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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 249

New Delhi,

03 July 2018

NOTIFICATION

In exercise of the powers conferred by 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 Kolkata Port Trust (KOPT) for revision of schedule of rent for KOPT's land at Haldia Dock Complex – II as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/10/2018-KOPT

Kolkata Port Trust

QUORUM

Applicant

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

ORDER

(Passed on this 8th day of June 2018)

This case relates to a proposal received from Kolkata Port Trust (KOPT) for revision of schedule of rent for KOPT's land at Haldia Dock Complex (HDC) – II.

2.1. The existing Schedule of Rent (SOR) for KOPT's land at HDC – II was approved by this Authority vide its Order No. TAMP/40/2011-KOPT dated 14 February 2012. This Order was notified in the Gazette of India on 14 March 2012 vide Gazette No. 64. Accordingly, the SOR came into effect from 13 April 2012 after expiry of 30 days period from the date of notification of the Order in the Gazette and was valid for a period of 5 years i.e. upto 12 April 2017.

2.2. Thereafter, the KOPT vide its correspondences had requested for extension of validity of the existing rentals on the ground that it has engaged a valuer for the purpose of revising the rentals and that it would require some time to carry out the valuation of land at Shalukkhali.

2.3. Based on the request made by KOPT and considering the time required for processing the proposal to be filed by the KOPT and in order to avoid a vacuum in the SOR of KOPT, this Authority considered the request made by KOPT and has extended the validity of SOR at periodic intervals. On the last occasion, the validity was extended upto 31 March 2018 vide Order dated 19 January 2018.

2.4. While extending the validity, it has been stipulated that the annual escalation of 2% will continue to apply during the extended validity period of the Rent Schedule for the land of KOPT at Shalukkhali, Haldia Dock – II. It has also been indicated in the extension Orders that the annual escalation of 2% is only a provisional arrangement to avoid vacuum in lease rentals and that the lease rentals to be fixed for the land of KOPT at Haldia Dock – II, based on a proposal to be filed by KOPT in this regard, would have to be given a retrospective effect from 13 April 2017, as the Land Policy Guidelines requires this Authority to fix lease rentals every five years.

2.5. Further, while extending the validity, the KOPT was advised to file its proposal for revision of Rent Schedule, following the amended Land Policy Guidelines, 2014, issued by the Government, by 31 January 2018.

3.1. In this backdrop, the KOPT vide its letter No. Ad/E/1032/SD/Shalukkhali/V/7109 dated 9 February 2018 has filed its proposal following amended Land Policy Guidelines, 2014, for fixation of Schedule of Rent for KOPT's land at HDC – II. At our request, the KOPT vide its email dated 28 February 2018 has furnished the contact details of the users / user organizations to be consulted in the case in reference.

3.2. Thereafter, the KOPT vide its email dated 5 March 2018 has stated that some inadvertent calculation/ typographical errors under para 9 of the Valuation Report have been corrected by Valuer and that the Valuer has submitted a revised report to KOPT. Accordingly, the KOPT has forwarded the revised valuation report and has requested to consider the revised Valuation Report. The KOPT has also stated that there is no change in proposed rate of rent of land at Haldia Dock-II and that the rentals are same as proposed by KOPT vide its earlier letter dated 9 February 2018.

4.1. The KOPT has prepared the proposal based on the valuation Report of December 2017 of M/s. Associated Valuers who were engaged by the KOPT as a valuer for the valuation purpose and in terms of "Land Policy Guidelines 2014 issued by the Ministry of Shipping on 17 July 2015. The salient points of the Valuation Report submitted by the Valuer (as reflected in the Agenda note placed by the KOPT before its Board of Trustees) are as follows:

- (i). The entire KOPT land at HDC-II of 162.84 acres abutting the river Hooghly is for development of dock and dock related facilities including jetties, terminals, storage facilities/ tankages, allied facilities for cargo evacuation etc.
- (ii). State Govt. ready reckoner is not available in West Bengal.
- (iii). No tender rates of the port land at HDC-II are available.
- (iv). The highest rate of transaction of land parcels in the vicinity mouzas in the last 3 years obtained from the sub-Registry Office has been considered for valuation of the subject land in line with the provision of the Land Policy Guidelines. Based on actual transaction rate, relevant issues including those mentioned below have been factored in for arriving at the market value of land at HDC-II.
- (a). The relevant transaction in last 2-3 years in the vicinity are mostly for rural residential use.
- (b). The Baastu (residential) purpose rates and industrial purpose rates in the adjacent mauzas vary to the tune of 16-19%, as seen from the online portal of the Directorate of Registration and Stamp Revenue, Govt. of West Bengal.
- (c). To remove inconsistencies between the subject area and comparable land parcel in terms of area of the land parcel, suitable discount factor has been applied.
- (d). The nature of utilization of the land at HDC-II which is for dock and dock related facilities is not comparable with the adjacent area. Such dock facilities have better infrastructural facilities, access, security etc.
- (e). Calculation for the lease rentals for Haldia Dock Complex- II is as follows:

| | | |
|--|-------------------|------------------------|
| Highest sale transaction in the vicinity (for residential) | 93450 | Rupees per decimal |
| Add: 15% Premium (to factor difference in value of residential & industrial) | 14018 | Rupees per decimal |
| Add: 25% Premium (to factor availability of better infrastructure in port lands) | 23363 | Rupees per decimal |
| Less: 5% Discounting factor (to factor that larger plots will be priced lower) | 4673 | Rupees per decimal |
| Adopted value of industrial land (freehold) | 126158 | Rupees per decimal |
| Adopted value of industrial land (freehold) (1 acre = 100 decimal) | 12615850 | Rupees per acre |
| Area of freehold land | 112.25 | acres |
| Market Value of Industrial freehold land [112.25 x 12615850] | 1416129163 | Rupees |
| Base Value of leasehold land | 12615850 | Rupees per acre |
| Area of leasehold land | 50.59 | acres |
| Market Value of leasehold land [50.59 x 12615850] | 638235852 | Rupees |
| 8% Return | 51058868.1 | Rupees |
| Less: 10% towards Property tax & other expenses | 5105886.81 | Rupees |
| Net Annual Return (NAR) | 45952981.3 | Rupees |

| | | |
|---|-------------------|--------------------------------------|
| Multiplication factor (considering alternative investment opportunity and without lease renewal clause) | 9.84 | --- |
| Market Value of leasehold area | 452177336 | Rupees |
| Capital Value of entire land | 1868306499 | Rupees |
| Lease Rent @ 6% of Market value of land | 112098390 | Rupees per annum for 162.94 acres |
| | 9341532.49 | Rupees per month for 162.94 acres |
| | 14.1668155 | Rupees per month for 1 sq.m |
| | 1416.68155 | Rupees per month for 100 sq.m |
| Lease Rent proposed by KOPT (rounded off) | 1417.00 | Rupees per month for 100 sq.m |

- (v). The valuer has recommended annual lease rent to be 6% of the market valuation of the land. The above is in conformity with the Land Policy Guidelines.
- (vi). Considering the suggested market value of land and yield of 6%, the rate of rent for the land at HDC – II has been assessed as ₹.1417 per 100 sq. mtrs. per month. This rate is 4.4% higher than the current rate of ₹. 1356.91 per 100 sq. mtrs. per month.
- (vii). The Land Allotment Committee (LAC) headed by the Dy. Chairman of HDC and comprising of General Manager (M&S), General Manager (Finance) i/c, General Manager (Traffic) i/c and Sr. Dy. Manager (Admn) as Members in its meeting held on 19 January 2018 has accepted the Valuation Report and has recommended the proposed rentals.

4.2. Accordingly, the proposal of KOPT is as follows:

“(i). Land:

| Description of Land | Rate of rent/ licence fee per 100 sq. mtrs. per month |
|----------------------------|--|
| Land at Haldia Dock - II | ₹.1417/- |

(ii). Other Charges:

- (a). Charges for using the waterfront abutting HDC-II land shall be 50% of the scheduled rent/ licence fee of the land i.e. ₹.709 per 100 sq. mtrs. per month.
- (b). Way leave permission fee will be charged as follows:
- (i). For laying essential utility service lines like telephone lines, water supply lines, sewerage lines, low voltage domestic electric lines running on single pole etc. way leave charges shall be levied at the rate of ₹.1500/- per calendar year or part thereof.
- (ii). For allowing overhead conveyors and high voltage transmission lines with towers, way leave charges will be charged on the basis of scheduled rent for the area coming in the alignment of the structures.

- (iii). For laying pipelines carrying Crude Oil, POL Products and other Liquid Cargo over or under the ground, way leave charges will be levied as follows:

For the purpose of way leave charges, the area occupied by single pipelines shall be calculated based on the diameter and length of those pipelines. In case of multi-layer pipeline stacks shall be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails jetties etc. the respective users shall be billed pro-rata for 50% of the concerned area assuming that they do not have exclusive possession of land and what they have is only 'Right of Way'. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines shall be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges."

4.3. The KOPT has also proposed an annual escalation of proposed rentals at 2% per annum.

4.4. Further, the KOPT has stated that the Board of Trustees of KOPT in its meeting held on 29 January 2018 has approved the Rate proposal of the Land Allotment Committee (LAC). The copy of the Minutes of the Board is furnished by KOPT.

5. In accordance with the consultative procedure prescribed, a copy each of the KOPT proposal dated 9 February 2018 and letter dated 5 March 2018 was forwarded to the concerned users/ user organizations/ vide our letter dated 7 March 2018, seeking their comments. However, none of the users / user organizations have responded till the case was finalized.

6.1. Further, while acknowledging the proposal to KOPT vide our letter dated 7 March 2018, the KOPT was requested to furnish some information. The KOPT has responded vide its email dated 29 March 2018. The information sought by us and response of KOPT thereon is tabulated below:

| Sr. No. | Information Sought by us | Reply of KOPT | | | | | | | | |
|--|--|---|--|--|--|--|-------------------------------------|--|--|--|
| (i). | KOPT to clarify whether the land in HDC – II area is covered under the Land Use Plan of KOPT. | The KOPT land at Haldia Dock-II is not covered under the Land Use Plan of HDC. However, the entire land at Haldia Dock-II is for setting up of port facilities on the west bank of river Hoogly for expansion of HDC. The area is mandated to be utilized for setting up of riverine terminals /jetties and port related and port based facilities which will aid in growth of cargo to HDC, KOPT. | | | | | | | | |
| (ii). | The proposal for 50% increase in way leave charges for laying essential utility service lines like telephone lines, water supply lines, sewerage lines, low voltage domestic electric line running on single pole, etc. from the existing rate of ₹.1000/- per calendar year or part thereof to ₹.1500/- per calendar year or part thereof, to be justified. | <p>The proposed increase (by 50%) from ₹. 1500/- per calendar year or part thereof to ₹. 2000/- per calendar year or part thereof is on the basis of similar percentage increase considered by TAMP in case of SOR for land and building of HDC notified in 2017 as may be seen from the table below:</p> <table border="1" data-bbox="842 1816 1398 2027"> <thead> <tr> <th data-bbox="842 1816 1034 2027">Rate as per HDC SOR notified in 2011 (per calendar year or part thereof)</th> <th data-bbox="1034 1816 1209 2027">Rate as per revised HDC SOR notified in 2016 (per calendar year or part thereof)</th> <th data-bbox="1209 1816 1398 2027">Percentage Increase [(II) over (I)]</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> | | | Rate as per HDC SOR notified in 2011 (per calendar year or part thereof) | Rate as per revised HDC SOR notified in 2016 (per calendar year or part thereof) | Percentage Increase [(II) over (I)] | | | |
| Rate as per HDC SOR notified in 2011 (per calendar year or part thereof) | Rate as per revised HDC SOR notified in 2016 (per calendar year or part thereof) | Percentage Increase [(II) over (I)] | | | | | | | | |
| | | | | | | | | | | |

| | | | | |
|--|--|-----------|-----------|-----|
| | | I | II | III |
| | | ₹. 1438/- | ₹. 2000/- | 40% |

6.2. While furnishing the above response, the KOPT has stated that since the validity of existing SOR of KOPT's land at Haldia Dock-II is upto 31 March 2018 and since the subject proposal for revision of SOR is under consideration, TAMP may suitably consider the extension of the validity of the existing SOR beyond 31 March 2018 to avoid any void.

7. A joint hearing on the case in reference was held on 22 March 2018 at the KOPT premises in Kolkata. At the joint hearing, the KOPT has made its submissions.

8. 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>.

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

- (i). The Rent Schedule for the land at Haldia Dock – II of Kolkata Port Trust (KOPT) was last fixed by this Authority vide Order No.TAMP/40/2011-KOPT dated 14 February 2012. Vide the said Order, rent/ licence fee of ₹ 1229/- per 100 sq. mtrs. per month was fixed for the Bare land in the Dock Interior Zone (inside custom bonded area). The said SOR came into effect from 13 April 2012 and was valid for a period of 5 years i.e. upto 12 April 2017. Thereafter, at the request of KOPT, this Authority has extended the validity of the existing Rent Schedule beyond 12 April 2017. On the last occasion, the validity of the Rent Schedule has been extended upto 31 March 2018. In this backdrop, the KOPT has come up with a proposal for revision of the Rent Schedule for the land at Haldia Dock – II. The proposal of KOPT has the approval of its Board of Trustees.
- (ii). The KOPT has filed its complete final proposal in March 2018. The said proposal alongwith the information/ clarification furnished by KOPT 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 111 of the MPT Act, 1963 for implementation with effect from 17 July 2015. The KOPT has, thus, come up with a proposal for revision of the Rent Schedule for the land at Haldia Dock – II, based on the provisions of the Land Policy Guidelines for Major Port Trusts, 2014, as amended in July 2015.
- (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). Accordingly, a LAC is seen to have been constituted in the case in reference, which has been headed by the Dy. Chairman of HDC and comprising of General Manager (M&S), General Manager (Finance) i/c, General Manager (Traffic) i/c and Sr. Dy. Manager (Admn) as Members of the Committee.
- (v). (a). As stated earlier, para 13(a) of the Land policy guidelines of July 2015 prescribes the methodology for determination of market value of the land based on the five factors as prescribed therein. In terms of the said para of the amended Land policy guidelines of 2014, the Land Allotment Committee may normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for

similar classification/ activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity with an appropriate annual escalation rate to be approved the Port Trust Board, (iii). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (iv). Rate arrived at by an approved valuer appointed for the purpose by the Port and (v). Any other relevant factor as may be identified by the Port. The amended Land Policy guidelines of 2014 also stipulates that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded.

- (b). In this connection, the LAC has observed from the Valuer's Report that the State Government Ready Reckoner rate is not available in West Bengal and there are no tenders for the land at Haldia Dock – II. Therefore, the approach adopted by the Valuer for arriving at the market value of land based on the highest sale transaction rate in the vicinity and thereafter applying premium/ discount factors to remove inconsistencies between the subject area and comparable land parcels, has been considered by the LAC.
- (c). The entire land of Haldia Dock-II of 162.84 acre consists of 112.25 acre of free hold land and 50.59 acre of lease hold land. The premium/ discount factors considered by the Valuer on the highest sale transaction rate in the vicinity for valuation of free hold land of 112.25 acres are as follows:
 - (i). 15% premium on Residential sale transaction rate has been considered considering the general trend of difference in rate for Residential usage and industrial usage of vicinity land areas as noted from the reference valuers available from official website of Directorate of Registration and Stamp Revenue, Govt. of West Bengal.
 - (ii). A 25% Premium to factor availability of better infrastructure in port lands, as compared to the rural residential areas.
 - (iii). A 5% Discounting factor to factor the position that larger plots will be priced lower, as compared to smaller residential areas.
- (d). The market value has been arrived at by the Valuer for the lease hold industrial land by considering 8% Return on the market value of leasehold area, 10% reduction towards Property tax & other expenses and a Multiplication factor of 9.84 to consider alternative investment opportunities and without lease renewal clause.
- (e). Thus, market value of the entire land of 162.84 acres comprising of freehold land lease hold land has been arrived by the Valuer.
- (f). Clause 13(b) of the guidelines stipulates that Reserve Price in terms of annual lease rent would be arrived, as a percentage of latest market value of land [determined based on the five factors in accordance with para 13(a)] and that the percentage should not be less than 6% which is to be fixed by the Port Trust Board. Based on the derived market value of land for the land at Haldia Dock – II, the Reserve Price in terms of the Annual Lease Rent for the land at Haldia Dock – II has been recommended by the Valuer at 6% of the market value of land so derived.
- (g). Based on the above position, the LAC has accepted the recommendations contained in the Valuation Report of the Valuer. In other words, the market value of land as well as the Reserve Price in terms of the Annual Lease Rent for the land at Haldia Dock – II, as arrived at by the Valuer has been recommended by the LAC in its Report. Accordingly, the lease rental for the land at Haldia Dock - II has been recommended by the LAC at ₹ 1417/- per 100 sq.m per month.

- (h). Subsequent to recommendation of the LAC, the matter has been referred to the Board of Trustees of KOPT. The Board of Trustees has approved the Rate proposal of the LAC.
- (vi). Considering that the Annual Lease Rent derived by the Valuer taking into account the market value of the land has been recommended by the LAC and given that the Board of Trustees of KOPT has approved the recommendation of the LAC and since none of the users/ prospective bidders have objected to the rentals proposed by the KOPT, this Authority is inclined to prescribe the Lease Rent for the land at Haldia Dock – II at ₹ 1417/- per 100 sq.m per month. Incidentally, the proposed rental is seen to be about 4.4% higher than the escalated rate of ₹ 1356.91 per 100 sq. mtrs. per month, that prevailed as on February 2017, when the initial tariff period of 5 years came to an end.
- (vii). For using the waterfront abutting Haldia Dock – II, the KOPT has proposed levy of 50% of the scheduled rent/ licence fee at ₹ 709/- per 100 sq. mtrs. per month. Prescription of licence fee for the water area at 50% of the licence fee of abutting land is in line with the stipulation contained in Clause 12(l) of the amended Land Policy Guidelines of 2010 and hence is approved.
- (viii). The KOPT has proposed a 50% increase in way leave charges for laying essential utility service lines like telephone lines, water supply lines, sewerage lines, low voltage domestic electric line running on single pole, etc. from the existing rate of ₹ 1000/- per calendar year or part thereof to ₹ 1500/- per calendar year or part thereof, on the ground that similar percentage increase was considered by this Authority while approving the way leave charges for laying essential utility service lines in March 2017, as part of the Rent Schedule for the lands and buildings of KOPT at Haldia. Considering that the LAC has recommended the way leave charges and the Board of Trustees of KOPT has approved the recommendation of the LAC and since none of the users/ prospective bidders have objected to the proposed way leave charges, the proposal of the KOPT in this regard is approved.
- (ix). The KOPT has proposed an annual escalation of 2% per annum after expiry of one year from the effective date of implementation of revised rentals. In this regard, it is relevant here to mention that Clause 13(c) of the Land Policy Guidelines of 2014 gives flexibility to the ports to fix annual escalation which would not be less than 2%. Since the annual escalation rate of 2% is recommended by the LAC, approved by the KOPT Board of Trustees and is as per the provision of the Land Policy Guidelines of 2014, the proposed rate of 2% annual escalation is approved.
- (x). The KOPT has proposed various notes and conditionalities in the rent Schedule pertaining to the land at Haldia Dock – II. Many of the notes and conditionalities are seen to be in line with the stipulations contained in the amended Land Policy Guidelines, 2014. Remainder of the notes are seen to be as prescribed in the Rent Schedule for the lands and buildings of KOPT at Kolkata and Haldia in March 2017 and hence is approved.
- (xi). While extending the validity for the Rent Schedule for the land at Haldia beyond the initial validity period upto 12 April 2017, it has been stated that the annual escalation of 2% will continue to apply during the extended validity period of the Rent Schedule for the land of KOPT at Haldia Dock – II. It has also been indicated in the Orders that the annual escalation of 2% is only a provisional arrangement to avoid vacuum in lease rentals and that the lease rentals to be fixed for the land of KOPT at Haldia Dock – II, based on a proposal to be filed by KOPT in this regard, would have a retrospective effect from 13 April 2017, as the Land Policy Guidelines requires this Authority to fix lease rentals every five years. Accordingly, the revised rental approved in respect of Haldia Dock – II will be effective from 13 April 2017.

10.1. The revised Rent Schedule for Land at Haldia Dock – II is attached as **Annex**.

10.2. The revised Rent Schedule for the Land at Haldia Dock – II will be effective from 13 April 2017 and shall remain valid for a period of 5 years upto 12 April 2022. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

(T.S. Balasubramanian)
Member (Finance)

**SCHEDULE OF RENT FOR LAND OF KOLKATA
PORT TRUST AT HALDIA DOCK - II.**

I. Land :

| Description of land | Rate of rent/ licence fee per 100 sq. mtrs. per month in ₹. |
|----------------------------|--|
| Land at Haldia Dock – II | 1417/- |

II. Other Charges :

A. Charges for using the waterfront abutting Haldia Dock –II land shall be 50% of the scheduled rent / licence fee of the land i.e. ₹.709/- per 100 sq. mtrs. per month.

B. Way leave permission fee will be charged as follows :

i) For laying essential utility service lines like telephone lines, water supply lines, sewerage lines, low voltage domestic electric lines running on single pole, etc. way leave charges shall be levied @ ₹.1500/- per calendar year or part thereof.

ii) For allowing overhead conveyors and high voltage transmission lines with towers, way leave charges will be charged on the basis of scheduled rent for the area coming in the alignment of the structures.

iii) For laying pipelines carrying Crude Oil, POL Products and other Liquid Cargo over or under the ground, way-leave charges will be levied as follows:

For the purpose of way leave charges, the area occupied by single pipelines shall be calculated based on the diameter and length of those pipelines. In case of multi-layer pipeline stacks, the physical area occupied by the multilayer pipeline stacks shall be considered and the respective users should be billed for pro-rata area on the basis of the diameter and length of their pipelines passing through that area. With respect to the area shared with road, rails, jetties, etc., the respective users shall be billed pro-rata for 50% of the concerned area assuming that they do not have exclusive possession of land and what they have is only 'Right of Way'. As far as underground pipes are concerned if the users establish that the possession of surface area above the underground cross-country pipelines is not physically with them, the area occupied by such pipelines shall be counted 50% of the product of diameter and length, for the purpose of levy of way leave charges.

III. Notes :

1. Annual Escalation and revision of SoR:

1. The rates indicated in the SoR shall get automatically escalated by 2% per annum after expiry of one year from the effective date of implementation of this instant SoR and after every year thereafter, the escalated rates shall be considered as the prevailing Scheduled Rent for the concerned year.

B. Conditionalities for allotment of land:

B.1 The allotment of land will be for activities directly related to setting up of port facilities, port operations and/or which aid the port activities and sea trade as per provisions of prevailing Land Policy Guidelines issued by the Central Govt.

B.2 Allotment of land may be made on Lease/ Licence basis.

B.3 Lease:

1. Lease of land shall be granted by inviting tender-cum-auction methodology through a competitive bidding process over and above the reserve price of such plots, which shall be the updated SoR notified by TAMP, save and except the following cases:-

(i). For establishment of common utilities like sewage plant, water treatment plant, etc. by local bodies, land can be allotted by the Port Trust on nomination basis provided, allotment is in the interest of the Port Trust. The land allotted to such entities is to be used exclusively for the purpose for which it has been allotted and under no circumstance, the usage can be changed. No transfer/sub-letting of such lease will be permitted. Concession in lease rent can be provided by the Port Trust Board as provided under para (ii) below for establishment of common utilities like sewage plant, water treatment plant, etc by local bodies provided, they are in accordance with approved master plan of the city and the land is not required for the Port's own use.

(ii). Land can also be allotted on nomination basis to Government Departments, Statutory Local Bodies, Statutory Authorities/Autonomous Organizations under State/ Central Ministries, Central Public Sector Undertakings (CPSUs), State Public Sector Undertakings (SPSUs) and security agencies like State Police, CISF, Coast Guard and Navy, subject to the availability of land and on the basis of updated SoR. In cases where any CPSU/SPSU/Statutory Authority enters into Joint Ventures (JV) with private party/parties and the said CPSU/SPSU/Statutory Authority is the lead promoter and has the largest share-holding in the said JV, Port Trust Board may decide to allot land to them also on nomination basis with the approval of the Port Trust Board after incorporating appropriate safeguards.

Concession may be granted to security agencies and Government Departments only upto 50% of the annual lease rent. However, in respect of land to be allotted to Government departments which are essential to the functioning of the Port like Customs, electricity department, health department and for core security functions, concession upto 75% of the annual lease rental may be considered by KoPT. But such concession may be given for only small extent of land required for core operational purposes imperative for Port functioning and not otherwise. The issue of granting concession and the quantum may be decided on a case to case basis by the KoPT Board, after recording the reasons in writing.

2. Period of lease:

Leases may be granted upto a maximum cumulative period of 30 years by the KoPT Board.

Leases beyond 30 years for capital intensive investment like tank firms, refineries etc. may also be granted with the approval of the Central Govt.

In respect of PPP projects, approval of the project by the Competent Authority will be taken as approval for the license of the land component of the project.

3. Methodology of granting leases other than through nomination:

(a) The land may be leased by the port either on (i) payment of one time upfront amount for the entire lease period and a nominal lease rent of Re 1/- per sq. meter per year for the currency of the lease period or (ii) annual lease rent basis.

(b) For leases granted through tender cum auction methodology, the bidding parameter will be as follows :-

(i). On Upfront payment basis : Reserve price will be the NPV of the sum total of annual lease rentals calculated at the updated SoR escalated annually by 2%. The discount factor would be the longest term G Sec rate as per the latest RBI Bulletin.

- (ii). On annual lease rent basis: The reserve price would be the annual lease rent calculated at the updated SoR.

Note: In both the cases, the bidders will have to quote upfront payment / annual lease rent over and above the reserve price.

4. **Mutation :** The following cases will be treated as cases of mutation and for granting such mutation, a fee equivalent to 5% of the 12 month's rent (excluding applicable Taxes, Duties, Ceses) or ₹ 20,000/- whichever is higher shall be recovered :

- (i) In case of death of the lease, transfer to the legal heirs or legal successor or representative.
- (ii) Transfer consequential to the order of the Court or as per new Certificate of Incorporation as per Registrar of Companies.
- (iii) Transfer consequential to lessee becoming subject to laws of insolvency or liquidation
- (iv) Gratuitous transfer to any of the legal heirs due to old age, infirmity or some other valid reasons.

5. **Transfer of leases:** The lessee may be allowed to transfer the lease as per extant laws after obtaining prior approval of the KoPT Board provided transferee takes over all the liabilities of the original lessee / allottee. Such transfer shall be for the remaining duration of the lease and in accordance with the land Use plan of the Port. Before allowing such transfer, the KoPT shall recover:-

- (i) In case of leases granted on upfront basis : In case of those lands which were originally given on lease on upfront rental basis, the transfer as per extant laws may be allowed subject to the transferee agreeing to pay the following :
 - (a) An undertaking for payment of the upfront rental as calculated on pro-rata basis for the balance period, and
 - (b) A fee equal to 50% of the pro-rata upfront rental payable upto the time of transfer.
- (ii) In case of leases granted on annual lease rent basis transfer may be allowed subject to :-
 - (a) An undertaking for payment of the annual lease rental for the balance period, and
 - (b) A fee equivalent to 50% of the total lease rent payable by the original lessee upto the time of transfer.
- (iii) Transfer of lease shall not be permitted where land was initially allotted on nomination basis or at concessional rates of lease rent.
- (iv) In respect of cases where the transferors extract premium on the transfer of the lease, 50% of such premium is to be paid to KoPT.

6. **Mortgage:** KoPT will grant NOC for mortgaging of leasehold interest only in favour of reputed financial intuitions / scheduled banks subject to KoPT retaining the first charge on them and recovery of fees as will be decided by the board.

7. Subletting:

- (i). The existing lease holder may be allowed to sublet / partially sublet the leased premises from a prospective date to another party for the same purpose for which it was originally allotted, provided, the lease deed has enabling provision for the same. Also, purpose of such subletting shall be in accordance with the land use

plan and before allowing this, the Port shall recover 50% of the rent charged by the lessee from the sub-lessee, for the entire period of sub-lease, irrespective of the fact whether land was originally allotted on upfront basis or annual rental basis. The original lessee would continue to remain responsible for payment of lease rent and for adherence to the terms and conditions of lease. Leased premises shall also include structures built on leased land for the purpose of recovering of subletting fees. Exemption from collecting subletting fees may be given in case of FTZ, SEZ etc. wherein the business model is based on subletting only.

(ii). No subletting will be allowed for leases granted on nomination basis.

8. **Change of use of leased land-**

Change of use of leased land may be permitted on receipt of prior application subject to such change being in conformity with the land use plan and the covenants of the lease and payment of –

- (i) Higher rate of rent for the new usage as per prevailing updated SoR from the date of change of purpose, as applicable. In case the existing rate is higher than the rate of proposed new purpose, the existing rate will continue with annual escalation as per lease agreement, and
- (ii) Fees equivalent to lease rent (applicable as per 8(i) above) for 6 months and applicable Tax.

9. **Termination & Imposition of Penalty:**

- (a) In case the leased land is not used for the purpose for which it is granted, (within two years of its allotment or as decided by the KoPT Board), the lease will be terminated and the possession of the land so allotted will be resumed by KoPT.
- (b) If a lessee breaches / violates any provisions of Lease Agreement, the KoPT Board would reserve the right to impose appropriate penalty on the lessee or terminate the lease depending upon the nature / magnitude of breach / violation. Such penalty may be imposed after giving a reasonable opportunity to the lessee to present the case.

10. **KoPT's right to resume possession and impose MGT:** (a) KoPT shall have the right to resume possession of the leased land in public interest before expiry of lease period. In such cases, subject to availability of land, the lessee may at the discretion of the KoPT Board be given an option to relocate the activities in another suitable location to be offered by KoPT, as per the land use plan or refund proportionate upfront premium if the land was leased on upfront basis. (b) KoPT would have the option to prescribe Minimum Guaranteed Traffic / Minimum Guaranteed Revenue as conditions for fresh leases if deemed fit.

B.4. Other utilization of land:

- i) When entering into a joint venture for improving Port connectivity or Port development with any public authority, land required for such projects, valued at the latest SoR may constitute the equity of the Port in such joint ventures.
- ii) The Port Trust shall not entertain any proposal for allotment of land to religious institutions or for religious purposes or to political institutions.
- iii) In respect of PPP projects, the annual lease rent based on latest SoR with the approved rate of annual escalation would be indicated to the bidders at the bidding stage itself. With respect to land allotted for captive facilities, the lease rentals for the land allotted shall be recovered from the user as per the annual lease rental based on latest SoR, with the approved rate of annual escalation.

B.5 Licence:

Licence of land can be given only for port related activities and for cases where it will not be feasible to make such allotments on lease basis. Such licences will be granted normally through tender cum auction procedure. In cases where the tender cum auction is not possible the land may also be allotted on license basis at the latest updated SoR. Besides, the other conditions and methodology in case of licensing of land as given below will also be applicable:

1. The licence shall be upto a maximum period of 11 months. The period of licence can be renewed at the discretion of KoPT. If the licensee requires renewal of the license, an application for renewal must be made to the authority concerned of KoPT well in advance.
2. The licensee shall utilize the allotted land for the purpose for which it is licensed. No change in purpose of utilization will be allowed. The space allotted shall also not be subletted / assigned / transferred.
3. The license is terminable on 7 days' notice on either side. No claim for any compensation whatsoever for termination of the license will be entertained.
4. The licensee shall agree to comply with all rules and directions issued by KoPT from time to time. If the licensee neglects to comply with such rules or directions, the port may terminate the license.
5. The licensee shall comply with all rules or regulations that may from time to time be issued by the Dock Safety or the Department of Explosives or any other Appropriate Authority in relation to storage of cargo.
6.
 - (i). Cargo stored under a license shall be at the entire risk and responsibility of the licensee. The licensee shall post his own watchman to safeguard the cargo stored at the allotted space and to prevent any unauthorized occupation of such space by others.
 - (ii). The licensee shall make his own arrangements to keep the allotted land and its surroundings neat, clean and in proper sanitary condition.
 - (iii). The licensee shall, at his own arrangements, display signboards containing name of the licensee, plate no. & validity of licence.
7. In addition to payment of license fee as per prevailing SOR, the licensee shall pay municipal tax, if required and as applicable.
8. The license fee prescribed under the SOR shall get automatically escalated by 2% per annum after expiry of one year from the effective date of implementation of this instant Rent Schedule and after every year thereafter the escalated rates shall be considered as the prevailing Scheduled Rent for the concerned year and will be applicable forthwith on all such licences / occupations in force.
9. The total licence fee towards the initially granted license period shall have to be paid in advance and only one month's license fee is to be deposited as Security Deposit (SD).

The SD will be refunded to the licensee upon handing over of vacant, peaceful, unencumbered possession of the concerned land to KoPT after adjusting dues to KoPT, if any.
10. Encroachment or unauthorized occupation of land and Railway tracks, etc. by the licensee will involve a liability to pay a penalty at the rate of ten times the scheduled licence fee, in addition to the cost of rectification of damages caused to the Port properties. If the licensee fails to remove cargo, if kept, from the encroached area in spite of notice to do so, the cargo will be removed elsewhere by the Port at the risk and cost of the licensee and penal licence fee at the rate of ten times the normal rate will be levied on the space occupied by the cargo so removed.

11. After the expiry / termination / determination / forfeiture of the licence, if the licensee continues to occupy it unauthorisedly, the licensee shall be liable to pay compensation for wrongful use and occupation at the following rates till vacant possession is obtained :-

| | |
|--|---|
| First 30 days | 3 times the rate as per prevailing SOR |
| Next 30 days | 5 times the rate as per prevailing SOR |
| Continued unauthorised occupation beyond 60 days | 10 times the rate as per prevailing SOR |

12. The licence fee, compensation charges, other dues along with the applicable Tax shall be paid within the due date specified in the Bills / Invoice or Demand Notice.
13. The licence fee will be charged from the date of handing over possession of the land and occupation of actual area of the land to be found on demarcation by the licensee.
14. The licensee shall not cause any damage to KoPT properties. If, however, any damage is caused, the licensee shall be liable to make good the damages at his own cost and arrangement to the satisfaction of KoPT.

B.6. Other Conditions

1. Other Charges :

- (a) In addition to rent / license fee, the lessees/licensees will be required to pay the following:
- (i) Municipal tax etc. as applicable.
 - (ii) Electricity charges / water charges at actuals plus 19.25% on the actual amount as overheads, if electricity / water is supplied from KoPT Sources.
- (b) The lessees/licensees will also be required to pay and discharge all present and future rates, GST, Cesses, taxes, duties, charges assessments, outgoing and premium in respect of policy of insurance against any risk whatsoever which are now or may at any time hereafter be assessed, charged or imposed upon or payable in respect of the demised land and / or any factory and / or building or structure erected by the lessees / licensees thereon or the owners or occupiers in respect thereof except the owners' share of municipal taxes in respect of the demised land.

2. Security Deposit:

Security Deposit shall be recovered as follows:-

- (a) In respect of leases :-
- (i) In case of lease on upfront basis, non-interest bearing security deposit equivalent to Two Years rent @ ₹. 1/- per sq. mtr. per year shall be recovered.
 - (ii) In case of lease on annual lease rent basis, non-interest bearing security deposit equivalent to Two Years rent as per updated SoR shall be recovered.
 - (iii) The Security Deposit is refundable after completion of lease period (without any interest) subject to adjustment of dues / damages.
- (b) In respect of Licenses:
- (i) In case of allotment of land on 11 months licence basis, non-interest bearing security deposit equivalent to 3 (three) month's licence fees (basic licence fee for land) plus 15% Administrative Deposit shall be recovered.

- (ii) In case licensee chooses to pay the total licence fee towards the initially granted licence period in advance, only one month's licence fee (basic licence fee for land) plus 15% Administrative Deposit is to be deposited as non-interest bearing Security Deposit.
- (iii) The Security Deposit is refundable after completion of license period (without any interest) subject to adjustment of dues of damages.

3. Damages for Encroachment:

Without prejudice to other appropriate action being taken, damages at **3 (Three) times** the rate of rent/license fee as per prevailing Schedule of Rent (SoR), will be recovered for encroachment of KoPT's land / building for the first month of encroachment. For the next two months of encroachment, the damages shall be recovered at **5(Five) times** the respective zonal rate of rent/license fee as per prevailing Schedule of Rent (SoR) and thereafter if the encroachment continues, the damages shall be recovered at **10(Ten) times** the respective zonal rate of rent / licence fee as per prevailing Schedule of Rent (SoR) for the encroached area.

4. Compensation:

In the event of expiration / termination / determination of lease/licence and despite receiving the notice thereof or forfeiture of lease / licence on account of change of user, assignment, etc, if the lessee / licensee continues to occupy the premises unauthorizedly, the lessee or the licensee shall be liable to pay compensation for wrongful use and occupation of the premises at **three (3) times** the annual lease rent/licence fee based on the latest SoR, till the vacant possession is obtained by the Port This provision will be invoked irrespective of whether the same is contained in the Lease Deed / License Agreement/Concession Agreement or not. In case of land allotted on upfront basis, the equivalent annual rent would be calculated on pro-rata basis.

5. Payment of Rent/Licence fee etc.

- i. In case of future lease of land / building on annual lease rent basis, the annual rent will be paid by the lessees in advance.
- ii. The rent / licence fee, whether demanded or not, shall be paid by the licencees / lessees on or before the 15th day of each month succeeding that for which the rent / licence fee etc. is due.
- iii. In case of way leave permission, the way leave permission fees, whether demanded or not, shall be paid by the concerned party on or before 15th day of the calendar year succeeding that for which permission fee etc, is due.
- iv. Any other dues shall be paid by the lessee/licensee within fifteen days from the issue of payment notice.

6. Penal Interest:

Simple Interest @12.00% per annum on the outstanding rent, Licence fee, compensation / occupational charges / water charges and other demands (as to be indicated in bill / invoice / demand notice) will be recovered from the due date, if the same is not paid within one month of the due date. The aforesaid rate of interest would be applicable for:

- a) All future leases, licenses and way leave and other permissions
- b) All cases of existing and future occupations under compensation/ occupation charges.
 - i. In cases of restoration of leases/licenses (earlier determined / terminated), where issuance of Bill/Invoice/Demand Notice were discontinued, the

lessee/licensee will be liable to pay rent/license fee etc along with applicable interest considering 15th day of each month as due date for payment for the preceding month for the restored period of lease/license.

- ii. The 'due date' for the purpose of levy of interest shall be the date as mentioned in the bill / invoice / Demand Notice concerned.

7. Applicability of Land Policy Guidelines:

In case there is any discrepancy / conflict between the above mentioned provisions with the Land Policy Guidelines prevailing at any point of time during the validity of this Schedule, the provision of Land Policy Guidelines will prevail.

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

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| F. No. TAMP/10/2018-KOPT | Proposal from Kolkata Port Trust (KOPT) for revision of Schedule of Rent for KOPT's land at Haldia Dock Complex – II. |
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A joint hearing on the case in reference was held on 22 March 2018 at the KOPT premises in Kolkata. At the joint hearing, the KOPT has made the following submissions:

- (i). Land at HDC-II of 162.84 acres is abutting the river Hooghly and is for development of dock and dock related facilities including jetties, terminals, storage facilities/ tankages, allied facilities for cargo evacuation etc.
- (ii). Lease rent was fixed by TAMP in 2012 at ₹.1229/- per 100 sq.m. With an annual escalation of 2%, the current lease rental is ₹. 1356.91 per 100 sq.m.
- (iii). Initial validity has expired on 13.4.2017. The validity has been extended by TAMP till 31.3.2018.
- (iv). KOPT engaged a Valuer for market valuation of HDC-II lands, as per Land Policy Guidelines.
- (v). Based on the market value of land as assessed by Valuer, the lease rental has been proposed at ₹.1417/- per 100 sq.m. This rate is 4.4% higher than the current escalated rate of ₹.1356.91 per 100 sq.m.
- (vi). The proposed rentals has been recommended by the LAC and approved by the Board of KOPT.
