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**Tariff Authority for Major Ports**

G.No. 97

New Delhi,

03 March 2020

**NOTIFICATION**

In exercise of the powers conferred by Sections 48 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from M/s. JSW Paradip Terminal Private Limited for notification of Scale of Rates in its name as per "Guidelines for determination of Tariff for Projects at Major Ports, 2013, as in the Order appended hereto.

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

**Tariff Authority for Major Ports**  
**Case No. TAMP/54/2019-JPTPL**

**M/s JSW Paradip Terminal Private Limited**

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**Applicant**

**QUORUM:**

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

**O R D E R**

(Passed on this 20<sup>th</sup> day of February 2020)

This case relates to a proposal received from M/s. JSW Paradip Terminal Private Limited (JPTPL) for notification of Scale of Rates (SOR) in its name as per "Guidelines for determination of Tariff for Projects at Major Ports, 2013.

2.1. It is recalled that based on a proposal filed by Paradip Port Trust (PPT), this Authority vide its Order no. TAMP/18/2008-PPT dated 14 July 2008 had fixed upfront tariff for construction of a deep draught iron ore berth and a deep draught coal berth at the PPT, based on the provisions prescribed in the Upfront Tariff Guidelines of 2008.

2.2. Thereafter, based on a proposal filed by PPT, this Authority vide its Order No. TAMP/37/2013-PPT dated 30 August 2013 fixed Reference tariff for the same project of construction of a deep draught iron ore berth at PPT, based on the enabling provision prescribed in the Reference Tariff Guidelines of 2013. The Reference tariff so fixed in August 2013 was after applying an indexation factor of 26.15% over the upfront tariff approved in the year 2008, following the enabling provisions prescribed in this regard in the Reference Tariff Guidelines of 2013 at Clause 2.2.

2.3. Thereafter, the PPT submitted the following vide its letter dated 16 May 2014:

- (i). The notification for upfront tariff for the 'Deep draught Iron Ore berth on BOT basis at Paradip port' was issued on 16 August 2008.
- (ii). These tariff was indexed vide Case No. TAMP/37/2013-PPT, dated 30 August 2013 and the project was put to retender.
- (iii). However, it has now been decided to discharge the present tender and re-invite bids from the RFQ stage. RFQ for the same will be issued in May 2014. As RFP documents for the project should contain proposed tariff for the project indexed to 2014 for various services, the Tariff Proposal has been prepared based on 'Revised Guidelines for determination of Tariff for projects at Major Ports, 2013' notified on 30 September 2013.
- (iv). The tariffs have been indexed by 31.58% based on approved tariff of 2008 (i.e., 4.3% based on approved tariff of 2013).

2.4. Therefore, based on a proposal filed by PPT, this Authority vide its Order no. TAMP/28/2014-PPT dated 05 June 2014 fixed Reference tariff for a new iron ore berth to be developed at PPT, based on the provisions prescribed in the Reference Tariff Guidelines of 2013. The Reference tariff so fixed in June 2014 was after applying an indexation factor of 31.58% over the upfront tariff approved in the year 2008.

3. Subsequent to this, the PPT awarded the Concession to the successful bidder i.e. Consortium of JSW Infrastructure Ltd and South West Port Ltd. A Concession Agreement (CA) was signed by PPT with JSW Paradip Terminal Private Limited (JPTPL), a SPV incorporated by consortium for development of iron ore berth for handling iron ore exports on BOT basis on 29 May 2015.

4. As per Section 48 read with Section 42(4) of the Major Port Trusts (MPT) Act, 1963, the SOR leviable by any person authorized by the Major Port Trusts to render service, is to be notified by this Authority.

5.1. Accordingly, the JPTPL vide its letter dated 09 October 2019 has approached this Authority with a request to notify the SOR in its name, since it envisaged to commence its commercial operations.

5.2. The submissions made by JPTPL in its proposal are as follows:

- (i). JPTPL has developed a new Iron Ore Terminal under BOT basis as per Concession Agreement signed with PPT on 29.05.2015.
- (ii). Provisional Completion Certificate has been received from Independent Engineer on 25.09.2019.
- (iii). A proposal is submitted to notify the indexed tariff in the name of JPTPL before commencement of operations.
- (iv). PPT submitted a proposal to TAMP for fixation of tariff for a new iron ore terminal in 2008. On that basis, TMP has issued Notification (G. No. 133) dated 16.08.2008 and then Notification (G. No. 245) dated 20.09.2013 by applying Wholesale Price Index. On PPT's request, TAMP has published Notification (G. No. 182) dated 17.06.2014 by applying WPI Indexation of 1 January 2014.
- (v). Subsequently, PPT awarded the Concession to the successful bidder i.e. Consortium of JSW Infrastructure Ltd and South West Port Ltd.
- (vi). A Concession Agreement was signed by PPT with JPTPL, a SPV incorporated by consortium for development of new iron ore berth for handling iron ore exports on BOT basis on 29.05.2015.
- (vii). JPTPL has commissioned the project and received Provisional Completion Certificate on 25.09.2019.
- (viii). As per Chapter 5 of the Notification (G. No. 182) dated 17.06.2014, the Reference Tariffs will be indexed to 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2014 and 1 January of the relevant year.
- (ix). The annual indexation factor announced by the Authority for each of the years from 2014-15 onwards under Reference Tariff Guidelines is as follows:

Year	Annual Indexation Factor
2015-16	3.78%
2016-17	Nil
2017-18	1.20%
2018-19	2.07%
2019-20	2.56%

5.3. Based on the above, JPTPL has proposed to notify SOR (after considering WPI Index) for the F.Y. 2019-20 as given below:

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**(a). The Cargo Handling Charges:**

The Cargo Handling Charges at the new Iron Ore berth for handling Iron Ore Exports at PPT shall be payable on the manifested cargo directly by the importer of cargo at the rates specified below:

Sl. No.	Commodity	Unit	Rate in ₹.
1.	Iron Ore handling charges (all types)	MT	227.12

**(b). Storage Charges:**

The Storage charges for the cargo stored in the stack yard beyond the free period shall be as below:

(Rate in ₹. Per Ton)

Sl. No.	Commodity	Rate for first 5 days for the balance cargo remaining after the free period	Rate for 6th day to 10th day for the balance cargo	Rate for 11 <sup>th</sup> day onwards for the balance cargo
1.	Iron Ore (all types)	17.36	34.72	69.44

(c). **Berth hire charges:**

The Berth Hire charges payable by masters/owners/agents for the vessel shall be as per rates below:

Sl. No.	Commodity	Rate per GRT per hour or part thereof (₹.)	
		Foreign Going Vessel	Coastal Vessel
1.	All Vessels	1.24	0.75

5.4. The JPTPL has also forwarded a copy of the Trade Circular no. TD/TM/GEN-114/2018/2475 dated 01 October 2019 issued by the PPT, wherein the PPT has, inter alia, indicated the indexed tariff to be levied at JPTPL.

5.5. The JPTPL has also forwarded a copy of the Provisional Certificate dated 25 September 2019, issued by the Independent Engineer, which inter alia, indicates that the Project can be safely and reliably placed in the commercial service of the users thereof and has declared the Project to be fit for entry into commercial operation on 25 September 2019.

5.6. Further, JPTPL has requested to rectify the error in the tariff Order No. TAMP/28/2014 dated 5 June 2014 (notified on 17.06.2014) under Chapter 3- Storage charges. The submissions made by JPTPL in this regard, are as follows:

- (i). As per the Notification dated 16.08.2008, the Storage charges are as follows:

(Rate in ₹ per tonne)

Sr. No	Commodity	Rate for five days for the balance cargo remaining after the free period	Rate for sixth day to tenth day for the balance cargo	Rate for 11th onwards for the balance cargo
1.	Iron Ore (all types)	12	24	48

- (ii). As per the Notification dated 20.09.2013, the Storage charges are as follows:

(Rate in ₹ per tonne)

Sr. No	Commodity	Rate for five days for the balance cargo remaining after the free period	Rate for sixth day to tenth day for the balance cargo	Rate for 11th onwards for the balance cargo
1.	Iron Ore (all types)	15.14	30.28	60.55

- (iii). As per the Notification dated 17.06.2014, the Storage charges are as follows:

(₹. Per MT per day)

Sr. No	Commodity	Rate for five days for the for the balance cargo remaining after the free period	Rate for sixth day to tenth day for the balance cargo	Rate for 11th onwards for the balance cargo
1.	Iron Ore (all types)	15.79	31.58	63.16

- (iv). As per the working provided in the Notification dated 16.08.2008, the storage charges are calculated with following methodology:

- (a). Revenue requirement is segregated into cargo handling and storage charges in the ratio of 99:1 [refer clause 9(v)(e)].
- (b). Basis of point no. (a), revenue requirement for storage is ₹.154 Lakh. Further assumptions are clarified in Summary of comments by PPT in reply to port user Comment No. 1(vi). Accordingly, the tentative storage charges working are as under:

S. N	Particulars	Cargo in MT	Storage charges (₹./MT)	Total Storage revenue
a)	90% of total cargo will be cleared within free period of 18 days	90,00,000	Nil	Nil
b)	10% of total cargo will attract storage charges of that			
i)	75% within first slab of 19 <sup>th</sup> to 23 <sup>rd</sup> days	7,50,000	12.00	90,00,000
ii)	20% within 2nd slab of 24 <sup>th</sup> to 28 <sup>th</sup> days	2,00,000	24.00	48,00,000
iii)	5% within 3rd slab of 29 <sup>th</sup> days beyond	50,000	48.00	24,00,000
	<b>Total</b>	<b>1,00,00,000</b>		<b>162,00,000</b>

- (v). From Notification dated 16.08.2008 and 20.09.2013, it is clear that storage charges are applicable for a “**different period groups**” and Notification issued on 17.06.2014 is also similar with previous notifications issued except WPI indexation of 31.58% based on approved tariff of 2008 and 4.3% based on approved tariff of 2013 (Refer clause 4(iv) of tariff order). However, in Order no. TAMP/28/2014, it is erroneously mentioned ₹. **Per MT per day** instead of ₹. **Per Ton** for different period groups.

6. Subsequently, the JPTPL vide its e-mail dated 14 October 2019 has furnished the Punch List annexed to the Provisional Certificate and has conveyed that the terminal is ready in all respects for operations and that they will start the operations immediately on receipt of tariff order/confirmation.

7.1. A copy of the JPTPL proposal dated 09 October 2019 was forwarded to the Licensor port (PPT) for its comments vide our letter dated 14 October 2019. The PPT was also requested to examine the request made by JPTPL and furnish its specific comment on the proposal of JPTPL to prescribe the unit of levy of storage charges at “₹ per tonne” instead of “₹ per tonne per day”.

7.2. In this regard, the PPT vide its letter dated 18 October 2019 has made the following submissions:

- (i). The draft SOR on Cargo handling charges, Storage charges and Berth hire charges proposed by JPTPL should be in line with TAMP Order no. TAMP/285/2014-PPT dated 05 June 2014 with suitable indexation.
- (ii). The Provisional Completion Certificate has been issued by the Independent Engineer on 25 September 2019. JPTPL are likely to commence commercial operations shortly.
- (iii). As regards unit of levy of storage charges, following are the facts:
- (a). The bids have been invited specifying the TAMP Order no. TAMP/28/2014-PPT dated 05 June 2014, wherein the unit rate for storage charges is ‘₹ per MT per day’.

*Rate in ₹ Per MT per day*

Sr. No	Commodity	Rate for five days for the for the	Rate for sixth day to tenth	Rate for 11th onwards for
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		<b>balance cargo remaining after the free period</b>	<b>day for the balance cargo</b>	<b>the balance cargo</b>
1.	Iron Ore (all types)	15.79	31.58	63.16

- (b). However, a summarized tabular column has been provided in the bid document and CA in which this is given as '₹ per MT'. Excerpts of the bid document and CA are as below:

*Rate in ₹ Per MT*

<b>Sr. No</b>	<b>Commodity</b>	<b>Rate for five days for the for the balance cargo remaining after the free period</b>	<b>Rate for sixth day to tenth day for the balance cargo</b>	<b>Rate for 11th onwards for the balance cargo</b>
1.	Iron Ore (all types)	15.79	31.58	63.16

- (c). Considering the fact that the TAMP Order no. TAMP/28/2014-PPT dated 05 June 2014 has been explicitly specified in the bid stage and subsequently reflected in the CA, the unit mentioned in the same i.e. '₹ per MT per day' will prevail and be followed.
- (d). Any changes in the Order, therefore, would be construed as post bid changes, beyond the scope of the Concessioneing Authority for acceptance.
- (e). The issue relating to unit of storage charges as 'per MT per day' is also applicable for other PPP Projects already under implementation in PPT like 'Mechanisation of EQ-1, 2, 3 berths at PPT on BOT basis' vide TAMP Order no. TAMP/12/2014-PPT dated 21 February 2014 and 'Development of new Coal Berth to handle coal imports at PPT on BOT basis' vide TAMP Order no. TAMP/68/2016-PPT dated 02 January 2017. Any changes will have ramifications on these projects also.

8.1. Since the response of PPT did not pointedly address the point regarding prescription of unit of storage charges at "per tonne per day" in the Tariff Notification dated 17 June 2014 as compared to "per tonne" prescribed earlier in the Tariff Notifications dated 20 September 2013 and 16 August 2008 which formed the basis for the Tariff Notification dated 17 June 2014 for levy of storage charges at JPTPL, the PPT was again requested vide letter dated 30 October 2019, to review its stand on prescription of the unit of levy of storage charges.

8.2. In this regard, the PPT vide its letter dated 14 November 2019 has conveyed that the matter related to storage charges raised by the JPTPL may be dealt by TAMP as per the relevant rules and guidelines governing such issues.

9. In the meanwhile, based on the Trade Circular issued by the PPT, some exporters of Iron ore pellets/ fines through PPT viz., Brahmani River Pellets Limited, Kashvi Power & Steel Private Limited and Mohashakti Forging Private Limited have objected to the trade circular issued by the PPT on 1 October 2019, which includes, inter alia, schedule of storage charges of JPTPL, where the unit of levy has been prescribed as 'per tonne per day'. The users are of the view that since the storage charges prescribed as 'per tonne per day' is exorbitant and not viable, they may not be in a position to use the facility at JPTPL. Infact, Kashvi Power & Steel Private Limited has also stated that the levy of storage charges as indicated in the Trade Circular will lead to the JPTPL as well as the PPT to earn unjust return on capital employed at the cost of the port users. Some of the users have also expressed their grievance that they were not consulted before notification of the Indexed Reference tariff Order dated 05 June 2014.

10.1. Since the Reference tariff sought by PPT for the iron ore project was an adoption of the Upfront tariff already fixed after hearing the concerned users and since Reference Tariff Guidelines, 2013 issued by the Ministry of Shipping (MOS) does not require consultation with the users when a Port

Trust proposes to adopt an upfront tariff already approved after consulting the users, no joint hearing was set-up before notifying the Indexed Reference tariff Order dated 05 June 2014.

10.2. As brought out above, the PPT in its letter dated 14 November 2019 had not adequately addressed the issue relating to prescription of unit of levy of storage charges at JPTPL. The users had also represented on the prescription of unit of levy of storage charges at JPTPL.

10.3. Clause 3.8.4 of the Upfront Tariff Guidelines of 2008 calls for TAMP to enquire into wrong application of SOR. Further, Clause 3.8.5. of the Upfront Tariff Guidelines of 2008 provides that TAMP can decide a question which arises requiring clarifications or interpretation of the SOR and the statement of conditions of a private operator.

10.4. The MOS in the Government of India vide its letter No. PD-26025/17/2019-PD-II, dated 30 October 2019 addressed to this Authority acting on the representation dated 07 October 2019 from the JPTPL to the MOS on the issue of prescription of unit of levy of storage charges stated that PPT had submitted a proposal to TAMP for fixation of tariff for Iron Ore Terminal in 2008 based on which TAMP issued notification, dated 16 August 2008, specifying storage charges on "different period groups". Similarly, another notification No. 245 dated 20 September 2013 was issued considering storage charges for "different period groups". The MOS letter further stated that in next notification dated 17 June 2014, which was similar to previous notifications the unit in storage charges is mentioned as "₹ per MT per Day". The MOS requested this Authority to examine the matter and take further necessary action as per provisions under intimation to the Ministry.

10.5. In the backdrop of the MOS communication and in order to enquire into the reported error in the prescription of unit of levy of storage charges and decide the question, based on the above position, it was decided to hold a joint hearing with PPT, JPTPL and the users who represented to this Authority with regard to the storage charges at JPTPL, on the limited issue of unit of levy of storage charges to be applicable at JPTPL.

11.1. Therefore, joint hearing was held on the matter at PPT premises in Bhubaneswar on 05 December 2019, with the PPT, JPTPL and the users who represented to this Authority to decide on the limited issue of unit of levy of storage charges applicable at the JPTPL. At the joint hearing, the JPTPL made a power point presentation of its proposal. At the joint hearing, the JPTPL, PPT and the users have made their submissions.

11.2. Concluding its power point presentation, the JPTPL has made the following submissions and prayed that:

- (i). As stipulated in Clause 3.8.4. of the Tariff Guidelines of 2008 the Authority can enquire into wrong application of SOR.
- (ii). Clause 3.8.5. of the Tariff Guidelines of 2008 provides that the Authority can decide a question which arises requiring clarifications or interpretations of the SOR and the statement of conditions of a private operator.
- (iii). The Authority and PPT to review the wrong SOR and correct the mistake of storage charges unit of levy as "₹. per tonne" basis rather than "₹. per tonne per day".

12.1. As decided at the joint hearing, the JPTPL vide its e-mail dated 16 December 2019 forwarded the copies of the 3 Agreements entered by the JPTPL with its customers. In one Agreement it has offered a discount of 50% and in another Agreement it has offered a discount of 55% in storage charges, perhaps to moderate the impact of the storage charges on the users.

12.2. As decided at the joint hearing, the PPT was requested vide our letter dated 18 December 2019 to forward a copy of the letter issued by PPT to the MOS on the matter in reference. In this regard, the PPT vide its e-mail dated 21 December 2019 has forwarded a copy of the letter dated 24 October 2019 issued by the PPT to the MOS giving a report on the representation of JSW. The report of the PPT is a reproduction of its submissions made to this Authority by its letter dated 18 October 2019 which have been brought out under para 7.2. of this Order and hence not reproduced for the sake of brevity.

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

- (i). Based on the proposal filed by the Paradip Port Trust (PPT), this Authority has passed an Order no. TAMP/28/2014-PPT dated 05 June 2014 fixing Reference tariff for an iron ore berth to be developed at PPT, based on the prescriptions prescribed in the Reference Tariff Guidelines of 2013. The said Order was notified in the Gazette of India Extraordinary (Part III Section 4) on 17 June 2014 vide Gazette No.182.
- (ii). The PPT has entered into Concession Agreement (CA) with M/s. JSW Paradip Terminal Private Limited (JPTPL) on 29 May 2015 for a period of 30 years, for development of an iron ore berth for handling iron ore exports.
- (iii). As per Section 48 read with Section 42(4) of the Major Port Trusts (MPT) Act, 1963, the SOR leviable by any person authorised by the Major Port Trusts to render services requires to be notified by this Authority. That being so, the BOT operators governed under the tariff guidelines 2013 who have been authorised by Major Port Trust, need to get the indexed SOR notified in their name before the commencement of operations. Accordingly, the JPTPL has approached this Authority with a request to notify the SOR in its name, since it envisaged commencement of its commercial operation. In this connection, the licensor port, PPT has also confirmed that the JPTPL is likely to commence its commercial operations shortly. The Provisional Certificate dated 25 September 2019 as made available by JPTPL, interalia, indicates that the Project can be safely and reliably placed in the commercial service of the users thereof and declares the Project to be fit for entry into commercial operation on 25 September 2019.
- (iv).
  - (a). With reference to the indexation of the reference tariff fixed vide Order dated 05 June 2014, it is relevant here to mention that the General Note in the SOR approving the reference tariff, states that the tariff caps will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2014 and 1 January of the relevant year. The general note explicitly states that the base year for WPI escalation has to be 1 January 2014.
  - (b). As brought out earlier, the applicable cumulative escalation factor to be applied on the base tariff of 2014 to arrive at the indexed SOR as in the year 2019 is 9.94%. Accordingly, the JPTPL has arrived at the proposed rates by applying the applicable cumulative escalation factor of 9.94% on the reference tariff caps notified in June 2014. The proposed rates furnished by JPTPL have been verified and found to be correct.
- (v).
  - (a). As brought out earlier, while seeking notification of the SOR in its name by applying the applicable indexation factor, the JPTPL has, for the reasons as brought out in the earlier part of the Order, made a request to rectify an error in the storage charges as notified in the Order dated 05 June 2014, by prescribing the unit of levy of storage charges as 'Rate in ₹ per ton' instead of 'Rate in ₹ per MT per day'.
  - (b). In this regard, it is relevant here to mention that in the Order dated 14 July 2008, which has formed the base for prescription of Reference tariff for the iron ore berth vide Reference tariff Order dated 05 June 2014, the unit of levy for storage charges for iron ore handling was prescribed on 'per tonne' basis only. However, while seeking approval for prescription of indexed Reference Tariff based on the June 2008 Order (vide PPT proposal dated 14/16 May 2014), the PPT had proposed the unit of levy for storage charges on 'per tonne per day' basis, which crept into the Indexed Reference tariff Order dated 5 June 2014.
  - (c). The table as given below, brings out this position:

Particulars	Unit of levy	of	Rate for first five days for	Rate for sixth day	Rate for 11th
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	<b>storage charges</b>	<b>the balance cargo remaining after the free period</b>	<b>to tenth day for the balance cargo</b>	<b>onwards for the balance cargo</b>
Approved vide Order dated 14 July 2008	Rate in ₹ per tonne	12	24	48
Approved vide Order dated 05 June 2014 after applying indexation factor of 31.58%	Rate in ₹ per tonne <b>per day</b>	15.79	31.58	63.16

Thus, in the Order dated 05 June 2014, though the storage charges were prescribed after applying an indexation factor of 31.58% over the storage rates approved vide the 14 July 2008 Order, the unit of levy of storage charges has been prescribed on 'per tonne per day basis', instead of 'per tonne' basis.

- (d). It may be a fact that the PPT invited bids specifying the Order No. TAMP/28/2014-PPT, dated 5 June 2014 wherein the unit of levy of storage charges is "per MT per day". But the PPT also does not deny that the summarized tabular column provided by itself in the bid document and Concession Agreement in which the unit of levy of storage charges is mentioned as "per MT". This is an accepted fact by the PPT.

The JPTPL in its proposal dated 09 October 2019 filed before this Authority for notification of the SOR in its name has drawn reference to 3 tariff Orders passed by this Authority, namely upfront tariff fixation Order dated 14 July 2008, Reference Tariff Order dated 30 August 2013 and indexed Reference Tariff Order dated 5 June 2014. The unit levy sought by the PPT for fixation of storage charges was "per tonne" only in the first two Orders dated 14 July 2008 and 30 August 2013 and not "Per tonne per day" basis. Though the PPT is stated to have referred to the indexed Referenced tariff Order dated 5 June 2014 at the bid stage, and invited bids and entered into a Concession Agreement with the successful bidder (JPTPL) the unit of levy of storage charges was mentioned explicitly as "per tonne" only by the PPT in the bid document and Concession Agreement, though a reference to the indexed Reference Tariff Order dated 5 June 2014 was made in the said documents.

The mention of unit of levy as "per tonne" is very explicit in the bid document and Concession Agreement rather than the mention of Order dated 5 June 2014 as brought out by PPT itself in its letter dated 18 October 2019.

As regards the mention of tariff Order dated 5 June 2014 in the bid document and Concession Agreement, it has to be noted that the Order dated 5 June 2014 has prescribed not only storage charges but also handling charges and berth hire charges. It has to be specifically noted that the Order dated 5 June 2014 was not passed solely for prescription of storage charges.

Significantly, the Order dated 5 June 2014 draws a reference at para No. 5(v) to the July 2008 Upfront tariff fixation Order and the July 2008 tariff Order prescribes unit of levy of storage charges as 'Per Tonne' only.

- (e). In summary, prescription of unit of levy for storage charges as 'per tonne per day' shall not be correct due to the following reasons:
- (i). Upfront tariff Order dated 14 July 2008 which formed the basis for indexed Reference tariff Order dated 5 June 2014 prescribed storage charges on "per tonne" basis.

- (ii). As per the excerpts of the bid document furnished by PPT in its letter dated 18 October 2019, the unit of levy of storage charges has been explicitly mentioned as “per tonne”.
- (iii). The Appendix 12 to the Concession Agreement also explicitly mentions the unit of storage levy as “per tonne.”
- (iv). The Indexed Reference tariff Order dated 5 June 2014 on the basis of which PPT invited bids, as per its letter dated 18 October 2019, draws reference to the Order dated 14 July 2008. The said Order dated 5 June 2014 draws reference to the July 2008 Order [para No. 5(v)], wherein the unit of levy for storage charges was approved as “per tonne” only. Therefore, the mention made by PPT in the bid document regarding indexed Reference tariff Order dated 5 June 2014 to insist for prescription of unit of levy on “per tonne per day” basis deserves to be ignored.
- (f). The JPTPL in its letter dated 09 October 2019 has also drawn reference to the workings relating to the storage charges as considered in the upfront tariff Order dated 14 July 2008 for the same Iron Ore project, which was taken as the basis for adoption while determining the reference tariff in the year 2014. In the joint hearing held in the case also, the JPTPL has furnished the calculation in its power point presentation. The annual revenue requirement from the levy of storage charges to the tune of ₹ 154 lakhs was proposed to be recovered by levy of storage charges at the rate of ₹ 12, ₹ 24 and ₹ 48 per tonne for the three slab period, after providing for 18 days free period. As per the indexed storage rate as of the year 2019-20 at ₹ 17.36 per tonne per day, ₹ 34.72 per tonne per day and ₹ 69.44 per tonne per day for the three slab period after the free dwell time of 18 days, a consignment of 2000 tonnes of cargo which stays in the terminal for 35 days for shipment on 36<sup>th</sup> day, the user will have to pay storage charges for 17 days after availing free storage period of 18 days amounting to ₹ 14,92,960/-, the storage amount being calculated on the basis of “per tonne per day”. The calculation in this regard is given below:

2000 tonnes X 5 days X ₹ 17.36 per tonne per day =	1,73,600/-
2000 tonnes X 5 days X ₹ 34.72 per tonne per day =	3,47,200/-
<u>2000 tonnes X 7 days X ₹ 69.44 per tonne per day =</u>	<u>9,72,160/-</u>
Total: 6000 tonnes 17 days	= 14,92,960/-

On the other hand, for the same consignment of 2000 tonnes and for the same dwell time of 17 days after free days of 18 days, for shipment on 36<sup>th</sup> day, the user has to pay storage charges amounting to ₹ 2,43,040. The calculation is given below:

1 <sup>st</sup> 5 days after free period:	
2000 tonnes X ₹ 17.36 per tonne	= 34,720/-
2 <sup>nd</sup> 5 days:	
2000 tonnes X ₹ 34.72 per tonne	= 69,440/-
Last 7 days	
<u>2000 tonnes X ₹ 69.44 per tonne</u>	<u>= 1,38,880/-</u>
Total: 6000 tonnes 17 days	= 2,43,040/-

- (g). If, the operator is allowed to levy the storage charges on “per tonne per day” basis, an amount of ₹ 14,92,960/- would accrue to the operator as per the illustrative example given above; the PPT would also be entitled to receive revenue share on the amount of ₹ 14,92,960/-. It will be an unjust return at the expense of the port users which cannot be permitted. Terminals are not operated for generating revenue in the form of storage charges. The apportionment of revenue requirement from storage charges is only 1% of the

total 100% revenue requirement to operate the terminal, as per the upfront tariff fixation guidelines of 2008.

- (h). Another contention of the PPT is that change in the unit of levy of storage charges from “per tonne per day” to “per tonne” would be construed as post bid change. However, it is an accepted fact by PPT that the bid document contained both the prescriptions of “per tonne per day” and “per day”. The mention of “per tonne” in the bid document was explicit. The wordings “per tonne per day” were not so. The prescription of unit of levy as “per tonne” weighs more in its favour rather than “per tonne per day”.
- (i). The JSW, during the proceedings relating to the case in reference has established that by levying storage charges on per tonne per day basis, it would earn substantially enormous storage income and would end up earning more than the permitted 16% return. The users who have represented to this Authority have also highlighted that the levy of storage charges on per tonne per day basis would lead to the JPTPL as well as the PPT earning unjust return on capital employed, at the cost of the port users.
- (j). There can be a view that Clause 2.8 of the upfront tariff setting guidelines of 2008 issued by the MOS) under Section 111 of the Major Port Trusts Act stipulates that the upfront tariff once determined by this Authority is subject to only indexation during the entire project period of 30 years and do not lend any scope to revise the upfront tariff fixed by this Authority during the project period. In this regard it is to state that in the case in reference, no change whatsoever, is effected to the upfront tariff fixed in the year 2008 and adopted as indexed Reference tariff in the year 2014. Only an error, which had crept in the Reference tariff Order of June 2014 is being rectified. This rectification, in no manner, to be construed as amounting to review of the upfront/ reference storage charges, approved by this Authority in July 2008/ June 2014.
- (k). Incidentally, in this connection, it is noteworthy to draw reference to a similar matter arising in another Major Port viz., Visakhapatnam Port Trust (VPT). After having the upfront tariff fixed for the West Quay - 6 (WQ-6) Berth in the Northern Arm of inner Harbour of VPT, the VPT awarded the development of the WQ-6 berth to West Quay Multiport Private Limited (WQMPL) on DBFOT basis. Thereafter, the WQMPL approached this Authority for notification of SOR in its name. The SOR was notified in the name of WQMPL. Thereafter, WQMPL filed a Writ Petition No.28595 of 2017 in the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh, seeking interference of the Hon'ble Court, inter alia, with the prayer to reduce storage charges prescribed in case of WQMPL. The Hon'ble High Court in its Order dated 14 December 2017 directed this Authority to consider and dispose of the WQMPL's representation. In compliance of the Order of the Hon'ble High Court, this Authority, after consultation with the VPT, vide its Order no. TAMP/85/2017-VPT dated 18 May 2018, had considered the representation of the WQMPL and prescribed the storage charges at a lower level by dividing the earlier notified storage charges by 7 days, so as to prescribe storage charges on per tonne per day basis.
- (l). In view of the above position, this Authority is inclined to prescribe the indexed storage charges after rectifying the error in the unit of levy of storage charges. The contention of PPT that prescription of unit of levy as 'per tonne' for the JPTPL project will have ramifications on the PPP projects relating to mechanization of EQ-1, 2, 3 berths at PPT and development of new coal berth to handle coal imports at PPT vide tariff Orders dated 21 February 2014 and 22 January 2017 respectively, cannot act as a hindrance to rectify error in the prescription of storage charges at JPTPL. If an error has crept in the prescription of storage charges in the above said tariff Orders, the said error may have to be examined and rectified in consultation with PPT, when the

concerned operators approach this Authority for notification of SOR in their respective names.

(m). The storage schedule contains 3 chargeable slab periods after the free dwell time. Each of first two chargeable slabs have 5 days dwell time. The third slab starts from 11<sup>th</sup> day onwards (after the free period) for an indefinite period. In respect of JPTPL, the rectification can be done in two ways:

- (i). Prescribe the unit of levy of indexed storage charges at '₹ per tonne',  
OR
- (ii). Considering that the storage charges are prescribed for a slab of 5 days, the proposed indexed storage charges can be divided by 5 and the unit of levy of indexed storage charges can be prescribed at '₹ per tonne per day'.

The JPTPL during the proceedings has insisted on prescription of storage charges on "per tonne" basis. In this regard, it is relevant here to mention that with regard to the 3<sup>rd</sup> slab, which starts from 11<sup>th</sup> day after free period and continues to be levied for an indefinite period, if the cargo continues to stay in the storage yard beyond the first two chargeable slab periods, and if the unit of levy is prescribed as "per tonne", as requested by JPTPL, it is likely that the users may continue to occupy the precious port premises for a longer period, given that irrespective of the period for which the cargo stays in the port premises, the users are liable to pay fixed storage charges for the quantity of cargo lying in the port premises. In such an instance, prescription of storage charges on per tonne per day basis, may discourage an user to utilize the port area as Storage yard for longer period and thereby act as a deterrent.

Further, given that the storage charges are prescribed on "₹ per tonne per day" basis, across the SOR of all the Major Port Trusts and Private Terminals operating thereat, it is felt appropriate to prescribe the storage charges on "per tonne per day" basis, as a uniform prescription.

Thus, incase of JPTPL, this Authority is inclined to prescribe unit of levy for the storage charges on 'per tonne per day' basis, keeping in view the unit of levy of storage charges in all other major ports and BOT operators operating thereat.

(n). The rates prescribed in the SOR are ceiling levels. The JPTPL may charge lower rates. Thus, the JPTPL has flexibility to charge lower rate of storage charges, if it so desires. If there are any issues arising on account of this on the revenue share, the port and JPTPL are advised to sit together and sort it out.

(vi). This Authority vide Order dated 05 June 2014 has notified the SOR alongwith Performance Standard as proposed by PPT as per the Reference Tariff Guidelines. Therefore, the performance standards as approved by this Authority in the Order dated 05 June 2014 are also included in the proposed SOR of JPTPL and notified.

(vii). The Government of India in the MOS undercover of its letter No. PT-11033/51/2014-PT dated 11 November 2014 has forwarded a copy of the guidelines on priority berthing of coastal vessels at Major Port issued vide letter No.PT-11033/51/2014-PT dated 4 September 2014 to this Authority. Accordingly, this Authority vide its Order no. TAMP/52/2014-Genl. dated 28 November 2014 has, interalia, approved the replacement of definition of 'Coastal Vessel' prescribed in the existing SOR of all the Major Port Trusts as follows:

“Coastal vessel” shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the Director General of Shipping/ Competent Authority.”

Therefore, the definition of Coastal Vessel proposed by the JPTPL is modified with the above mentioned definition of ‘Coastal Vessel’ to reflect the position contained in MOS letter dated 11 November 2014.

- (viii). All the other conditionalities governing the application of the rates as approved in the SOR of the Order dated 05 June 2014 are retained subject to the following:
- (a). This Authority, in view of the clarification sought by the V.O. Chidambaranar Port Trust regarding levy of concessional charges for coastal cargo/ container has passed an Order No. TAMP/53/2015-VOCPT dated 29 September 2015 regarding system of clarification of vessels for levy of vessel related charges and the time of incidence of vessel related charges and cargo related charges at concessional coastal rate based on the recommendations of Directorate General (DG) Shipping. The provisions approved in the said Order were further amended vide Order No. TAMP/53/2015-VOCPT dated 26 November 2015. The said Order passed is for common adoption by all the Major Port Trusts. Subsequent to the said Order, the DG Shipping vide its letter no.SD-9 CHART(309)/2016 dated 20 May 2016 has issued further clarification on the provision approved in the 26 November 2015 Order. This Authority has accordingly passed a clarificatory Order slightly amending the provision prescribed in para 9A (ii) and 10(ii) of the Order dated 26 November 2015. The amended provisions approved by this Authority in the said Order has been updated accordingly, in the SOR of JPTPL as note no. (ii), (iii) and (iv) in place of note no. (ii) under General terms and conditions notified vide Order dated 05 June 2014. The subsequent note nos. are consequently renumbered.
  - (b). The General note to Chapter (2) and (3) proposed by JPTPL states that the tariff caps will be indexed to inflation but only to the extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2019 and 1 January of the relevant year. Such automatic adjustment of tariff caps will be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31 March of the following year. This general note is seen to be in line with the prescription in the SOR of other BOT operators governed under 2013 guidelines who have commenced the operations.

14.1. In the result, and for the reasons given above, and based on the collective application of mind, this Authority approves notification of SOR and Performance Standards for the new Iron Ore berth in the name of JPTPL operating at PPT attached as **Annex – I** and **Annex – II** respectively.

14.2. The SOR notified for JPTPL shall come into force from the date of commencement of commercial operations by JPTPL.

14.3. The JPTPL is expected to perform at least at the performance norms brought out in the Concession agreement.

15.1. From the date of Commercial Operation (CoD) till 31<sup>st</sup> March of the same financial year, the tariff would be limited to the indexed Reference Tariff relevant to that year, which would be the ceiling. The aforesaid Reference Tariff shall be automatically revised every year based on an indexation as provided in para 2.2 of the guidelines of 2013 which will be applicable for the entire concession period.

However, the JPTPL would be free to propose a tariff along with Performance Standards (the “Performance Linked Tariff”) from the second year of operation onwards, over and above the indexed Reference Tariff for the relevant financial year, at least 90 days before the 1<sup>st</sup> April of the ensuing financial year. Such Performance Linked Tariff shall not be higher than 15% over and above the indexed Reference Tariff for that relevant financial year (and this will be the Tariff Cap). The

Performance Linked Tariff would come into force from the first day of the following financial year and would be applicable for the entire financial year.

15.2. The proposal shall be submitted by JPTPL to this Authority along with a certificate from the independent engineer appointed under the Concession Agreement of the Project indicating the achievement of Performance Standards in the previous 12 months as incorporated in the Concession Agreement or for the actual number of months of operation in the first year of operation as the case may be.

15.3. On receipt of the proposal, this Authority will seek the views of the PPT on the achievement of Performance Standards as outlined in para 5 of the Tariff Guidelines of 2013, within 7 days of receipt.

15.4. In the event of JPTPL not achieving the Performance Standards as incorporated in the Concession Agreement in previous 12 months, this Authority will not consider the proposal for notifying the Performance Linked Tariff for the ensuing financial year and the JPTPL shall be entitled to only the indexed Reference Tariff applicable for the ensuing financial year.

15.5. After considering the views of the PPT, if this Authority is satisfied that the Performance Standards as incorporated in the Concession Agreement have been achieved, it shall notify the performance linked tariff by 15<sup>th</sup> of March to be effective from 1<sup>st</sup> of April of the ensuing financial year.

15.6. While considering the proposal for Performance Linked Tariff, this Authority will look into the Performance Standards and its adherence by the Operator. This Authority will decide on the acceptance or rejection of the Performance Linked Tariff proposal based on the achievement or otherwise of the Performance Standards by the JPTPL. Determination of indexed Reference Tariff and Performance Linked Tariff will follow the illustration shown in the Appendix attached to the Tariff Guidelines of 2013.

15.7. From the third year of operation, the Performance Linked Tariff proposal from the JPTPL shall be automatically notified by this Authority subject to the achievement of Performance Standards in the previous 12 months period as certified by the Independent Engineer. The JPTPL, for the Performance Linked Tariff from the third year onwards, will submit the Performance Linked Tariff proposal along with the achievement certificate from the independent engineer by 1<sup>st</sup> March and this Authority shall notify by 20<sup>th</sup> March, the Performance Linked Tariff to be effective from the ensuing financial year.

15.8. In the event any user has any grievance regarding non-achievement by the PPP operator of the Performance Standards as notified by this Authority, he may prefer a representation to this Authority which, thereafter, shall conduct an inquiry into the representation and give its finding to the PPT. The PPT will be bound to take necessary action on the findings as per the provisions of the respective Concession Agreement.

15.9. The JPTPL shall furnish to this Authority, quarterly reports on cargo traffic, ship berth day output, average turnaround time of ships, average pre-berthing waiting time as well as the tariff realized at the berth. In addition, quarterly reports shall also be provided on average moves per crane hour and average dwell time for containers. The quarterly reports shall be submitted by the JPTPL within a month following the end of each quarter. Any other information which may be required by this Authority shall be furnished to them from time to time.

15.10. If any question arises requiring clarifications or interpretation of the SOR and the statement of conditionalities, the matter shall be referred to this Authority and its decision in this regard will be binding on the JPTPL.

15.11. The actual performance of the JPTPL shall be monitored by this Authority. If any complaint regarding quality of service is received, this Authority shall enquire into such allegation and forward its findings to the PPT. If any action is to be taken against the JPTPL, the PPT shall initiate appropriate action in accordance with the provisions of the relevant Concession Agreement.

15.12. This Authority shall publish on its website all such information received from JPTPL. However, this Authority shall consider a request from JPTPL about not publishing certain data/

information furnished which may be commercially sensitive. Such requests should be accompanied by detailed justification regarding the commercial sensitiveness of the data/information in question and the likely adverse impact on their revenue/operation of upon publication. This Authority's decision in this regard would be final.

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

**JSW PARADIP TERMINAL PRIVATE LIMITED**

**SCALE OF RATES FOR THE NEW IRON ORE BERTH.**

**CHAPTER 1 – DEFINITIONS & GENERAL TERMS & CONDITIONS**

**1.1. DEFINITIONS – GENERAL**

- (i). **“Coastal vessel”** shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the Director General of Shipping/ Competent Authority.
- (ii). **“Foreign vessel”** shall mean any vessel other than Coastal vessel.
- (iii). **“Per day”** means per calendar day unless otherwise stated.

**1.2. GENERAL TERMS & CONDITIONS**

- (i). The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for its classification as ‘coastal’ or ‘foreign-going’ for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.
- (ii). System of classification of vessel for levy of Vessel Related Charges (VRC)
  - (a). A foreign going vessel of Indian flag having a General Trading Licence can convert to coastal run on the basis of a Customs Conversion Order. Such vessel that converts into coastal run based on the Customs Conversion Order at her first port of call in Indian Port, no further custom conversion is required, so long as it moves on the Indian Coast.
  - (b). A Foreign going vessel of foreign flag can convert to coastal run on the basis of a Licence for Specified Period or Voyage issued by the Director General of Shipping and a custom conversion order.
- (iii). Criteria for levy of Vessel Related Charges (VRC) at Concessional Coastal rate and foreign rate:
  - (a). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.
  - (b). In cases of such conversion coastal rates shall be chargeable till the vessel completes discharging operations at the last call of Indian Port; immediately thereafter, foreign going rates shall be chargeable by the discharge ports.
  - (c). For dedicated Indian coastal vessels having a Coastal licence from the Director General of Shipping, no other document will be required to be entitled to coastal rates.
- (iv). Criteria for levy of Cargo Related Charges (CRC) at Concessional Coastal rate
  - (a). Foreign going Indian Vessel having General Trading License issued for ‘worldwide and coastal’ operation should be accorded applicable coastal rates with respect to Handling Charges (HC) i.e. ship to shore transfer and transfer from/ to quay to/ from storage yard including wharfage in the following scenario:



- (i). Converted to coastal run and carrying coastal cargo from any Indian Port and destined for any other Indian Port.
- (ii). Not converted\* to coastal run but carrying coastal cargo from any Indian Port and destined for any other Indian Port.

\* The Central Board of Excise and Customs Circular no.15/2002-Cus. dated 25 February 2002 allows carriage of coastal cargo from one Indian port to another port in India, in Indian flag foreign going vessels without any custom conversion.

- (b). In case of a Foreign flag vessel converted to coastal run on the basis of a Licence for Specified Period or Voyage issued by the Director General of Shipping, and a Custom Conversion Order, the coastal cargo/ container loaded from any Indian Port and destined for any other Indian Port should be levied at the rate applicable for coastal cargo/ container.
- (v). Interest on delayed payments / refunds:
  - (a). The user shall pay penal interest on delayed payments under this Scale of Rates. Likewise, the operator shall pay penal interest on delayed refunds.
  - (b). The rate of penal interest will be 2% above the Prime Lending Rate of State Bank of India (SBI). The penal interest rate will apply to both the operator and the port users equally.
  - (c). The delay in refunds will be counted only 20 days from the date of completion of services or on production of all the documents required from the users, whichever is later.
  - (d). The delay in payments by the users will be counted only 10 days after the date of raising the bills by the operator. This provision shall, however, not apply to the cases where payment is to be made before availing the services/ use of Port Trust's properties as stipulated in the Major Port Trust Act and/ or where payment of charges in advance is prescribed as a condition in this Scale of Rates.
- (vi). All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.
- (vii). (a). The rates prescribed in this Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The operator may, if he so desires, charge lower rates and/ or allow higher rebates and discounts.  
(b). The Operator may also, if he so desires, rationalize the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalization gives relief to the user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling levels. Provided that the operator should notify the public such lower rates and / or rationalization of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and / or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.
- (viii). The users will not be required to pay charges for delays beyond a reasonable level attributable to the operator.

## CHAPTER 2 – CARGO RELATED CHARGES

The cargo handling charges at the New Iron Ore berth for handling Iron Ore Exports at Paradip Port Trust shall be payable on the manifested cargo directly by the importer of cargo at the rates specified below:

**a. Handling Charges**

Sl. No.	Commodity	Unit	Rate in ₹
1	Iron Ore handling charges (all types)	Ton	227.12

**Note:**

The above rate is the composite rate for unloading the Iron Ore from the railway wagon, conveying to stack yard, storage at the stack yard upto free period of 18 days after the time of unloading the iron ore from railway wagon, reclaiming from stack yard and loading on to the ship and all other miscellaneous services provided.

**b. Storage charges:**

The storage charges for the cargo stored in the stack yard beyond the free period of 18 days allowed shall be as below:

(Rate in ₹ per MT per day or part thereof)

Sl. No	Commodity	Rate for first five days for the balance cargo remaining after the free period	Rate for sixth day to tenth day for the balance cargo	Rate for 11th onwards for the balance cargo
1	Iron Ore (all types)	3.47	6.94	13.89

**Notes:**

- (i). For the purpose of calculation of free period, Customs notified holidays and Terminal's non-working days shall be excluded.
- (ii). Free period for Import cargo shall be reckoned from the day following the day of completion of final discharge from the vessel.
- (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.

## CHAPTER 3 - VESSEL RELATED CHARGES.

**a. Berth Hire Charges**

The Berth Hire Charges payable by Masters/ Owners/ Agents for the vessel shall be as per the rates below:

Sl. No	Vessels	Rate per GRT per hour or part thereof	
		Foreign Going Vessel (in ₹)	Coastal Vessel (in ₹)
1	All Vessels	1.24	0.75

**Notes:**

- (i). The period of berth hire shall be calculated from the time vessel occupies the berth.
- (ii). Berth hire includes charges for services rendered at the berth, such as occupation of berth, rubbish removal, cleaning of berths, fire watch, etc.
- (iii). Incase the vessel idles due to breakdown or non availability of the shore based facilities of the operator, or for any other reasons attributable to the terminal

operator, rebate equivalent to berth hire charges accrued during the period of idling of the vessel shall be allowed by the operator.

- (iv). (a). Berth hire shall stop 4 hours after the time of vessel signaling its readiness to sail.
  - (b). The time limit of 4 hours prescribed for the cessation of berth hire shall exclude the ship's waiting time for want of favorable tide conditions, inclement weather, and due to lack of night navigation.
  - (c). The master/ agent of the vessel shall signal readiness to sail only in accordance with favorable tidal and weather conditions.
- (v). The Penal berth hire charges shall be equal to one day's (24 hours) berth hire charge for a false signal. levied in addition to berth hire charges beyond 2 hours.

"False signal" would be when the vessel signals its readiness and asks for a pilot in anticipation even when she is not ready for un-berthing due to engine not being ready or cargo operation not completed or such other reasons attributable to the vessels. This excludes the signaling readiness when a vessel is not able to sail due to unfavorable tide, lack of night navigation or adverse weather conditions.

#### **CHAPTER 4 - GENERAL NOTE**

The tariff caps will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2019 and 1 January of the relevant year. Such automatic adjustment of tariff caps will be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31 March of the following year.

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**PERFORMANCE STANDARDS**

**1. Gross Berth Output:**

The parameter deals with the productivity of the terminal (Gross Berth Output) for different types of cargo. In case of iron ore, the capability of the terminal (mechanization, method of handling) and parcel size will determine the Gross Berth Output. Higher terminal capability and greater parcel size will lead to high productivity. The Gross Berth Output shall be calculated as the total cargo handled to the ship during a month divided by the time spent by the ship at the terminal multiplied by number of working days of ships in that month at that terminal. While determining the number of working days from the ship hours, the berth allowance of 4 hours shall be subtracted from the total hours.

The norm for Gross Berth Output for Iron Ore will be 60,000 Tons/day. Weightage in case of shortfall in meeting the prescribed performance standard will be 70%.

**2. Transit Storage Dwell Time:**

**Bulk Cargo**

The Transit Storage Dwell Time for iron ore shall be calculated, as half of average parcel size of above cargo vessels in a month divided by average disposal of cargo from the port per day as per the following methodology:

$$\text{Average disposal of Cargo per day (A)} = \frac{\text{OB+Received/Despatched-CB}}{\text{No. of days}}$$

OB = Opening Balance, CB = Closing Balance.

$$\text{Average Parcel Sizes (B)} = \frac{\text{P1} + \text{P2} + \dots + \text{Pn}}{\text{n (no. of parcels)}}$$

P1, P2 ..... Pn are parcel size of each vessel in a month.

$$\text{Transit storage Time for Bulk Cargo} = 0.5 (B/A)$$

The transit dwell time for iron ore will be 18 days up to commencement of ship loading operation. Weightage in case of a shortfall in meeting the prescribed performance standard is 20%.

**3. Turn around Time for receipt / delivery operation:**

The Turnaround Time for receipt/delivery operation shall be the sum of time taken for unloading of cargo divided by the number of rakes deployed, as the case may be, in a month. Further, in case the rake does both unloading and loading operations on a single entry into the terminal, the time allocated shall be doubled for those rakes.

The norms will be as follows:

- Rake for dry bulk cargo (single operation) : 10 hours
- Rake for dry bulk cargo (Double operation) : 18 hours  
58 BOXN wagons per rake

Weightage in case of a shortfall in meeting the prescribed performance standard is 10%.

**Performance Evaluation and calculation of liquidated damages:**

Performance evaluation shall be made on a quarterly review of the reports furnished by the Concessionaire and/or the records of the Concessionaire and/or by an enquiry by the

Concessioning Authority. The Concessionaire shall be liable to pay liquidated damages determined at the rate of 1% (one per cent) of the Gross Revenue of the respective quarter for every shortfall of 10% (ten per cent) in the average performance which shall be assessed in the following manner.

Each Performance Standard is calculated as an average in the manner indicated above.

The actual average performance vis-à-vis a standard will be evaluated against the prescribed standard. The shortfall will be computed as a percentage of the prescribed standard. The shortfall in respect of each performance standard will have a weightage assigned to it. The overall shortfall in average performance shall be assessed as the aggregate of the weighted shortfalls in respect of each of the performance standards. For example, if there is a shortfall in Gross Berth Output by x%, Transit Storage Dwell Time by y% and Turn round time for receipt/delivery operations by z% and the weightage assigned to such shortfalls is 0.7, 0.2 and 0.1 respectively, then the overall shortfall in average performance will be  $(0.7x + 0.2y + 0.1z)\%$ .

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**SUMMARY OF THE ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE  
THE AUTHORITY.**

<b>F. No. TAMP/54/2019-JPTPL</b>	<b>Proposal received from M/s. JSW Paradip Terminal Private Limited for notification of Scale of Rates in its name as per “Guidelines for determination of Tariff for Projects at Major Ports, 2013.</b>
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A joint hearing was held on the matter at PPT premises in Bhubaneswar on 05 December 2019, with the PPT, JPTPL and the users who represented to the Authority to decide on the limited issue of unit of levy of storage charges applicable at the JPTPL. At the joint hearing, the JPTPL made a power point presentation of its proposal. At the joint hearing, the JPTPL, PPT and the users have made the following submissions.

**JPTPL**

- (i). [Briefly explained the sequence of events from the year 2008 to 2019, discussing about fixing of upfront tariff by TAMP in the year 2008 for Iron Ore Berth to be developed at PPT, fixation of reference tariff by TAMP in June 2014 for Iron Ore Berth to be developed at PPT by applying indexation of 31.58% over the 2008 tariff, JSW bidding for the project and entering into a Concession Agreement with PPT in May 2015 and thereafter commissioning of operations by JSW in September 2019 and issue of Trade Circular by PPT in October 2019.]
- (ii). JPTPL has commenced its operations. We, however, have issues with regard to storage charges, as has been approved in the June 2014 Order.
- (iii). Upfront Tariff Order dated 14 July 2008, which formed the basis of Reference Tariff Order dated 5 June 2014, prescribed storage charges on ‘per tonne’ basis. Revision of Tariff in 2013 also prescribed storage charges on ‘per tonne’ basis. As per the bidding documents the unit of levy of storage charges was explicitly mentioned on ‘per tonne’ basis. The Appendix 12 to the Concession Agreement explicitly mentions the unit storage levy as ‘per tonne’. At the time of signing of Concession Agreement, although a mention was made to TAMP Order dated 5 June 2014, the methodology for calculating storage charges explicitly stipulated ‘per tonne’ basis. In the previous Order of TAMP (2008 and 2013), changes in only indexation factor have been considered. Changing the unit of levy for storage charges in the subsequent 2014 notification is, therefore, not justified. TAMP notification of 2014 contradicts previous two notifications. Storage charges are applicable for different period groups. Not on per day basis.
- (iv). Due to application of indexation factor in the June 2014 Order over the 2008 Order, all the rates in the June 2014 Order have increased only by 31.58% except for the storage charges, which has increased by 557.91%, on account of indexation as well as change in the unit of levy of storage charges from ‘Rate in ₹ per tonne’ to ‘Rate in ₹ per tonne per day’. [The JSW refers to a table in this regard in the power point presentation.]

- (v). High escalation in the storage charges leaves the terminal unviable, as the users would not be able to pay the steep storage charges.
- (vi). As per the TAMP announced indexation factors for each of the years from 2014-15 to 2019-20, storage charges for 2019-20 will be ₹ 17.36 per tonne, ₹ 34.72 per tonne and ₹ 69.44 per tonne for three period groups.
- (vii). Revenue requirement is segregated into cargo handling and storage charges in the ratio of 99:1 The revenue requirement for storage is ₹ 154 Lakhs. The revenue realization from storage as per tentative working may be ₹ 162 lakhs, closer to ₹ 154 lakhs. However, as per Trade Circular of PPT, revenue from Storage will be manifold.  
[JSW refers to a table in this regard, in the power point presentation.]
- (viii). JSW would end up earning more than the permitted 16% return. If 56000 tonnes of cargo received in piecemeal on different dates, and stay in terminal including free period of 18 days for shipment on 36<sup>th</sup> day, terminal would earn storage charges at ₹ 177.94 per tonne when the charging basis is per tonne per day; if the charging basis is only per tonne, terminal would earn only ₹ 26.66 per tonne.
- (ix). In another scenario of 46 days dwell time, terminal would earn ₹ 435.71 per tonne when the charging basis is per tonne per day; if the charging basis is per tonne only, the realization will be ₹ 38.60 per tonne. More than 10 times.  
[The JSW in their presentation gives illustrations to establish that the storage amount per tonne that would be earned by them on account of levy of storage charges on per tonne per day basis, would be substantially enormous.]
- (x). The users have also objected to high storage charges unit of levy being specified as ₹ per tonne per day”. JPTPL and PPT’s unjust returns on capital employed at the expense of other port users, likely to have legal implications. While specifying tariff in 2014, TAMP did not conduct this meeting. Hence, users are having grievances which need to be settled.
- (xi). Though we had entered into contracts with about 12-15 parties for handling of cargo at our terminal, except one, none of them have materialized. From 4th October till now we have only one customer, owing to the steep storage charges. Even with a per tonne storage rate, we have contracted to give discount to the tune of 55%. It is national loss, considering that a brand new terminal with all equipment in place is available, but is not in a position to operate to its optimum utilisation.

[Member(F), TAMP: Provide us with copies of the contracts entered by JPTPL with various parties.]

JSW: We will provide the copies of contracts.

- (xii). Other competing ports offer lowest storage charges. Users would shift there. Fully mechanized infrastructure of JPTPL will be unviable. Port will lose royalty. Storage charges at per tonne basis is in the best interest of

PPT and JPTPL. There will be smooth public private partnership between PPT and JPTPL.

(As per the presentation made by JPTPL, the total cost of handling iron ore at PPT operated iron ore handling plant is ₹ 192 per tonne and it is ₹ 270 per tonne at Dhamra Port whereas it will be ₹ 474 per tonne at JPTPL, the major component being storage charges at ₹ 178 per tonne if the basis for levy is per tonne per day.)

- (xiii). As stipulated in Clause 3.8.4 of the Tariff Guidelines of 2008, TAMP can enquire into wrong application of Scale of Rates. Clause 3.8.5 of the Tariff Guidelines of 2008, provides that TAMP can decide a question which arises requiring clarification or interpretations of the Scale of Rates and the statement of conditions of a private operator. JPTPL request TAMP and PPT to review the wrong SOR and correct the mistake of storage charges unit of levy as “₹ per tonne” basis rather that “₹ per tonne per day”.
- (xiv). Only one or two shipments of iron ore stay in the yard for more than 45 days, which are exceptional. We want per tonne only.

### **Brahmani, Kashvi & Mohashakti**

- (i). The storage charges at JPTPL has substantially increased our operating costs. The storage charges may be reviewed and prescribed on ‘per tonne’ basis.

### **PPT**

- (i). We have given our comments to Ministry as well as TAMP. TAMP can take a call on the matter. We have no other comments to offer.  
[PPT is silent on the arguments made by JPTPL backed by its power point presentation.]  
[Member (F), TAMP: Provide us with a copy of the letter issued by PPT to Ministry.]

PPT: We will provide it to TAMP.

### **Member (F), TAMP**

- (i). Storage charge prescribed for a period group may be divided by the number of days of that period group and charge may be prescribed at per tonne per day. This will disincentivise users to use the terminal as Storage yard for longer period particularly in the last period group of 29<sup>th</sup> day onwards.

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