) relating to storage charge as per the schedule 4 in the SOR is prescribed herein separately for ease of application instead of tinkering with the existing Scale of Rates of the AKBTPPL approved by this Authority in the Order No.TAMP/59/2014-KPT dated 2 January 2015.

- (ix). The DPT has proposed a note that the proposed Rationalized Tariff for storage will be reviewed after one year from date of Notification i.e., the proposed tariff will be effective for initial period of one year or approval of revised tariff, if any, post review whichever is later. In this regard, it is relevant to state that as per Para 6 of the MOS letter dated 11 July 2018 Concessioning Authority is to review the situation periodically for optimum utilization of the facility created. In the case of the other stressed projects at the VPT, the VPT had sought approval of the rationalised storage charge for a period of one year and to review thereafter and the approval was granted by this Authority for the period of one year from the date of in-principle approval accorded for the two stressed PPP projects of the VPT. In the instant case, since the rationalised storage charge was approved by this Authority on adhoc basis from 20 February 2020, validity of the amended storage schedule is approved by this Authority for the period of one year from that date when adhoc approval was granted till 19 February 2021. Further, for the reasons stated earlier, the proposal of the DPT for retrospective effect for the period 11 July 2018 i.e. from the date of the MOS letter till 19 February 2020 when the adhoc approval was granted by this Authority is approved. Thus, the note proposed by the DPT is modified to state that it is prescribed from 11 July 2018 and shall be valid till 19 February 2021.

12.1. In the result, and for the reasons given above, and based on a collective application of mind, the storage charge applicable as per existing schedule 4 in the Order No.TAMP/59/2014-KPT dated 02 January 2015 approved by this Authority notifying the SOR in the name of the AKBTPPL is replaced with the following schedule until its validity period prescribed till 19 February 2021.

(in ₹ per tonne per day or part thereof)

Sl. No.	Particulars	Amended indexed Storage Charge for the period <u>11.07.2018 till 19.02.2021</u>		
		11.07.2018 to 31.03.2019	For the year 2019-20	For the period 01.04.2020 to 19.02.2021
1.	Storage Charges from 1st day to 10th day	0.37	0.38	0.39
2.	Storage Charges from 11 th day to 20th day	0.73	0.75	0.76
3.	Storage Charges from 21st day onwards	1.10	1.13	1.14

Note for Section 4

- (i). Five free days for import cargo and fifteen free days for export cargo shall be allowed. For the purpose of calculation of free period, Customs notified holidays and Terminal's non- working days shall be excluded.
- (ii). Storage charges shall be payable for all days including Terminal's non- working days and Customs notified holidays for stay of cargo beyond the prescribed free days.
- (iii). Storage charge on cargo shall not accrue for the period when the terminal operator is not in a position to deliver / ship the cargo when requested by the user due to reasons attributable to the terminal operator.
- (iv). The above storage schedule is approved for the period from 11 July 2018 and shall be valid till 19 February 2021.

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

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE COMMENTS RECEIVED FROM THE PORT USERS/ USER ORGANIZATIONS AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY

F.No.TAMP/64/2019-DPT: Proposal received from Deendayal Port Trust (DPT) for rationalisation of indexed upfront tariff for storage charges for Dry Bulk Terminal off Tekra near Tuna approved by the Authority vide Order No.TAMP/59/2014-KPT dated 02 January 2015 while notifying the SOR for Dry Bulk Terminal developed off Tekra near Tuna outside Kandla creek by the BOT operator M/s. Adani Kandla Bulk Terminal Pvt. Ltd. (AKBTPL) on Built, Operate and Transfer (BOT) basis under Public Private Partnership (PPP) model with DPT in pursuance of the Ministry of Shipping (MOS) letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on “Stressed PPP Projects”.

A summary of the comments received from the Indian National Shipowners Association (INSA) and reply furnished by Deendayal Port Trust (DPT) thereon are tabulated below:

Sr. No.	Comments received from INSA	Reply furnished by DPT
(i).	INSA is grateful for the opportunity provided to give our views. After perusing through the contents we presume the intent of the proposal is to incentivize trade for making use of the facility developed and “reduction of cost” is the identified tool.	No comments of DPT.
(ii).	INSA are very pleased note that on a voluntary basis a Major Port management is opting to reduce user’s cost for a non-Main line container trade.	
(iii).	However, INSA noticed that the reduction in cost is proposed to be achieved only by reducing storage charges. TAMP is aware that on various occasions and through representations by not just INSA but other associations also, it is already established that there is need and scope to reduce VRC in all Indian ports. In understanding of INSA, this avenue of VRC reduction doesn’t seem to have been explored. INSA requests the authority to look in to possibility of all options available to reduce cost of using the Dry bulk Terminal by trade.	
(iv).	Storage Charges, Vessel related Charges & Handling charges for cargo (i.e. Loading / Discharging + Wharfage) is another major cost that contributes to the overall cost of per unit cargo weight for using a particular port and apparently it also has been left out of consideration for reducing trade cost.	No comments of DPT.
(v).	The reasoning & calculations submitted in support of reducing Storage charges seems to be flawed as explained below-	(i). DPT has prepared the proposal for rationalization of indexed upfront tariff for storage charges for Dry Bulk Terminal off Tekra near Tuna as per the directions stipulated by the MOS letter dated 11 July 2018 providing directions to all Major Ports for resolving issues with regard to Stressed PPP Projects.
(a).	As per existing tariff, ₹2.07 / tonne / day is the storage charges for first 10 days and then increased by 100% after 10 days i.e. up to 20 days. From 21 st day the storage is capped to 300 % i.e. ₹6.21/tonne/day.	
(b).	From the information submitted, the usage of terminal is just 33% of the capacity and is admitted to be underutilized. With the asset already under stress, we find it difficult to comprehend rational of reducing only storage basic slab from ₹2.07 to ₹0.29 i.e. to level of 14% for incentivizing volume growth. INSA notices	

	that the revenue requirement is maintained as per the original proposal and is assumed to be fulfilled by utilization going up from present 30% to 100%.	(iii). The MOS letter primarily addresses the issue with regard to Abnormal Storage Charges for PPP Projects in Major Ports and provides methods for resolving issues related to Storage Charges.
(vi).	Trust / Authority would consider following doubts that come to mind while disposing of the proposal.	(iv). Based on the MOS directives vide the aforementioned letter, the subject project was evaluated by DPT and was categorized as a Stressed PPP Project.
(a).	Will the terminal capacity utilization go up from 30% to 100%	(v). Further based on the several representations made by the Concessionaire and present directives provided vide MOS letter, DPT proposed to rationalize the tariff for storage by rationalizing the Rate of Tariff and thereby addressing the issue of Abnormal Storage Charges for the purpose of removal of Stress for the subject Project.
(b).	What other steps are being taken to justify the increase in traffic and time frame assumed for the achieving the utilization of 100 % capacity.	(vi). In addition to the above, it has also been directed by the MOS to periodically review of the situation for the optimum utilization of the facility created.
(c).	If the purpose is to incentivize, why only storage why not other charges mentioned above (VRC & Cargo Related) also be considered.	(vii). Hence based on the above it is to clarify the Rationalization of Storage Charges are being carried out as per MOS directives.
(d).	What happens if the utilization is not achieved? Will the short fall be achieved by further increase in VRC and CRC?	

2. A joint hearing in this case was held on 12 March 2020 at the DPT premises. The DPT made a brief Power Point presentation of its proposal. At the joint hearing, the DPT and the concerned users/ user organizations have made the following submissions:

Deendayal Port Trust (DPT)

- (i). Commercial operation by AKBTPPL commenced in 10 February 2015.
- (ii). TAMP has approved upfront tariff for the project.
- (iii). At the TAMP approved storage tariff, the actual revenue from storage for the years 2015-16 to 2017-18 worked out 40% of total actual revenue as against norm of storage revenue to be 5% of the ARR.
- (iv). The MOS issued a letter dated 11 July 2018 to all the Major Port Trusts giving mechanism to revive stressed PPP project.
- (v). Based on MOS letter dated 11 July 2018, this project is identified by the DPT as Stressed project as it meets all the 3 criteria prescribed by MOS for classification of a project as Stressed Project.
- (vi). In view of the above, the DPT has proposed to rationalise i.e. reduce the approved storage charges based on actual cargo evacuation of 2015-16, 2016-17 and 2017-18.
- (vii). For arriving at the proposed reduced storage charge, the ARR from storage is, however, maintained as estimated in original tariff Order approved by TAMP.
- (viii). The proposal was also sent to IPA for their opinion. The IPA has confirmed that the rationalised storage charge proposed is in order.
- (ix). We also consulted the Concessionaire, AKBTPPL.

- (x). AKBTPL has accepted the revised proposed storage charge as calculated by DPT.
- (xi). The Board of Trustees of DPT has approved proposed rationalised storage charge to be made effective from 11 July 2018.
- (xii). The proposed rate shall be reviewed post 1 year from the date of implementation of revised tariff approved by TAMP.

M/s.Adani Kandla Bulk Terminal Pvt. Ltd. (AKBTPL)

- (i). This is 5th year of our operation. This issue had been raised earlier also. We are thankful that port has initiated the steps to do the necessary correction.
- (ii). Based on MOS letter dated 11 July 2018, we have given audited accounts, Chartered Accountant certificate and traffic detail as required to DPT.
- (iii). DPT has based on details provided by us and since the project is stressed, filed the proposal to TAMP seeking rationalisation in storage charge i.e. reduced the upfront tariff approved by the TAMP.
- (iv). We have given undertaking to DPT that we shall pay the revenue share @ 25.09% as per the Concession Agreement on storage charge accrued till 10 July 2018 (i.e. 1 day prior to the MOS letter dated 11 July 2018) calculated as per approved upfront tariff by DPT along with interest thereon.
- (v). Post 10 July 2018, we have undertaken to pay revenue share @ 25.09% on storage charge based on rationalised storage charge with interest thereon or 25.09% of Annual Revenue Requirement considered to arrive at the storage charge in the TAMP Order of the 2010, whichever is higher.
- (vi). We shall pay DPT once they raise the bills based on revised rationalised storage charge approved by TAMP.
- (vii). Even if the actual revenue from storage charge is less than the ARR from storage charge estimated in original Order, we will pay 25.09% revenue share on the ARR estimated from storage charge. Thus, we have committed to protect the revenue of DPT.
- (viii). We have handled more cargo than the last year. We will be closing this year at 6.5 MTPA as against the optimal capacity of 14.11 MTPA.
- (ix). With rationalised storage charge we anticipate to handle 10 MTPA next year.
- (x). Positive action of port has helped to survive the project. Else, it would have collapsed.
- (xi). The survival of this project will lead to increase in cargo volume and also contribute in value addition to the nation.
- (xii). We request TAMP to approve the proposal mooted by DPT.
- (xiii). We request to approve proposal by 31.03.2020 so that we can make appropriate provision in the accounts of this financial year.
- (xiv). Once, DPT revises invoices, we shall pay the dues to the DPT on account of revenue share on storage charge.
- (xv). We are investing on new cranes and yard development and increasing number of weigh bridges to improve infrastructure in the terminal to enable us to achieve the optimal capacity.

Deendayal Port Trust (DPT)

[Chairman]

- (i). The DPT has sought the rationalised storage tariff from 11 July 2018. This flows from the undertaking given by AKBTPL. The AKBTPL has agreed to pay the accrued revenue share on storage charge for the period upto 10 July 2018 calculated as per approved upfront tariff by DPT along with interest thereon. For the subsequent period they have agreed to pay revenue share on storage charge at the rationalised proposed rate. Hence, we have sought this rationalised storage tariff from 11 July 2018. This arrangement is a win-win situation. The proposed tariff is approved by the Board of DPT w.e.f. 11 July 2018 i.e. date when MOS issued the letter on Stressed Project. Hence, approve the rate from 11.07.2018.
- (ii). AKBTPL have guaranteed 7.00 MTPA for the year 2019-20. They are expected to reach 6.5 MTPA.
- (iii). Next year, AKBTPL have promised 10 MTPA traffic.
- (iv). This project was also presented to the MOS in Chairmen meet as one of the achievements of DPT to bring this project out of stress and to revive the project. This project was stressed project. Lot of discussion has happened with MOS in this regard.
- (v). The proposal will help to remove one project of the DPT from stress and to revive it.

Deendayal Port Trust (DPT)

(FA&CAO)

- (i). Once, proposal is approved by TAMP, DPT will have to issue revised invoice to AKBTPL. There will be impact on GST. We request TAMP to approve the proposal before 31 March 2020.
