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TARIFF AUTHORITY FOR MAJOR PORTS

G.No.508

New Delhi,

19 November, 2020

NOTIFICATION

In exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Gateway Terminal India Private Limited (GTIPL) for review of its Scale of Rates approved vide Tariff Order No. TAMP/47/2019-GTIPL dated 20 February 2020 to the extent of compensating upward revision of Estate Lease Rentals of Jawaharlal Nehru Port Trust (JNPT), as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

TARIFF AUTHORITY FOR MAJOR PORTS

Case No. TAMP/30/2020- GTIPL

Gateway Terminal India Private Limited

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Applicant

QUORUM

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

ORDER

(Passed on this 28th day of October, 2020)

This case relates to the proposal received from Gateway Terminal India Private Limited (GTIPL) vide its letter No GTIPL/TAMP/Tariff Proposal-2020/01 dated 17 July 2020 for review of its Scale of Rates approved vide Tariff Order No. TAMP/47/2019-GTIPL dated 20 February 2020, to the extent of offsetting the upward revision of Estate Lease Rentals by Jawaharlal Nehru Port Trust (JNPT).

2.1 This Authority has passed an Order No. TAMP/47/2019- GTIPL dated 20 February 2020 in the case relating to the proposal received from Gateway Terminal India Private Limited (GTIPL) for General revision of its Scale of Rates (SOR) under Tariff Guidelines, 2019. The said Order of GTIPL was notified in the Gazette of India on 3 March 2020 vide Gazette No. 98. The revised Scale of Rates and conditionalities of the GTIPL has come into effect after expiry of 30 days from the date of notification of the Order in the Gazette of India i.e. from 02 April 2020 and will be in force till 01 April 2023.

2.2. The overall revenue impact of the revised SOR was estimated to be a reduction of 6.55% from the tariff being levied by the GTIPL then (as per tariff Order dated 3 March 2010), based on the interim Order of the Hon'ble High Court of Bombay.

3.1. In this backdrop, the GTIPL has filed its proposal vide its letter dated 17 July 2020 for revision of its Scale of Rates approved vide Tariff Order No. TAMP/47/2019-GTIPL dated 20 February 2020, on account of the upward revision of Estate Lease Rentals by the Licensor port Jawaharlal Nehru Port Trust (JNPT). The submissions made by GTIPL are as follows:

- (i). As per JNPT circular no. JNP/FIN/2020/538 dated 12 July 2020, the Estate related Scale of Rates has been revised by JNPT with effect from 18 July 2020. The rates have been increased significantly and will result in significant amount of additional lease rental cost of ₹ 11 crores to GTIPL as given below.

Description	Existing rate-effective April 2020	Area in sq.mtrs		Amount in INR
		Revised rate	Total	Annual Impact
Developed land inside port area	32.52	54	371611	9,57,97,153.76
Developed land outside port area	28.46	45	71015.25	1,40,95,106.82
Undeveloped land inside port	14.2	22.5	16	1,593.60
			Total	10,98,93,854.18

Note:
1 Rates are per sq.mtr per month
2 Rates are escalated @2% annually w.ef April 1.
3 Revised rates effective July 18,2020.

- (ii). TAMP revised Scale of Rates of GTIPL with effect from 02 April 2020 vide Order no. TAMP/47/2019-GTIPL dated 20 February 2020. The rates were based on Annual Revenue requirement of ₹ 65,668 Lakhs for an average annual traffic of 1337416 containers. While calculating the annual revenue requirement mentioned above, the lease rental cost as per the rates prevailing then was considered. However, there is a substantial increase in the lease rental as explained above.

- (iii). The existing tariff is valid for three years from 2020-21 to 2022-23. The annual impact of increase in lease rental cost for these three years is ₹ 11 crores. This unforeseen increase in lease rental cost need to be compensated by tariff increase in accordance with Clause 6 of Tariff Guidelines 2019.
- (iv). It is, therefore, proposed to increase the existing tariff of GTIPL to cover this additional cost of lease rental of ₹ 11 crores as per the detailed working provided as follows:

Calculation of additional Annual Revenue Requirement

Tariff description	Average traffic as per proposal in containers	Proposed increase per container	Incremental Revenue	Existing rate w.e.f 1.5.2020	Proposed rate
Discharge Foreign Empty Gen 20	13,452	72.5	975,294	2,108.12	2,180.62
Discharge Foreign Empty Gen 40	40,863	108.75	4,443,815	3,162.19	3,270.94
Discharge Foreign Empty Gen 45	96	145	13,968	4,216.25	4,361.25
Discharge Foreign Full Gen 20	356,186	75	26,713,950	2,627.76	2,702.76
Discharge Foreign Full Gen 40	258,938	112.5	29,130,488	3,941.63	4,054.13
Discharge Foreign Full Gen 45	267	150	40,000	5,255.51	5,405.51
Load Foreign Empty Gen 20	71,871	72.5	5,210,623	2,108.12	2,180.62
Load Foreign Empty Gen 40	65,629	108.75	7,137,154	3,162.19	3,270.94
Load Foreign Empty Gen 45	42	145	6,042	4,216.25	4,361.25
Load Foreign Full Gen 20	230,937	75	17,320,300	2,627.76	2,702.76
Load Foreign Full Gen 40	167,836	112.5	18,881,513	3,941.63	4,054.13
Load Foreign Full Gen 45	222	150	33,300	5,255.51	5,405.51
Total	1,206,338		109,906,446		

- (v). TAMP is requested to make the revised tariff effective immediately.

3.2. The GTIPL has furnished the JNPT Trade Circular dated 14 July 2020 intimating the revision of Estate Rentals.

3.3. Further, the GTIPL vide its email dated 19 August 2020 has furnished the revised Scale of rates, considering the revised rates as brought out para 3.1. (iv) above.

4.1. In accordance with the consultative procedure prescribed, the proposal of GTIPL dated 17 July 2020 was forwarded to the Licensor Port (JNPT) and concerned users/ user organisations seeking their comments. None of the users/ user organisations have furnished their comments till the case was finalized.

4.2. The JNPT vide its e-mail dated 14 October 2020 has conveyed that the Estate related SOR of JNPT has been implemented w.e.f. 18 July 2020 based on the Gazette Notification No. 219 dated 18 June 2020 issued by TAMP. Estate tariff levied to M/s. GTIPL for revision of its SOR to the extent of upward revision of Estate Lease Rentals by JNPT, may be considered as per Tariff Guidelines 2019 and after taking due consideration of the interest of other stakeholders.

5. In view of the outbreak of COVID-19 and in pursuance of the Ministry of Shipping (MOS) letter no. 11053/30/2020-Coord dated 11 April 2020, a joint hearing in this case was held on 16 September 2020 through Video Conferencing. At the joint hearing, the GTIPL, JNPT and users/ user organisations have made their submissions at the joint hearing.

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

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

- (i). Based on a proposal filed by the tariff of Gateway Terminal India Private Limited (GTIPL), the tariff of GTIPL was last revised vide Order dated 20 February 2020, based on the stipulations contained in the Tariff Guidelines, 2019. The said tariff has come into effect since 02 April 2020 and will be in force upto 01 April 2023.

As stipulated in Clause 2.1 of the Tariff Guidelines, 2019, the Annual Revenue Requirement (ARR), which formed the base to decide the tariff to be levied by GTIPL during the period from 2020-21 to 2022-23, was based on the average actual expenditure incurred by GTIPL during the years 2016-17 to 2018-19, based on the audited annual accounts for the respective years. One of the components of expenditure considered while determining the ARR of GTIPL was the lease rent paid by GTIPL to the Licensor port, Jawaharlal Nehru Port Trust (JNPT) during the years 2016-17 to 2018-19.

Incidentally, based on a separate proposal filed by JNPT, this Authority vide its Order no. TAMP/44/2019-JNPT dated 01 June 2020 has fixed the Scale of Rates for the Estate of JNPT. This Order has come into effect after expiry of 30 days from the date of notification of the Order in the Gazette of India i.e. from 18 July 2020 and will be in force for a period of five years till 17 July 2025. Whereas the SOR of GTIPL was approved in February 2020 prior to June 2020.

Since the JNPT has allotted land to GTIPL, the increase in the Scale of Rates for the Estate of JNPT will lead to a definite and increased outflow for GTIPL in the form of additional lease rent, which is to be paid by GTIPL to JNPT from 18 July 2020 onwards. Given that the impact of the increased lease rent during the tariff cycle 2020-21 to 2022-23 is definite and has not been captured in the ARR which formed the base to decide the tariff to be levied by GTIPL during the period from 2020-21 to 2022-23, the GTIPL has come up with a proposal so as to capture the impact of the additional lease rent, payable by it to JNPT during the tariff cycle 2020-21 to 2022-23, and thereby recover the additional cost by way of increase in some of its tariff items during the tariff cycle 2020-21 to 2022-23.

- (ii). As brought out above, as per the stipulation contained in Clause 2.1 of the Tariff Guidelines, 2019, the actual expenditure incurred by the BOT operator during the past 3 years is to be considered to determine the tariff for the future 3 years. Accordingly, it is recalled that while revising the tariff of GTIPL vide Order of February 2020 the ARR was assessed at ₹ 651.78 crores. The revised Scale of Rates approved vide the said Order was fixed in such a manner so as to enable the GTIPL earn an annual revenue of ₹ 651.78 crores during each of the years 2020-21 to 2022-23, from the various tariff items listed in the SOR of GTIPL. The actual expenditure considered to determine the ARR of GTIPL to the tune of ₹ 651.78 crores, does not capture the increased lease rentals of ₹ 10.99 crores, which the GTIPL is bound to pay to JNPT with effect from 18 July 2020, as per the revised estate rentals of JNPT and as per the provisions of the Licence Agreement entered by GTIPL with JNPT. Thus, the revenue, estimated to be earned by GTIPL during the years 2020-21 to 2022-23 based on the tariff fixed as per the Order of February 2020, will fall short to the tune of ₹ 10.99 crores per annum, as the rates fixed for GTIPL to enable the GTIPL earn an annual revenue of ₹ 651.78 crores during the years 2020-21 to 2022-23, is exclusive of increased lease rentals ₹ 10.99 crores per annum.
- (iii). Clause 2.14 of the Tariff Guidelines, 2019, stipulates that for good and sufficient reasons, the BOT operator may propose revision ahead-of-schedule either for general revision or partial revision of its SOR. The increase in the Estate Rental of JNPT would lead to an increase in expenses of GTIPL; it is a good and sufficient reason. The Licensor port (JNPT) has also acknowledged that the proposal of GTIPL is based on the increased lease rentals of JNPT. Therefore, this Authority is inclined to consider the review proposal for revision of its SOR as filed by GTIPL, in accordance with Clause 2.14 of the Tariff Guidelines, 2019.
- (iv). The GTIPL has furnished detailed workings to establish that the increase in the lease rentals of JNPT will lead to an additional expenditure to GTIPL to the tune of ₹ 10.99 crores. The rates for lease rent for various types of land and the area of various types of land as considered by GTIPL in its calculations are seen to be in order.
- (v). To meet the increase in its expenditure of the lease rentals, the GTIPL is seen to have proposed increase only in some tariff items viz., handling charges on loaded and empty foreign containers, ranging from 2.85% to 3.44%, so as to generate an additional revenue of ₹ 10.99 crores. The overall impact of the proposed increase is an average increase of 3.15% over the indexed tariff of GTIPL prevailing with effect from 01 May 2020.

- (vi). During the joint hearing, the users have objected to the increase in tariff proposed by GTIPL. The Indian Merchants' Chamber (IMC) has taken a view that considering the huge volumes handled by GTIPL, the impact of ₹ 11 crores is insignificant and should be borne by GTIPL itself, without passing it on to the users, by way of increase in tariff. Maritime Association of Nationwide Shipping Agencies-India (MANSA) is of the view that the trade is already suffering due to the COVID-19 pandemic and that any further increase in rates by GTIPL will put the trade in hardship. Thus, it has requested to postpone the increase till the revival of economy. With regard to the submissions made by the users, it is to state that the proposal of GTIPL is within the purview of the stipulations contained in the Tariff Guidelines, 2019, and that the increase in tariff of GTIPL as sought by GTIPL, is warranted so as to enable the GTIPL to earn revenue to meet its expenditure and 16% return on capital employed, as stipulated in the Tariff Guidelines, 2019.

Further, as stated earlier, the overall impact of tariff revision vide tariff Order dated 20 February 2020 was a reduction of 6.55% from the High Court permitted tariff. The overall impact of the proposed increase is an average increase of 3.15% over the indexed tariff prevailing as of 01 May 2020. Considering the 6.55% reduction and the 3.15% increase, the trade is going to pay less than what it was paying before the tariff Order dated 20 February 2020. In any case, the SOR is at ceiling level; the GTIPL has the flexibility to levy lower rates based on commercial considerations.

- (vii). Thus, based on the submissions made by GTIPL in its proposal and the submissions of JNPT and considering that Clause 2.14 of the Tariff Guidelines, 2019, provides for an ahead-of-schedule partial revision of its SOR, for good and sufficient reasons, this Authority is inclined to grant an increase in the handling charges prescribed for different sizes of containers for the activity 'Ship to yard/ yard to ship using port crane' on loaded and empty foreign containers. Consequently, the rates for the corresponding coastal containers is also prescribed at 60% of the corresponding foreign rates, so as to give effect to the Coastal Policy Guidelines of the Government. The said prescription on coastal tariff will not have an impact on the ARR of GTIPL, as the GTIPL in its earlier proposal (which culminated in the tariff Order of February 2020) has not estimated handling of any coastal containers.
- (viii). Though the GTIPL in its proposal had not initially sought for a retrospective revision in tariff, it has, during the joint hearing, sought a retrospective revision in its tariff with effect from 18 July 2020, the date when the revised lease rentals of JNPT has come into force. As rightly put forth by MANSA, the users/ user associations would not in a position to recover the increased rates from their clients retrospectively, who have reportedly already gone away, after availing services. Giving retrospective revision may also lead to billing issues. Hence, this Authority is not inclined to give retrospective revision to the increased rates, as sought by GTIPL. Recognising the lead time required for the Trade to get ready to pay the revised rates, and the time required for the GTIPL to implement the revised rates, the revised charges being approved now shall come into effect after expiry of 15 days from the date of notification of the Order in the Gazette of India. The GTIPL will not be put into disadvantageous position since the entire expenditure incurred by GTIPL in the form of increased lease rentals shall have to be captured during the tariff fixation for the next cycle under ARR Model.

8.1. In the result, and for the reasons given above, and based on the collective application of mind, the existing charges prescribed at Section 1A of the existing SOR of GTIPL are replaced with the following:

Section - 1 Charges for all Normal & Rail in -Rail Out containers/Non vessel bound containers

A. Ship to yard/ yard to ship using port crane.		
Particulars.	Foreign-Going (In INR)	Coastal (in INR)
Loaded Container		
20'	2,702.76	1,621.65
40'	4,054.13	2,432.48
Over 40'	5,405.51	3,243.31
ICD Container		
20'	2,702.76	1,621.65
40'	4,054.13	2,432.48

Over 40'	5,405.51	3,243.31
Empty Container		
20'	2,180.62	1,308.37
40'	3,270.94	1,962.56
Over 40'	4,361.25	2,616.75

8.2. The GTIPL is directed to make necessary amendment in its Scale of Rates.

8.3. The above prescription shall come into effect after expiry of 15 days from the date of notification of the Order passed in the Gazette of India and shall remain valid co-terminus to the validity of the existing Scale of Rates of GTIPL. The approval accorded shall automatically lapse thereafter unless specifically extended by this Authority.

(T.S. Balasubramanian)
Member (Finance)