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Tariff Authority for Major Ports

G.NO. 528

New Delhi,

25 November 2020

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963) and in compliance of Orders dated 5 February 2020 and 7 October 2020 passed by the Hon'ble High Court of Bombay at Goa, the Tariff Authority for Major Ports hereby disposes of the representation dated 30 October 2019 received from the Adani Mormugao Port Private Limited as in the Order appended hereto;

and

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963) and in pursuance of Ministry of Shipping Letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on Stressed PPP Projects, the Tariff Authority for Major Ports hereby disposes of the proposal dated 11 August 2020 for rationalization of storage charge at Berth No. 7 operated by Adani Mormugao Port Private Limited received from Mormugao Port Trust as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/31/2020-MOPT

Adani Mormugao Port Private Limited (AMPTPL)
Mormugao Port Trust (MOPT)

Applicants

QUORUM

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

O R D E R

(Passed on this 28th day of October 2020)

This Authority received a representation dated 30 October 2019 from the Adani Mormugao Port Terminal Private Limited (AMPTPL) to increase free period from present 15 days to 25 days and correct the storage charges approved in the tariff Order No. TAMP/23/2008-MOPT dated 07 August 2008 notified in the name of Mormugao Port Trust (MOPT) followed by AMPTPL letters dated 14 April 2020, 16 July 2020 and 10 September 2020 on the same subject of its representation dated 30 October 2019. The representation dated 30 October 2019 of AMPTPL also claimed that the AMPTPL's Berth No. 7 at MOPT qualified as a Stressed PPP Project in terms of the criteria established by the Stressed PPP Guidelines issued by the Ministry of Shipping (MOS) in the Government of India, entitling it to a rationalization of storage charges.

1.2. This Authority also received a proposal dated 11 August 2020 from MOPT for rationalization of storage charges at Berth No. 7 operated by AMPTPL for the year 2019-20 based on a separate application dated 25 May 2019 filed by the AMPTPL to MOPT in pursuance of MOS Letter No. PD-13/1/2018-PPP Cell dated 11 July 2018 on Stressed PPP Projects. Since the representation dated 30 October 2019 received from AMPTPL and the proposal dated 11 August 2020 received from MOPT are towards rationalization of storage charges at Berth No. 7 operated by AMPTPL, the representation dated 30 October 2019 of AMPTPL and the proposal dated 11 August 2020 of MOPT are tagged together and a common Order is passed as in hereunder.

2.1 This Authority had notified upfront tariff for Development of Coal handling terminal at berth no.7 at MOPT on DBFOT basis vide Order No.TAMP/23/2008-MOPT dated 07 August 2008 which was notified in the Gazette of India on 20 August 2008 vide Gazette No.141. The MOPT awarded the project to Adani Mormugao Port Terminal Private Limited (AMPTPL). Based on the proposal of AMPTPL, this Authority notified the Scale of Rates after indexation in the name of AMPTPL vide Order No.TAMP/13/2014-MOPT dated 4 July 2014. The said Order was notified in the Gazette of India on 25 July 2014 vide Gazette No.224.

2.2. The relevant extracts of storage charges schedule and relevant Note(i) prescribed in the upfront tariff Order dated 7 August 2008 and in the tariff Order dated 4 July 2014 notifying SOR in the name of AMPTPL are given below:

- (i). Order No.TAMP/23/2008-MOPT dated 7 August 2008:

"4. STORAGE CHARGES:

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

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

Sl. 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 Eleventh day onwards for the balance cargo
1.	Coal (all types)	12	24	48

Note:

- (i). Fifteen free Days shall be allowed, after complete discharge of vessel's cargo. For the purpose of calculation of free period, customs notified holidays and Terminal's non- working days shall be excluded.
- (ii). Order No.TAMP/13/2014-MOPT dated 4 July 2014 [After Indexation]:

“4. STORAGE CHARGES:

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

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

Sl. 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 Eleventh day onwards for the balance cargo
1.	Coal (all types)	15.79	31.58	63.16

Note:

- (i). Fifteen free Days shall be allowed, after complete discharge of vessel's cargo. For the purpose of calculation of free period, customs notified holidays and Terminal's non- working days shall be excluded.
3. The submissions made by AMPTPL in its representation dated 30 October 2019 to this Authority for rationalization of storage charge approved by this Authority vide Order dated 07 August 2008 notifying the Scale of Rates in the name of MOPT are summarized below:

(A). TAMP Notification of upfront tariff for Berth No.7 at MOPT:

- (i). Optimal yard capacity is 3.75 million tons, based on a stacking limit of 4.5 tons/ sq. mtr. (by reference to the stacking achieved by a terminal operator at MOPT who is catering to a related entity only and is transporting cargo volumes largely by rail) contrary to the stacking limit of 3 tons/ sq. mtr. set out in the 2008 Tariff Guidelines.
- (ii). The stockyard plot is not sufficiently large and there are railway tracks running through that plot limiting the area even further. The turnover ratio is not more than 6 on account of slower cargo evacuation for want of railway rakes and road transportation restrictions as opposed to 17 determined under the Tariff Notification, again based on the efficiency experienced by the captive berths 5A and 6A being operated by South West Port Limited, a JSW Group Company.
- (iii). The Tariff Notification considered the Capital Cost of the Coal Handling Terminal at Berth No.7 of MOPT, Goa at INR 252.43 crores. However, AMPTPL invested over INR 460 crores in establishing the Coal Handling Terminal at Berth No.7 of MOPT, Goa, and this increased capital cost and its implication on the revenue requirement has not been factored in while determining the Tariff in the Tariff Notification.
- (iv). The constraints and limitations in respect of the MOPT Berth No.7 which is multi-user terminal with both road as well as rail movement of cargo whereas the infrastructure for evacuation of cargo by both rail as well as road is not sufficiently developed was not considered.
- (v). Based on the tariff purportedly set for a differently circumstanced port terminal at Paradip, a graded scale of storage charges was set for the MOPT Berth No.7 at INR 12 per ton per day or part thereof for the first 5 days beyond the free storage period, INR 24 per ton per day or part thereof for the next 5 days

and INR 48 per ton per day after the 25th day (including the 15 day free storage period).

(B). Concession Agreement and thereafter:

- (i). AMPTPL executed the Concession Agreement dated 22 September 2009 with the MOPT for developing the Coal Handling Terminal at Berth No.7 of MOPT.
- (ii). The AMPTPL commenced its commercial operations at Berth No.7 on or about 06 June 2014 and the capacity utilisation of the quay equipment is grossly underutilised.
- (iii). The underutilization of capacity is not on account of any defaults or deficiencies on the part of AMPTPL in the discharge or storage or loading of cargoes but solely on account of the lack of availability of railway rakes, lack of a four-lane highway and restrictions imposed by MOPT on road transportation of coal.
- (iv). As per the 2008 guidelines, stacking space should be 70% of the total allotted area whereas due to re-purposed project land with two different locations AMPTPL was allotted a storage yard space of only 41345 M2 out of 95742 M2 (43%) of the total project land. As a corollary to the lower rate of evacuation of cargo, the storage times have increased substantially, reducing the plot turnover to 6-7 times with a storage period of about 60 days. As the extension of the storage period is on account of the MOPT's lack of proper planning, creation of infrastructure and allocation of cargo, the terminal users are unwilling to bear the storage costs imposed under the TAMP Tariff Notification as that is prohibitively expensive. This is best illustrated by the following example:-

Tariff (as per TAMP)	Handling Charges of INR 183 per ton
	Storage Charges of INR 12/24/48 per ton per day
Average Storage Time	60 Days
Free Storage Time	15 Days
Chargeable Storage Days	45 Days
Storage Charges	INR (12*5) + (24*5) + (48*35)
	= INR 1860 per ton
Storage Charges are 8 times the Handling Charges	
Storage Charges are 809 time the Storage Charges under the Tariff Guidelines	

- (v). The exorbitant and unreasonable character of Storage Charges applicable to Berth No.7 at MOPT are self-evident from the following table setting out the Storage Charges applicable at competing Ports/ Terminals with the same catchment area for port users:-

Comparative Storage Charges-

Ports	No. of Days								Remarks
	0-15	16-20	21-25	26-30	31-45	46-60	61-75	76-90	
AMTPL, Goa	0	16.54	33.08	66.16	66.16	66.16	66.16	66.16	Rate per MT per Day or part thereof
Chettinad New Mangalore	0	0	0	1.07	1.61	2.14	2.14	2.14	Rate per MT per Day or part thereof
Krishnapatnam	0	0	0	0	0	15	25	25	Day for 15 days period or part thereof
JSW Jaigarh Port	0	0	0	0	0	10	10	20	Per month on maximum cargo at any particular day or part thereof

- (vi). Such an excessive rate of storage charges is a definite deterrent for the cargo interests to discharge their cargo at Berth No.7 of MOPT, and makes the entire project commercially unviable.

- (vii). The AMPTPL has had a negative return on capital employed, for the reason that the MOPT specifications for the Coal Handling Terminal were disproportionately excessive to the evacuation constrained use-case. The return on capital employed as per AMPTPL's audited books of accounts for the past 5 years is set out below:

Sl. No.	Year	Volume of Cargo Handled (MT)	Cargo Handling Revenue (₹ Crores)	Operating Costs (₹ Crores)	Return on Capital Employed (%)
1	2014-15	8,60,339	18.63	12.62	-3
2	2015-16	18,12,324	44.42	26.20	-3
3	2016-17	19,59,252	48.08	30.28	-2
4	2017-18	11,22,377	27.72	21.42	-6
5	2018-19	42,48,719	88.90	121.16	-15

- (C). Stressed Project and MOS letter dated 11 July 2018 to Major Ports on Stressed PPP Project and consideration of AMPTPL project as Stressed PPP Project in pursuance of said MOS letter:

- (i). The Ministry of Shipping has issued a directive vide letter No.PD-13/1/2018-PPP Cell on 11 July 2018 to all Major Ports in India and directed the Major Ports to approach the TAMP with an appropriate proposal for rationalization of storage charges in line with the views of the Committee appointed by the MOS and in consultation with the concessionaires wherever abnormal storage charges are resulting in stressed PPP projects. The said letter prescribed the three criteria for classification of project as stressed PPP project.
- (ii). The telescopic storage charges at Berth No.7 of MOPT are excessive and unviable given the challenges in respect of availability of sufficient and adequate cargo evacuation means on account of lack of railway rakes, permission for limited hours of road transportation operations and absence of a 4-lane bypass highway.
- (iii). As against an assumed plot turnover of 20 times, the actual plot turnover achieved is only 6-7 times, for reasons entirely beyond the control of AMPTPL. As a corollary, the free period of 15 days is far shorter than the actual average storage period of approximately 60 days. This has reduced the ability of AMPTPL to handle cargo and thereby generate revenue.
- (iv). (a). The capacity utilization vis-à-vis the DPR is as follows:

Year	Capacity as per DPR (MMT)	Actual Cargo Handled (MMT)	Capacity Utilisation Actual / DPT for the year (%)	Capacity Utilisation Actual / DPR 2-Year Average (%)
2017-18	7.5	1.122	14.96	35.80
2018-19	7.5	4.248	56.64	

- (b). AMPTPL has incurred Cash Losses of ₹22.12 Crores in FY 2017-18 and ₹75.49 Crores in FY 2018-19 and Net Losses of ₹49.62 Crores in FY 2017-18 and ₹103.43 Crores in FY 2018-19 (Certificate from Deloitte Haskins & Sells LLP is furnished).

Statement showing Cash Loss for the Financial Years 2017-18 and 2018-19, Net Loss for the Financial Years 2017-18 and 2018-19 and net worth as at March 31, 2018 and March 31, 2019 is given below:

(₹ in Lakhs)			
Year	Cash (Loss) (Note-1)	Net Worth (Note-2)	Net (Loss) (Note-3)
2017-18	-2,212.61	-2,040.09	-4,962.13
2018-19	-7,549.64	-12,383.80	-10,343.71

- (c). The Net Worth of AMPTPL is negative and was INR-20.40 Crores in FY 2017-18 and INR -123.83 Crores in FY 2018-19.

As per the criteria established by the Stressed PPP Guidelines, AMPTPL's Berth No.7 at MOPT qualified as a Stressed PPP Project, entitling it to a rationalization of storage charges.

- (v). AMPTPL's customers have consistently declined to pay any storage charges. As against the Tariff Notification based storage charges (on which MOPT calculates the Royalty allegedly payable to it), the actual storage charges received by AMPTPL is zero. If AMPTPL had not waived the storage charges, it would lose the little business that it has. AMPTPL's financial results for the past 5 years are as under:

Year	Cargo Projection as per DPR (MMT)	Actual Cargo Handled (MMT)	Revenue in Crores	Net Loss in Crores
2014-15	5.60	0.86	20.64	-28.18
2015-16	6.30	1.81	48.93	-49.78
2016-17	7.10	1.96	55.10	-7.87
2017-18	7.50	1.12	31.78	-49.62
2018-19	7.50	4.24	88.90	-103.39

- (vi). In the above background, the Concessionaire, AMPTPL, has made several requests to MOPT for grant of relaxation in dwell time vis-à-vis the storage charges which was rejected by MOPT.

- (vii). The following is summary of the comparison between the 2008 TAMP Tariff Guidelines for Coal Terminal, the MOPT proposal and the Tariff Notification:

Description	2008 TAMP Tariff Guidelines for Coal Terminal	Proposed by MOPT	Approved by TAMP in the Tariff Notification
Stacking capacity per Sq. Mtrs.	3.00 MT	4.5 MT	4.70 MT
Annual Turnaround Ratio of the plot in a year	12	17	20
Storage charges	1% Annual Revenue Requirement	NIL	1% ARR i.e. 85 Lakhs for a full year for annual revenue of ₹8474 lakhs
Storage Rate Slab	1% Annual Revenue Requirement	NIL	First 5 days ₹12 PMT/ Day 6 th to 10 days ₹24 PMT/ Day 11 th day onwards ₹48 PMT/ Day
Free storage period	25	30	15

- (viii). The following limitations have been faced by AMPTPL, obviously surfaced only once the investment had been made and operations commenced at Berth No.7:

- (a). Non-Availability of Railway Rakes
- (b). Non-Availability of required infrastructure for Despatch
- (c). Restriction of Cargo Movement by Road

- (ix). The Tariff Notification for Berth No.7 is heavily skewed against AMPTPL, and this is demonstrated also by the fact that –

- (a). storage charges being levied are steep as compared to other Major Ports, resulting in increase in overall cost of the Berth No.7 and diversion of cargos to other ports with cheaper storage charges;
- (b). unregulated manual and mechanized berths in the vicinity of the Berth No.7 of MOPT are able to provide much cheaper and/ or free storage and handling charges, thereby resulting in a vast disparity in storage charges levied on consumers, making the Berth No.7 unviable;

- (c). AMPTPL's Berth has an excessive storage charge making it uncompetitive, as explained in the table below:

Name of the Port Trust	Mormugao	New Mangalore
Name of the Terminal	AMPTPL	Chettinad
Free Days	15	25
Storage Charges payable after Free Storage Days (per MT per Day)		
Days Beyond Free Storage Period	Storage Charges (Per Day per MT)	
0-5	-	-
6-10	-	-
11-15	-	-
16-20	16.97	-
20-25	33.95	-
25-30	67.88	1.07
31-35	67.88	1.61
36-40	67.88	1.61
41-45 & onwards	67.88	2.14

(D). Conclusion and Request:

- (i). Calculation of Revised / Corrected Storage Charges- AMPTPL has proposed corrected storage tariff for AMPTPL as calculated below based on the annual revenue requirement given in the original Tariff Order, free period as per Tariff Guidelines 2008 and the prevailing parameters related to evacuation, dwell time, customer requirements etc.

Revised Storage Charges based on TAMP Order						
Particular	INR Lakhs					
Cargo Handling Revenue Requirement	8528					
Storage Charge Rev. Requirement @ 1%	85.28					
Optimal Capacity of Terminal	4606000					
Particulars	% Evacuation	% of Stored Quantity	Quantity Stored	Rate in INR	Days of Slab	INR Lakhs
Free Period 25 days	80%	60.00%	2763600	0.00	25	0.00
26 th Day to 30 th Day	5%	12.50%	575750	2.06	5	59.22
31 st Day to 35 th Day	4%	3.00%	138180	3.09	5	21.32
36 th Day to 40 th Day	1%	0.50%	23030	4.11	5	4.74
Total Storage Charges	100%					85.28

Explanation and assumption of above calculation:

- (a). Total Dwell Time of 40 days of which 25 days are considered free storage period.
- (b). During Free period, 80% of the cargo will get evacuated. Hence, total 20% of the cargo will attract the storage charges.
- (c). Percentage of Evacuation has been considered based on the fact that 75% of the cargo attracting storage charges will get evacuated in the first slab of 5 days after free period. Next 5 days will see evacuation of 20% of cargo which attract the storage charges and next 5 days will see evacuation of remaining 5%. Accordingly, 20% of total cargo which is attracting storage charges has been considered to be evacuated in the first, second and third slab after free period i.e. at 15%, 4% and 1% of Total Cargo. Total Cargo is considered as optimal capacity for the Project.
- (d). It has been assumed that quantity get evacuated evenly throughout each 5 day slab. Hence, chargeable quantity stored will be average value of quantity lying at start of day 1 (i.e. quantity to be evacuated in

that slab) and end of day 5 (i.e. zero). In addition, the quantity which will be evacuated in the next slabs will be considered with full value as stored quantity for the particular slab.

- (e). Revenue requirement has been considered as per original TAMP Order.
- (ii). The following is the corrected storage tariff for modifying the original TAMP order, escalation factor applicable and storage tariffs applicable to be levied for FY 2019-20 based on the same:

Revised Storage Charges for FY 2019-20			
Particular	Corrected Rate for Original Tariff Order with Base Year 2008 ₹/MT/Day	Escalation to be applied *	Revised Storage Charges for FY 2019-20 ₹/MT/Day
26 th Day to 30 th Day	2.06	1.41	2.91
31 st Day to 35 th Day	3.09	1.41	4.36
36 th Day to 40 th Day	4.11	1.41	5.82

Note: * As per Escalation Factor circular on www.tariffauthority.gov.in for FY 2019-20. For tariffs approved with base year 2008, Escalation factor up to August 2018-35.08%+1.0207*1.0256=1.41 times.

- (iii). To summarize, AMPTPL requests to TAMP:
- (a). To increase free period from present 15 days to 25 days (which is given in Tariff Guidelines 2008)
- (b). Correct the storage charges approved in the original TAMP Order for the Project and accordingly, the present SOR also to be revised.
- (c). In view of their above, Schedule 4 of Scale of Rates needs to be replaced with revised version as given below:

4. STORAGE CHARGES:

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

SL. No.	Commodity	Rate for five days for the balance cargo remaining after the free period	Rate for the sixth day to tenth day for the balance cargo	Rate for the eleventh day onwards for the balance cargo
1.	Coal (All types)	2.91	4.36	5.82

- (i). *Twenty Five days free period shall be allowed, after complete discharge of vessel cargo. For the purpose of calculation of the free period, Custom notified holidays and Terminal's non-working days shall be excluded.*
- (ii). *Storage charges shall be payable for all days including Terminal's non-working days and Custom notified holidays for stay of cargo beyond the prescribed free days.*
- (iii). *Storage charge on the cargo shall not accrue for the period when terminal operator is not in the position to deliver / ship the cargo when requested by the user due to reasons attributable to the terminal operator."*

4.1. The AMPTPL has referred to the MOS letter dated 11 July 2018 issued to all Major Port Trusts on Stressed PPP Projects and it has discussed about consideration of AMPTPL project as Stressed PPP Project in pursuance of the said MOS letter, and claimed that AMPTPL's berth No. 7 at MOPT qualifies as a stressed PPP project, entitling it to a rationalization of storage charges as per the criteria set by stressed PPP Guidelines as brought out in an earlier paragraph.

4.2. The MOS vide letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 addressed to all Major Port Trusts including MOPT has evolved a mechanism to rationalize storage charge for stressed PPP project. Para 6 of the said letter states that whenever issue of abnormal storage charges emerges in stressed projects as defined in the said MOS letter, the Ports may approach TAMP under the provisions of "Agreements, modification or alternations" to the terms and conditions of the concession agreement with an appropriate proposal for rationalization of storage charges in consultation with concessionaires so as to achieve the ARR as per the TAMP guidelines/ notification. TAMP has to consider such proposals on merit. The Committee also recommended review of the situation by the Concessions Authority periodically for optimum utilization of the facility created.

4.3. Accordingly, and since MOPT has to approach this Authority for rationalization of storage charges as per MOS letter dated 11 July 2018, a copy of the representation dated 30 October 2019 was forwarded to MOPT vide our letter dated 13 December 2019 requesting the MOPT to examine the application of the AMPTPL dated 30 October 2019 and file an appropriate proposal for rationalisation of storage charges in consultation with AMPTPL as stipulated in paragraph No. 6 read with paragraph 7 of MOS letter dated 11 July 2018.

5.1. In the meantime, the AMPTPL filed a Writ Petition No. 1050 of 2019 before the Hon'ble High Court of Bombay at Goa wherein TAMP and MOPT were made the Respondents, amongst others.

5.2. The Hon'ble High Court Order dated 5 February 2020 on the said W.P.1050 of 2020 records that the Counsel for MOPT sought 8 weeks time from date of the High Court Order to respond to the TAMP letter dated 13 December 2019 and the Counsel for TAMP stated before the Hon'ble High Court that TAMP will expedite the matter and dispose of the application made by the Petitioner in accordance with law and on its own merits.

5.3. Based on the averments made by the Counsels of the MOPT and TAMP, the Hon'ble High Court has disposed of the said Writ Petition vide Order dated 5 February 2020. The Order of the High Court states that all contentions of parties are left open to be determined by this Authority.

6. The MOPT was again requested vide our letter No.TAMP/63/2019-MOPT dated 11 June 2020 to immediately file an appropriate proposal before this Authority for rationalisation of storage charges for coal terminal at Berth No.7 at MOPT as per the application of the AMPTPL dated 30 October 2019 in pursuance of MOS letter dated 11 July 2018 for stressed PPP projects and in compliance to High Court order dated 5 February 2020 so as to enable us to take further necessary action in the matter.

7.1. Finally, the MOPT vide its letter dated 11 August 2020 has filed the proposal for rationalisation of storage charge at berth No.7 at MOPT in pursuance of the MOS letter No.PD-13/1/2018-PPP cell dated 11 July 2018. The submissions made by MOPT in its proposal are given below:

- (i). The subject project was awarded to M/s. Adani Mormugao Port Terminal Pvt. Ltd., (AMPTPL) the Concessionaire, at Port of Mormugao, Goa. The project was operational w.e.f. 06.06.2014. The Upfront tariff and indexed SOR for the project has been notified by TAMP vide Order No. TAMP/13/2014-MOPT dtd.04.07.2014 for berth hire charges, cargo handling charges, storage charges and miscellaneous charges.
- (ii). AMPTPL has made an application dated 27.05.2019 to Mormugao Port Trust, Goa, that the project is being operated in stressed condition due to various reasons including punitive storage charges which are prohibitive to attract customers at their terminal. Further, the competing Ports in the vicinity provide cheaper option which results in migration of traffic leading to very low capacity utilization. AMPTPL is running with huge losses since start of its operation.
- (iii). Ministry of Shipping vide Letter No. PD-13/1/2018-PPP Cell dtd.11.07.2018 has directed all Major Ports and TAMP to adopt the procedure contained therein including the review of the situation periodically for optimum utilisation of the facility created
- (iv). In response to MOS letter dated. 11.07.2018, AMPTPL has submitted request to consider project as Stressed for the following reasons:

- (a). On analysing the past data on storage of cargo at AMPTPL, it indicates that due to unequal allocations of rakes between SWPL and AMPTPL, which are fixed at 3:1 by MOPT vide its letter No.TM/MKTGRLY/012015/677 dated 10.03.2015, availability of sufficient rakes became a concern. This has impacted the evacuation of cargo.
- (b). The dispatches of cargo through road are restricted by MOPT due to probable traffic congestion and permitted between 10 PM to 6 AM only (8 hours daily) vide letter no.TM/578/(A)/2016/546 dated 09 November 2016 & TM/578(A)/2017/249 dated 08 September 2017. This has impaired the dispatch of cargo.
- (c). Proposed 4- Lane Port connectivity highway which was planned in FY 2010 to facilitate faster evacuation of cargo are still not been operational. This has compelled vehicles to move through city roads as per time schedule mentioned in point no. (iii) (b). above, causing serious impact on truck turnaround time and thereby evacuation.
- (d). Frequent restriction by GSPCB on movement of cargo.
- (v). AMPTPL has given the details of cargo handled during the preceding 5 years and audited financial report for FY 2017-18 & 2018-19 certified by their statutory auditor. AMPTPL has proposed the free days for storage of cargo as 35 days at their terminal.
- (vi). A Committee was constituted by the Mormugao Port Trust (MOPT), with due approval of the Chairman to resolve the issue of AMPTPL stressed project. The Committee was headed by the Dy. Chairman comprising of TM, FA&CAO, CME & CE to discuss and resolve the issues of stressed project.
- (vii). (a). The Committee met on 16.07.2019 & 15.01.2020. After detailed discussions, the committee observed that the actual cargo handled in the two preceding years i.e. 2017-18 and 2018-19, is sub-optimally utilized with 19% and 68% respectively as against 70% of the Criteria 'a'. The same has been certified by Traffic Department. The AMPTPL vide its letter dated 27.05.2019, has enclosed the report of M/s. Deloitte Haskins & Sells LLP, the statutory auditor wherein they have certified the cash loss (Criteria 'b') and net worth (Criteria 'c') for the financial year 2017-18 and 2018-19 as given below:

FY	Cash (Loss)	Net worth
2017-18	₹(22.12) Crores	₹ (20.40) Crores
2018-19	₹(75.49) Crores	₹ (123.83) Crores

- (b). The Committee also observed that the project meets all the criteria for qualification as a stressed project as per the guidelines of the Ministry of Shipping based on two independent reports i.e. M/s. Deloitte Haskins & Sells LLP, the statutory auditor of AMPTPL and M/s. D S Pawooskar & Co., Independent Auditor appointed by the Port. The details of the following criteria for classification of a PPP Project as 'Stressed Project' as per MOS are given below as ready reference:

Sr. No.	Criteria for classification of a PPP Project as 'Stressed Project'	FY 2016-17	FY 2017-18	FY 2018-19
1.	Criteria-'a' Project is sub-optimally utilized as evidenced by the actual cargo handled by operator during the two preceding financial years being less than 70% of the projection as per the DPR/Feasibility Report forming part of the bid document.	37%	19%	68%
2.	Criteria-'b' Project SPV incurring Cash loss continuously for two preceding financial years.	₹19.01 Cr.	₹ (-) 22.12 Cr.	₹ (-) 75.44 Cr.
3.	Criteria-'c'	66%	123%	242%

	The losses incurred by Concessionaire has caused atleast 50% Erosion of its Peak Net worth during the Operation Period.			
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- (viii). The Committee called for meeting with the Concessionaire on 11.02.2020 to discuss the issue of free days for storage of cargo. As per TAMP notified SOR dated 04.07.2014, the free days for storage of cargo is stipulated as 15 days. The committee found that AMPTPL has proposed increase in free days for storage of cargo as 35 days, which is found to be on much higher side. The constraints have been indicated by AMPTPL in their proposal for increase in dwell time of storage of cargo.
- (ix). The Committee observed that as per data provided by AMPTPL and Independent Auditor report regarding details of the storage period of the vessels handled at Berth no.7, the average evacuation of cargo rate dwell time is found to be more than 33 days for the FY 2018-19 based on 88 vessels handled. The Committee also observed that if 26 vessels out of 88 vessels which have exceeded storage period more than 35 days are excluded then 70% of cargo would have been cleared within an average period of 30 days. If the storage period is extended to 25 days instead of 35 days, then approximate 60% of the cargo would have been cleared within an average period of 25 days.
- (x). The Committee also observed that as per actual statistics, AMPTPL places indent once in three (3) days and as the transparent policy of rake allotment vide MOPT letter no.TM/MKTGRLY/012015/677 dtd.10.03.2015 has no impact on cargo evacuation even if the rakes are placed within 11 hours, on an average, after the requisition is placed by AMPTPL.
- (xi). The Committee observed that as per TAMP guidelines for upfront Tariff for PPP projects at Major Ports, 2008, the norms for the free storage period for a Coal Handling Terminal is 25 days. The committee also impressed upon the Concessionaire, AMPTPL that giving extra storage period would reduce the terminal turnaround time and increase the risk of customers using the terminal as storage yard area. Based on this argument the representative of AMPTPL agreed to a free storage period to 25 days instead of 35 days.
- (xii). On the proposal and at request of the Concessionaire for increase in free storage period based on the dwell time period, it was felt appropriate by the Committee that in the interest of the project and also to discourage the diversion of cargo to the neighbouring Ports, a free storage period of 25 days from existing 15 days may be permissible.
- (xiii). A Committee again met on 04.06.2020. After due deliberation, the committee concurred with the proposal submitted by AMPTPL vide its letter dated 27.05.2019 wherein they meet all the three criteria for stressed project.
- (xiv). The requests of the Concessionaire were put up to the Board of Trustee of Mormugao Port in its meeting held on 30.06.2020 for review and deliberations. The Board vide resolution No. 36 of 30.06.2020 resolved to:
- (a). Consider the proposal for classification of the Berth No.7 Project as “Stressed Project” for the financial year 2019-20.
 - (b). To approach TAMP under the provisions of Article 21.9 “Amendments, Modifications or alterations” of the CA with the proposal for rationalization of storage charges in consultation with TAMP so as to achieve the Annual Revenue Requirement (ARR) as per TAMP Guidelines/ Notifications.
 - (c). To fix the free time for storage of cargo from the existing 15 days as stipulated in the Concession Agreement to 25 days. To request M/s. AMPTPL to send the proposal to TAMP through Mormugao Port Trust duly justifying the reasonableness of increasing the storage period for rationalization of storage charges.

- (d). To carry out necessary modifications as per the provisions available under Article no. 21.9 of the Concession Agreement covering Amendments, Modifications or Alternations” as per the Order of the Ministry dated 11.07.2018.
- (e). To consider the proposal for a period of one year and to review thereafter.
- (xv). The decision of the Board was communicated to AMPTPL. In response, M/s. AMPTPL submitted a detailed proposal vide its letter no.AMPTPL/ 2020/416 dated 23/07/2020 for rationalisation of storage charges duly (i) enhancing the free period from 15 days to 25 days and (ii) adopting option as communicated vide section 4 of MOS letter dtd. 11.07.2018 under reference cited above.
- (xvi). The comparative position of the existing tariff, proposed tariff and the royalty in respect of storage charges as proposed by M/s. AMPTPL is presented below for amendment w.e.f. 01.04.2019 for the FY 2019-20.

Sr. No.	No. of Days	Storage charges /MT/Day in Rupees		% revenue share to MPT on storage charges	
		Current SOR	Revised Proposal	Current SOR	Revised Proposal
1	0-15	Nil	Nil	Nil	Nil
2	16-20	16.97	No charges	20% on Gross Revenue	1% of ARR
3	21-25	33.95	No Charges	20% on Gross Revenue	1% of ARR
4	26-30 onwards	67.88	67.88	20% on Gross Revenue	*20% on Gross Revenue or 1% of ARR whichever is higher

[*The MOPT has, vide its email dated 21 September 2020, rectified its error pointed out by AMPTL vide its email dated 18 September 2020 and requested to read as “20% of Actual storage charges recovered or 1% of ARR whichever is higher”.]

- (xvii). From the above it is seen that the revised proposal submitted by M/s.AMPTPL for rationalisation of storage charges is in line with the suggestions of the Committee communicated vide MOS letter dtd.11.07.2018 under reference cited above.
- (xviii). In the joint meeting held on 11 February 2020 with Concessionaire M/s. AMPTPL and MOPT, the free storage period for 25 days has been agreed by both parties. In view of above, the joint hearing to be held by TAMP may be dispensed with and hence TAMP may issue notification order for storage charges for the financial year 2019-20 for coal terminal at Port of Mormugao, Goa.
- (xix). Mormugao Port Trust shall review the proposed rationalisation after one year of notification by TAMP in compliance of MOPT Board of Trustees resolution dated 30 June 2020 and shall approach TAMP for notification for continuation of the proposal or further revision as the case may be.

7.2. MOPT has, therefore, requested to consider the proposal submitted by AMPTPL for rationalisation of storage charges as envisaged and notify the same at the earliest to avoid diversion of cargo to the neighbouring private port and to attract additional volumes so that the capacity utilization of the facility can be improved.

8.1. Though the MOPT requested to dispense with the joint hearing, the prescribed consultation process with stake holders including AMPTPL was initiated to have participative approach and to give an opportunity of hearing to the concerned parties and accordingly the MOPT was intimated vide our letter No.TAMP/31/2020-MOPT dated 21 August 2020.

8.2. In accordance with the consultative procedure prescribed, a copy of the proposal of MOPT dated 11 August 2020 was forwarded vide our letter dated 21 August 2020 to the concerned

users/ user organisations seeking their comments. Subsequently, the comments received from Indian National Shipowners' Association (INSA) and comments of MOPT thereon was forwarded to us by the MOPT vide its email dated 07 September 2020.

8.3. The BMM ISPAT Limited (BIL) vide its letter dated 27 August 2020 has furnished its comments on the proposal of MOPT, a copy of which was forwarded to MOPT as feedback information. The MOPT has not responded.

9. During the consultation process, the MOPT vide its email dated 29 August 2020 has furnished its comments on the submissions made by the AMPTPL vide its letter dated 16 July 2020. The AMPTPL vide its email dated 10 September 2020 has reiterated its request to expeditiously publish the rectification of the storage charge from the original tariff Order. A summary of main points made by AMPTPL and reply furnished by MOPT is given below:

Sr. No.	Submissions made by AMPTPL	Reply furnished by MOPT
1.	<p>(a). In the public hearing conducted by TAMP while setting the tariff at berth no.7 at MPT, the representations were made by various user groups regarding the constraints likely to be faced by coal handling terminal for evacuation of cargo by road due to geographical and social factors.</p> <p>(b). References were also made to prohibition on night transportation of cargo by road.</p> <p>(c). Representations were also made with respect to the lack of availability of sufficient number of railway rakes and dependency on the construction of bridge over Vasco city for movement of coal traffic.</p> <p>In response to all such parties the MPT has represented firstly that it was investing a huge amount of about Rs.50 crores in constructing flyover and four lane road for quick evacuation of cargo which were to be completed by 2010 and secondly, that the availability of rakes would be tied up with Indian Railways in Konkan Railways and that MPT has ascertained that the railway capacity in the Goa-Karnataka corridor was likely to increase substantially over the next 5 to 7 years. Quite contrary to these assumptions and representations - which go to the root of MPT's proposal to the TAMP and TAMPS's resultant fixation and notification of tariff for the coal handling terminal at berth no.7 at MPT – even after 12 years the fly over and the four lane road which were promised by the MPT to be completed by 2010 are not available and the railway rakes conditioned on an increase in railway capacity in the Goa Karnataka corridor are also not available in sufficient numbers. As a result, the evacuation of cargo and, thereby yard capacity and therefore in the ultimate analysis the terminal capacity are severely constrained.</p>	<p>There is no prohibition on night transportation of cargo from MOPT by road, however the State Government has put restrictions on transportation during day time which has effectively reduced the cargo evacuation during the day time.</p> <p><u>Status of flyover and 4 lane road:</u> The road from Verna Junction (0.00 Km) to Varunapuri Junction 13.10 Km commenced in 1998 and was completed in 2004 by Border Road Organisation (BRO) under NHAI/MPT supervision. The work was initiated by MOPT and thereafter to execute the work Mormugao Port Road Co. Ltd a Special Purpose Vehicle (SPV) was formed by NHAI in 2000. The further work was stopped due to non-availability of Right of Way (ROW) due to land acquisition problems. Subsequently the work was awarded by NHAI in 2008 as EPC contract. However the same was abandoned as the matter of land acquisition was not resolved fully. The Stakeholders of Port (Mormugao Port Users Association) approached the Supreme Court and filed a writ petition in 2009. The Supreme Court vide order dated 17.09.2012 directed Public Works Department, Govt. of Goa (PWD/GOG) to take up the work. As per the directives of Supreme Court the balance 5.20 km road from Varunapuri junction (13.10 km) to Sada junction (18.30 KM) including the construction of flyover from ROB from Ravindra Bhavan Baina to Gate no 9, was planned and awarded by PWD/GOG. The tripartite MOU was signed between MPRCL- NHAI, MPT and Government of Goa was signed in 2nd Nov 2014.</p> <ul style="list-style-type: none"> - The work was awarded to M/s Gammon India for ₹397 Crores - : 20th August 2015

		<ul style="list-style-type: none"> - The work commenced on : 14th October 2015 - The scheduled date of completion was : 13th October 2018 - Physical work completed as on date : 79.00 % - Extension granted by P.W.D since work was not completed and it is estimated that the work may be delayed further. : 21st January 2021 <p>Hence, the said project was delayed for various reasons not attributable to the Port.</p> <p><u>Availability of railway rakes:</u> As regards evacuation of the cargo through railways is concerned, port has been providing adequate number of rakes as and when requisition for rakes are placed by M/s. AMPTPL.</p>
2.	<p>The tariff notified by the TAMP for berth number 7 at MOPT suffers from various errors, including –</p> <p>(a). Most importantly, an obvious error in transcribing the storage charges, which though copied from the storage charges notified for a coal handling terminal at Paradip, have been notified on a ‘per tonne per day’ basis as opposed to a ‘per tonne’ for five-day blocks basis as notified for Paradip.</p> <p>(b). An optimism bias in relation to the plot turnover ratio, without considering the constraints on cargo evacuation – the plot turnover ratio arrived at by the TAMP was obviously based on the assumption that the MOPT would act on its representations in respect of provision of a flyover and four-lane road connectivity and sufficient number of railway rakes for evacuation of cargo, which have yet to come true;</p> <p>(c). An optimism bias in relation to the stacking ratio, without considering the fact that the land parcel available for berth number 7 at MOPT were scattered, non-contiguous and irregular shaped patches and, the cargo to be handled was non-homogenous on account of the terminal being a general user berth which would inherently handle multiple parcels from multiple users of different grades and varieties of coal which had to be stacked separately and the restrictions imposed by the Goa State Pollution Control Board on the stacking height of cargo.</p> <p>(d). It is obvious that the identical error that has crept into the notification dated 20 August 2008 in respect of berth number 7 at MPT also which must be rectified for the very reason that a rectification was undertaken in case of the iron ore terminal at Paradip.</p> <p>(e). A similar exercise of rectification of storage charges was also undertaken by the TAMP in respect of the West Quay Multiport Private Limited’s terminal at the Visakhapatnam Port Trust by notification dated 12 June 2018.</p> <p>(f). The TAMP is bound to treat all terminal operators on an equal footing and to rectify any error in any of its notifications, if and when the same are pointed to it.</p>	No comments furnished by MOPT.

	(g). The reference to the settlement at DPT for the period prior to 11 July 2018 is not germane since the settlement at DPT was for charges legitimately due and not in respect of any obvious mistake in the notifications and SOR published by the TAMP.	
3.	<p>From the exchange between the TAMP and MOPT it appears that there is a misunderstanding as to AMPTPL's request. For reasons that AMPTPL have not been able to comprehend, both MPT and TAMP appear to be proceeding on the basis that our representations beginning with the representation dated 30 October 2019, are for being considered as a stressed PPP project under the 11 July 2018 notification issued by the Ministry of Shipping, GOI, which they are not. While it is true that AMPTPL fully qualifies to be considered as a stressed PPP project under the 11 July 2018 notification and that is separately being pursued by us with MPT on its own merits, the captioned series of representations are simply for rectification <i>ab initio</i> of the storage charges for the reasons and on the basis set out above. AMPTPL urges that the TAMP to limit its consideration as at present to this chain of representations – which is solely in respect of rectification <i>ab initio</i> – without getting influenced by any other factor or consideration of.</p>	<p>TAMP vide its letter dated 13.12.2019 has forwarded representation of M/s. AMPTPL dated 30.10.2019, with a request to examine the application of M/s. AMPTPL in pursuance to the Ministry of Shipping (MOS) letter dated 11.07.2018 on the stressed projects and file an appropriate proposal for rationalisation of the storage charges in consultation with M/s. AMPTPL for further necessary action to TAMP. Accordingly, MOPT duly started the process of resolving the issue as per the MOS letter dated 11.07.2018, as requested by TAMP. MOS vide letter dated 11.07.2018 has recommended the three criteria for classification of PPP Project as "Stressed Project".</p> <p>The port has reiterated the MOS letter dated 11.7.2018 for Classification as a Stressed Project and approach post classification of stressed project which is not reiterated here for the same of brevity. The port has reiterated the approach followed by it for classification of the AMPTPL project as stressed project and the proposal filed by it vide its letter dated 11.08.2020 for rationalisation of storage charges for the F.Y. 2019-20, which envisages only extension of free storage period from 15 days to 25 days as per MOS letter dated 11.07.2018.</p> <p>As regards, M/s. AMPTPL's contention that errors have crept into the initial notification of tariff and SOR regarding storage charges of ₹12, ₹24 & ₹48 per tonne per day basis as against the per tonne on five day block basis, MOPT is not in a position to comment on the same and it is for TAMP to rectify errors, if any. It is informed that MOPT has only implemented the rates notified by TAMP and is in no position to comment on whether any errors have crept while notifying the rates for storage charges or not.</p>
4.	<p>(a). AMPTPL has not recovered any storage charges since commencement of operations at the coal handling terminal, and therefore, the question of AMPTPL having to refund any monies to cargo receivers simply does not arise.</p> <p>(b). AMPTPL request the TAMP to expeditiously publish the rectification of the storage charge from the original tariff Order as directed by the Hon'ble Bombay High Court (Bench at Goa) by its Order dated 05 February 2020 in Writ Petition No.1050 of 2019, and oblige.</p>	No comments furnished by MOPT.

10. A joint hearing in this case was held on 16 September 2020 through video conferencing. At the joint hearing, the MOPT, AMPTPL and users / user organisations have made their submissions.

11.1. The AMPTPL filed a Civil Application dated 6 October 2020 before the Hon'ble High Court seeking for restoration of Writ Petition No.1050 of 2019 on the grounds that its representation was not decided by this Authority.

11.2. In this regard, it is relevant to list down the following chronology of events that took place on the representation dated 30 October 2019 which was before the Hon'ble High Court in the Writ petition No. 1050 of 2019.

- (i). The AMPTPL vide its letter dated 30 October 2019 had made a representation to TAMP for rationalization of storage charge.
- (ii). Apart from making a request to increase the free period from 15 days to 25 days and correct the storage charges approved in the original TAMP order for the project the AMPTPL has also drew a reference in its representation dated 30 October 2019 to the MOS letter dated 11 July 2018 addressed to the Major Ports on Stressed PPP Projects and consideration of AMPTPL project as a stressed project in pursuance of MOS letter dated 11 July 2018 and the AMPTPL asserted that its berth No. 7 qualifies as a stressed project entitling it to a rationalization of storage charges.

Since the concerned Port Trust has to approach this Authority, as per MOS letter dated 11 July 2018 under the provisions of "Amendments, modifications or alterations" to the terms and conditions of the Concession Agreement with an appropriate proposal for rationalisation of storage charges in consultation with concessionaire and only thereafter this Authority has to consider such proposal on merits, a copy of the said representation was forwarded to MOPT vide our letter dated 13 December 2019 requesting the MOPT to examine the application of the AMPTPL dated 30 October 2019 in pursuance of the MOS letter No. PD-13/1/2018-PPP cell dated 11 July 2018 on the Stressed PPP Project and file an appropriate proposal for rationalisation of storage charges in consultation with AMPTPL.

- (iii). Subsequently, the MOPT was, vide our letter dated 11 June 2020, requested to file immediately an appropriate proposal before this Authority for rationalisation of storage charges for coal terminal at Berth No.7 at MOPT as per the application of the AMPTPL dated 30 October 2019 in pursuance of MOS letter dated 11 July 2018 for stressed PPP projects and in compliance to High Court order dated 5 February 2020 so as to enable us to take further necessary action in the matter.
- (iv). The MOPT has filed its proposal dated 11 August 2020 for rationalisation of storage charges at berth No.7 at MOPT for the year 2019-20 in pursuance of the MOS letter dated 11 July 2018 for stressed PPP projects
- (v). In accordance with the prescribed consultative procedure, a copy of the proposal of MOPT dated 11 August 2020 was forwarded vide our letter dated 21 August 2020 to the concerned users/ user organisations including the AMPTPL seeking their comments. A copy of the comments received from the users/ user organisations was forwarded to the MOPT as feedback information.
- (vi). Further, a joint hearing in this case was held on 16 September 2020 through Video Conferencing giving an opportunity of hearing to concerned users/user organisations including the petitioner i.e. AMPTPL. The proposal was not matured at that relevant point of time for passing the Order.

11.3. Thus, it can be seen that this Authority has taken all possible and immediate action as per the prescribed procedure, immediately on receipt of the proposal dated 11 August 2020 of the MOPT.

11.4. In the Civil Application dated 6 October 2020 filed by AMPTPL, the Division bench has passed the Order dated 7 October 2020 directing this Authority to dispose of the representation as expeditiously as possible and, in any case, on or before 30th November, 2020 and to communicate its decision to all the concerned parties.

12.1. The AMPTPL vide its letter No. AMPTPL/2020/364 dated 14 April 2020 separately addressed to this Authority with a copy endorsed to MOPT has made the following submissions:

- (i). The upfront tariff was incorrectly determined, inter alia, for the following reasons:
 - (a). The upfront tariff relies heavily on the considerations that weighed with the TAMP while setting the upfront tariff for the Coal Terminal at Paradip Port Trust under TAMP Notification G.133 dated 16.08.2008 ("PPP Tariff"), which is differently circumstanced.
 - (b). It is instructive that the upfront Tariff wrongly copies the value of Storage charges from the PPT Tariff – Where they were notified on a "Per Ton" for a 5 day block basis – and notifies the same values on a "Per Ton Per Day" basis.
 - (c). The storage charges notified under the Upfront Tariff, coupled with the small free storage period of 15 days (as opposed to 30 days in the MPT application) would result in the storage charges being far in excess of 1% of the total terminal revenue provided under the 2008 Tariff Guidelines.
- (ii). AMPTPL's bonafide belief is that the error in transcribing the storage charges from the PPT Tariff to the upfront Tariff was obviously inadvertent and an oversight. The consequence, however, is that the effective Storage Charges under the Upfront Tariff are 5 times the Storage Charges that were notified under the PPT Tariff, which it purported to follow. This unfortunately makes the Storage Charges abnormally and unreasonably high.
- (iii). Based on the upfront tariff, the notification of the SOR in the name of AMPTPL for coal handling at berth no.7 in MOPT vide Gazette No.224 dated 25 July 2014 was issued where the inadvertent error in setting out the storage charge was carried forward from the notified upfront tariff.
- (iv). The error which the AMPTPL is convinced, is inadvertent, has resulted in a situation where assuming cargo is evacuated within 30 days applying the upfront tariff works out to ₹552.65 per tonne after 15 days free period.
- (v). The representation for avoidance of doubt is obviously for rectification ab initio of upfront tariff to remove inappropriate biases in the upfront tariff.
- (vi). Against the argument that pursuant to clause 2.8 of the upfront Tariff Guidelines, the TAMP cannot review the tariff once notified, AMPTPL states that it is well within the remit of the TAMP and the inherent jurisdiction to remedy or rectify its errors, including, but not limited to powers conferred by clauses 3.8.4 and 3.8.5 of the 2008 Guidelines. This has in fact been done recently in at least two cases (a) for the West Quay Multiport Pvt. Ltd. and (b) for the JSW Paradip Terminal Pvt. Ltd. where in both cases upfront tariff was rectified for removing the error that had crept in the two tariff notification for various reasons.
- (vii). The obvious error in notifying the Storage Charges needs to be rectified ab initio

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

Sl. 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 Eleventh day onwards for the balance cargo
1.	Coal (all types)	12	24	48

so as to replace existing (original upfront tariff Order) storage schedule with the following table-

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

Sl. 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 Eleventh day onwards for the balance cargo
1.	Coal (all types)	2.40	4.80	9.60

12.2. The AMPTPL again made a submission vide its letter No. AMPTPL/2020/412 dated 16 July 2020 reiterating most of its submissions made in its earlier letter dated 14 April 2020 in support of its request for rectification of storage charges in the original tariff Order which has already been brought out above and hence not reiterated. The said MOPT letter dated 16 July 2020 was forwarded to MOPT vide our letter dated 18 August 2020 seeking its point-wise comments on the said letter.

12.3. The MOPT, vide its letter dated 13 May 2020, stated that the port has initiated the process of examining the application dated 27.5.2019 of AMPTPL stressed project for the F.Y.2018-19 based on the audited report. The committee observed that the Independent Auditor has opined that the project is qualifying as stressed project as per MOS guidelines dated 11.7.2018 based on the preceding years 2017-18 and 2018-19. Due to Pandemic COVID-19 port could not hold regular Board meeting, hence the stressed project proposal could not be placed before the Board. The stressed project proposal will be placed before the Board of MOPT and thereafter proposal will be sent to TAMP for further needful action.

Apart from that, the MOPT has reiterated the submission made by AMPTPL in its letter dated 14 April 2020 and has requested this Authority to kindly examine the representation of AMPTPL regarding rectification of reported errors in storage charges.

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

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

(i). This case is processed in compliance of the Order dated 5 February 2020 of the Hon'ble High Court of Bombay at Goa disposing of the Writ Petition No.1050 of 2019 filed by Adani Mormugao Port Terminal Pvt. Ltd. (AMPTPL) and subsequent Order dated 7 October 2020 of the Hon'ble High Court at Goa on the Civil Application of AMPTPL for restoring their earlier application on which the High Court has directed this Authority to dispose of the representation of AMPTPL as expeditiously as possible and, in any case, on or before 30th November, 2020 and to communicate its decision to all the concerned parties. It is relevant here to state that the orders dated 05 February 2020 and 07 October 2020 passed by the Hon'ble High Court are with reference to the AMPTPL representation dated 30 October 2019 only.

Further, this case is also processed simultaneously to dispose of the proposal mutually agreed between the AMPTPL and the Mormugao Port Trust (MOPT) for rationalization of storage charge by increasing free period in the storage schedule approved by this Authority vide Order No.TAMP/13/2014-MOPT dated 4 July 2014 notifying the Scale of Rates in the name of Adani Mormugao Port Terminal Pvt. Ltd. (AMPTPL) for the coal terminal at berth no.7 at MOPT for the year 2019-20 by treating the AMPTPL project as stressed project in pursuance of MOS letter No.PD-13/1/2018-PPP cell dated 11 July 2018 for stressed PPP project.

(ii). Before proceeding to analyse the case, it is relevant to state that the Order of the High Court dated 5 February 2020 is with reference to the representation made by AMPTPL to this Authority vide its letter dated 30 October 2019. The representation dated 30 October 2019 revolves around the following two prayers made by the AMPTPL:

(a). Increase free period from present 15 days to 25 days as prescribed in the Upfront Tariff Guidelines 2008.

(b). Correct the storage charges approved for the Project in the original TAMP Order passed by this Authority vide Order No.TAMP/23/2008-MOPT dated 07 August 2008

for MOPT and the indexed SOR notified in the name of AMPTPL vide Order No.TAMP/13/2014-MOPT dated 4 July 2014; and, to revise the present SOR of the AMPTPL for the year 2019-20.

Subsequent to the High Court Order dated 5 February 2020, the AMPTPL has, vide its subsequent letters dated 14 April 2020, 16 July 2020 and 10 September 2020, reiterated that there is error in notifying the Storage Charges in the Order dated 7 August 2008 and hence sought to correct the storage charge approved in the original Tariff Order and the SOR notified in its name. The main submissions of the AMPTPL are also dealt with in the analysis.

The AMPTPL has drawn a reference in its representation dated 30 October 2019 for rationalization of storage charges sent to this Authority to its stressed project and MOS letter dated 11 July 2018 to Major Ports on stressed PPP Projects and consideration of AMPTPL project as a stressed project in pursuance of MOS letter dated 11 July 2018 and asserted that AMPTPL's berth No. 7 qualifies as a stressed project entitling it to a rationalisation of storage charges as per the criteria fixed by MOS in its letter dated 11 July 2018. The MOPT has filed its proposal dated 11 August 2020 for rationalisation of storage charges at AMPTPL's berth No. 7 in pursuance of MOS letter dated 11 July 2018. Since the representation dated 30 October 2019 received from AMPTPL and the proposal dated 11 August 2020 received from MOPT are towards rationalization of storage charges at berth No. 7 operated by AMPTPL, it is found not possible to limit ourselves only to the chain of representations dated 14 April 2020, 16 July 2020 and 10 September 2020 beginning with its representation dated 30 October 2019. Therefore, both the prayers of the AMPTPL and the proposal of the MOPT for rationalisation of storage charges prescribed for the AMPTPL for the year 2019-20 in pursuance of MOS letter No.PD-13/1/2018-PPP cell dated 11 July 2018 for stressed PPP project are tagged together and dealt with in the subsequent part of this analysis.

A. Request of the AMPTPL to increase free period from present 15 days to 25 days as prescribed in the Upfront Tariff Guidelines 2008 so far as the year 2019-20 is concerned and the proposal of the MOPT for rationalisation of storage charges by increasing the free period from 15 days to 25 days for the year 2019-20 by treating the AMPTPL project as stressed project in pursuance of the MOS letter No.PD-13/1/2018-PPP cell dated 11 July 2018 for stressed PPP project, are dealt together.

- (i). The MOS in its letter dated 11 July 2018 has prescribed the three criteria for classification of PPP project as Stressed Project by Major Port Trusts which has been brought out in earlier paragraph and hence not reiterated for the sake of brevity.
- (ii). The Board of Trustees of the MOPT in its meeting held on 30.06.2020 has declared the project handled by the AMPTPL as Stressed Project as the project meets all the three criteria prescribed in the MOS letter dated 11 July 2018 for classifying the project as stressed Project as summarised below:
 - (a). As regards the first parameter, the capacity utilisation for the preceding two years furnished by the MOPT being below 70% as exhibited by MOPT is tabulated below:

Year	Cargo Handled (MMT)	Projected Capacity(MMT)	%utilisation
2017-18	1.12	5.76	19%
2018-19	4.25	6.25	68%

- (b). As regards the other two parameters, the port has furnished the certificate of Chartered Accountant from the statutory auditors of AMPTPL and also from the independent auditor appointed by the Port certifying the cash losses and net worth of AMPTPL for the preceding two financial years as tabulated below:

(₹ in crores)			
Sr. No.	Particulars	FY 2017-18	FY 2018-19
1.	Cash Loss incurred by the Company	(22.12)	(75.49)
2.	Net Worth of the Company	(20.40)	(123.83)

There have been cash losses of ₹22.12 crores in the financial year 2017-18 and ₹75.49 crores in the year 2018-19. Further, the net worth of the AMPTPL is reported to be negative to the tune of (-)₹20.40 crores in financial year 2017-18 which has increased to (-)₹123.83 crores in financial year 2018-19 which is 507% i.e. more than 50% erosion prescribed as one of the criteria for declaring the project as stressed project.

- (iii). Para 6 of the MOS letter dated 11 July 2018 states that whenever the issue of abnormal storage charges emerges in stressed project, the Ports may approach TAMP under the provisions of “Agreements, modification or alternations” to the terms and conditions of the concession agreement with an appropriate proposal for rationalization of storage charges in consultation with concessionaire so as to achieve the ARR as per the TAMP guidelines/ notification. TAMP has to consider such proposals on merit.

The upfront SOR approved by this Authority vide Order dated 7 August 2008 and the SOR approved by this Authority and notified in the name of the AMPTPL vide Order dated 4 July 2014 prescribes fifteen days free period and prescribes the schedule of storage charges beyond the free period in slab of five days.

Para 4 of the MOS letter gives the option to the Major Port Trust that in case the project is Stressed Project, the port may extend the free period depending on the local conditions with a view to optimize the capacity. The MOPT has, accordingly, based on the approval of its Board proposed to increase the free period prescribed in the existing SOR of the AMPTPL from existing 15 days to 25 days and accordingly modified the storage schedule for the year 2019-20 as the part of its proposal for rationalization of storage charge for the stressed project in pursuance of the MOS letter dated 11 July 2018.

A comparative position of storage schedule as per the upfront tariff approved by this Authority vide its Order dated 7 August 2008, rate applicable as per SOR notified in the name of the AMPTPL vide Order dated 4 July 2014 for the year 2019-20 after applicable automatic indexation announced by this Authority (i.e. compoundable indexation factor of 35.08% upto the year 2017-18 for the base year 1 January 2008, annual indexation factor of 2.07% for the year 2018-19 and 2.56% for the year 2019-20) and rationalized storage charges proposed by MOPT by increasing the free period from existing 15 days to 25 days is tabulated below:

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

Sl. No.	Particulars	Storage Charges approved by Authority vide Order dated 07 August 2008	Storage Charges in the SOR notified in the name of AMPTPL vide Order dated 04 July 2014 after applicable indexation factor	Storage Charges applicable for the year 2019-20 after applicable indexation	Storage Charges proposed by MOPT vide its letter dated 11 August 2020 based on existing rate recommended for approval after updating it with applicable annual indexation factor for the year 2019-20 applicable from 1 April 2019 till 31.3.2020
1.	Storage Charges (0-15 days)	Nil	Nil	No Charges	No Charges
2.	Storage Charges (16-20 days)	12	15.79	16.97	No Charges
3.	Storage Charges (21-25 days)	24	31.58	33.94	No Charges
4.	Storage Charges (26 th day onwards)	48	63.16	67.88	67.88

The AMPTPL had earlier sought from the MOPT to increase free period from existing 15 days to 35 days citing the constraints of unequal allocations of rakes between SWPL and AMPTPL, restricted dispatches of cargo due to probable traffic congestion, non-operational 4-lane connectivity and frequent restriction by GSPCB on movement of cargo. The Port then impressed upon the AMPTPL that giving extra storage period would reduce the terminal turnaround time and increase the risk of customers using the terminal as storage yard area. The AMPTPL then agreed for increase in free storage period to 25 days instead of 35 days sought by them earlier.

- (iv). Thus, based on the agreed proposal of AMPTPL dated 23 July 2020, the MOPT vide its proposal dated 11 August 2020 has proposed for rationalised storage charge i.e. increasing the free storage period from existing 15 days to 25 days for the year 2019-20 under the stressed PPP project.

The MOPT Board has, inter alia, resolved in its meeting held on 30 June 2020 to fix the free time for storage of cargo from the existing 15 days as stipulated in the Concession Agreement to 25 days for a period of one year i.e. 2019-20 for which the project is declared as Stressed project by the Board and to review thereafter.

Recognizing that the proposal filed by the MOPT is based on the approval of the Board of Trustees of the MOPT and is also based on the MOS letter dated 11 July 2018 on the Stressed Project for a period of one year i.e. 2019-20 and is intended to improve the utilization of the facility created, this Authority approves the current proposal of the port.

- (v). Para 6 of the MOS letter dated 11 July 2018 states that the Concessioneing Authority is to review the situation periodically for optimum utilization of the facility created.

The port has proposed the rationalised storage schedule by increasing the free period from existing 15 days to 25 days for one year of 2019-20 and has stated that it will review the proposed rationalisation after one year and shall approach this Authority.

The current proposal of the MOPT is for a period of one year i.e. 2019-20. Recognizing that the storage charge and the free period prescribed in the SOR notified in the name of the AMPTPL is for the entire project period of 30 years subject to annual escalation, the existing note nos. (i) to (iii) relating to storage charge as per the schedule 4 in the SOR are prescribed herein separately for ease of application instead of tinkering with the existing Scale of Rates of the AMPTPL approved by this Authority in the Order TAMP/13/2014-MOPT dated 4 July 2014. Further, a note is prescribed that the rationalized storage schedule is applicable for period of one year i.e. year 2019-20 from 1 April 2019 till 31 March 2020 and that from 1 April 2020 onwards, the original storage schedule as approved in the Order dated 4 July 2014 with appropriate indexation rates shall apply.

This will tantamount to prescribing the rate with retrospective effect from 1 April 2019 to 31 March 2020. Since the proposal is an agreed proposal between the port and the AMPTPL and is in pursuance of the MOS letter dated 11 July 2018 for stressed PPP project, this Authority accords approval to the same with retrospective effect for the said one year period of 2019-20.

- (vi). The proposal of MOPT also includes the percentage of Revenue share payable by the AMPTPL to MOPT. The proposal of the MOPT covering percentage of revenue share on the storage charges payable by the AMPTPL to MOPT will be governed by the MOS letter No.PD-13/1/2018-PPP Cell dated 11 July 2018.
- (vii). Thus, based on the above analysis the request of the AMPTPL for increasing the free period from existing 15 days to 25 days as far as the year 2019-20 concerned is addressed by according approval to the MOPT proposal for rationalisation of storage charge by increasing the free period to 25 days under the stressed PPP project in pursuance of the MOS letter dated 11 July 2018. For the subsequent period, the MOPT has assured that it shall review in accordance with the said MOS letter and approach TAMP.

B. Request of the AMPTPL in its representation dated 30 October 2019 to correct the Storage Charges approved for the Project in the original TAMP Order No. TAMP/23/2008-MOPT dated 07 August 2008 for MOPT and the indexed SOR notified in the name of AMPTPL vide TAMP Order No. TAMP/13/2014-MOPT dated 04 July 2014.

- (viii). Before proceeding to dispose of the representation dated 30 October 2019 of the AMPTPL, it is to state that a copy of the said representation of AMPTPL dated 30

October 2019 was forwarded to MOPT vide our letter dated 13 December 2019 requesting the MOPT to examine the said application of the AMPTPL dated 30 October 2019 in pursuance of the MOS letter No. PD-13/1/2018-PPP cell dated 11 July 2018 on the Stressed PPP Project and file an appropriate proposal for rationalisation of storage charges in consultation with AMPTPL. The MOPT has filed its proposal dated 11 August 2020. This Authority has, vide its letter dated 21 August 2020, followed the prescribed consultation process with the concerned stakeholders including the AMPTPL seeking their comments. AMPTPL, during the processing of this matter, has made separate submissions vide its letter dated 14 April 2020, 16 July 2020 and 10 September 2020 mainly reiterating its request made in its representation dated 30 October 2019 for correction in the storage charge in the original order. A copy of the comments received from the users/ user organisations and further submissions made by AMPTPL vide its letters dated 14 April 2020 and 16 July 2020 was forwarded to the MOPT as feedback information. The MOPT has responded vide its letters dated 13 May 2020 and 29 August 2020. Further, a joint hearing in this case was held on 16 September 2020 through Video Conferencing giving an opportunity of hearing to the concerned users/user organisations including the petitioner i.e. AMPTPL. Thus, it can be seen that this Authority has initiated prompt and requisite action right from the receipt of the proposal of the AMPTPL dated 30 October 2019 and the proposal of MOPT dated 11 August 2020.

As regards the proposal filed by the MOPT dated 11 August 2020 for rationalization in storage charge by increasing the free period from existing 15 days to 25 days for the year 2019-20 which is one of the requests made by the AMPTPL in its representation dated 30 October 2019, this is already dealt with in the preceding paragraphs.

- (ix). This Authority, therefore, now proceeds, in pursuance of the Order of the Hon'ble High Court dated 5 February 2020 and 7 October 2020 to dispose of the representation dated 30 October 2019 which contained the following two requests:
- (a). **Increase in free period from present 15 days to 25 days as prescribed in the Upfront Tariff Guidelines 2008.**
 - (b). **Correction in the storage charges approved by this Authority vide Order No. TAMP/23/2008-MOPT dated 07 August 2008 and the indexed SOR notified in the name of AMPTPL vide Order No. TAMP/13/2014-MOPT dated 4 July 2014**
- (x). The Hon'ble High Court, while disposing the W.P. No 1050 of 2019 of the AMPTPL in the Order dated 5 February 2020, has observed that all contentions of parties are left open for determination by this Authority. Both the requests of the AMPTPL are interlinked and hence analysed together. The following are the main grounds given by the AMPTPL for their request at point (a) and (b) above:
- (a). Free period of 15 days is not as per the prescribed norm for the coal terminal which is at 25 days.
 - (b). Challenges in respect of availability of sufficient and adequate cargo evacuation means on account of lack of railway rakes, permission for limited hours of road transportation operations and absence of a 4-lane bypass highway.
 - (c). There is an inadvertent error by TAMP in transcribing the storage charges from the upfront tariff fixed for Paradip Port Trust (PPT) which was obviously inadvertent and an oversight.
 - (d). The AMPTPL has given a summary of the comparison between the norms as per upfront tariff Guidelines of 2008 for Coal Terminal, the parameters considered by the MOPT and the parameters considered in the Tariff Order dated 7 August 2008.

- (e). It is well within the ambit of the TAMP and the inherent jurisdiction to remedy or rectify its errors, including, but not limited to powers conferred by clauses 3.8.4 and 3.8.5 of the 2008 Guidelines.
- (f). AMPTPL, vide its letter dated 14 April 2020, has drawn reference to the correction in the storage charge approved by this Authority in the two other upfront tariff cases viz., West Quay Multiport Private Limited (WQMPL) in the Order No.TAMP/85/2017-VPT dated 18 May 2018 and in the case of JSW Paradip Terminal Private Limited(JPTPL) in PPT approved by this Authority vide Order No.TAMP/54/2019-JPTPL dated 20 February 2020.
- (a). **Analysis of this Authority on ground (a) above - Free period of 15 days is not as per the prescribed norm for the coal terminal which is at 25 days:**
 - (i). The Upfront tariff Guidelines of 2008 prescribe norm of 25 days free period for a coal terminal. The interlinked parameter is plot turnover for which the norm is prescribed at 12 in the ibid guidelines.

As brought out in para 9 (iv) (b) of the upfront tariff Order dated 7 August 2008, during the fixation of the upfront tariff for the coal terminal at MOPT, the MOPT submitted that the South West Port Limited (SWPL), another BOT operator for coal with its mechanised wagon loading system has achieved turnover of 25.6 and 26.3 during the years 2006-07 and 2007-08. Considering various factors relevant to its terminal, the port assumed plot turnover ratio of 17 for assessment of the optimal yard capacity as against parameter of 12.

With reference to objection then raised by one of the users that the proposed coal terminal is for multi-user with both road as well as rail movement of cargo whereas the infrastructure for evacuation of cargo by both rail as well as road is not sufficiently developed, the MOPT had then clarified that investment has been made for construction of flyover and four lane road for quick evacuation of movement of cargo by road. The port had also ascertained from the railways that the upgradation of rail infrastructure in that section is in process.

The said Order also refers to the coal terminal proposed to be developed at the Paradip Port where the upfront tariff has been fixed by this Authority reckoning the plot turnover ratio at 30 times in a year as proposed by the port.

This Authority also then recognised that if the turnover ratio and cargo stacking factor are considered strictly as per the norms, the yard capacity would be 1.76 million tonnes per annum. The quay capacity is 8.81 million tonnes. This would lead to a serious mismatch between the quay and yard capacities.

The lower yard capacity arises due to physical constraints at the port, and this Authority felt it is necessary to utilise the available resources effectively to increase the capacity. Taking these factors into consideration, the plot turnover ratio then achieved by the SWPL was moderated by around 20% and adopted for the proposed coal terminal. Accordingly, the plot turnover ratio was considered at 20 for computing the optimal yard capacity of the coal terminal. Incidentally, even one of the bidders M/s. Maytas Infra Assets Limited had then suggested to reckon the plot turnover of 20.

As brought out in Para 9(vii)(d) of Order dated 7 August 2008, since the plot turnover was modified from the prescribed norm of 12 to 20 for assessing the optimal yard capacity, the number of free days was suitably modified and prescribed as 15 days as against 25 days stipulated in the guidelines.

- (ii). Thus, it can be seen that the Order dated 7 August 2008 is a reasoned Order explaining the reasons for the variation from the prescribed norm of free period from 15 days to 25 days.
- (iii). That being so, though the plot turnover norm and free period norm prescribed in the guidelines were at variance with guidelines, it was for stated reasons. There is no apparent error or inadvertent error in the prescription of free period.
- (iv). It is relevant here to state that the rates approved by this Authority are ceiling rates and the operator can charge lower rate and allow higher free period. A suitable note in this regard is prescribed at note (v) under 1.2.General Terms and Conditions of the SOR.

In fact, the MOS in its said letter dated 11 July 2018 has referred to TAMP letter dated 11.09.2015 wherein TAMP has recommended to the MOS on the similar line in the case of VPT for one of their projects pertaining to high storage charge.

(b). Analysis on ground (b) above as regards challenges faced by AMPTPL, in respect of availability of sufficient and adequate cargo evacuation means on account of lack of railway rakes, permission for limited hours of road transportation operations and absence of a 4-lane bypass highway.

- (i). As regards availability of cargo, it is to state that the tariff is fixed for the optimal capacity and not with reference to traffic as per the Upfront tariff Guidelines of 2008. The challenges faced in getting cargo evacuation is due to restrictions imposed by the Goa Pollution Control Board, as reported by AMPTPL.
- (ii). As regards the point made about development of infrastructure in terms of road and rail, it is to state that these matters fall under the domain of the MOPT. The mandate of this Authority is to determine the tariff. This Authority has no control over provision and non-provision of infrastructure.
- (iii). In the instant case, the upfront tariff approved by this Authority in the Order dated 7 August 2008 is based on the proposal filed by the MOPT for coal terminal to be developed on PPP mode. The port has, during the processing of this case, given its comments on the present status of the 4 lane road and also stated that it shall be completed by 21 January 2021.

As regards constraint expressed by AMPTPL on evacuation of the cargo through railways, port has stated that it has been providing adequate number of rakes as and when requisition for rakes are placed by M/s. AMPTPL.

(c). Analysis on ground (c) above as regards the point made by the AMPTPL that there is an inadvertent error by TAMP in transcribing the storage charges from the upfront tariff fixed for Paradip Port Trust (PPT) inadvertently and by oversight.

- (i). With reference to this point made by the AMPTPL, the MOPT has restricted itself stating that the port has only implemented the rates notified by TAMP and is not in position to comment on whether any errors have crept in while notifying the rates for storage charges or not. The MOPT has left it to this Authority to rectify errors, if any, in the storage charge approved in the original upfront tariff Order.

- (ii). As regards the reported inadvertent error pointed by the AMPTPL, it is to state that on perusing the concerned File available in office records, it is seen that the storage charge of ₹12 per tonne per day approved by this Authority in August 2008 Order is based on a working done at that point of time and also a comparison of storage charge was done with other bulk terminal operators which forms part of the same working sheet. The working sheet of storage charge for prescription of storage tariff in August 2008 Order available in the concerned File is attached as **Annex**. The said calculation sheet shows that the storage charge was calculated in a scientific manner following the parameters relevant for calculation of storage charges. As per the working, the storage charge is ₹11/- per tonne per day. The storage charge prescribed in the upfront tariff Order for the first slab is ₹12/- per tonne per day.
- (iii). Further, as per information available in the concerned file, the following comparison of storage charge then prevailing is found to have been made with other bulk terminal operators i.e. SWPL in MOPT and VSPL in VPT:

Storage Charge	SWPL (Rate per ton/per day or part thereof)		VSPL (Rate per ton/per day or part thereof)	
	(a) Free period	3 days		Import -3 days/ Export 21 days
	Coal	Met coke/ coke		
(b) Storage charge beyond free period	1-5 days ₹ 10	₹ 15	1-10 days ₹ 12	
	6-10 days ₹ 25	₹ 40	Thereafter ₹ 24	
	11-20 days ₹ 50	₹ 75	Ground rent- open stacking space	
	Thereafter ₹100	₹ 150	₹ 138 per 100 sq mtr / week	

From the above table, it can be seen that the upfront storage charges then approved for the MOPT coal terminal was found to be comparable to the storage charge fixed for other terminal mainly handling coal viz., South West Port Limited (SWPL) in Goa and Vizag Seaport Pvt. Ltd. (VSPL) in VPT. The prevailing storage charge of SWPL, another BOT operator in MOPT, for the four slabs are ₹ 12/31/ 62/124 per tonne per day or part thereof.

In short, the upfront storage charge for coal terminal approved in the said Order for Berth No. 7 in the case of MOPT now being operated by AMPTPL is supported with the working as per office records. It is not the rate adopted from PPT as contended by AMPTPL. It was only a passing remark made in the tariff Order dated 07 August 2008 that similar storage tariff structure was allowed while setting upfront tariff for a coal terminal at the Paradip Port.

- (iv). Thus, in view of the above analysis, the point made by the AMPTPL that there is bona fide error in transcribing the storage charge from the PPT coal terminal upfront tariff Order to the MOPT Coal terminal for Berth No 7 is unfounded.
- (v). The AMPTPL has, vide its letter dated 14 April 2020, drawn comparison of the rates prevailing in neighboring ports like Chettinad – New Mangalore, Krishnapatnam and JSW Jaigarh. The Krishnapatnam Port and JSW Jaigarh do not come under the tariff regulatory regime of this Authority and hence this Authority is not in a position to comment. As regards upfront tariff notified in the name of Chettinad Mangalore Coal Terminal Private Limited, it is for handling bulk cargo and is based on the reference tariff approved vide No.TAMP/60/2015-NMPT dated 16 November 2015. The reference tariff approved in the said Order for the project at NMPT is based on the parameters furnished by the NMPT for arriving at the storage charge.
- (d). **As regards ground (d) about summary of the comparison between the norms prescribed in the upfront tariff Guidelines of 2008 for Coal Terminal, the norms considered by the MOPT while seeking approval in the year 2008 for coal terminal and the parameters**

considered by this Authority in the Tariff Order dated 7 August 2008 given by the AMPTPL is tabulated below along with drawing reference drawn to relevant paras of the said speaking Order as a part of our analysis to their representation dated 30 October 2019:

Description	Norms prescribed in Upfront Tariff Guidelines for Coal Terminal	Proposed by MOPT	Approved by TAMP in the Tariff Order approved by this Authority dated 7 August 2008
(i). Stacking capacity per Sq. Mtrs.	3.00 MT	4.5 MT	4.70 MT
(ii). Plot Turn over (no.of times)	12	17	20
(iii). Storage charges	1% Annual Revenue Requirement	NIL	1% ARR i.e. 85 Lakhs for a full year for annual revenue of ₹8474 lakhs
(iv).Storage Rate Slab	1% Annual Revenue Requirement	NIL	First 5 days ₹12 PMT/ Day 6 th to 10 days ₹24 PMT/ Day 11 th day onwards ₹48 PMT/ Day
(v).Free storage period	25	30	15

Analysis: Reference is drawn to relevant paras of the said speaking Order on each of the above parameter:

- (i). Stacking capacity :
Relevant Para 9 (iv) (a) of the Order dated 7 August 2020 is reproduced below:

“(a). Stacking capacity: As per norms given in the guidelines for upfront tariff setting, stacking factor is 3 tonnes per square meter of area. This factor has been considered by the MOPT at 4.5 tonnes in the computation of optimal yard capacity. The detailed analysis presented by the port and the position obtained by it from the working private terminal South West Port Limited (SWPL) point to a stacking factor of 5 tonnes per square metre of area. However, the port has assumed this factor at 4.5 tonnes for calculation of optimal yard capacity. Mormugao Port Users Association has pointed out that since coke has a lower density, larger area would be required in comparison to the area required for stacking coal. Hence stacking of the 4.5 tonnes of coal per square meter assumed by the MOPT based on the position obtained from the SWPL needs to be re-examined. In this context it may be relevant to mention here that the theoretical calculation furnished by the port clearly shows a stacking factor of 5 tonnes per square metre is feasible. This is also the position reported for the private terminal operator SWPL operating in the same port. The Paradip Port Trust (PPT) in its proposal for upfront tariff setting for a coal terminal has considered 4.7 tonnes of coal can be stacked per square meter of area which has been accepted by this Authority while fixing the upfront tariff of that port. Based on the MOPT’s own calculation and also taking into consideration the stacking capacity assumed by another port for a coal terminal, it may not be unreasonable to adopt the stacking capacity for coal terminal at the MOPT at 4.7 tonnes per square metre per annum.”

Thus, it can be seen that increased stacking parameter considered in the said upfront tariff Order for assessing the Yard capacity is based on MOPT’s proposal dated 25 April 2008 which was updated to the parameter considered for another coal terminal in their upfront tariff fixation.

- (ii). Plot Turn Over and (v) Free period:
This point is explained in preceding paragraphs while analyzing the first request of the AMPTPL for increasing the free period from 15 days to 25 days and hence not reiterated here for the sake of brevity.
- (iii). Storage charge and (iv). Storage Rate Slab:
Relevant Para 9(vii) (b) and (d) of the Order dated 7 August 2008 are reproduced below:

“9(vii)(b). The guidelines require 98% of the total revenue requirement to be apportioned to handling charge and 1% each towards storage charge and miscellaneous charge. The MOPT has proposed a single uniform composite handling rate. It has not proposed any tariff for miscellaneous service on the grounds that the

miscellaneous services cannot be listed upfront and has submitted that for any activity beyond cargo handling services, the operator must be allowed to charge separately after taking necessary approval from competent authority. As regards demurrage charge also, the port is under the impression that the operator can propose tariff for this service later. In this context, it has to be recognised that the upfront rate fixed is the cap to meet the estimated revenue requirement. The guidelines do not provide for any alteration of the revenue requirement during the period of the concession and consequently, the upfront tariff caps will not undergo any change except to the extent of annual escalation as prescribed in the guidelines. Therefore, the tariff for various services to be provided by the Concessionaire is to be fixed upfront to meet the revenue requirement.”

“(d). The point made by the MOPT that demurrage charge is not covered by the guidelines is not correct. As already mentioned earlier, the guidelines stipulate 1% revenue requirement to be met from storage charge after allowing the 25 days free period for coal terminal. As per the guidelines, 1% of the revenue requirement (i.e. Rs.85 lakhs) is considered for arriving at the storage charge. Since the plot turnover is modified from the prescribed norm of 12 to 20 for assessing the optimal yard capacity, the number of free days is suitably modified and prescribed as 15 days as against 25 days stipulated in the guidelines. Considering the revenue earning days available after allowing 15 days free period, the storage charge is prescribed at Rs.12 per tonne per day or part thereof for the first five days beyond the free period i.e. from 16th day to 20th days, Rs.24 per tonne or part thereof for the next five days (21st day to 25th day) and Rs.48 per tonne or part thereof the period thereafter (26th day onwards). The 1% of the revenue requirement can be met from this tariff structure prescribed.

Similar tariff structure is allowed while setting upfront tariff of a coal terminal at the Paradip port.”

Thus, the original tariff Order explicitly brings out that the storage charge was computed based on the parameters considered in the upfront tariff calculation.

- (iv). From the above it can be seen that the Order dated 7 August 2008 explains the reasons for the variation from the prescribed norm or the parameter considered by the MOPT. There is no apparent error or inadvertent error as such.
- (e). **Analysis on the point made by the AMPTPL that it is well within the ambit of the TAMP and the inherent jurisdiction to remedy or rectify its errors, including, but not limited to powers conferred by clauses 3.8.4 and 3.8.5 of the 2008 Guidelines**
 - (i). As per Clause 2.8 of the upfront tariff guidelines of 2008 issued under Section 111 of the Major Port Trusts Act, 1963 as policy direction of the Central Government, which is binding on this Authority, once the tariff caps are fixed, they are only subject to annual indexation. The 2008 guidelines do not provide for review of the upfront tariff already determined for the projects that are already bid out. Thus, this Authority does not have mandate to review any upfront tariff item in the post bid scenario.
 - (ii). In the two cases referred by the AMPTPL where this Authority has rectified the storage charge which is discussed in subsequent paragraph, those were based on an apparent inadvertent error in the original tariff Order. In the instant case, as already brought out earlier, there is no inadvertent or apparent error warranting for rectification in the storage charge.
 - (iii). As regards the reference to clause 3.8.4 and 3.8.5 of the Upfront tariff Guidelines referred by AMPTPL, it is to state that clause 3.8.4. stipulates that TAMP, either on its own or based on any complaints received, will enquire into any alleged wrong application of Scale of Rates by an operator. If the operator fails to comply with such directions given, the concerned Port Trust can initiate penal action against the operator in accordance with the provisions of the relevant Concession Agreement. Clause 3.8.5 stipulates that if any question

arises requiring clarifications or interpretation of the Scale of Rates and the statement of conditionalities of a private operator, the matter shall be referred to TAMP and its decision in this regard will be binding on the operator.

- (iv). The representation of the AMPTPL does not fit under the above mentioned clauses of the Upfront Tariff Guidelines of 2008.

(f). Analysis on reference cited by the AMPTPL vide its letter dated 14 April 2020 drawing reference to the correction in the storage charge approved by this Authority in other two upfront tariff cases viz., West Quay Multiport Private Limited (WQMPL) in the Order TAMP/85/2017-VPT dated 18 May 2018 and in the case of JSW Paradip Terminal Private Limited (JPTPL) in PPT approved by this Authority vide Order TAMP/54/2019-JPTPL dated 20 February 2020

- (i). As regards the reference drawn by the AMPTPL vide its letter dated 14 April 2020 to the correction in the storage charge approved by this Authority in the case of West Quay Multiport Private Limited (WQMPL), a BOT operator governed under the Upfront Tariff Guidelines of 2008 in the VPT, it is to state that Order passed by this Authority vide Order no. TAMP/85/2017-VPT dated 18 May 2018 is in compliance of the Court Order dated 14 December 2017 passed by the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in the Writ Petition No.28595 of 2017 filed by WQMPL. Relevant extract of para nos. 14 (iv) (a) and (d) of the said Order are reproduced below:

Para no .14 (iv) (a) (d) of the Order No. TAMP/85/2017-VPT dated 18 May 2018

“(a). -----. *The VPT has subsequently pointed out that the error has crept in the storage calculation approved in February 2009 Order and has furnished proposal for rectification of storage tariff approved in the said Order as brought out in an earlier paragraph. That being so, this Authority considers the representation of the WQMPL for rectification of storage charge so as to remove the error crept in the then proposal of the VPT and flowing from the tariff Order of February 2009.*”

“(d). *As stated earlier, as per clause 2.8 of the upfront tariff guidelines of 2008, the tariff caps fixed upfront are subject to only indexation during the entire project period of 30 years. The 2008 upfront tariff guidelines do not lend any scope to revise the upfront tariff fixed by this Authority during the project period. As regards storage charge, in view of specific direction from the Hon'ble High Court to consider the representation of the WQMPL dated 16 June 2017 and 30 June 2017 and also in view of the port recommending to rectify the error in the storage charge in the February 2009 Order, this Authority agrees to rectify the error. This exercise is limited to rectify the error observed in the storage charge calculation by both and the licensor port (VPT) in the February 2009 Order.*”

- (ii). As regards, the reference drawn by the AMPTPL subsequently in its letter dated 14 April 2020 to correction in the storage charge for iron ore approved by this Authority in the case of JSW Paradip Terminal Private Limited (JPTPL) in the PPT, it is to state that JPTPL while seeking notification of the SOR in their name, JPTPL pointed out an error in the storage charge prescription and sought it for rectification. The relevant extract from para 13 (v) and (j) of the Order no TAMP/54/2019-JPTPL dated 20 February 2020 is reproduced below:

Para 13 (v) (j) of the Order dated 20.2.2020:

“13(v)(j). “..... 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.”

- (iii). Thus, in short, the Order passed by this Authority in WQMPL case was based on the proposal of the VPT to rectify the error which had crept in the calculation of storage charge in the original upfront tariff Order and it was in compliance of the direction of the Order of the Hon'ble Court.

In case of JSW Paradip Terminal Private Limited, the prescription in the original upfront tariff Order was on per tonne basis. In the reference Tariff Order approved in June 2014, adopting the Upfront tariff Order after indexing it, the unit of levy was prescribed inadvertently as “per MT per day basis” instead of “per MT”. As stated in the said Order, unit of levy as “per tonne” was very explicit in the bid document and Concession Agreement rather than the mention of Order dated 5 June 2014 as brought out by PPT. Thus, only an error, which had crept in the Reference tariff Order of June 2014 was rectified by this Authority.

The comparison drawn by AMPTPL on its storage issue with that of WQMPL and JSW is seen to be irrelevant as they are not comparable. Therefore, the question of this Authority not treating all terminal operators on an equal footing does not arise.

- (iv). In case of AMPTPL, there is no apparent error as such in the storage charge pointed out by AMPTPL. Even the licensor port MOPT in its letter dated 13 May 2020 with reference to submissions of AMPTPL dated 14 April 2020 has only reiterated the points of AMPTPL. The MOPT has not made any observation about the error in the storage charge approved by this Authority in the upfront tariff Order.

C. Conclusion based on the analysis given under the heading B above on the representation of the AMPTPL dated 30 October 2019 which was before the Hon'ble High Court when the Hon'ble High Court passed the Order dated 5 February 2020.

- (i). The tariff Order No.TAMP/23/2008-MOPT dated 07 August 2008 passed by this Authority fixing upfront tariff for Coal handling terminal at berth no.7 at MOPT is a speaking Order following the “Guidelines for upfront tariff setting for PPP Projects at Major Ports, 2008” announced by the Government of India and based on the proposal of MOPT and after following the due consultation procedure. The relevant stakeholders including MOPT were also consulted in the tariff proceeding before passing the said Order.
- (ii). It is seen from the concerned file, that the storage charge approved by this Authority in August 2008 Order is based on a working for arriving at storage charges done at that point of time and also a comparison of storage charge was done with other bulk terminal operators. The storage charge is not based on the rate prescribed at PPT for its coal terminal as wrongly contended by AMPTPL. As per the analysis given above, there is no apparent error in the storage charge as such. Thus, the point made by the AMPTPL that there is bona fide error in transcribing the storage charge from the PPT coal terminal upfront tariff Order to the MOPT Coal terminal for Berth No. 7 is unfounded.
- (iii). As regards the reference drawn by the AMPTPL to the two cases. viz. (a) for the West Quay Multiport Pvt. Ltd. at VPT and (b) for the JSW Paradip Terminal Pvt. Ltd. in PPT, in both cases upfront storage tariff was modified by this Authority for removing the apparent error that had crept in the two tariff notification for reasons elaborated in speaking Order No TAMP/85/2017-VPT dated 18 May 2018 and TAMP/54/2019-JPTPL dated 20 February 2020 respectively.

In case of AMPTPL, there is no apparent error as such in the storage charge as pointed out by AMPTPL. Even the licensor port MOPT in their letter dated 13 May 2020 with reference to submissions of AMPTPL dated 14 April 2020 has just reiterated the points

of AMPTPL. The MOPT has not pointed out any error in the storage charge approved by this Authority in the upfront tariff Order.

- (iv). As per Clause 2.8 of the upfront tariff guidelines of 2008 once the tariff caps are fixed they are only subject to indexation. The 2008 guidelines do not provide for review of the upfront tariff already determined for the projects that are already bid out. Thus, this Authority does not have mandate to review any upfront tariff item in the post bid scenario. The MOPT would have invited bids based on the upfront tariff approved by this Authority in the said Order of 7 August 2008 following the upfront Tariff Guidelines.
- (v). (a). **As regards the main issue of the AMPTPL about high storage charge for its terminal it is reiterated at the cost of repetition that the rates approved by this Authority are ceiling rates and the operator can charge lower rate. A suitable note in this regard is prescribed at note (v) under 1.2.General Terms and Conditions of the SOR. That being so, the AMPTPL has full flexibility to charge storage charge lower than the existing rates.**
- (b). **As regards, the matter arising on payment of revenue share to the port i.e. the MOPT, mechanism is prescribed in the MOS letter dated 11 July 2018 in para 4. Both the AMPTPL and the MOPT may mutually discuss and may consider to arrive at consensus following the mechanism for revenue share prescribed in the MOS letter dated 11 July 2018 for the period prior to 2019-20.**

As stated earlier, the principle enumerated in the said MOS letter is that the BOT operator shall pay revenue share at the agreed rate as per the Concession Agreement on the actual revenue from storage charge or revenue share calculated on the ARR from the storage charge estimated in the original Order after applying applicable annual indexation, whichever is higher.

In the instant case, the AMPTPL has, during the joint hearing, agreed to give undertaking to the port as done in the DPT. The MOPT and AMPTPL may consider to settle this matter mutually as done by the Adani Kandla Bulk Terminal Pvt. Ltd., and DPT.

13. As brought out earlier, Para 6 of the MOS letter dated 11 July 2018 on stressed PPP project states that whenever issue of abnormal storage charges emerges in stressed projects as defined in the said MOS letter, the Ports may approach TAMP under the provisions of "Agreements, modification or alternations" to the terms and conditions of the concession agreement with an appropriate proposal for rationalization of storage charges in consultation with concessionaires so as to achieve the ARR as per the relevant TAMP original tariff Order. The MOPT has filed the proposal increasing the free period from existing 15 days to 25 days and proposed that the rationalised storage charge for the third slab i.e. 26th to 30th day shall be at ₹67.88 per tonne per day for the year 2019-20 under the stressed PPP project. This rate of ₹67.88 per tonne per day is based on the storage charge approved by this Authority in the original tariff Order dated 7 August 2008 for the last slab at ₹48/- per tonne per day and after applying applicable WPI indexation for the base year 1 January 2008 till the indexation factor for the year 2019-20 which cumulates to 1.41 (i.e. cumulative indexation factor till 2017-18 at 35.08% , 2.07% and 2.56 % for the years 2018-19 and 2019-20 respectively) (i.e. ₹ 48 * 1.41). The MOPT has, apart from that, not proposed any other rationalization in the storage charge. The AMPTPL has stated that though they have agreed to increase the free period from existing 15 days to 25 days, the rate of ₹67.88 per tonne per day beyond 25 days is very high. During the consultation process of this case, apart from AMPTPL, users like M/s. Sandur Mangarene Iron Ore Pvt. Ltd. and Delta have also pointed out that the proposed storage rate of ₹67.88 per tonne/ day beyond proposed 25 days is high compared to other ports and have claimed that due to high storage, cargo is not coming to terminal. Neither the MOPT nor the users who have objected that the rate is high have proposed what the storage charge should be.

Incidentally, the AMPTPL in their representation dated 30 October 2019, which was also forwarded to MOPT, has given calculation for storage charge based on certain assumptions of dwell time of cargo, cargo evacuation slab wise as brought out in para 3 (D) (i) of this Order so as to achieve the ARR of ₹. 85.28 lakhs estimated in the original tariff Order of August 2008. The MOPT has not objected to this

calculation. None of the other users have objected to the same. That being so, and as pointed out by the users and AMPTPL that the storage charge proposed by the MOPT in the current proposal dated 11 August 2020 is high, this Authority approves the proposed rationalised storage charge for three slabs after 25 days free period viz. 26-30 days, 31-35 days and 36th day onwards as proposed by AMPTPL based on the calculation of the AMPTPL in the absence of the MOPT proposing the rationalised storage charge to address the objection raised by the users and AMPTPL for the year 2019-20.

14.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following:

- (i). Storage charge applicable as per existing Schedule 4 in the Order No.TAMP/13/2014-MOPT dated 4 July 2014 passed by this Authority notifying the SOR in the name of the AMPTPL is replaced with the following schedule for the year 2019-20 i.e. from 1 April 2019 till 31 March 2020:

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

Sl. No.	Storage Days	Existing Storage Charges applicable for the year 2019-20 after applicable indexation	Amended Storage Charges from 1.4.2019 till 31.03.2020	Royalty payable as per MOS letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 and as given by MOPT for the year 2019-20
1.	Storage Charges (0-15 days)	Nil	No Charges	Nil
2.	Storage Charges (16-20 days)	16.97	No Charges	1% of ARR from Storage charges at ₹. 85.28 lakhs estimated in August 2008 Order and after applicable indexation
3.	Storage Charges (21-25 days)	33.94	No Charges	1% of ARR from Storage charges i.e. ₹. 85.28 lakhs estimated in August 2008 Order and after applicable indexation
4.	Storage Charges (26 th day to 30 th day)	67.88	2.91	20% of actual storage charges recovered or 1% of ARR from Storage charges i.e. ₹. 85.28 lakhs as per Order dated 07.08.2008 after indexation, whichever is higher
5.	Storage Charges (31 st day to 35 th day)		4.36	
6.	Storage Charges (36 th day onwards)		5.82	

- (i). Twenty five free days shall be allowed, after complete discharge of vessel's cargo. For the purpose of calculation of free period, customs notified holidays and Terminal's non- working days shall be excluded.
- (ii). Storage charges shall be payable for all days including Terminal's non- working days and customs notified holidays for stay of cargo beyond the prescribed free days.
- (iii). Storage charge on cargo shall not accrue for the period when the terminal operator is not in a position to deliver / ship the cargo when requested by the user due to reasons attributable to the terminal operator.
- (iv). The above storage schedule shall be valid for a period of one year of 2019-20 i.e. from 1 April 2019 till 31 March 2020. From 1 April 2020 onwards, the original storage schedule as approved in the Order dated 4 July 2014 with appropriate indexation rates shall apply.
- (ii). The AMPTPL has full flexibility as regards extending higher free period than the prescribed level.

As regards revenue share payable by the BOT operator to the port, the MOS letter dated 11 July 2018 on stressed PPP project prescribes the mechanism for payment of

revenue share when the storage charge is rationalised i.e. reduced or free period is increased for stressed PPP project . The principle enumerated in the said letter is that the BOT operator shall pay revenue share at the agreed rate (i.e. 20% as given by MOPT) as per the Concession Agreement on the actual revenue from storage charge or revenue share calculated on the ARR from the storage charge estimated in the original Order (i.e. ₹85.28 lakhs) after applying applicable annual indexation, whichever is higher.

The MOPT and the AMPTPL may, as regards revenue share payment on storage charge, mutually discuss and consider to adopt the mechanism prescribed in the MOS letter dated 11 July 2018 for the period prior to 2019-2020. For this purpose both MOPT and AMPTPL may adopt the Storage charges prescribed by TAMP in this Order.

14.2. The proposal of the MOPT for rationalization of storage charge in the Order No.TAMP/13/2014-MOPT dated 4 July 2014 for a period of one year of 2019-20 is treated as disposed of. Further, the representation of Adani Mormugao Port Terminal Pvt. Ltd. (AMPTPL) dated 30 October 2019 and the subsequent representations of the AMPTPL dated 14 April 2020, 16 July 2020 and 10 September 2020 on the same matter are also treated as disposed of in compliance of Order dated 5 February 2020 of the Hon'ble High Court of Bombay at Goa and the subsequent Order of the Hon'ble High Court dated 7 October 2020.

(T.S. Balasubramanian)
Member (Finance)

Annex

Computation of storage charge as per TAMP File No. TAMP/23/2008-MOPT for arriving at the Storage charge in the Order dated 07 August 2008				
Sr.No	Particulars	As per Norms	For turnover ratio adopted by MOPT	Suggested by TAMP
(i)	Turn over	12	17	20
(ii)	Avg No of days [365/ (i)]	30	21	18
(iii)	Free period	25	18	15
(iv)	Revenue earning days per cycle (ii - iii)	5	3	3
(v)	Total earning days in a year [(iv) * (i)]	60	51	60
(vi)	Expected revenue requirement (Rs. in lakhs)	83.49	84.74	85.28
(vii)	Expected storage charge per day (vi) / (v) (in Rs.)	139148	166155	142132
(viii)	Terminal Capacity (in tonnes)	1764000	3750000	4606000
(ix)	Avg tonnage handled per day (viii)/365	4833	10274	12619
(x)	Storage charge per day per tonne (vii/ix)	29	16	11

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

F.No. TAMP/31/2020-MOPT- Proposal received from Mormugao Port Trust (MOPT) for rationalization of storage charge by increase in free period in the storage schedule approved by the Authority vide Order No. TAMP/13/2014-MOPT dated 4 July 2014 notifying the Scale of Rates in the name of Adani Mormugao Port Terminal Pvt. Ltd. (AMPTPL) for development of a Coal Handling Terminal at Berth No.7 at MOPT and disposal of Adani Mormugao Port Terminal Pvt. Ltd. (AMPTPL) representation dated 30 October 2019 in compliance of High Court of Bombay at Goa Orders dated 5 February 2020 and 7 October 2020.

A summary of the comments made by the users/ user associations and AMPTPL and reply furnished by MOPT thereon is tabulated below:

Sl. No.	Comments of the users / user organisations	Reply furnished by MOPT
1.	Indian National Shipowners' Association (INSA)	
(i).	Project with Utilization of 37 % is generating + 19.01 Cr Cash profit but when the utilization is nearly doubled i.e. 68% the project yields a negative cash loss of - 75.44 Crores. Again if the utilization reduces to 19% the cash loss is reduced to (-) ₹22.12 Crs. It means the profitability is independent of utilization and there are other factors that need to be looked into. Request explanation for better understanding by stake holders.	In the FY 2016-17, even though project utilization is 37%, the cash profit of ₹19.01 Crores is due to waiver of interest on Loan by Holding company (Interest subsidy of ₹36.66 Crores). In FY 2018-19, even though project utilization was 68%, the negative cash flow was due to major cargo handled at discounted rate in comparison to TAMP notified Handling rate.
(ii).	There is mention of free period provided in adjoining ports being a reason of the project not found attractive destination. However, no details of, or information is provided as to how the increase in free period will make the same project attractive. Request to provide information for better understanding of stakeholders.	Terminal user will get additional 10 free days to evacuate the cargo. Terminal envisages that the increase in free period will encourage Karnataka hinterland users to bring the cargo at MOPT.
(a).	The upfront tariff at the commencement of project or the existing tariff would have projections of cost and revenue. We presume port would have done the gap analysis to know what went wrong with the project. Request the same is shared with stakeholders. From user's perspective, ports and terminals have been seeking upward revision every now and then. At the same time unrealistic concessions are declared for attracting a specific cargo traffic. A shipowner as a common user who is not in a position to draw benefit has been adversely affected by such	The cost and revenue projections are done during the upfront tariff setting is available at TAMP website.

	inconsistent revisions and decisions. So a gap analysis will help deliberation for setting tariff in the MOPT or other major ports in future.	
(b).	There is no mention of study made for exploring alternatives to ease out the situation for so many years. We trust the port would have undertaken such study, and information about same could be shared with other stake holders.	Port had appointed M/s. Halcrow and Ernst & Young in November 2006 for preparing a Business Development plan for Mormugao Port. As part of the report, they had carried out extensive traffic survey for the port by interacting with various users and industries. The Business Plan report prepared by M/s Halcrow suggests that the coal requirement of the region will increase substantially. Hence Berth No.7 was proposed to be developed as a dedicated coal handling terminal. The berth will be developed under the Public Private Partnership (PPP) model.

1.2. The BMM ISPAT Limited, (BIL) vide its letter dated 27 August 2020 has furnished its comments on the proposal of MOPT, a copy of which was forwarded to MOPT as feedback information. The MOPT has not responded. The comments of BIL are given below:

- (i). We require about 50,000 MT to 60,000 MT coal per month and the lifting of same is not possible within 15 days permitted free period by MAPTPL. The storage free period at other ports is higher, that is, at Krishnapatnam Port it is 45 days and at Chettinad Mangalore Coal Terminal Private Limited, Mangalore, it is 30 days. Therefore, we request you to kindly increase the free storage period to 30 days / 45 days and support us with extended free storage period.
- (ii). The charges stipulated in the subject proposal of ₹67.88/- per MT per day beyond extended free period of 25 days seem to be extremely high and cargo handling from Goa becomes uneconomical in comparison to competing ports like NMPT and Krishnapatnam. NMPT is extending the free period of 30 days on completion ₹2.26 per MT per day for first five days and Krishnapatnam is extending a free period of 45 days and beyond 45 to 60 days they charge ₹5 to 10 only.

In view of the above, we request to re-consider the storage charges of AMPTPL ₹67.88 per MT per day beyond free period of 25 days to ₹5 per MT per day which will help the trade in a long way.

2. A joint hearing in this case was held on 16 September 2020 through video conferencing. At the joint hearing, the MOPT, AMPTPL and users have made the following submissions:

Mormugao Port Trust (MOPT)

- (i). Briefly explains the proposal.
- (ii). The proposal is filed based on MOS letter dated 11 July 2018. MOS letter dated 11 July 2018 prescribes three criteria for the port to categorize a project as stressed PPP project.
- (iii). MOPT initially analyzed the data for the years 2016-17 and 2017-18 based on the three criteria and found the project is not stressed. Based on the data for the years 2017-18 and 2018-19, all the three criteria prescribed in the MOS letter are met for declaring as stressed project. Accordingly, the MOPT Board of Trustees has declared the AMPTPL project as Stressed Project.
- (iv). Based on approval of the Board, MOPT proposes to rationalize the storage schedule by increasing the existing free days from 15 to 25 days. That is the only change proposed.
- (v). AMPTPL had earlier sought 35 days free period. Based on discussion between MOPT and AMPTPL, the AMPTPL has agreed for increase in free period of 25 days.
- (vi). In the existing storage schedule, free period of 15 days is prescribed. As per the proposed rationalised storage schedule for the extended period of free days i.e. 16 to 25 days, no storage charge shall be levied.
- (vii). On the rationalised storage schedule, Revenue share payable by AMPTPL shall be 20% of the Gross revenue or 1% of ARR whichever is higher.

[Member (F) TAMP: The MOS letter dated 11 July 2018 does not state revenue share is payable on Gross Revenue for the rationalised storage schedule. The port is to follow the MOS letter as the proposal is filed based on that.]

Adani Mormugao Port Terminal Pvt. Ltd. (AMPTPL)

- (i). Though we have agreed to increase free period from existing 15 days to 25 days, the rate of ₹68/- per tonne per day beyond 25 days is very high. In NMPT, the storage charge beyond 25 days is ₹1.75/tonne/day.
- (ii). So, we want competitive rate from existing ₹68/- per tonne/ day to ₹5/- per tonne/ day.

- (iii). We shall pay revenue share on the actual revenue at the TAMP approved rationalised storage charge or 1% of ARR from storage whichever is higher.

M/s.BMM Ispat Ltd.

- (i). The rate of ₹68/ tonne/ day beyond 25 days is very high. No other port is charging such high rate.

M/s.Sandur Mangarene Iron Ore Pvt. Ltd.

- (i). We plan to bring panamax vessel to Goa through AMPTPL.
- (ii). 25 days free period is accepted.
- (iii). The rate of ₹68/- per tonne/ day beyond 25 days is high.

Delta

- (i). We have many users who are not willing to come to Goa due to high storage charges compared to other ports.
- (ii). At the prescribed rate of ₹68/- per tonne/ per day for 1000 tonnes, storage charge shall be ₹68,000/ day.
- (iii). Due to high storage, cargo is not coming to terminal.
- (iv). If rate is reduced, coal cargo can be attracted to AMPTPL.

AMPTPL

- (i). The rate of ₹68/- per tonne per day beyond 25 days is very high. The rates may be reduced to the best level possible.
- (ii). By increasing free period from 15 days to 25 days, MOPT will not lose any revenue. Revenue of MOPT is protected as revenue share shall be paid on rationalised storage charges approved by TAMP or 1% of ARR from storage charges whichever is higher.
- (iii). We can give undertaking to the port as done by us in DPT.

MOPT

- (i). There is lot of restriction from Goa Pollution Control Board.
- (ii). Other factors like evacuation also has to be considered.

MOPT

- (i). ₹68/- per tonne is the rate for the third slab. The rate for the first two slabs are now proposed to be free.
- (ii). We have not increased the rate for the third slab. It is the existing rate.

AMPTPL

- (i). There is error in original storage charge.
[TAMP: There is no apparent error in the storage charge approved by the Authority]
- (ii). We only mean that the assumptions made in the calculation of storage charge may not have materialized.

MOPT

- (i). The proposal is filed for increase in free period for the year 2019-20 under stressed PPP project for a period of one year and to review thereafter. This is based on the data for the years 2017-18 and 2018-19.
- (ii). For the subsequent period, the MOPT will file a separate proposal after analyzing the data for the relevant period.

Manu Thakker Hiralal

- (i). I am agreeable to the MOPT proposal.
