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**TARIFF AUTHORITY FOR MAJOR PORTS**

G.No. 322

New Delhi,

17 August 2017

**NOTIFICATION**

In exercise of the powers conferred under Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Jawaharlal Nehru Port Trust (JNPT) for seeking amendment to the Order no. TAMP/19/2016-JNPT dated 6 May 2016 passed by this Authority approving Scale of Rates (SOR) for allotment of JNPT land in area allocated for Free Trade Warehousing Zone (FTWZ).

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

## Tariff Authority for Major Ports

### Case No. TAMP/54/2017 – JNPT

The Jawaharlal Nehru Port Trust

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Applicant

### QUORUM

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

### ORDER

(Passed on this 21<sup>st</sup> day of July 2017)

This case relates to a proposal dated 13 June 2017 received from Jawaharlal Nehru Port Trust (JNPT) seeking amendments to the Order no. TAMP/19/2016-JNPT dated 6 May 2016 passed by this Authority approving Scale of Rates (SOR) for allotment of JNPT land in area allocated for Free Trade Warehousing Zone (FTWZ).

2.1. The submissions made by the JNPT in its proposal dated 13 June 2017 are summarised below:

- (i). JN Port had submitted a proposal dated 22 February 2016 seeking approval for SOR for land marked for Free Trade Warehousing Zone (FTWZ) within the SEZ for a period of 30 years. The Order relating to this proposal was passed on 6<sup>th</sup> May 2016 by TAMP. Relevant clause from the TAMP order is reproduced below:

Clause 3.1 of Annex III from TAMP Order dated 6<sup>th</sup> May 2016: Allotment of land for the development of FTWZ as per the rates indicated below:

Sr. No.	Zone	Reserve Price in terms of Annual lease rentals for 30 years lease. (₹ per Sq. in Per Annum)
1.	Land inside in the free trade warehouse zone	266/-

- (ii). JN Port intends to make two amendments to TAMP order dated 6<sup>th</sup> May 2016. First, exclude the mention of lease tenure (30 years) from the notified Reserve price for the annual lease rental. This will enable JN Port to use the notified Reserve price for the annual lease rental for cases where the lease tenure for the land in Free Trade Warehousing Zone needs to be more than 30 years. Second, amend the zone from Free Trade Warehousing Zone to entire Special Economic Zone.
- (iii). Requirements for the first proposed amendment, for excluding mentioning of lease tenure from the specified SOR, are documented below:
  - (a). JNPT now intends to give the SEZ land including area allotted for the Free Trade Warehousing Zone for lease tenure of greater than 30 years.
  - (b). The Land policy for Major Ports 2015 allows the port to provide lease tenure greater than 30 years for capital intensive projects with prior approval of the ministry.
  - (c). The Reserve price in terms of the annual lease specified in the TAMP order is calculated as 6% of the present market value of the land. The market value of the land calculated for JNPT SEZ land is independent of the lease tenure and adoption of this amendment will not affect the approved Reserve price of ₹266 per sq.m. per annum.
- (iv). The requirements for second proposed amendment, for extending specified SoR to the entire SEZ land, are documented below:
  - (a). JN Port now intends to commence tender cum auction process for the entire SEZ land and not limit to land allocated to the Free Trade Warehousing Zone within the SEZ.

- (b). The market value for land of ₹4437.12 per sq.m. proposed by JN Port (Annex — II of the TAMP Order) is applicable to the entire SEZ land including the Free Trade Warehousing Zone.
- (c). The methodology used for calculating the market value (Annex - II of the TAMP Order) considers the acquisition cost and development cost for the entire 685 Acres of the SEZ land out of which approximately 80 Acres is allocated to the Free Trade Warehousing Zone. The saleable area considered in Annex — II also represents the entire SEZ.
- (d). At the time of earlier proposal, the priority of JN Port was to tender cum auction the Free Trade Warehousing Zone only and approval requested was restricted to Free Trade Warehousing Zone. JN Port now intends to tender cum auction the remaining SEZ land along with Free Trade Warehousing Zone. This will be enabled once this proposed amendment is adopted by TAMP.
- (v). The subject matter related to both the amendments was discussed and approved by both Land Allotment Committee and the Board of the JN Port. The Board in its meeting on 31 May 2017 has resolved as under:

“RESOLVED that the proposal regarding two amendments in the TAMP Order (TAMP/19/2016-JNPT) dated 6th May 2016

(1). Omission of the mention of lease tenure (30 years) from the notified Reserve Price for the annual lease rental.

(2). Extension of SOR notified to entire SEZ area covering 277.28 Ha be and is hereby approved”

2.2. In this backdrop, the JNPT has requested this Authority to consider the subject proposal for the two proposed amendments under Resolution No. 252/31.05.2017 passed by the Board of JN Port.

3. While acknowledging the proposal, the JNPT was requested vide our letter dated 22 June 2017 to clarify a few points. The JNPT has responded vide its letter dated 29 June 2017. The information/ clarification sought by us and the response of JNPT thereon are tabulated below:

Sl. No.	Information/ clarification sought by us	Reply of JNPT
(i)	In the proposal filed by JNPT in February 2016 for notification of lease rent for allotment of land in the Special Economic Zone (SEZ) area, the JNPT had Indicated that Standing Finance Committee (SFC) in its meeting held on 29 September 2015 at Ministry of Shipping, Delhi, had approved the rate of ₹4000/- per Sq. Mt. as upfront payment for 30 years lease period for the SEZ area. Even the rate of ₹266/- per Sq. Mt. per annum (as approved by the Authority) after considering an annual escalation of 2% per annum <u>for a period of 30 years</u> by applying a discounting factor of 7.83% had worked out to about ₹4000/- per Sq. Mt. being the reserve price in terms of one time upfront lease payment <u>for a period of 30 years</u> . In this backdrop, the JNPT to examine and clarify, whether the amendment as now proposed by JNPT to exclude the mention of lease tenure of 30 years will impact the amount of upfront payment of ₹4000/- per Sq. Mt. considered by SFC, LAC and Board of JNPT at that point of time.	In the TAMP notification issued for annual lease rent of ₹266 per sq mtr, the 30 years lease was intended while submission of proposal in Feb 2016. The words "for 30 years" need to omitted as planned lease is now for more than 30 years. For lease tenure of more than 30 years, JN Port will calculate the reserve price for one-time upfront payment in accordance with Land policy guidelines. The same will then be taken to LAC and the Board for approval. The reserve price for longer tenure (say 60, 90 years) will be calculated as NPV of the sum total of annual lease rentals calculated as per Clause 13(b) of Land policy guidelines, escalated annually at the rate approved by the Board as indicated in Clause 13(c) of land policy guidelines. The discount factor would be the longest term G-sec rate as per the latest RBI Bulletin.  The SoR used will the latest SoR approved by TAMP (₹266 per sq mtr) with approved annual escalation of 2%. The discount factor will be the latest G-Sec rate published in RBI bulletin.

(ii)	If 2% annual escalation is applied on the earlier approved rate of ₹266/- per Sq. Mt. per annum and applying a discounting factor of 7.83% as considered by JNPT for a period beyond 30 years, the upfront premium approved by SFC, considered by LAC and approved by Board of JNPT @ ₹4000/- per Sq.Mt. will be more than ₹4000/- per Sq. Mt. depending on the tenure of the lease say, 60 years or 90 years as the case may be. The JNPT to take note of this significant point. The JNPT to also note that the upfront premium of ₹4000/- per Sq. Mt. would no longer be relevant if the lease period exceeds 30 years.	JNPT acknowledges that reserve price of ₹4000 per Sq mtr will not be relevant for lease tenure of more than 30 years. The reserve price for longer tenure (say 60, 90 years) will be calculated as NPV of the sum total of annual lease rentals calculated as per Clause13(b) of Land policy guidelines, escalated annually at the rate approved by the Board as indicated in Clause 13 (c) of land policy guidelines. The discount factor would be the longest term G-sec rate as per the latest RBI Bulletin. The SOR used will the latest SOR approved by TAMP (₹266 per Sq. Mtr.) with approved annual escalation of 2%. The discount factor will be the latest G-Sec rate published in RBI bulletin.
(iii)	The rate of ₹4000/- per Sq. Mt. was for the 1 <sup>st</sup> phase of bidding and in the proceedings relating to the earlier SEZ proposal, the JNPT has stated that after finalization of 1 <sup>st</sup> phase of tendering process, the highest offer received by the Port would be considered as the Minimum Reserve Price for next phase of tendering process. Thus, the JNPT to indicate the highest offer received by it in the 1 <sup>st</sup> phase and explain why the said higher offer cannot be considered as the Reserve Price for the balance SEZ area instead of ₹266/- per Sq. Mt. per annum.	JNPT has not commenced the first phase of tendering for JNPT SEZ. Tender was released inviting bids for FTWZ but was subsequently cancelled. The first phase of tendering for JNPT SEZ to commence post TAMP approval for the two proposed amendments that are part of the submitted proposal. First phase to cover plots from entire SEZ area (including FTWZ zone which is part of the SEZ land)

4. In accordance with the consultative procedure prescribed, a copy of the JNPT proposal dated 13 June 2017 was forwarded to the concerned users/ user organisations/ BOT operators for their comments. After the joint hearing, the Oil Field Warehouse and Services Limited (OFWSL) vide its letter dated 05 July 2017 and the R.K. Bakewell Mars Private Limited (RKB MPL) vide its letter dated 05 July 2017 have furnished their comments. These comments were forwarded to JNPT for its feedback comments. The JNPT has responded vide its letter dated 13 July 2017 on the comments of OFWSL and RKB MPL.

5. The joint hearing on the above case was held on 30 June 2017 at the Office of the Authority. At the joint hearing, the JNPT had made a Power point presentation of the proposal. The JNPT and the concerned users / organization bodies 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 the case, the following position emerges:

- (i). The Jawaharlal Nehru Port Trust (JNPT) had been allocated an aggregate area of approximately 2,584 hectares of land by the Government of India. Keeping in view the objective of the port to utilize this land for further expansion of its port operations, the JNPT has conceptualized to develop a Special Economic Zone (SEZ) on 277.38 hectares of the said land. Based on a proposal filed by JNPT in February 2016 for notification of lease rent for allotment of land in the Special Economic Zone (SEZ) area, this Authority vide its Order no. TAMP/19/2016-JNPT dated 6 May 2016 has approved a rate of ₹266/- per Sq. Per Annum as the Reserve Price in terms of Annual lease rentals for 30 years lease period for allotment of land for the development of Land inside the Free Trade Warehouse Zone (FTWZ). In this backdrop, the JNPT has now come up with a proposal seeking two amendments to the Order of May 2016. The first amendment is to exclude the mention of lease tenure (30 years) from the notified SOR. The second amendment is to extend the specified rates to the entire SEZ land and not limit to land for the FTWZ within the SEZ.
- (ii). The JNPT proposal dated 13 June 2017 alongwith the information/ clarification furnished by the JNPT during the processing of the case, is considered in this analysis.
- (iii). 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 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 Ministry of Shipping has issued amended Land Policy Guidelines, 2014 under Section of the MPT Act, 1963 for implementation with effect from 17 July 2015. The JNPT has, thus, come up with a proposal for amending the Order of May 2016 following the internal approval procedure prescribed in the Land Policy Guidelines for Major Port Trusts, 2014, as amended in July 2015, as brought out in the next paragraph.

- (iv). 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). In the case of JNPT, a LAC was constituted under the chairmanship of Chairman and consisting of Chief Manager (Finance), Chief Manager (PPD) and Chief Manager (Admin & Sec) as Members of the Committee. The LAC is seen to have recommended the two amendments to the May 2016 Order. The Board of Trustees of JNPT has also accorded approval for the amendments to be effected to the May 2016 Order.
- (v). With regard to the first amendment as proposed by the JNPT to exclude the mention of lease tenure (30 years) from the SOR, the JNPT has stated that it now intends to give the SEZ land including area allotted for the FTWZ for lease tenure longer than 30 years, based on the demand from the users. During the consultation proceedings relating to the case in reference, some of the users have pressed for a lease tenure beyond 30 years, so as to have a greater flexibility and work out the sustainability of their Project, given that they will be incurring huge investments. The JNPT has flexibility to fix the tenure of lease for a period more than 30 years complying with the provisions of the Land Policy Guidelines of the Government of India. Further, the Reserve Price in terms of Annual lease rentals fixed by this Authority in the May 2016 Order at ₹ 266/- per Sq. Per Annum is a standalone rate derived based on the market value of the land and has no bearing on the tenure of the lease.
- (vi). With regard to the second amendment as proposed by the JNPT to extend the specified rates to the entire SEZ land and not limit to land for the FTWZ within the SEZ, the JNPT has stated that it had initially wanted to tender cum auction only the FTWZ area and had therefore, made a request earlier to prescribe the lease rent for FTWZ only. But now, since the Port intends to tender cum auction the remaining SEZ land along with FTWZ area, it has proposed the said amendment. The Port has confirmed that the methodology used for calculating the market value of the SEZ land in the Order of May 2016 considers the acquisition cost and development cost for the entire SEZ area which is inclusive of the FTWZ area. In this connection, it is recalled that in the Order of May 2016, since the Board of Trustees of JNPT had then approved one time upfront lease payment for allocation of the first set of land on 30 year lease for development of a FTWZ, this Authority was constrained to take up the proposal for prescribing lease rentals for the FTWZ only. However, the JNPT was advised to approach this Authority for approval of lease rental for the remaining area of SEZ with the approval of its Board following the applicable Land Policy Guidelines.
- (vii). Given that the proposed two amendments to the Order of May 2016 has been recommended by the LAC and approved by the Board of Trustees of JNPT and also since none of the users have objected to the said amendments, this Authority is inclined to effect the two amendments to the Order of May 2016, as proposed by the Port.
- (viii). In the proposal filed by JNPT in February 2016 for notification of lease rent for allotment of land in the Special Economic Zone (SEZ) area, the JNPT had Indicated that Standing Finance Committee (SFC) in its meeting held on 29 September 2015 at the Ministry of Shipping, Delhi, had approved the rate of ₹ 4000/- per Sq. Mt. as upfront payment for 30 years lease period for the SEZ area. In this connection, the JNPT has acknowledged that in the event of increase in the tenure of the lease beyond 30 years, the reserve price in terms of one time upfront lease payment of ₹ 4000 per Sq. mtr. will not be relevant. The JNPT is advised to rework the one time upfront lease payment when the tenure of the lease exceeds 30 years.

8.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves replacement of the existing Section 3.1 of the Scale of Rates notified vide May 2016 Order with the following:

3.1. Allotment of land for the development of SEZ as per the rates indicated below:

<b>Sl. No.</b>	<b>Zone</b>	<b>Reserve Price in terms of Annual Lease Rental (₹ Per sq.mt per annum)</b>
1	Land inside the Special Economic Zone (SEZ)	266/-

8.2. Simultaneously, the phrase “Free Trade Warehousing Zone (FTWZ)” wherever appearing in the Scale of Rates notified vide the Order of May 2016 is replaced with “Special Economic Zone (SEZ)”.

8.3. The phrase “for a period of 30 years from the date of approval of the Board” appearing in Section 1(c) of the SOR of the Order of May 2016 stands deleted on account of the amendment sought by JNPT to exclude the lease tenure from the SOR. When the JNPT allots land for more than 30 years, it may follow the relevant provisions of the Land Policy Guidelines.

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

**SUMMARY OF THE COMMENTS RECEIVED FROM USERS AND THE ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.**

<b>F. No. TAMP/54/2017-JNPT</b>	<b>Proposal received from Jawaharlal Nehru Port Trust (JNPT) for seeking amendment to the Order no. TAMP/19/2016-JNPT dated 6 May 2016 passed by the Authority approving Scale of Rates (SOR) for allotment of JNPT land in area allocated for Free Trade Warehousing Zone (FTWZ).</b>
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A summary of the comments of the users/ user organisations is given below:

**1. Oil Field Warehouse and Services Limited (OFWSL) (Page no. 68/c)**

- (i). The provision of long lease tenure will help Investor to take informed decision in respect of its long term sustainability in the said business and also the effective return from investment. Thus the maximum lease tenure beyond 30 years will be beneficial for JNPT SEZ.
- (ii). The pricing schedule of the JNPT SEZ land in respect of FTWZ or unit need to be uniform and hence the Land price decided to be applicable to entire JNPT SEZ land including FTWZ area.

**2. R.K. Bakewell Mars Private Limited (RKB MPL) (Page no. 70/c)**

- (i). The period of 30 years is very less for the viability for any industry to be set up at the SEZ units keeping in mind the huge investments done by the industry towards the construction of building and setting up of the machineries.
- (ii). Have uniform rates keeping in mind the competitiveness and limitation of having the land only for export purpose. Higher rates for the SEZ units would not be feasible and make the competitiveness weaker in the long run. We request the rates as suggested by the port authority should be maintained.

2. A summary of the arguments made by the JNPT and the users/ user organisations during the joint hearing held on 30 June 2017 is given below:

**Jawaharlal Nehru Port Trust (JNPT)**

- (i). Based on the port's proposal in February 2016, TAMP vide its Order passed in May 2016 has approved the Reserve Price in terms of Annual lease rentals for 30 years lease for allotment of land for the development of Free Trade Warehouse Zone (FTWZ).

- (ii). The proposal now submitted before TAMP is for requesting to make two amendments to the May 2016 Order.
- (iii). The 1<sup>st</sup> amendment is for extending specified SoR to the entire SEZ land instead of FTWZ, for the reason that at the time of earlier proposal, the priority of JNPT was to tender cum auction the FTWZ only and therefore, approval requested was restricted to FTWZ. However, now the JNPT intends to invite tender cum auction for the remaining SEZ land along with FTWZ. It is noteworthy that FTWZ area is within the SEZ area.
- (iv). The 2<sup>nd</sup> amendment is for excluding mentioning of lease tenure from the specified SOR, as the JNPT now intends to give the SEZ land including area allotted for the FTWZ for lease tenure of greater than 30 years, based on the users demand. The Land policy for Major Ports 2015 allows the port to provide lease tenure longer than 30 years for capital intensive projects with prior approval of the Ministry of Shipping.
- (v). The methodology used for calculating the market value in May 2016 Order considers the acquisition cost and development cost for the entire 685 Acres of the SEZ land out of which approximately 80 Acres is allocated to the FTWZ.
- (vi). The LAC has recommended the proposed amendments and the Board has also approved the same.

#### **Magus Consultants**

- (i). In other places, the SEZ land is given for a longer tenure. Competitive pricing and attractive lease rentals will attract potential customers. The amendment proposed by JNPT is in that direction.

#### **Export Promotion Council (EPC)**

- (i). Land is available in plenty. So lease period and tenure is negotiated everywhere. There should be flexibility in the tenure and rentals.

(TAMP: The JNPT is mandated to follow the Land Policy Guidelines for allotment of land.)

#### **Jabel Ali Free Zone Authority (on behalf of DP World)**

- (i). It is fair to have a tenure beyond 30 years as it helps the investor to work out the viability of his Project. Tender cum auction is a fair and transparent method for allotment of land.

#### **Agricultural Marketing Board (AMB)**

- (i). We have no comments to offer.