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Tariff Authority for Major Ports

G.No. 74

New Delhi,

21 February 2019

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the V.O. Chidambaranar Port Trust (VOCPT) for revision of lease rent of the land leased out for installation of phosphoric acid storage tanks inside the wharf area of the port for the period of five years w.e.f. 20 January 2016 to 19 January 2021 as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/27/2018-VOCPT

V. O. Chidambaranar Port Trust

Applicant

QUORUM

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

O R D E R

(Passed on this 18th day of January 2019)

This case relates to the proposal dated 6 April 2018 received from the V.O. Chidambaranar Port Trust (VOCPT) for revision of lease rent of the land leased out to M/s.Southern Petrochemicals Industries Corporation Limited (SPIC) at VOC Wharf for installation of phosphoric acid storage tanks for the period of five years w.e.f. 20 January 2016 to 19 January 2021.

1.2. It is relevant to state that the lease rentals for the land allotted by the VOCPT on long term basis to SPIC was last revised vide tariff Order No.TAMP/38/2014-VOCPT dated 27 February 2016. The lease rentals approved vide the said tariff Order were made retrospective effect at the request of port from 20 January 2011 and were valid for a period of five years i.e. upto 19 January 2016. The validity of the lease rentals has already expired.

2.1. The main points of the VOCPT proposal are as follows:

- (i). The SPIC was allotted port's land admeasuring 2,325 sqm. with effect from 01.04.1979 as first allotment and 1085 sqm. as second allotment in VOC wharf IVth Berth area from 20.01.1981 with the approval of Government of India on long term lease for a period of 30 years for installation of phosphoric acid Tank. The lease deed entered into with M/s.SPIC Ltd. provided vide clause 4 that the lease rent is subject to upward revision w.e.f. 01.01.1997 and thereafter on expiry every year.

Accordingly, the lease rent was approved by TAMP w.e.f. the date as detailed below:

Sl. No.	Date of revision of rate	Rate in ₹ per Sqm./Annum
1	01.01.1992	444/-
2	01.01.1997	555/-
3	01.01.2002	708/-
4	01.01.2007 to 19.01.2011	2,386/-
5	20.01.2011 to 19.01.2016	3,495/-

- (ii). The lease rent was revised as ₹3,495/- per sqm. per annum w.e.f. 20.01.2011 by TAMP vide its Order No.TAMP/38/2014-VOCPT dated 27 February 2016 G. No.106 dated 23 March 2016. A copy of the said Order is attached as Annexure-I to the proposal filed by VOCPT.
- (iii). As the validity of the current lease rate for the Phosphoric Acid storage tank is already over on 19.01.2016, it is proposed to fix the lease rate for the period from 20.01.2016 to 19.01.2021.
- (iv). M/s.KITCO, Government approved valuer, has been appointed for valuation of Market Value and lease rent thereon for the land leased out to M/s.SPIC.
- (v). The valuer, in his report, has recommended the lease rental for the Port's land allotted for Phosphoric Acid Tank in IV Berth of VOC at ₹3,200/- per sqm. per annum stating that, considering present economic slowdown and present growth rate in order to facilitate an industrial friendly atmosphere and growth of the industry. The basis for arriving the lease rental as furnished by M/s.KITCO is enclosed as Annexure-II to the proposal.
- (vi). As per clause no.13 (c) of Land Policy Guidelines, 2014, M/s.KITCO's report was placed in the LAC meeting held on 19.12.2017 vide Agenda No.2, Reso. No. 2 and LAC recommended the lease rate of ₹3,200 per sqm. per annum (Annexure - III & IV) to the proposal.

- (vii). The recommendation of the LAC was placed before the Board. The Board in its meeting held on 09.02.2018 resolved to approve the proposal of revision of lease rate of ₹3,200/- per Sqm / Annum for period w.e.f. 20.01.2016 with 2% annual escalation for the land leased out VOC wharf for installation of phosphoric acid storage Tank and to send the proposal to TAMP (Annexure - V) to the proposal.

2.2. The VOCPT has requested to consider the lease rate recommended by VOC Port's Board and notify the lease rent of ₹3,200/- Sqm / annum with 2% of arrived escalation for subsequent years in respect of the lands leased to M/s.SPIC Ltd. for the phosphoric acid storage tank at VOC wharf for a further period of 5 years from 20.01.2016 to 19.01.2021 under Section 49 of MPT Act 1963.

3.1. In order to compute the revised lease rent as stipulated in Land Policy Guidelines 2014 by an approved valuer in respect of the lands leased to M/s.SPIC Ltd for the phosphoric acid storage tank at VOC wharf, port awarded the work to M/s.KITCO Ltd., Govt. approved valuer, Cochin. Accordingly, M/s.KITCO submitted the report of land valuation of VOCPT. A copy of calculation for Phosphoric acid tank lease rent prepared by the M/s.KITCO is furnished.

3.2. M/s.KITCO has considered land valuation by using other factors for consideration which is one of the five methods for land valuation prescribed under Clause No. 13(a) the amended of Land Policy Guidelines 2014. In this method, M/s.KITCO has calculated valuation of ports land per acre under Income Approach Method.

- (a). The statement showing estimation of value of ports land using Income Approach is given as below:

Sl. No.	Extent under consideration	Net Annual Income (NAI)	Estimated ROI for Lease hold right	Estimated ROI for Port land	YP for 30 years -1/(R+S) where $S=r/((1+r)^{30}-1)$ $r=2.5%$ $S=0.23$	Estimated Value per acre	Value of Port's Land per Acre
	Acre = 4047 sqm	E-F	By applying Weightage	By applying Weightage	$1 / (L + 0.023)$	G x M	N + P
	Sqm	₹				₹	₹
A	C	G	K	L	M	N	Q
Zone A							
	Phosphoric Acid Tank						656
	3435 Sqm	9858113.88	5.18	5.18	13.37	131770601	155247633
							9314858
							2302
							2958
	Add Annual equivalent of Cost of construction of Wharf						28
							2986

Upper Limit

Phosphoric Acid Tank 3425Sqm 0.85 Acre MGT-90000 MT SPIC							
						Monopoly Value	
3435	9858113.88	5.18	5.18	13.37	131770600.6		1125
							155247633
							9314858
							2302
							3427
	Add Annual equivalent of Cost of construction of Wharf						28
							3455

[Under this method the Govt. approved valuer appointed by the port has first arrived at net annual income of ₹98,58,114/- considering sum of Annual Equivalent of Net Investment + Savings in pumping cost / 0.85 + warehouse lease for area of pipe laying [(i.e. 62,81,747 + (10,00,000/0.85) +(374.98 X 3,200 X 2)]. It works out to 98,58,090. But in the valuation report it is considered at ₹98,58,114/-. From that the port has arrived at value of port land at ₹13,17,70,601/- for 0.85 acres of land applying multiplying factor of 13.37 which is yearly purchase for 30 years. (₹98,58,113.88 X 13.37). This is then converted to per acre at 15,52,47,633/- (i.e.

13,17,70,601/0.85). There is slight mismatch in figure. It works out to 15,50,61,956/-.

Taking value of land at 15,52,47,633, the port has applied 6% return as per the amended Land Policy Guidelines, 2014 and arrived at lease rent of ₹93,14,858 (15,52,47,633 X 6%). The lease rent with upper limit and lower limit is arrived by the port as explained below.]

- (b). Considering lease rent of ₹93,14,858 per acre, the port has arrived at lease rent with lower limit and upper limit considering monopoly value 1.75 and 3 times on per sq. mtr. per annum basis. The detailed workings as furnished by the Govt. approved valuer is as under:

Lower limit value = 2,302 + 1.75 x 374.98 + 28 = ₹2,986/- per sq mtr/ annum

Upper limit value = 2,302 + 3.00 x 374.98 + 28 = ₹3,455/- per sq mtr/ annum

Where,

- (i). The lease rental per sqm is ₹2,302/- = ₹93,14,858 / 4046.486 sqm per acre.
(ii). Warehouse lease rental is ₹374.98 = ₹15,17,559 / 4046.86 sqm.
(iii). Monopoly value = 1.75 for lower limit value and 3 for upper limit value.
- (c). Thus, based on the valuation done considering the monopoly value of 1.75 to 3 to arrive at the lower limit of lease rent at ₹2986 and upper limit of lease rentals at ₹3455 thereon, the same has been averaged ($\frac{₹2,986+₹3,455}{2} = ₹3,220.50$ rounded off to ₹3,200/- per sq. mtr. per annum) and proposed lease rent of ₹3,200/- per sqm. p.a is arrived at.
- (d). The approved valuer has considered following factors for arriving proposed lease rent:
- (i). Adjustment for advantage of infrastructural facilities of port use of being near to port and uncertainty of renewal conditions risk in conditions of lease by Port against revision in every five years.
(ii). Decrease in Rate for larger extent not considered.
(iii). The financial advantage of Liquid storage tank near to wharf is calculated by capitalizing the annuity earned.
(iv). Comparing with the nearest viable location in 3.20 m down the wharf.
(v). Pipeline and pumping cost is calculated and annuity considering life as 12 Years.
(vi). Advantage on pumping cost is considered separately.
- (a). Pipe line and pumping cost is calculated and annuity considering life as 12 years.
(b). Advantage on pumping cost is considered separately.
(c). Lease rent of land for laying pipeline – 3200 x 2.00 m = 6400 Sqm @ arrived rate is considered.
- (vii). The financial advantage is considered as net annual income and this capitalized to arrive at Value.
(viii). Lower limit and upper limit is calculated with Monopoly Value 1.75 and 3.

4.1. For the determination of market value of the subject land and revision of lease rates, the VOCPT has constituted the Land Allotment Committee (LAC) under the Chairmanship of Deputy Chairman & Estate Officer, Chief Engineer and other Members. The other members of the LAC are Traffic Manager, Financial Adviser & Chief Accounts Officer and Dy. Chief Engineer of VOCPT. The meeting of the LAC was held on 19 December 2017. The minutes of the LAC meeting has been furnished by VOCPT. The Committee had detailed discussion in the meeting on the land value report furnished by M/s.KITCO, Cochin Govt. approved valuer.

4.2. The highlights of the minutes of meeting of LAC held on 19 December 2017 are summarized below:

- (i). The Land Allotment Committee has gone through the rate recommended by M/s.KITCO for ₹3,200/- per Sqm. Per annum to the existing Phosphoric Acid Tank available in VOC Berth No.IV for the period for 20.01.2016 to 19.01.2021, whereas the TAMP approved rate was ₹3,858.75/- for the period from 20.01.2016 to 19.01.2017. The existing TAMP approved rate is higher than the rate recommended by M/s.KITCO.
- (ii). The LAC also noted that per the TAMP Order No.TAMP/13/2007-TPT dated 07.08.2007, the competitive price bids for the land outside the Wharf area for the same purpose was considered for revision. Therefore, LAC has gone through the earlier tender rates, for highest offer received for Tank farm during the year 2014, 2016 and 2017 towards upfront premium basis as submitted below:

Sl. No.	Name of Allottee	Area in Sqm	Purpose	Year of allotment	Reserve price fixed by Port / Sqm for 30 years in ₹	e-auction rate offer by bidder in ₹	Diff. in amount in ₹	% increase
1	M/s.Green Star Fert. Ltd.	12,783.4	Liquid Storage Tank	2014	4,735/-	12,750/-	(+) 8015	169.27%
2	M/s.MPCL	23,750	Lorry parking Terminal with Retail outlet	2016	5,363/-	7,000/-	(+) 1637	30.52%
3	M/s.Green Star Fert. Ltd.	7.415	Liquid Storage Tank	2017	5,657/-	5,660/-	(+) 3	0.05%
4	M/s.DCW Ltd.	19,703	VCM Storage Tank	2017	5,657/-	5,658/-	(+) 1	0.02%

- (iii). From the above table, it is observed that during the year 2017, the competitive tenders for tank farm received by Port is only (+) 0.05% and (+) 0.02% above the reserve price. The LAC has also gone through the general revision of lease rent in respect of Port for the Period from 01.07.2017 to 30.06.2022 by M/s.KITCO for Service, Industrial and Commercial category rate.

In this regard, the Board of Trustees of VOCPT in its 1st ordinary meeting for the year 2017-2018 held on 07.07.2017 vide Reso. No.4 Agenda Item No.2 has revised the lease rent of port land only with 2% escalation for the period from 01.07.2017 to 30.06.2022 which has been approved by TAMP.

The existing TAMP approved rate with 2% escalation for Phosphoric Acid Tank upto the period 19.01.2016 was 3,858.75 per Sqm/ Annum with 2% annual escalation on rate of ₹3,495/- per Sqm per annum for the period from 20.01.2011 as tabulated below:

Sl. No.	Period	TAMP approved	Remarks
1	2011-12	3495.00	2% escalation
2	2012-13	3564.90	2% escalation
3	2013-14	3636.10	2% escalation
4	2014-15	3708.92	2% escalation
5	2015-16	3783.09	2% escalation
6	2016-17	3858.75	2% escalation

- (iv). **Recommendation of LAC:**

After detailed discussion LAC recommended the lease rate of ₹3,200/- per Sqm./Annum which has been recommended by Government Approved Valuer and to place the proposal to the ensuing Board to send the proposal to TAMP.

5.1. The VOCPT Board in its meeting held on 9 February 2017 has approved the recommendations of the Committee. Accordingly, based on the recommendations of the Committee and approval of its Board, the VOCPT has proposed revised lease rental rate of ₹3,200/- per sqm per annum for a w.e.f. 20 January 2016 with 2% escalation for the land leased out at VOC wharf for installation of phosphoric acid storage tank.

5.2. Further, the port has also made following submissions in its proposal dated 06 April 2018:

- (i). The lease period for the 1st allotment expired on 31 March 2009 and for the 2nd allotment expired on 19 January 2011. M/s.SPIC has requested the port for renewal of the lease period beyond the respective dated of expiry for 30 days for both allotment.
- (ii). The request of SPIC to renew the lease period was placed before the Board and resolved vide its resolution no.92 of 5 Ordinary meeting held on 24 February 2010 to extend the lease period of the 1st allotment from 1 April 2009 to 28 February 2010 and thereafter to renew on short term license basis to a minimum period upto 19 January 2011 to match with the expiry date of licence period of 2nd allotment and to process the renewal for the lease period beyond 19 January 2011 for both the allotment simultaneously.
- (iii). Again in Board vide its Resolution No.104 (Agenda No.28) of the meeting held on 21 March 2011 resolved to take up the matter regarding renewal of lease of two allotment for storage tanks for 30 years with the Ministry. Accordingly, Ministry has been requested vide port letter dated 14 May 2011 to accord approval for the renewal of the lease in respect of the two lands allotted to SPIC.
- (iv). The Ministry of Shipping (MOS) vide D.O. letter dated 20 January 2013 that since new land policy guidelines 2014 for major ports has been approved by the Union Cabinet the proposal which has been sent to the MOS earlier due to absence of land policy should process in the light of new land policy guidelines.
- (v). Accordingly, the proposal for extension of lease period was placed in the Board meeting held on 25 August 2014 and the Board has accorded approval to extend the intervening period between the date of expiry to 31.12.2014 over and above the original allotment and to take necessary action for tendering process.
- (vi). The allotment period expired on 31.12.2014. As per land policy guidelines 2014 issued by the MOS, in order to consider the fresh allotment through tender cum auction, the port has vide its letter dated 10 December 2014 has terminated the allotment made to SPIC.
- (vii). In response to the termination order the SPIC, filed a case W.P. (MD) No.2918/2015 Hon'ble High Court of Madras, Madurai Bench and got interim stay and the stay is extended till date and the case is pending. The direction of board meeting held on 25 August 2014 could not be implemented due to existing of stay. No specific direction has been received from the Hon'ble High Court restraining the Authority from fixation of lease rental for the period 20 January 2016 to 19 January 2021. [As per Website of High Court of Madras, Madurai Bench the W.P. (MD) No.2918/2015 is pending in the Hon'ble High Court of Madras, Madurai Bench]

6. While acknowledging the VOCPT proposal dated 6 April 2018, the VOCPT vide our letter dated 12 April 2018 was requested to furnish documents/ clarifications on the few points. In response, the VOCPT vide its letter dated 19 May 2018 has furnished its reply. A summary of documents/ clarifications sought by us and reply furnished by VOCPT is tabulated below:

Sl. No.	Documents/ clarifications sought by us	Reply furnished by VOCPT
(i).	The VOCPT has furnished only some pages of Land Valuation of VOCPT land, submitted by M/s.KITCO. The VOCPT to immediately furnish complete Report of Land Valuation. Also, simultaneously	The consolidated report of Land Valuation of VOCPT prepared by M/s.KITCO, and also copy of the Board's approval regarding revision of lease rent of Phosphoric Acid

	forward the same to M/s.Southern Petrochemical Industries Corporation Limited (SPIC Ltd.) under intimation to TAMP.	tank are furnished. Further, the same has also been sent to SPIC Ltd. on 5 May 2018.
(ii).	The VOCPT to furnish the copy of the Board approval on the subject proposal to TAMP and SPIC immediately.	
(iii).	VOCPT is well aware that SPIC has filed W.P.No.617/2018 and WMP (MD) No.645 of 2018 in the Hon'ble High Court of Madras, Madurai Bench, challenging the Order passed by this Authority vide Order No.TAMP/38/2014-VOCPT dated 27 July 2016 based on the proposal filed by VOCPT seeking revision of lease rent for the land leased out to M/s.SPIC at VOC Wharf for installation of Phosphoric Acid storage tank with retrospective effect from 20 February 2011 to 19 January 2016. The Hon'ble High Court has granted interim stay and the case is pending for disposal. The VOCPT was requested to clarify whether there is any direction from the Hon'ble High Court refraining the Authority to consider the subject proposal for revision of lease rent beyond the 19 January 2016 and the subject proposal will not amount to contempt of court.	The interim stay obtained by M/s.SPIC Ltd., for not to implement the revision of rent fixed by the TAMP vide Order dated 27 June 2016 with retrospective effect in the W.P. (MD) 617/2018 for the period from 20.01.2011 to 19.01.2016 for the land allotment made to M/s.SPIC Ltd., for Phosphoric acid storage tank in IV Berth of VOC wharf. There is no direction or orders from the High Court refraining the TAMP to consider the subject proposal of revision of lease rent beyond 19.01.2016 and the subject proposal will not amount to contempt of court. Hence, the port has requested to revise the lease rent in respect of allotment made to M/s.SPIC Ltd., for the period from 20.01.2016 to 19.01.2021. [As per Website of High court of Madras, Madurai Bench the last Order was passed on 5 June 2018, however the copy of Order is not available. The case is pending.]

7. In accordance with the consultative procedure prescribed, a copy of the VOCPT proposal dated 6 April 2018 was forwarded to M/s.SPIC Ltd. seeking their comments. The comments received from M/s.SPIC Ltd. was forwarded to VOCPT as feedback information. The VOCPT vide its letter dated 1 June 2018 has furnished its reply on the comments of the M/s.SPIC Ltd.

8. Based on the preliminary scrutiny of the proposal, the VOCPT was requested vide our letter dated 30 May 2018 to furnish additional information / clarifications on a few points by 10 June 2018. This was followed by reminders dated 5 June 2018, 21 June 2018 and 30 July 2018. The VOCPT has furnished its written comments vide its letter dated 6 August 2018. A summary of information/ clarification sought by us and comments furnished by VOCPT thereon is tabulated below:

Sl. No.	Information / clarifications sought by us	Reply furnished by VOCPT
(i).	The VOCPT has arrived at the proposed lease rental for land leased out to M/s.Southern Petrochemical Industries Corporation Limited (SPIC Ltd.) at ₹3,200 per sq. mtr. per annum considering 20.58% decrease from the escalated lease rent as on 19 January 2016. As per clause 13(a) of the amended Land Policy Guidelines for Major Ports-2014 issued by the MOS, the Land Allotment Committee (LAC) should take into account highest of the following factors to determine the latest market value of port lands viz. (a). State Government's ready reckoner of land	

	<p>values in the area, if available for similar classification/ activities, (b). Highest rate of actual relevant transactions registered in last three years in the Port's vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards), with an appropriate annual escalation rate approved by the Port Trust Board, (c). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (d). Rate arrived at by an approved valuer appointed for the purpose by the Port and (e). Any other relevant factor as may be identified by the Port. If the highest factor is not chosen, then the reasons for the same have to be recorded in writing. The VOCPT has considered the rate arrived at by an approved valuer only. In this regard, the VOCPT is requested to clarify on the following points:</p>	
	<p>(a). Neither the proposal of VOCPT nor the copy of the minutes of the proceedings of the Land Allotment Committee (LAC) dated 19 December 2017 forwarded by the VOCPT under the cover of its proposal show that the valuation of land leased to M/s.SPIC Ltd has been done as per the above five options prescribed in clause 13(a) of the amended Land Policy Guidelines of 2014 to derive the highest market value of land. The VOCPT to clarify the reasons for not assessing the value of land under all the options.</p>	<p>The land allotted inside the custom bound area for tank forms and the lease agreement entered with M/s.SPIC has expired on 31 December 2014. With regard to clause 13 (c) of the LPG, the following is submitted:</p> <p>(a). State Government ready reckoner The allotted land is situated in custom bound port reclaimed area. Hence, State Government reckoner value is not applicable.</p> <p>(b). Highest rate of actual relevant transactions M/s.SPIC is the only firm which has been allotted earlier on nomination basis for land inside the custom bond area for installation of Phosphoric acid tank. No tender had been called for this allotment by port so far. Even though the lease rental is approved by the TAMP is available for 2011-16, the SPIC has filed a Writ Petition and not making the payment from 2011 onwards considering the same is not relevant.</p> <p>(c). Highest accepted tender-cum-auction rate Since the earlier lease has expired by 2014, the port has initiated the Process of Tender for allotment of said land. M/s.SPIC approached the court against the termination order issued by VOC Port Trust. Tender could not be resorted by VOC Port Trust and the stay has not been vacated till date.</p> <p>(d). Rate arrived at by an approved valuer</p>

		<p>Rate arrived at by Government approved valuer M/s.KITCO is considered by port.</p> <p>(e). Any other relevant factor identified Since the land leased to M/s.SPIC in Custom bond area, no relevant factor is to consider under four categories.</p> <p>Since the values under a, b, c and e of clause 13(a) were not arrived for comparison purposes the market valuation and lease rental recommended by the Government approved valuer had been considered and recommended by LAC, which was approved by Board of Trustees.</p>
	(b). With reference to Annex-II of the proposal dated 6 April 2018, the VOCPT to furnish/ clarify the following:	
	(i). The VOCPT has furnished the copy of land valuation report submitted by Government approved land Valuer i.e. M/s.KITCO. In the said report the approved land valuer has arrived the lease rental under Income Approach Method and the calculation is furnished in Table 6B. In the said Table, the approved land valuer has considered the Net Annual Income (NAI) of ₹98,58,113.88. At the end of the statement a remark is given for arrival of NAI which states that the 98,58,113.88= AE of capital investment i.e. ₹4 crores + saving in energy for pumping i.e. ₹10 Lakhs/ year + lease rent for area for laying pipeline 3.2 km, 2m wide @ arrived rate. The remark is not clear. The VOCPT may, therefore, furnish the detail calculations along with figures to match the NAI at ₹98,58,113.88. It is also observed that the some columns like B,D,E,F etc. are missing in Table 6B. Therefore, the VOCPT is requested to furnish the details.	The VOCPT has stated that he detailed calculation for arriving the net annual income of ₹98,58,113.88 by the Government approved valuer is furnished. [The port has forwarded page 61 of the report of the approved valuer]
	(ii). A rate of ₹2,986 per sq. mtr. per annum has been derived from the figure of ₹2,302 per sq. mtr. per annum. Likewise, a rate of ₹3,455 per sq. mtr. per annum has been derived from the same figure of ₹2,302 per sq. mtr. per annum. The VOCPT to describe how these two figures have been derived.	<p>While recommending the lease rental in respect of land area inside the custom bound area for the tank farms, the Govt. approved valuer has considered monopoly value 1.75 and 3 based on the financial advantage of liquid storage tank near to wharf. The detailed workings as furnished by the Govt. approved valuer has already been forwarded alongwith the proposal. However, for ready reference, the same has been furnished hereunder.</p> <p>Lower limit value = $2,302 + 1.75 \times 374.98 + 28 = ₹2,986/-$</p> <p>Upper limit value = $2,302 + 3.00 \times 374.98 + 28 = ₹3,455/-$</p> <p>Where</p>

		<p>(i). The lease rental per sqm of ₹2,302/- = ₹93,14,858 / 4046.486 sqm per acre.</p> <p>(ii). The warehouse lease rental of ₹374.98 = ₹15,17,559 / 4046.86 sqm</p> <p>(iii). Monopoly value = 1.75 to 3.</p>
	<p>(iii). The rate of ₹2,986 per sq. mtr. per annum appears to be lower limit. The rate of ₹3,455 per sq. mtr. per annum has been indicated as upper limit. If ₹2,986 per sq. mtr. per annum is the lower limit and ₹3,455 per sq. mtr. per annum is the upper limit, the reason for pegging the lease rent at ₹3,200 per sq. mtr. per annum to be explained.</p>	<p>Since the valuation was done considering the monopoly value of 1.75 to 3 to arrive the lower and upper limit of valuation and lease rentals thereon, the same has been averaged and recommended at ₹3,200/- per sqm p.a. considering the economic slowdown and present growth rate the lease rentals for said land area inside the custom bound area has been recommended</p> <p style="text-align: center;">= (₹2,986+3,455/2) = ₹3,220.50 = Say ₹3,200/-</p>
(ii).	<p>The VOCPT in its separate proposal filed for revision of lease rent of its land which has already been disposed of by this Authority vide Order No.TAMP/52/2017-VOCPT dated 14 November 2017 had furnished a copy of the land valuation report pertaining to the year 2017 by valuer appointed by VOCPT. The VOCPT to clarify whether this land valuation report covered valuation of land in respect of land leased to M/s.SPIC Ltd. also. If so, the port may examine whether the valuation of land in the said report under all the options would be relevant for the current proposal. If not, the VOCPT to examine whether valuation of the market value of land leased to M/s.SPIC Ltd. under all the options has to be undertaken to comply with the provisions prescribed in the amended Land Policy Guidelines of 2014, as stated in query no.(i)(a) above.</p>	<p>The land valuation report considered for general revision of lease rental rates does not cover the valuation of land area inside the custom bound area earmarked for tank farms.</p> <p>Since the Imported Phosphoric Acid tank have been installed inside custom bond reclaimed area and for the reasons mentioned at para 1(a) above, the market value and lease rental recommended thereon by the Government approved valuer has been considered.</p>
(iii).	<p>The proposal of the VOCPT does not include conditionalities governing the proposed lease rent for Phosphoric Acid Storage Tank leased to SPIC Ltd. The Authority is mandated not only to prescribe Scale of Rates but also conditionalities governing the application of rates. The amended Land Policy Guidelines 2014 also broadly list out the terms and conditionalities for issuances of right of way permission for laying pipelines/ conveyors etc. The VOCPT to incorporate the conditionalities governing the proposed lease rent for Phosphoric Acid Storage Tank leased to M/s.SPIC Ltd. as per provisions prescribed in the amended Land Policy Guidelines of 2014.</p>	<p>As directed, the conditionalities applicable to land area inside the custom bound area earmarked for tank forms is prepared and furnished.</p> <p>The detail conditionalities are as under:</p> <p>(i). The rates prescribed above shall be applicable with effect from 20 January 2016 till 19 January 2021.</p> <p>(ii). The rates shall be escalated by 2% per annum with effect from 20 January 2017 till 19 January 2021.</p> <p>(iii). All other conditions governing the license fee/ lease rent shall be as per the amended Land Policy Guidelines 2014 issued by the Ministry of Shipping, and as may be amended from time to time.</p>
(iv).	<p>The VOCPT has sought approval to the revised rates retrospectively w.e.f. 20 January 2016. The Lease Agreement with M/s.SPIC Ltd. has already expired on 31 December 2014 and the termination order issued by VOCPT is challenged by M/s.SPIC</p>	

	before the Hon'ble High Court of Madras at Madurai Bench. The SPIC has obtained the interim stay for not to implement the revision of rent fixed by the TAMP vide Order No.TAMP/38/2014-VOCPT dated 27 February 2016. In this context, the VOCPT to clarify:	
	(a). The reason for seeking revision of lease rent with retrospective effect from 20 January 2016 when no lease agreement is reported to exist between VOCPT and SPIC for the period beyond 31 December 2014.	The validity of the lease rentals applicable for land inside the custom bound area earmarked for tank farms has expired on 19 January 2016. Further, the land allotted inside the custom bound area to M/s.SPIC for tank farms is still under its possession due to stay obtained by M/s.SPIC Ltd., in Hon'ble High Court, even though the lease agreement entered between VOC Port Trust and M/s.SPIC expired by 31 December 2014.
	(b). In view of the position brought out by the VOCPT that there is no lease agreement prevailing between with SPIC and VOCPT as on date, it may be examined whether it will be appropriate to notify the revised lease rent indicating the name of the lessee i.e. SPIC retrospectively with effect from 20 January 2016.	As stated above, even though the lease agreement entered between VOC Port Trust and M/s.SPIC has expired by 31 December 2014 the validity of the lease rentals applicable for land insider the custom bound area earmarked for the tank farms expired on 19 January 2016. Since the land is under the possession of M/s.SPIC, the retrospective lease rent revision is required for levy of lease rentals on M/s.SPIC.
	(c). The VOCPT to indicate the exact description in terms of area, zone of the land and the purpose thereof for which the lease rent/ reserve prize is to be approved by this Authority.	The area proposed for revision of lease rent is 3,410 Sqm of port reclaimed area for providing 3 Nos. of Phosphoric Acid Tank having a capacity of 5000 Cum each. As per the Land Policy Guidelines, the lease rentals have to be fixed once in 5 years. The existing rate expired on 19 January 2016. The proposed area is very nearer (approximately 25 M) from the Port berth in which cargoes are being handled from the vessels by the users.
(v).	The VOCPT has proposed the lease rent of ₹3,200/ sqm/ annum for lands leased to M/s.SPIC Ltd., for the Phosphoric Acid Storage Tank at VOC wharf for a further period of 5 years from 20.01.2016 to 19.01.2021 based on the recommendation of the government approved valuer i.e. M/s.KITCO. The VOCPT has reported that highest offer received from M/s.Green Star Fert. Ltd for Tank Farm during 2014 is ₹12,750/ sqm/ annum. If the e-auction offers received from the Green Star Fertilisers Ltd. and the DCW Ltd. in 2017 are considered, the offers are ₹5,660 and ₹5,658 per sq. mtr. per annum respectively. Even the Reserve Price of the area e-auctioned in the year 2017 is much higher at ₹5,657 per sq. mtr. per annum as shown below. Prima facie the proposed lease rental of ₹3,200/ sqm/ annum is very lower than the offers received. Clause	The offer received through tender cum e-auction will not be applicable in respect of land allotment made to M/s.SPIC inside the custom bond areas. The Highest Offers received pertain to the land situated in outside custom bound area. Moreover, it is informed that the highest auctioned rate by the bidders such as M/s.DCW Ltd., M/s.Green Star Fertiliser Ltd., and M/s.HPCL Ltd., for their respective allotments is per Sqm, for 30 years period, whereas, the lease rate proposed for Phosphoric Acid Tank is ₹3,200/- per Sqm per Annum only on annual lease rental basis. The recommendation of the valuer @ of ₹3,200/- Sqm in its report recommending the lease rental for the ports land allotted for Phosphoric acid tank in IV Berth of VOC

<p>13 (a) of Land Policy Guidelines 2014 requires to take into account highest of the five factors to determine the latest market value of Port land and in case the Land Allotment Committee is not choosing the highest factor, the reasons for the same has to be recorded in writing. The reasons for not choosing the highest lease value is not recorded in the report of LAC or in the proposal of VOCPT as required in the amended Land Policy Guidelines 2014. The VOCPT to furnish the reasons as required by the amended Land Policy Guidelines, 2014. The VOCPT also to justify the proposed lease rent in light of the highest offers received from M/s.Green Star Fertilisers Ltd. in the year 2014 and 2017.</p> <p>The VOCPT in its covering letter at Para 5 has stated that the valuer in its report recommended the lease rental for the ports land allotted for phosphoric acid tank in IV Berth of VOC at ₹3,200 per sqm per annum on the ground of the present economic slowdown and present growth rate in order to facilitate an industrial friendly atmosphere and growth of the industry</p> <p>Whereas the land allotment committee in its minutes of the meeting held on 19 December 2017 has noted the earlier tender rates for highest offer received for Tank Farm during the year 2014, 2016 and 2017 towards upfront premium basis. The details of land allotment made by VOCPT in the year 2014 to 2017 are given below:</p> <table border="1" data-bbox="327 1288 861 1579"> <thead> <tr> <th>Sl. No.</th> <th>Name of Allottee</th> <th>Purpose</th> <th>Year of Allotment</th> <th>Reserve price fixed by Port/ Sqm for 30 years in ₹</th> <th>E-Auction rate offered by bidder in ₹</th> <th>% increase</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>M/s Green Star Fert Ltd</td> <td>Liquid Storage Tank</td> <td>2014</td> <td>12,750/-</td> <td>12,750/-</td> <td>169.27</td> </tr> <tr> <td>2</td> <td>M/s HPCL</td> <td>Lorry Parking Terminal Retail Outlet</td> <td>2016</td> <td>5,363/-</td> <td>7,000/-</td> <td>30.52</td> </tr> <tr> <td>3</td> <td>M/s Green Star Fert Ltd</td> <td>Liquid Storage Tank</td> <td>2017</td> <td>5,657/-</td> <td>5,660/-</td> <td>0.05</td> </tr> <tr> <td>4</td> <td>M/s DCW Ltd</td> <td>VCM Storage Tank</td> <td>2017</td> <td>5,657/-</td> <td>5,658/-</td> <td>0.02</td> </tr> </tbody> </table> <p>From above table, it is seen that there are takers for port land at the reserve price fixed by port. Therefore, the VOCPT to show how does its proposal fit into the amended Land Policy Guidelines of 2014.</p>	Sl. No.	Name of Allottee	Purpose	Year of Allotment	Reserve price fixed by Port/ Sqm for 30 years in ₹	E-Auction rate offered by bidder in ₹	% increase	1	M/s Green Star Fert Ltd	Liquid Storage Tank	2014	12,750/-	12,750/-	169.27	2	M/s HPCL	Lorry Parking Terminal Retail Outlet	2016	5,363/-	7,000/-	30.52	3	M/s Green Star Fert Ltd	Liquid Storage Tank	2017	5,657/-	5,660/-	0.05	4	M/s DCW Ltd	VCM Storage Tank	2017	5,657/-	5,658/-	0.02	<p>at ₹3,200 per Sqm per annum on the ground of the present economic slowdown and present growth rate in order to facilitate an industrial friendly atmosphere and growth of the industry, which was considered by the Land Allotment Committee and noted by the LAC in the respective that highest rates obtained through e-tender on upfront basis cannot be compared with allotment made on annual lease rental basis.</p> <p>It is also evident that, during 2017 tank farm allotments outside custom bond port could not get much increase over the reserve price and it was only 0.05%, 0.02% and only single bidder. Last time for tank farm rate revision inside custom bond area, the % of increase obtained outside custom bond area was adopted on it was nearly 46.48%, which the existing lessee M/s.SPIC has objected. That is why this time port has arrived the rate by appointing approved valuer which is also one of the method for valuation.</p> <p>With regard to comparing the proposed lease rentals of ₹3,200/- with the rate received in 2014 is not correct since the allotment was initiated in the year 2014 and the current proposal is 2018. Further, it is relevant here to state that the port has proposed the lease rentals of port lands (except the proposal under consideration) has been only with 2% annual escalation as there was no much demand for the port lands. The same has also been clearly brought out in the minutes of Board meeting held on 30 August 2017 in respect of Agenda for general revision of lease rentals of port lands.</p> <p>Hence, in view of the paras explained above the approval for the proposal for revision of lease rent in respect of M/s.SPIC which fits into the amended Land Policy Guidelines, 2014 may please be communicated at the earliest.</p>
Sl. No.	Name of Allottee	Purpose	Year of Allotment	Reserve price fixed by Port/ Sqm for 30 years in ₹	E-Auction rate offered by bidder in ₹	% increase																														
1	M/s Green Star Fert Ltd	Liquid Storage Tank	2014	12,750/-	12,750/-	169.27																														
2	M/s HPCL	Lorry Parking Terminal Retail Outlet	2016	5,363/-	7,000/-	30.52																														
3	M/s Green Star Fert Ltd	Liquid Storage Tank	2017	5,657/-	5,660/-	0.05																														
4	M/s DCW Ltd	VCM Storage Tank	2017	5,657/-	5,658/-	0.02																														

9.1. A joint hearing in this case was held on 1 June 2018 at the VOCPT premises. The VOCPT made a brief power point presentation of its proposal. At the joint hearing, the VOCPT and SPIC have made their submissions.

9.2. As agreed at the joint hearing, the VOCPT was requested vide our letter dated 5 June 2018 with subsequent reminder dated 21 June 2018 and 30 July 2018 to take action on the following points:

- (i). At the joint hearing, a point arose that the proposed rate of ₹3200 per sq.mtr. per annum proposed to be effective from 20 January 2016 is lower than the escalated rate of ₹3783.10 per sq. mtr. per annum prevailing as on 19 January 2016. At the joint hearing, the port mentioned that M/s.Southern Petrochemical Industries Corporation Limited (SPIC) has paid the rent at the revised rate from 01 April 2016 approved for the period 20.01.2011 to 19.01.2016 (with applicable escalation). The allottee itself pays rent at a rate higher than the proposed rate of ₹3200. There is no argument at the joint hearing from port side in justification of the proposed rate. The port has relied on the reasons given by the valuer for its recommendation for the proposed rate of ₹3200 per sq. mtr. per annum.
- (ii). As agreed at the joint hearing, the port was requested to review its proposal and seek approval of its Board. In this regard, the port was requested to follow the procedure of consideration of review by Land Allotment Committee and approval by Board thereafter.
- (iii). The VOCPT was requested to confirm at what rate and from which date the SPIC is paying lease rental at the revised rate.

10.1. With reference to point of action decided at the joint hearing brought out in para 9.2. (i) and (ii) above, VOCPT vide its letter dated 6 August 2018 has furnished the following submissions:

- (i). The escalated rate of ₹3,783.10 per sq. mtr. per annum prevailing as on 19 January 2016 is higher than the rate proposed under the current proposal. Since the validity of the lease rentals for the land located inside the custom bound area earmarked for tank forms expired by 19 January 2016, as per the clause 13(c) of the Land Policy Guideline of 2014, the port has appointed the Govt. Approved Valuer for fixation of Market value and lease rental thereon.
- (ii). Accordingly, the Govt. Approved Valuer has recommended the lease rentals for the lands located inside the custom bound area earmarked for tank forms at ₹3,200/- per sq. mtr. per annum, stating that considering the economic slowdown and present growth rate, the rate has been recommended. It is also relevant here to submit that lease rental is being paid by SPIC as approved by TAMP from 01.04.2016 as against the approval from 19.01.2011 under protest since, M/s.SPIC has filed a writ petition in the Hon'ble High Court of Madras at Madurai Bench against the retrospective revision of lease rentals.
- (iii). The Land Allotment Committee and as well as Board of Trustees of VOCPT has recommended the rate @ ₹3,200/- per sq. mtr. per annum as recommended by the Govt. Approved Valuer.
- (iv). As stated by the Govt. Approved Valuer, due to economic slowdown and present growth rate, the port has decided not to increase the lease rentals not only for port lands outside the custom bound area but also inside the custom bound area.
- (v). Accordingly, it has been proposed at ₹3,200/- per sq. mtr. per annum for land located inside the custom bound area earmarked for tank forms. Even, the port has not proposed to revise its lease rentals for port lands located outside the custom bound area which was effective from 1 July 2017 and only sought the annual escalation of 2%.
- (vi). Further, M/s.SPIC has not made any comments on the proposed reduction in the applicable lease rentals. Hence, there was no question of argument from the port side with regard to revision of lease rentals for tank farms at lower than the existing rates.
- (vii). With regard to request review of the proposal and seeking approval from the Board, it is to state that in view of the economic slowdown and present growth rate, it has been decided by the Competent Authority that no review is required on the proposal submitted for approval.
- (viii). Further, M/s.SPIC has also not made any request to that effect. In view of the above, TAMP is hereby requested to communicate the sanction for the lease rental proposed at ₹3,200/- per sq. mtr. per annum as there was no opposition from M/s.SPIC for the rate proposed during the joint hearing held on 1 June 2018.

10.2. With reference to point of action decided at the joint hearing brought out in para 9.2. (iii) above, VOCPT vide its letter dated 6 August 2018 has furnished the following information:

(i). With regard to the rate at which M/s.SPIC has been making the payment and the date from which the payment is being done, the statement is furnished below:

(a). **Statement of pending dues to be paid by the firm (Principal amount only) SPIC (Phosphoric) for the period from 2011 to 2018**

Allotment No. 1300047 **Area : 2325 Sqm.**

Period		No. of days	Area	Lease rental as approved by TAMP vide order dated 27.02.2016		Lease rental as approved by TAMP vide order dated 07.08.2007	Remitted amount	Balance to be remitted
From	To			Rate per sq. m / annum	Demand Amount	Rate per sq. m / annum		
20/01/2011	19/12/2011	334	2325	3495	74,35,732	2434	51,78,418	22,57,314
20/12/2011	19/01/2012	31	2325	3495	6,90,143	2483	4,90,307	1,99,836
20/01/2012	19/11/2012	305	2325	3565	69,26,111	2483	48,08,176	21,17,935
20/11/2012	19/01/2013	61	2325	3565	13,85,222	2533	9,84,227	4,00,995
20/01/2013	19/10/2013	273	2325	3636	63,22,904	2533	44,04,818	19,18,086
20/10/2013	19/01/2014	92	2325	3636	21,30,796	2584	15,14,295	6,16,501
20/01/2014	31/03/2014	71	2325	3709	16,77,433	2584	11,68,641	5,08,792
01/04/2014	19/01/2015	294	2325	3709	69,45,992	2636	49,36,542	20,09,450
20/01/2015	31/03/2015	71	2325	3783	17,10,901	2636	11,92,158	5,18,743
01/04/2015	19/01/2016	294	2325	3783	70,84,574		71,55,088	(70,514)
20/01/2016	31/03/2016	72	2325	3200	74,40,000			74,40,000
					4,97,49,809		3,18,32,670	1,79,17,139
01/04/2016	19/01/2017	294	2325	3200	59,92,767	3783		
20/01/2017	19/01/2018	365	2325	3264	75,88,800	3783	1,58,80,049	
					1,35,81,567		1,58,80,049	(22,98,482)
Grand Total					6,33,31,376		4,77,12,719	1,56,18,657

- Note:
- 1) The interest on belated payment of lease rent has not been included in the statement which will be calculated as per SOR.
 - 2) The rate of ₹3,200/- per sqm. per annum has been adopted w.e.f. 20.01.2016 as per the rate proposed to TAMP.
 - 3) The rate of ₹3,200/- has been proposed to TAMP by VOCPT for the period w.e.f 20.01.2016 to 19.01.2021.
 - 4) The rate of ₹3,783/- per Sqm. per annum has been remitted by M/s.SPIC for the period from 01.04.2016 to 19.01.2018.

(b). **Statement of pending dues to be paid by the firm (Principal amount only) SPIC (Phosphoric) for the period from 2011 to 2018**

Allotment No. 1300076 (LL0054) **Area : 1085 Sqm.**

Period		No. of days	Area	Lease rental as approved by TAMP vide order dated 27.02.2016		Lease rental as approved by TAMP vide order dated 07.08.2007	Remitted amount	Balance to be remitted
From	To			Rate per sq. m / annum	Demand Amount	Rate per sq. m / annum		
20/01/2011	19/12/2011	334	1085	3495	34,70,008	2434	24,16,595	10,53,413
20/12/2011	19/01/2012	31	1085	3495	3,22,067	2483	2,28,810	93,257
20/01/2012	19/11/2012	305	1085	3565	32,32,185	2483	22,43,816	9,88,369
20/11/2012	19/01/2013	61	1085	3565	6,46,437	2533	4,59,306	1,87,131
20/01/2013	19/10/2013	273	1085	3636	29,50,689	2533	20,55,582	8,95,107
20/10/2013	19/01/2014	92	1085	3636	9,94,371	2584	7,06,671	2,87,700
20/01/2014	31/03/2014	71	1085	3709	7,82,802	2584	5,45,366	2,37,436
01/04/2014	19/01/2015	294	1085	3709	32,41,463	2636	23,03,720	9,37,743
20/01/2015	31/03/2015	71	1085	3783	7,98,420	2636	5,56,340	2,42,080
01/04/2015	19/01/2016	294	1085	3783	33,06,135		33,25,678	19,543
20/01/2016	31/03/2016	72	1085	3200	6,84,888			6,84,888
					2,04,29,465		1,48,41,884	55,87,581

01/04/2016	19/01/2017	294		3200	34,72,000	3783		
20/01/2017	19/01/2018	365		3264	35,41,440	3783	74,10,690	
					70,13,440		74,10,690	(3,97,250)
Grand Total					2,74,42,905		2,22,52,574	51,90,331

- Note:
- 1) The interest on belated payment of lease rent has not been included in the statement which will be calculated as per SOR.
 - 2) The rate of ₹3,200/- per sqm. per annum has been adopted w.e.f. 20.01.2016 as per the rate proposed to TAMP.
 - 3) The rate of ₹3,200/- has been proposed to TAMP by VOCPT for the period w.e.f. 20.01.2016 to 19.01.2021.
 - 4) The rate of ₹3,783/- per Sqm. per annum has been remitted by M/s.SPIC for the period from 01.04.2016 to 19.01.2018.

10.3. The VOCPT vide its email dated 3 August 2018 has also furnished the conditionalities governing the lease rent proposed for phosphoric acid storage tank allowed to SPIC which are as under:

- (i). The rates prescribed above shall be applicable with effect from 20 January 2016 till 19 January 2021.
- (ii). The rates shall be escalated by 2% per annum with effect from 20 January 2017 till 19 January 2021.
- (iii). All other conditions governing the license fee/ lease rent shall be as per the amended Land Policy Guidelines of 2014 issued by the Ministry of Shipping, and as may be amended from time to time.

11. Further, the VOCPT was requested vide our letter 26 September 2018 to furnish further additional information/ clarification followed by reminder dated 17 October 2018. In response, the VOCPT vide its letter dated 13 November 2018 has furnished its comments thereon. A summary of additional information/ clarification sought by us and comments of VOCPT thereon is given below:

Sl. No.	Additional Information/ clarifications sought by us	Reply furnished by VOCPT
(i).	The VOCPT had sought revision last time in lease rent for the land leased out to M/s.SPIC at VOC wharf for Phosphoric acid storage tanks under the amended Land Policy Guidelines, 2014. Based on the proposal of VOCPT the Authority has passed an Order No.TAMP/34/2014-VOCPT dated 27 February 2016, approving ₹3495 per sq. mtr. per annum lease rent with retrospective effect from 20 January 2011 till 19 January 2016 with 2% annual escalation. In the current proposal M/s.KITCO, approved valuer, has arrived the upper limit of lease rental for land allotted to SPIC at ₹3455/- per sq.mt per annum [TABLE 6B of the Report of May 2017] and recommended the final lease rent of ₹3200 per sq.mtr. per annum w.e.f 20.1.2016. The VOCPT to justify as to why the upper limit taken by the valuer for arriving at lease rent w.e.f. 20.01.2016 in its May 2017 Report is lower than the approved lease rent of ₹3,495 per sq. mtr. per annum w.e.f 20.01.2011 proposed by VOCPT and approved in the Order dated 27 February 2016 which was based on the then proposal of the VOCPT.	The variation in amount quoted during auction is considered in arriving at a multiplying factor of minimum 1.75 and maximum of 3. This factor is not deduced from a calculation based on any supplied figure. During tendering, the monopoly value may be a synergy, creating value addition for a specified use/ business (depending on the type of business and proximity to the port). The current lease rent proposed is based on land valuation report by M/s.KITCO with reference to representative land values. This method cannot be compared since the procedure adopted for net annual income is annual equivalent net investment method coming under any other method of Land Policy Guidelines and hence, is in order.
(ii).	In the last revision of lease rent in the year 2016 for land allotted to SPIC, the VOCPT had proposed 46.48% increase over the then lease rent (approved by the Authority	It is to inform that, VOCPT proposed to the General revision for outside custom bound area applying 2% escalated rate for the period from 01.07.2016 to 30.06.2017

	<p>in August 2007 Order) at ₹2,386 per sq. mtr./ annum to ₹3495 per sq. mtr./ annum by comparing the competitive bid received for land outside the wharf area which reflected 46.48% increase. In the said Order it is stated that during the revision of lease rent on the land allotted to SPIC vide Order dated 7 August 2007, the port has stated that the value of land inside the wharf area, which is the prime location of the operational area of the port, will undoubtedly be more than the value of land outside the wharf area. In 2016 revision as well, the port has stated that wharf area is a prime area. However, in the current proposal, the VOCPT has proposed reduction in lease rent from ₹3,783.10 per sq. mtr. per annum prevailing as on 19 January 2016 to ₹3,200 per sq. mtr. per annum from 20 January 2016 which works out to 15.41% reduction. Thus, when the stand of VOCPT was that land allotted to SPIC is prime area, reduction in lease rent when for other port land port has sought 2% increase w.e.f. 01.07.2017 need to be justified.</p>	<p>(Correct period is 01.07.2017 to 30.06.2022) for the revision from 01.07.2016 (Correct year is 2017) (i.e.) ₹370.03/Sqm./Annum. Whereas, the lease rent in respect of Phosphoric Acid Tank the land allotment made as long term inside custom bound area, is ₹3495/Sqm/Annum as on 20.01.2011 which is 9 times over the lease rent fixed for outside custom bound area.</p> <p>For the lease rent fixed for Phosphoric Acid Tank inside custom bound area, a specific rate in 2014 was considered along with escalation based on the Tender percentage. Port now decided to fix the lease rent through Government approved valuer as per Land Policy Guidelines. Now the valuer M/s.KITCO has furnished the lease rent considering the benefit of the users and advantages for the area a nearby Berth etc., and arrived at the current lease rent in respect of Phosphoric Acid Tank allotment (i.e.) ₹3,200/Sqm/Annum. Hence, the rate proposed is justified.</p>
(iii).	<p>For the revision of lease rent for VOCPT land which was approved by the Authority vide Order No.TAMP/52/2017-VOCPT dated 14 November 2017, the port had initially sought to increase the lease rent by 6.78% based on the report of the same approved valuer M/s.KITCO. M/s.KITCO, the approved land valuer appointed for valuation of assets of VOCPT has informed vide email dated 7 September 2017 that they do not expect any reduction in the values. However, based on submission made by users/ user associations, the VOCPT had then reduced the increase proposed in lease rent for port land from 6.78% to 2% increase. The proposed lease rent was approved by the Authority and made effective from 1 July 2017 for 5 years subject to 2% annual escalation per annum.</p> <p>Thus, when for port land the KITCO did not expect reduction in values from the level recommended by them of upward revision of 6.78% in its report of May 2017 and port had also sought an upward revision in lease rent by 2%, the port to adequately justify the proposed reduction in lease rental from ₹3783/- as on 19.1.2016 to ₹3200 per sq.mt per annum from 20.1.2016 on the land allotted to SPIC.</p> <p>The VOCPT to also confirm whether the reason for reduction in lease rent cited as</p>	<p>VOCPT has proposed to fix the Phosphoric Acid Tank lease rent through the Government approved valuer as per Land Policy Guidelines. Based on the Government approved valuer report only port has proposed to fix the rate of Phosphoric Acid Tank at ₹3,200/Sqm/Annum based on table 6B of report adapting annual equivalent of net investment plus savings plus warehouse lease area for pipe laying.</p> <p>The reduced rate of ₹3,200/- Sqm/Annum from ₹3,495/-Sqm/Annum is on account of different formula adapted as envisaged in Land Policy Guidelines. Hence, the question of reduction does not arise. The methodology adopted is one of equivalent of net investment plus savings plus warehouse lease are for pipe laying... so as to consider the single lessee of the area for a specific cargo. The issues of economic slow down is specific to the said lessee and hence the rate proposed is recommended for approval.</p>

	economy slowdown is applicable only in case of this parcel of land allotted to SPIC and not for port's other land.	
(iv).	Further, with reference to information furnished by VOCPT on point no.(i)(b)(i) of our letter dated 30 May 2018 Annexure II - Explanation of calculation for arriving the new annual income of ₹98,58,113.88 furnished by the VOCPT it is still not clear as to how ₹98,58,113.88 is arrived at. The VOCPT is again requested to furnish calculation of relevant figures explicitly for our understanding.	M/s.KITCO Government approved valuer arrived Net Annual income by applying the following formula Net Annual Income = (Annual Eq. Net Investment) + (Savings in pumping cost/ 0.85) + Warehouse lease area for pipe laying. = 62,81,747 + (10,00,000/0.85) + (374.98 x 3200 x 2) = 62,81,747 + 11,76,471 + 23,99,872 = 98,58,090 Net Annual Income = ₹98,58,090/-

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

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

- (i). The proposal of the V.O. Chidambaranar Port Trust (VOCPT) is for revision of lease rent for two parcels of land viz. 2325 sq. mtrs. and 1085 sq. mtrs. which have been allotted by the port to M/s.Southern Petrochemical Industries Corporation Limited (SPIC) at VOC Wharf for installation of Phosphoric Acid Tank in VOC Wharf.
- (ii). (a). The lease rent for the said land at VOC wharfs allotted by VOCPT to SPIC was last approved by this Authority vide Order No.TAMP/38/2014-VOCPT dated 27 February 2016. In the said Order, this Authority revised the lease rent at ₹3,495 per sq. mtr. per annum as proposed by the VOCPT as against then pre-revised lease rent of ₹2386 per sq. mtr. per annum. The revised lease rent was given retrospective effect from 20 January 2011 as proposed by the port. The revised lease rent was valid for five years i.e. upto 19 January 2016. In the current exercise, the VOCPT has sought approval of this Authority to the present revised lease rate retrospectively w.e.f. 20 January 2016.
- (b). Before proceeding to analyse this case further, it is relevant here to state that the SPIC has filed Writ Petition Nos.617/ 2018 and WMP (MD) 645 of 2018 in the Hon'ble High Court of Madras at its Madurai Bench challenging the lease rent revised by this Authority retrospectively vide Order No.TAMP/38/2014-VOCPT dated 27 February 2016 in respect of land allotted to SPIC.
The port has clarified that SPIC has obtained interim stay on implementation of revised rent approved by this Authority vide Order dated 27 February 2016 with retrospective effect for the period from 20.01.2011 to 19.01.2016 for the land allotted by port to SPIC Ltd., for Phosphoric acid storage tanks.
- (c). The port has confirmed that there is no direction or orders from the Hon'ble High Court refraining this Authority to consider the subject proposal of revision of lease rent beyond 19 January 2016 and the subject proposal will not amount to contempt of Court. Hence, the port has requested to revise the lease rent in respect of allotment made to SPIC Ltd., for the period from 20 January 2016 to 19 January 2021.
- (d). During the processing of the case, it is learnt from the port that the Lease Agreement made between VOCPT and SPIC Ltd. has already expired on 31 December 2014. In view of that and in pursuance of Land Policy Guidelines, 2014 in order to initiate process of fresh allotment on tender-cum-auction basis of the said parcels of land the VOCPT issued termination

notice to SPIC Ltd. The SPIC has challenged this action of the VOCPT in the Hon'ble High Court of Madras, Madurai Bench and obtained stay on the termination notice issued by VOCPT and the stay is extended by the Hon'ble High Court and the case is pending. The port has confirmed that no specific direction has been received from the Hon'ble High Court restraining this Authority from fixation of lease rental for the period 20 January 2016 to 19 January 2021.

In view of pending litigation, the VOCPT was requested to clarify the reason for seeking revision of lease rent with retrospective effect from 20 January 2016 when no lease agreement is reported to exist between VOCPT and SPIC for the period beyond 31 December 2014 and also clarify whether it will be appropriate to notify the revised lease rent indicating the name of the lessee i.e. SPIC retrospectively with effect from 20 January 2016.

The VOCPT has clarified that the validity of the lease rentals applicable for land inside the custom bound area earmarked for tank farms has expired on 19 January 2016. Further, the land allotted inside the custom bound area to SPIC for tank farms is still under its possession due to stay obtained by the firm M/s.SPIC Ltd., in Hon'ble High Court, even though the lease agreement entered between VOC Port Trust and SPIC has expired on 31 December 2014. For the above stated reasons, the VOCPT has emphatically stated that the retrospective lease rent revision is required for levy of lease rentals on SPIC.

Section 49 of the Major Port Trusts Act, 1963 mandates this Authority for fix the Scale of Rates and conditionalities governing the rates for the port land. The matter relating the allotment of the land falls under the domain of the port. In view of this position and based on clarification furnished by VOCPT and also recognizing that the validity of lease rent for phosphoric storage tank inside at VOC Wharf approved by this Authority has expired on 19 January 2016 and amended Land Policy Guidelines, 2014 require revision in lease rent every five years, this Authority considers the proposal of VOCPT. While approving the lease rent, this Authority prescribes lease rent for the relevant parcel of land i.e. "Lease rent for land at VOC Wharf inside custom bound area leased/ allotted by the port for installation of phosphoric acid storage tank" without going into the matter to whom the land is allotted by the port.

- (iii). (a). The amended Land Policy Guidelines 2014, clearly lays down the procedure and the methodology to be adopted for determining the market value and the latest Scale of Rates of the port lands.
- (b). As per clause 11.2(e) of the revised Land Policy Guidelines 2014, a Land Allotment Committee (LAC) shall be constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic. The VOCPT has constituted the LAC under the Chairmanship of Dy. Chairman and Estate Officer, VOCPT and comprising of other members viz. Chief Engineer, Traffic Manager, Financial Adviser & Chief Accounts Officer and Dy. Chief Engineer. Thus, the VOCPT has complied with the stipulation of the formulation of the LAC as per the amended Land Policy Guidelines, 2014. The LAC in its meeting held on 19 December 2017 has recommended the lease rent of ₹3200/- per sq. mtr./ annum as recommended by the approved valuer with retrospective effect from 20 January 2016 for a period of 5 years i.e. upto 19 January 2021 based on the valuation of land done by the Government approved valuer KITCO.
- (c). As per Clause 13(a) of the amended Land Policy Guidelines of 2014, the LAC shall determine the market value of land taking into account highest of the five factors like (i) State Government's ready reckoner value if available for similar classification/ activities, (ii) Highest rate of actual relevant transactions registered in last three years in the Port's vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards), with an appropriate annual escalation rate to be approved by the Port Trust Board (iii) Highest accepted tender-cum-auction rate of Port land for similar

transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board., (iv) rate arrived at by an approved valuer and (v) any other relevant factors as may be identified by the port. In case the LAC is not choosing the highest factor, the guidelines requires the reasons for the same have to be recorded in writing.

Neither the proposal of VOCPT nor the copy of the minutes of the proceedings of the LAC dated 19 December 2017 forwarded by the VOCPT under the cover of its proposal show that the valuation of land leased to SPIC Ltd. has been done as per the above five options prescribed in clause 13(a) of the amended Land Policy Guidelines of 2014 to derive the highest market value of land and port to clarify the reasons for not assessing the value of land under all the options.

When sought clarification, the VOCPT has clarified that the proposed lease rental is based on the recommendation of approved valuer. The VOCPT has furnished the following reasons for not considering land valuation under different methods prescribed by amended Land Policy Guidelines of 2014.

- (i). **State Government ready reckoner value:**
The subject land is situated in custom bound port reclaimed area. Hence, State Government reckoner value is not applicable.
 - (ii). **Highest rate of actual relevant transactions:**
SPIC is the only firm which has been allotted earlier on nomination basis for land inside the custom bound area for installation of Phosphoric acid tank. No tender had been called for this allotment by port so far. Even though, the lease rental approved by this Authority is available for the period 20.01.2011 to 19.01.2016, since the SPIC has filed a Writ Petition and is not making the payment for 2011 onwards, considering this factor is not relevant.
 - (iii). **Highest accepted tender-cum-auction rate:**
Since, the early lease has been expired by 2014, the port has initiated the Process of Tender for allotment of said land. However, SPIC has approached the Hon'ble High Court against the termination order issued by VOC Port Trust. Hence, the tender could not be resorted by VOC Port Trust, and the stay has not been vacated till date.
 - (iv). **Any other relevant factors:**
Since, the land is leased to SPIC in Custom bound area, no relevant factor is considered under this category.
- (d). Thus, in short, the VOCPT has proposed the lease rent at ₹3200/sqm/year as per the fourth factor i.e. rate arrived at by an approved valuer which is one of the five factors prescribed in the amended Land Policy Guidelines, 2014.

During the last revision, the VOCPT has considered the percentage increase over the highest accepted tender of port land for similar transaction "outside the wharf area" and applied that percentage increase to determine the lease rental of land allotted to SPIC "inside wharf area". Even during the last revision the port had not arrived at market value of land on all the five factors. This Authority had approved the lease rent as proposed by the port in the last revision based on the method adopted by the port. In the current exercise, the port has undertaken the valuation of land by appointing an approved valuer which is one of methods prescribed in the amended Land Policy Guidelines, 2014. In view of the above position and in view of reasons given by the port for not being in a position to obtain the market value of land under the other four factors, this Authority goes ahead with the current proposal of the port for fixation of lease rent.

- (iv). (a). The Government approved valuer in the Report has stated that since the use of the land is a monopoly to the port, similar category of land is not available in the market for comparison. Another tank farm facility which is available for liquid storage is at approximately 3.2 km from the berth.

The approved valuer has worked out the lease rental by adopting the income approach. The approved valuer has considered following factors for arriving proposed lease rent:

- (i). Adjustment for advantage of infrastructural facilities of port being near to port, uncertainty of renewal conditions, risk in conditions of lease by Port against revision in every five years.
- (ii). Decrease in Rate for larger extent not considered.
- (iii). The financial advantage of Liquid storage tank near to wharf is calculated by capitalizing the annuity earned.
- (iv). Pipeline and pumping cost is calculated and annuity considering life as 12 Years.
- (v). Advantage on pumping cost is considered separately. Pipe line and pumping cost is calculated and annuity is arrived considering life as 12 years.
- (vi). The financial advantage is considered as net annual income and is capitalized to arrive at Value.
- (vii). Lower limit and upper limit is calculated with Monopoly Value 1.75 and 3.

To summarise, under this method the Govt. approved valuer appointed by the port has first arrived at net annual income of ₹98,58,114/- considering sum of Annual Equivalent of Net Investment + Savings in pumping cost / 0.85 + warehouse lease for area of pipe laying [(i.e. 62,81,747 + (10,00,000/0.85) +(374.98 X 3,200 X 2)]. It works out to 98,58,090. But in the valuation report it is considered at ₹98,58,114/-. As variation is not significant, valuation given in valuation report is relied upon. From that the port has arrived at value of port land at ₹13,17,70,601/- for 0.85 acres of land applying multiplying factor of 13.37 which is (YP) Yearly Purchase for 30 years. (₹98,58,113.88 X 13.37). This is then converted to per acre value of land at 15,52,47,633/- (i.e. 13,17,70,601/0.85). There are slight mismatch in the figures. The figure works out to 15,50,61,957 (i.e. 9858090 * 13.37 / 0.85) following the approach adopted by the port.

Taking value of land at 15,52,47,633/- per acre, the port has applied 6% return as per the amended Land Policy Guidelines, 2014 and arrived at lease rent of ₹93,14,858 (15,52,47,633 X 6%). From that, the port has arrived at lease rent with lower limit value and upper limit value considering monopoly value of 1.75 and 3. The detailed workings as furnished by the Govt. approved valuer is as under:

Lower limit value = 2,302+ 1.75 x 374.98 + 28 = ₹2,986/-

Upper limit value = 2,302 + 3.00 x 374.98 + 28 = ₹3,455/-

Where,

- (i). The lease rental per sqm is ₹2,302/- = ₹93,14,858 / 4046.486 sqm per acre.
 - (ii). Warehouse lease rental is ₹374.98 = ₹15,17,559 / 4046.86 sqm
 - (iii). Monopoly value = 1.75 for lower limit value and 3 for upper limit value
- (b). Finally, after computation of lease rent of lower limit value and upper limit value, the approved valuer has, considering the present economic growth rate and in order to facilitate an industrial friendly atmosphere and a consistent growth of industry, recommended the lease rentals for said land area at ₹3,200/ per sq. mtr./ annum which is average of the lower and upper limit value with rounding off (₹2,986+3,455/2 = ₹3,220.50 rounded off to ₹3,200/- per sq. mtr. per annum). The proposed lease rent of ₹3,200/- per sqm. p.a. is recommended by the LAC in the meeting held on 19 December 2017. After taking into consideration the recommendation of the LAC, the Board of the Trustees of the VOCPT in its meeting held on 09.02.2018 has

approved the proposal for revision of lease rate of ₹3,200/- per Sqm / Annum w.e.f. 20.01.2016 with 2% annual escalation for the land leased out at VOC wharf for installation of phosphoric acid storage tank.

As per Land Policy Guidelines, the lease rent is to be arrived by applying 6% return on the highest market value of land. The lease rent proposed by the port is based on the lease rent arrived by the approved valuer as explained in the preceding paragraph wherein the factor of applying 6% return on market value of land arrived by the approved valuer is considered as explained in the preceding paragraph. Thus, the proposal of VOCPT complies with the provision of amended Land Policy Guidelines, 2014.

- (v). The lease rent approved by this Authority in last Order dated 27 February 2016 is ₹3,495/- sq. mtr./ annum w.e.f. 20.01.2011. Applying the applicable escalation rate of 2%, it works out to ₹3,783/- sq. mtr./ annum as on 19.01.2016. The port has stated that from 01 April 2016, which is covered by the 5 year period commencing from 20 January 2016 the SPIC is paying the lease rent of ₹3,783/- sq. mtr./ annum as per the rate approved by this Authority under protest. The proposed lease rent of ₹3200/- sq. mtr./ annum w.e.f. 20.01.2016 is found to be lower than the lease rent as on 19.1.2016 at ₹3,783/- sq. mtr./ annum which is being paid by SPIC.

In view of the above position as brought out in the earlier paragraph, continuous efforts were made by us vide our letters dated 30 May 2018, 5 June 2018 and 26 September 2018, requesting the VOCPT to justify reduction in lease rent proposed by the port from ₹3,495/- sq. mtr./ annum approved by this Authority vide Order dated 27 February 2016 w.e.f. 20.01.2011 which after 2% annual indexation works out to ₹3783/- as on 19.01.2016 to ₹3200/- sq. mtr./ annum w.e.f. 20.01.2016 in the current proposal. The port was also requested to consider to review the proposed rate and seek the recommendation of LAC and approval of the Board of Trustees of VOCPT for the same. The continuous efforts made by this Authority in this regard and justification furnished by the VOCPT in support of its proposal are brought out in subsequent paragraphs:

- (a). Clause 13 (a) of Land Policy Guidelines, 2014 requires to take into account highest of the five factors to determine the latest market value of Port land and in case the Land Allotment Committee is not choosing the highest factor, the reasons for the same has to be recorded in writing. The reasons for not choosing the highest lease value is not recorded in the report of LAC or in the proposal of VOCPT as required in the amended Land Policy Guidelines, 2014. When sought the port to furnish the reasons as required by the amended Land Policy Guidelines, 2014 and to justify the proposed lease rent in light of the highest offers received from M/s.Green Star Fertilisers Ltd. (GSFL) in the year 2014 at ₹12,750/ sq. mtr./ annum and at ₹5,660/- and ₹5,658/- per sq. mtr. per annum in the year 2017, from GSFL and DCW respectively, the VOCPT has clarified that the highest offers received through tender cum e-auction pertain to the land situated outside custom bound area and will not be applicable in respect of land allotment made to SPIC as land allotted is inside the custom bond areas. Moreover, the port has stated that the highest auctioned rate by the bidders such as M/s.DCW Ltd. and M/s.Green Star Fertiliser Ltd. are for their respective allotments on upfront basis for 30 years period, whereas, the lease rate proposed for Phosphoric Acid Tank is ₹3,200/- per sqm per annum is only on annual lease rental basis.

The LAC has taken note that during last revision, lease rent proposed by the port was based on the percentage increase in the tender received outside the wharf and that percentage increase was applied on the pre-revised lease rent of ₹2,386/- per sq. mtr./ annum to arrive at the lease rent of ₹3,495/- per sq. mtr./ annum which was approved by this Authority in February 2016 Order. The port has stated that LAC has observed that highest rates obtained through e-tender on upfront basis for 30 years cannot be compared with allotment made on annual lease rental basis. After above consideration, the LAC has noted that the recommendation of

the Government approved valuer of lease rent at ₹3,200/- Sqm per annum is on the grounds of the present economic slowdown and present growth rate and in order to facilitate an industrial friendly atmosphere and growth of the industry the VOCPT has recommended the rate proposed by the approved valuer.

The VOCPT has reiterated that comparing the proposed lease rentals of ₹3,200/- with the rate received in 2014 on upfront basis for 30 years is not correct. Further, the port has drawn reference to the lease rentals of port lands in the year 2017 where port has proposed only 2% annual escalation as there was no much demand for the port lands. The port has stated that the minutes of Board meeting held on 30 August 2017 for revision in lease rentals of port lands clearly brings out this position about no demand for port land. The said proposal was approved by this Authority.

- (b). In the last revision of lease rent in the year 2016 for land allotted to SPIC, the VOCPT had proposed 46.48% increase over the then lease rent (approved by this Authority in August 2007 Order) at ₹2,386 per sq. mtr./ annum to arrive at the proposed lease rent of ₹3,495 per sq. mtr./ annum. The 46.86% was arrived by VOCPT by comparing the competitive bid received for land outside the wharf area which was applied for inside wharf area for arriving at the proposed rate. In the said Order, reference was drawn to the revision of lease rent on the land allotted to SPIC vide Order dated 7 August 2007, wherein the port has stated that the value of land inside the wharf area, which is the prime location of the operational area of the port, will undoubtedly be more than the value of land outside the wharf area. While seeking revision of this parcel of land in the 2016 as well, the port has stated that wharf area is a prime area. However, in the current proposal, the VOCPT has proposed reduction in lease rent from ₹3,783.10 per sq. mtr. per annum prevailing as on 19 January 2016 to ₹3,200 per sq. mtr. per annum from 20 January 2016 which works out to 15.41% reduction. Thus, when the stand of VOCPT was that land allotted to SPIC is prime area and also when for other port land, port has sought 2% increase w.e.f. 01.07.2017, the port was again requested to review its proposal for reduction in the lease rent from the lease rent prevailing as on 19.01.2016 which is being paid by SPIC.

The VOCPT has clarified that for the other port land outside custom bound area, port sought increase in lease rent by 2% for the period from 01.07.2017 to 30.06.2022. The lease rent therein is ₹370.03/ Sqm./ annum (Commercial Purpose Zone A and Port related Zone B). Whereas, as regards, the lease rent in respect of Phosphoric Acid Tank, which is inside custom bound area, the land allotment made by VOCPT is for long term was fixed at ₹3,495/ Sqm/ Annum as on 20.01.2011 which is nine times over the lease rent fixed for outside custom bound area.

The VOCPT has further clarified that the lease rent fixed for Phosphoric Acid Tank inside custom bound area arrived in the 2016 Order was based on the pre revised lease rent approved by this Authority in 7 August 2007 at ₹2,386/- per sq. mtr. per annum and applying thereon 46.48% by comparing increase in the competitive bid received by the port for tank farms for land outside the wharf area during the period 2007 to 2010. The method then adopted was percentage escalation based on the Tender received outside the wharf. The port has now decided to fix the lease rent by getting the valuation done through Government approved valuer as per amended Land Policy Guidelines, 2014. The approved Government valuer M/s.KITCO, has arrived at the proposed lease rent of ₹3,200/ Sqm/ Annum in respect of Phosphoric Acid Tank allotment inside the wharf area considering various factors as already explained in earlier paragraph. Hence, the port has emphatically stated that the rate proposed based on the recommendation of the Government approved valuer is justified.

- (c). The port was requested to confirm whether the reason for reduction in lease rent cited as economy slowdown is applicable only in case of this parcel of land allotted to SPIC and not for other land of port as while seeking revision of lease rent for VOCPT land which was approved by this Authority vide Order No.TAMP/52/2017-VOCPT dated 14 November 2017, the KITCO did not expect reduction in values from the level recommended by them of upward revision of 6.78% in its report of May 2017 and port had also sought an upward revision in lease rent by 2%.

In this context, the VOCPT has clarified that the port has proposed to fix the Phosphoric Acid Tank lease rent through the Government approved valuer as per Land Policy Guidelines. Based on the report of Government approved valuer on valuation for this parcel of land, the port has proposed to fix the lease rent for land for installation of Phosphoric Acid Tank at ₹3,200/ Sqm/ Annum.

The port has explained that reduction in the proposed lease rent arrived of ₹3,200/- Sqm/Annum from ₹3,495/-Sqm/Annum approved by this Authority in the February 2016 Order is on account of different formula which is one of the factors adopted from the factors envisaged in Land Policy Guidelines. The methodology was adopted considering the single lessee of the area for a specific cargo. The issues of economic slowdown is specific to the said lessee and hence the VOCPT has requested to approve the proposal of revision of lease rent of the land leased out to SPIC.

From the above points made by VOCPT, it can be seen that we have repeatedly attempted to make the port to review the rate of ₹3,200 per sq. mtr. per annum. Our attempts have reached the level of Competent Authority of the VOCPT. However, the VOCPT has maintained its proposal without any change. The port has furnished reasoning and justification for considering its proposal for proposed reduction in the lease rent of the land allotted for installation of storage tanks for phosphoric acid at VOC wharf inside the wharf area and sought approval of the lease rent proposed by it at ₹3,200/ sqm/ annum w.e.f. 20 January 2016. Recognising that the proposed rate has been approved by the LAC headed by Deputy Chairman (VOCPT) and comprising of Head of the Departments of the port trust and the Board of Trustees of VOCPT has approved the proposed lease rent, following the procedure prescribed in the amended Land Policy Guidelines, 2014, this Authority is inclined to accept the reasoning and justification given by VOCPT and approve the rate proposed by the port.

In fact, the SPIC has objected even the said proposed lease rent. SPIC has contended that the proposed rent of ₹3,200/ sqm/ annum is still higher and abnormal and it is 10 times higher compared to the lease rent fixed for a similar facility located outside the wharf area in VOC Port. The lease rent levied by Chennai Port for a similar facility inside the wharf area is ₹700/ sqm/ annum only and SPIC has contended that the rent levels at Tuticorin should be lower than metro cities like Chennai where the cost of living, economic index, land valuation, etc., are higher compared to non-metro cities like Tuticorin. The SPIC has thus requested VOCPT to further reduce the proposed rate considering the above factors.

The port has not accepted the contention of the SPIC citing that the proposed revision in lease rent is downward revision and that port has made investment in the infrastructure facility inside wharf area including reclamation of land etc. The port has reiterated that the comparison done by SPIC of tank farm inside wharf area and outside wharf area is not correct. As regards the point made by SPIC about lease rent levied by Chennai Port for a similar facility inside the wharf area is ₹700/ sqm/ annum only, the VOCPT has clarified that lease rates at various ports cannot be compared as it depends on various operating conditions.

- (vi). The VOCPT has sought approval of lease rent retrospectively from 20 January 2016 with a validity period of five years i.e. till 19 January 2021.

Section 49 of the Major Port Trusts Act, 1963 calls for fixation of rates from time to time. For fixation of lease rent, this Authority is bound by the Land Policy guidelines issued by the Government for arriving at the lease rental for Major Port Trusts land. Clause 13(c) of the Amended Land Policy Guidelines of 2014 stipulates that the Scale of Rates will be revised every five years.

The lease rent approved by this Authority in the last tariff Order of February 2016 clearly mentions that the lease rent will be valid for five years i.e. upto 19 January 2016 and SOR will be reviewed after five years. The VOCPT has, accordingly, sought approval to the revised rates retrospectively w.e.f. 20 January 2016 for the quinquennium 2016-2021.

In view of the clear Government guidelines in this regard, and also recognizing that lease rentals prescribed in the past is with retrospective effect based on the proposal of the VOCPT, the proposal of VOCPT to consider revision of lease rents at VOCPT retrospectively is approved. In fact, it is relevant here to mention that this approach is being followed not only in the case of the VOCPT but also in the other Major Port Trusts like NMPT, VPT, MOPT, etc. while revising the lease rent or port land. This Authority, therefore, decides to approve the proposal of the VOCPT for revision in lease rent with retrospective effect from 20 January 2016 for a period of 5 years i.e. upto 19 January 2021.

- (vii). The port has proposed a note stating that the rates prescribed shall be applicable with effect from 20 January 2016 till 19 January 2021. The proposed note is approved. As per clause 13(c) of the revised Land Policy Guidelines, 2014, the annual escalation in the lease rent should not be less than 2%. The annual escalation proposed by the VOCPT at 2% is approved by the Board of Trustees of the VOCPT. Hence, the same is approved as it is well within the frame work of the amended Land Policy Guidelines, 2014. Thus, the note proposed stating that the rates shall be escalated by 2% p.a. with effect from 20 January 2017 till 19 January 2021 is prescribed under the schedule of lease rent.
- (viii). The VOCPT has not proposed any other conditionalities except those discussed in preceding paragraphs governing the lease rent proposed for phosphoric acid storage tank of SPIC. On being pointed out, the port has proposed a note stating that all other conditions governing the license fee/ lease rent shall be as per the amended Land Policy Guidelines of 2014 issued by the Ministry of Shipping, and as may be amended from time to time. The proposed note is approved.
- (ix). **If the rate approved by this Authority in February 2016 Order is upheld by the Hon'ble High Court of Madurai in Pending Litigation, the VOCPT may, if required, approach this Authority for review of the rate upwards from the level approved in the current proposal as proposed by the port.**

13. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the following lease rent for land at VOC wharf inside custom bound area leased/ allotted for storage of phosphoric acid as proposed by the port.

"Lease rent for land at VOC Wharf inside custom bound area leased/ allotted by the port for installation of phosphoric acid storage tank

₹ Per Sq. Mtr. Per Annum
₹3,200.00

Notes:

- (i). The lease rent prescribed above shall be applicable with effect from 20 January 2016 till 19 January 2021.

- (ii). The rates shall be escalated by 2% per annum with effect from 20 January 2017.
- (iii). All other conditions governing the license fee/ lease rent shall be as per the amended Land Policy Guidelines, 2014 issued by the Ministry of Shipping, and as may be amended from time to time."

(T.S. Balasubramanian)
Member (Finance)

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

F. No.TAMP/27/2018 - VOCPT - Proposal from the V.O.Chidambaranar Port Trust for revision of lease rent for the land leased out to M/s. Southern Petrochemical Industries Corporation Limited at VOC Wharf for installation of Phosphoric acid storage tanks.

A summary of the comments received from M/s. Southern Petrochemical Industries Corporation (SPIC) Limited and reply received from VOCPT is given below:

Sl. No.	Comments of M/s.SPIC Ltd.	Reply furnished by VOCPT
(i).	While SPIC notices a downward revision of lease rent, SPIC finds that the proposed rent of ₹3200/ sqm/ annum is still higher and abnormal.	The lease rent for Phosphoric Acid Tank has been revised and notified by TAMP w.e.f 20 January 2011 to 19 January 2016 with 2% annual escalation is now proposed at ₹3,200/- Sq.m for the period from 20 January 2016 to 19 January 2022 which is downward revision instead of increasing the lease rent.
(ii).	The proposed rent is 10 times higher compared to the lease rent fixed for a similar facility located outside the wharf area in VOC Port.	The land allotment is prime reclaimed land inside the wharf which is only 3.4 Km away from the port entry and operationally convenient near to the berth. The infrastructure facility inside wharf area has been made with huge investment including reclamation of land etc., by port. Hence, the comparison of tank farm inside wharf area and outside wharf area is not correct considering the location of Tank Farm is in nearby berth in reclaimed land.
(iii).	SPIC understands that the lease rent levied by Chennai Port for a similar facility inside the wharf area is ₹700/ sqm/ annum only. The rent levels at Tuticorin should be lower than metro cities like Chennai where the cost of living, economic index, land valuation, etc., are higher compared to non-metro cities like Tuticorin.	The lease rates at various ports cannot be compared as it depends on various operating conditions. VOC Port Trust has assessed the lease rate for Phosphoric acid tank as per Clause 13(a) Land Policy Guidelines 2014.
(iv).	Hence, the rent proposal shall be reviewed and the rent shall be further reduced by VOC Port considering the above factors.	The lease rents are to be fixed based on the provision of LPG, 2014 and VOCPT to follow the same. However, VOC Port has proposed for downward revision only. Hence, further reduction cannot be considered. Keeping in view of the above, it is to inform that, the lease rent proposed for revision by the VOCPT is based on the LAC recommendations for Phosphoric Acid Tank following the LPG, 2014 is in order.

2. A joint hearing in this case was held on 1 June 2018 at the VOCPT premises. The VOCPT made a brief power point presentation of its proposal. At the joint hearing, the VOCPT and SPIC have made the following submissions:

V.O. Chidambaranar Port Trust (VOCPT)

(i). The initial lease period of 30 years for two allotments of land to SPIC was extended till 31.12.2014 with the approval of Board on 25.08.2014.

- (ii). The Board also accorded approval to take necessary action for tendering process in view of the Land Policy Guidelines of 2014 requiring to allot the lands through tender-cum-auction. Port terminated the allotment made to SPIC on 10.12.2014.
- (iii). SPIC has challenged the termination before the High Court of Madras and got a stay on 26.03.2015 for termination. Stay continues till date.
- (iv). The validity of the rental has already expired on 19.01.2016. We have filed the proposal for revision of rates as required by Land Policy Guidelines of 2014 for the five years period from 20.01.2016 to 19.01.2021.
- (v). Our proposal is based on the recommendation of the KITCO, the Government approved valuer.
- (vi). KITCO has arrived at the reserve price, a special rate, for the land allotted to SPIC considering the location of the land inside custom bond area and proximity to Berth No.IV.
- (vii). The KITCO recommended rate is the average of ₹2986 (lower limit) and ₹3455 (upper limit) and rounded off to ₹3200 per sq. mtr. per month.
- (viii). The LAC has recommended the rate of ₹3200 with 2% escalation. Our Board has approved the rate recommended by LAC. We have submitted the proposal to TAMP.
- (ix). The interim stay dated 11.01.2018 granted by High Court is on the retrospective implementation of the revised rate approved by TAMP by its Order dated 27.02.2016. High Court has not restrained TAMP to consider the proposal for revision of rent beyond 19.01.2016.

Southern Petrochemical Industries Corporation (SPIC)

(K. Venkatesh / S. Venkataraman)

- (i). Port issued termination notice. We have obtained a stay from High Court on termination notice.
- (ii). An allottee of vacant land can vacate. But, we are here with infrastructure built on the land allotted to SPIC. Please differentiate between the allottee of vacant land and us.

[Dy. Chairman, VOCPT: We are planning to convert VOC III and IV into container terminal. SPIC has to relocate its facilities from the berth area of VOC IV.

SPIC: It is not simple relocation. We have to lay pipelines at least for 4 kms. distance.

[Dy. Chairman: Shifting is inevitable. Earlier shifting will be less costly.]

- (iii). We are here for last 60 years. We will continue to be here as long as agriculture is in India. We generate revenue to port not only by way of payment of lease rental to port but also payment of wharfage charges for our cargo handled at the berth of VOCPT. For first time, port has come down with rates.
- (iv). Chennai Port Trust levies rental at ₹700 per sq. mtr. per annum for a similar facility inside wharf area. Please consider special rate.
- (v). [In the context of the challenge by SPIC to the retrospective revision of lease rent approved last time, the Dy. Chairman as well as the SPIC representative submit that the SPIC pays rental at the revised rate from 1 April 2016 approved for the period 20.01.2011 to 19.01.2016.]

TAMP

(Senior Consultant)

- (i). Proposed rate of ₹3200 per sq. mtr. per annum is lower than the Reserve price for 30 years lease of land for liquid storage tanks tendered for e-auction in the last year (2017). The e-auction rates offered by bidders are ₹5660 and ₹5658 per sq. mtr.

[Dy. Chairman, VOCPT: The rates are for one time upfront payment by lessees for 30 years lease. It is fixed based on the NPV of sum total of annual lease rental. The annual lease rental is ₹370 per sq. mtr. per annum.]

Senior Consultant, TAMP: It is not brought out in the LAC report.]

- (ii). The proposed rate of ₹3200 per sq. mtr. per month is lower than the escalated rate of ₹3783.10 per sq. mtr. per annum applicable for the year 2015-16.

[Dy. Chairman, VOCPT: KITCO has recommended ₹3200 considering present economic slowdown and present growth rate to facilitate industrial friendly atmosphere and growth of industry. We will review our proposal and go to our Board.]
