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Tariff Authority for Major Ports

G.No. 413

New Delhi,

06 November 2018

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the review application filed by Vizag Seaport Private Limited (VSPL) for review of the Order No.TAMP/19/2017-VSPL dated 19 January 2018 passed by the Authority in respect of general revision of Scale of Rates (SOR) of VSPL as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/24/2018-VSPL

Vizag Seaport Private Limited

Applicant

QUORUM:

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

O R D E R

(Passed on this 3rd day of October 2018)

This case relates to review application filed by the Vizag Seaport Private Limited (VSPL) for review of the Order No.TAMP/19/2017-VSPL dated 19 January 2018 approved by this Authority in respect of general revision of Scale of Rates (SOR) of VSPL.

2.1. This Authority had passed an Order No.TAMP/19/2017-VSPL dated 19 January 2018 disposing of the proposal received from the VSPL for general revision of its SOR. The said Order was notified in the Gazette of India on 26 February 2018 vide Gazette No.78 and was forwarded to VSPL vide our letter dated 27 February 2018.

2.2. This Authority in the Order dated 19 January 2018, based on the net deficit reflected by the cost statement, has approved 44% increase in Shore handling charges, 7% decrease in Bulk Material Handling Service (BMHS), 33% increase in Dust suppression system, 5%-34% increase in wharfage and deleted charges of Railway siding as proposed by VSPL. As regards berth hire charges, as against 25% increase proposed by VSPL for both foreign and coastal vessel, based on the deficit position reflected in the cost statement and for reasons cited in para 16 (xxix) (a) of the Order, this Authority has approved 15% increase in the berth hire charges.

2.3. As stipulated in Clause 3.3.1. of the tariff guidelines of March 2005, application for review of a tariff Order can be entertained provided such an application is filed within 30 days of the notification in the Gazette of India. Referring to the said clause, this Authority in para 16 (xxxi) of the Order had mentioned that the VSPL has the option to approach this Authority for review of the Order to the extent of error apparent on face of records. The VSPL Order has been notified on 26 February 2018 and the VSPL has filed the review application under cover of its letter dated 21 March 2018, which is within the prescribed time limit of 30 days.

3.1. With reference to the said tariff Order of 19 January 2018, the VSPL vide its letter dated 21 March 2018 has filed an application for review of the tariff Order.

3.2. The points made by VSPL in its Review Application is with reference to the following:

- (i). **15% increase in Berth Hire charges approved by the Authority as against VSPL's request of 25% increase:**

The estimated deficit for Vessel Related Activity for the years 2017-18 to 2019-20 has been arrived at ₹4.17 crores by the Authority as against VSPL's estimate of ₹12.77 crores. If the Authority considers the grievance points of VSPL as stated below, and gives effect to the same in arriving at the deficit position under Vessel Related activity, then proposed increase of 25% in berth hire could be found justified by the Authority.

Accordingly, VSPL has made the following submissions towards justification of their grievances stated above.

- (a). **Reduction in maintenance dredging cost for 2017-18 to 2019-20 to the tune of 50% than the estimate of VSPL:**

The deficit position arrived under Vessel Related activity includes difference in reckoning maintenance dredging expenditure at 50% of VSPL's Projection of ₹3.11 crores (i.e.) at ₹1.55 crores by the Authority.

The Authority has considered only 12 shifts engagement of Port dredger based on Actuals for the year 2014-15. But, it is has to be noted that from June, 2014, VPT implemented window periods to the effect that berths shall be shut down on alternate days for Capital dredging of channels to -16.10 Meters and the dredging was in full swing and done at VSPL berth front during the year 2015-16 when this expenditure was NIL. In other words, the maintenance dredging expenditure was less during 2014-15 to 2016-17 only on account of Capital dredging done during the said period. That shall not be the basis for reducing number of shifts by 50% for the years 2017-18 to 2019-20. Hitherto, the maintenance dredging at our berth front was done by engaging the Port dredger at a cost of about ₹5.00 Lakhs per shift. After Dredging to -16.10 Meters, the maintenance dredging activities are required to be done by engaging DCI Dredgers of Higher capacity (Trailer Suction Hopper Dredger) at a huge cost. For the current year 2017-18, VSPL has actually spent ₹1.67 Crores towards maintenance dredging by engaging DCI dredger XX. (Copy of agreement with DCI is furnished). Hence on that basis, our estimated dredging expenditure of ₹3.11 Crores for 2017-18 to 2019-20 may be allowed for computation of surplus under vessel related activity.

Hence, VSPL requests that the maintenance dredging expenditure estimated for the years 2017-18 to 2019-20 for ₹3.11 crores may be allowed without any reduction.

(b). **The Capex of ₹16.08 crores incurred towards Capital dredging not allowed:**

- (i). There is wide variation in depreciation and ROCE due to not allowing this Capex under vessel related activity in all the tariff orders passed by the Authority. There is no second view that this Capex has facilitated the widening of entrance channel that paved the way for entry of Panamax vessels to the Inner Harbour of VPT which fact have also been affirmed by VPT as recorded by the Authority in Para 8.3(6) of Tariff Order dated 11 October 2011. It is not denied that incurring of this Capex is in accordance with compliance of clause 2.9.5 and 2.9.6 of the Tariff Guidelines, 2005. It is an acknowledged fact by VPT itself that this Capex has benefited not only VSPL but also all the Inner Harbour berth of VPT. The only ground for not allowing this Capex by the Authority hitherto was that it is not in accordance with our License Agreement. Now with the entering of original License Agreement dated 28 November 2011, the validity of the said reasoning has expired and now this Capex is brought within the ambit of our License Agreement and hence VSPL specifically requested to consider allowing this Capex post execution of Supplementary Agreement with VPT in the current tariff proposal.
- (ii). Under para 16 (v) (q) of the Tariff order dated 19 January 2018, the Authority has only held that this capex is not admissible as it is not as per the Concession Agreement and for deciding that this capex is outside the purview of the Concession Agreement, the Authority have solely relied on the assertion of the VPT which is erroneous on the facts as VPT has only reiterated its earlier stand purely based on original License Agreement and not replied anything how that reason still holds good post execution of Supplementary License Agreement forming part of the original License Agreement. The Authority too have not dealt the issue under the said para of the order as to why this is not an allowable expenditure when the issue of requirement of clause 2.9.11 of Tariff guidelines, 2005 that Capex shall be as per License Agreement is now settled with the execution of Supplementary

Agreement thereby bringing this Capex within the ambit of our License Agreement.

- (iii). Under SI.no.9 of para 10 of the order, the Authority raised a pointed query on VPT as quoted below:
"In this regard, the VPT is requested to clarify whether the request of VSPL is to be considered in the current tariff revision in view of the point made by the VPT in the last tariff order dated 15 May 2015."

For this VPT replied that the expenditure incurred in 2009-10 is not in line with the provisions of the License Agreement. The said reply of VPT is not valid and relevant as it is not addressing the changed scenario wherein this Capex is now brought within the ambit of License Agreement through the Supplementary License Agreement. Further it may be noted that for the purpose of our License Agreement, vide clause 1.1. of our License Agreement, VPT is a Licensor and not considered as Government Authority. Hence it is requested that this issue be dealt objectively by the Authority independent of the views of VPT as they have offered no adverse remark on allowing this Capex under the Supplementary License Agreement but only reiterating stand with reference to the original License Agreement. The Authority have allowed various items in several tariff proposal in case no pointed objection is received from the concerned party/ users. The logic for following earlier years approach as stated by the Authority is not applicable for this issue under the changed scenario of entering into Supplementary Agreement.

Accordingly, VSPL requests the Authority to allow the above said Capex of ₹16.08 crores for depreciation and an eligible Investment for ROCE.

(ii). **The discount / Rebate to Steel Authority of India Limited (SAIL) in the revenue projections from the years 2017-18 to 2019-20 not considered:**

- (a). Under para 16(xi) (b) of the Tariff Order, our request for exclusion of discount of ₹17.08 crores for the years 2017-18 to 2019-20 was not considered by the Authority on the following grounds:
- (i). Tariff has to be determined with reference to the cost position reflected based on revenue estimation at the existing SOR approved in the last general revision order. This approach is followed uniformly while determining tariff of all private operators under 2005 Tariff Guidelines.
 - (ii). If the request is considered, it would warrant higher tariff increase which have to be borne by users other than SAIL.
 - (iii). The rates agreed between VSPL and SAIL as an individual user agreement between two parties and that cannot form the basis for tariff determination.
- (b). VSPL submits that above contentions may no longer hold good post issue of following clarifications by the Authority based on the opinion of the A.G, vide letter No.TAMP/46/2015-Misc. dated 24 July 2015.
- (i). Both financial and Physical parameters will be taken into account for the purpose of clause 2.13 of the Tariff Guidelines, 2005 and 20% of the surplus would be allowed to be retained by the

operator. It is only surplus over and above the 20% that shall be shared equally between the operator and the users.

- (ii). The Income to be considered for the purpose of clause 2.13 will be the Actual income earned by the operator based on their audited accounts and not on any notional income.
- (c). The uniform approach followed hitherto by the Authorities was prior to issue of the above said clarification of MOS based on AG's opinion. As such, same may have to be reviewed.
- (d). In the current tariff Order our actual income for 2014-15 to 2016-17 has been considered as per audited accounts which is net of discounts and rebates in line with the above said clarification. VSPL have already entered into a three years contract with SAIL from August 2017 and during the said period the rate is fixed and SAIL being a PSU there is no scope of collecting any rate other than the discounted rate prescribed in the contract. That being the factual position, and during review of actual income collected from SAIL in next tariff cycle with respect to projection, the actual revenue collected (Audited) is going to be allowed by the Authority, it is but fair and reasonable that current tariff fixation shall not be based on any such notional income knowing that same is not going to be collected. Further, our request is only for deficit arising out of exclusion of this said notional income. Such enhanced berth hire will be applicable to all users including SAIL.

The VSPL, therefore, requests the Authority, to consider excluding the discount/ rebate of ₹17.08 crores from the projected income for the years 2017-18 to 2019-20.

- (iii). **Advance payment of lease rentals under Sundry debtors not considered:**
Under para 16(vi)(b) of the Tariff Order, it is stated that the License Agreement entered by VSPL with VPT does not prescribe any advance payment of lease rentals and such prepayments can be considered only if the same flows from the provisions of the License Agreement.

In this regard, VSPL draw the kind attention of the authority to clause 5.2 of our License Agreement which provides that Land lease rentals shall be paid by Licensee yearly as per the terms and conditions of the land lease agreement to be entered into separately. Payment of advance lease rental is as per the terms of the said land lease agreement only and accordingly the same flows only from the provisions of the License Agreement. Hence, it is requested that advance lease rental may be considered as an item of Sundry debtor.

- (iv). **The provision for bad debts in actuals for the years 2014-15 to 2016-17 to the tune of ₹120.80 lakhs not allowed:**

Under para 16(v)(n), the Authority has not allowed the bad debts and provision for bad debts amounting to ₹120.38 Lakhs for the years 2014-15 to 2016-17 citing that as per the provisions contained in the existing SOR of VSPL, service are rendered on payment of relevant charges in advance. But our SOR does not appear to have such provision. Actually, only berth hire is collected in advance and our customers normally pay cargo handling charges only after delivery of cargo at their destination or after loading of cargo into Rail Rakes. Accordingly on a turnover of ₹354.05 crores for the said three years period, bad debts provisions of ₹1.20 crores is incidental and normal for our operation size. We accordingly request the Authority to allow the said expenditure of ₹120.38 lakhs in the actuals for the years 2014-15 to 2016-17 so that same may be followed in future, if approved.

3.3. Based on the above, the VSPL has requested this Authority to consider their review Petition and accordingly approve enhancement of berth hire charges to 25% from 15%

already granted. The VSPL has, however, not furnished any revised cost statements along with the review application.

4. In accordance with the consultative procedure prescribed, a copy of the review application of VSPL dated 21 March 2018 was forwarded to the VPT and concerned users/ user organisations seeking their comments. The comments received from the VPT and users/ user organisations were forwarded to VSPL for feedback information. The VSPL vide its letter dated 2 July 2018 has furnished its reply.

5.1. A joint hearing in this case was held on 25 April 2018 at the VPT premises. The VSPL made a power point presentation of its Review Application. At the joint hearing, the VSPL and VPT have made their following submissions.

5.2. At the joint hearing, the VSPL has furnished a detailed write up with reference to its review application. The copy of the detailed write up was forwarded to the VPT vide our letter dated 15 May 2018 requesting to furnish specific comments on each of the points made by VSPL along with its comments on the break-up of the amount of ₹16.08 crores furnished by VSPL. This was followed by reminders dated 29 May 2018, 20 June 2018 and 5 July 2018. The VPT has not furnished its reply till finalization of this case. The points made by the VPSL in its detailed write up are as follows:

Review Prayer: To grant the increase in Berth Hire charges to 25% as against 15% increase granted.

Background:

- (i). The Authority have notified the revision of SOR of VSPL on 26 February 2018 which *inter alia* includes revision of berth hire charges from 0.0072 USD per GRT per hour to 0.0083 USD per GRT per hour. VSPL had requested for increase to 0.0090 USD per GRT per hour based on the deficit position from its vessel related activity.
- (ii). The submission of VSPL was that Authority ought to have considered allowing the Capex of ₹16.08 crores, a major item while computing the deficit under vessel related activity so that VSPL request of increase in Berth Hire by 25% would have been justified.
- (iii). Facts of the issue of not allowing the capex of ₹16.08 crores towards capital dredging expenditure incurred by VSPL:
 - (a). VSPL commenced its operations at its berths in 2005. At that time VPT had declared a dredged depth of -10.70 Meters that was capable of handling vessels with the following specifications:

LOA	:	160 Meters
Beam	:	27 Meters
Channel width	:	97.5 Meters
Vessel Draft	:	10.06 Meters

The above facility is sufficient to handle only Handymax vessels with a beam upto 27 Meters.
 - (b). In order to handle Panamax vessels with LOA of 225 Meters and beam of 32.26 Meters, VPT had awarded the contract of dredging involving widening and deepening of the Inner Harbour Turning Circle to -11.8 Meters and 12.8 Meters respectively to Dharti Dredging and Infrastructure Company Limited (DDIL) under Phase I Dredging, vide VPT Work Order dated 20 July 2005. The major scope of phase 1 dredging work awarded by VPT to DDIL are as below:
 - (i). Dredging of soft soil (overburden) of 255780 CUM for ₹3.82 crores.
 - (ii). Rock Dredging of 66150 CUM for ₹20.53 crores.

- (iii). Achieving design depth of 11.8 Meters at Entrance channel and - 12.80 Meters at Inner Harbour Turning Circle.
- (c). VSPL was issued CFO by APPCB to handle a maximum volume of 9.5 Million Metric Tons per annum and as per Article 3.9(a)(i)(b), it is the obligation of the VSPL, Licensee to make efforts to maximize cargo handled so as to achieve optimal utilization of Project facilities and Services. Under Article 7.3(b)(iv) of the License Agreement, it is the obligation of both the Licensor and Licensee to mutually cooperate with each other in order to achieve the objectives of the License Agreement.
- (d). In order to maximize the throughput, VSPL had entered into a 30 year contract with SAIL on 31 January 2005, to handle fully laden Panamax vessels which required a dredged draft of -14.0 Meters at its berths and - 13.5 Meters at all Inner Harbour Channels. Since the present facility was to handle only Handymax vessels with a beam of upto 27 Meters, VSPL entered into a MOU on 24 November 2006 with VPT to undertake further widening and deepening of all Inner Harbour waterways to -13.5 Meters at its cost and awarded the contract to the same DDIL. It is pertinent to note that VSPL, on behalf of VPT, also undertook the feasibility and navigation studies through M/s.MARIN, Netherlands to cater to 14 M draft vessels, at its cost. Same Study Reports of MARIN were utilized by VPT while calling for Tenders for deepening upto -16.1 M.

This is pursuant to the award of Phase 1 Dredging by VPT to DDIL and for extending the deepening works of the area to facilitate navigation of bigger ships to VSPL to the extent of achieving Entrance channel of Inner Harbour, Inner Harbour Turning Circle and Northern Arm of VPT to -13.5 Meters.

The Scope of work by VSPL to Dharti was as under:

	(₹ in crores)
i). Jet Probing of 3000 Cum	0.32
ii). Dredging of soft soil (Over burden) of 66000 CUM for	8.95
iii). Rock Dredging for 103000 CUM	21.12
iv). Slope Protection	2.87
v). Operational delays	0.09
vi). Total	33.35

- (e). The first priority was to make entry of Panamax vessels in Inner Harbour entrance channel with a beam of 32.26 Meters. Though the Channel width of 97.5 Meters was just sufficient being three times the beam length, in view of the bends in the I.H Channel, the facility could not be utilized. Hence, the Dredging Company first widened the Inner Harbour Channel and Turning circle from 97.5 Meters to 111 Meters doing Rock Dredging and started work on account of VSPL at the Inner Harbour channel first as more than 50% area of Inner Harbour channels were common to both waterways leading to VSPL and VPT berths in the Inner Harbour.
- (f). Above proactive action of VSPL has led to the entry of Panamax vessels into the Inner Harbour of VPT for the first time on 13 February 2007. Thereafter, this paved the way for entry of all Panamax vessels chartered by entire trade after lightening at the then General Cargo Berth (GCB). VSPL too could handle Panamax vessels of SAIL after Lightening at GCB from 11 May 2008. Thus the benefit of the Capex incurred by VSPL accrued to VPT, VSPL and trade are as under:

Details	Permissible Draft	LOA	Beam	Width	Turning Circle Radius
Before	10.06 M	160 M	27 M	97.5 M	180 Ms.

Dredging work in 2005-06					
After widening of channels	10.90 M	225 M	32.26 M	111 M	220 Ms.
(Source: Port Circular ITRA/SHP/PCIR dated 06.10.09)					

In view of the abnormal delay in completion of Phase 1 dredging by VPT and since the required draft to perform SAIL 30 years contract could not be achieved within the permissible time, VSPL intimated its decision to withdraw from the MOU to complete dredging to -13.5 Meters and same was approved by VPT with the approval of the Government and communicated vide VPT letter dated 4 September 2009.

- (g). VPT besides approving the withdrawal of VSPL from its obligations under the MOU to dredge to -13.5 Meters has also called for tender on 25.03.2010 for dredging to 16.10 Meters under Phase II and Phase III dredging. Hence VSPL could capitalize the expenditure of ₹16.08 crores on 25.03.2010 to the extent of actual work done by DDIL as detailed below:

	(₹ in crores)
i). Payments against Running bills	14.24
ii). Channel dredging for slope protection	0.80
iii). Simulation studies by VSPL	0.27
iv). Finance cost apportionment	1.86
v). Mobilization of dredger advance	6.95
vi). Encashment of B.G for recovery of advances	(8.05)
vii). Total Capitalization	16.08

- (iv). Reasons given by TAMP for not allowing this Capex of ₹16.08 crores since its Order dated 11 October 2011:

(a). As per License Agreement, it is the obligation of the Licensor to undertake Capital Dredging and the Capex claimed by VSPL is not in line with the provisions of the License Agreement.

(b). Though VPT has in its reply to TAMP under para 8.3(6) of the said Tariff Order has accepted that Capex incurred by VSPL has facilitated the widening of the entrance channel that paved the way for entry of all Panamax vessels into the Inner Harbour through the entrance channel after lightening at GCB and accordingly all VPT berths are benefited, it has reiterated its stand the said Capex is not an allowable one under the License Agreement.

- (v). Reasons for claiming said Capex in the tariff proposal of VSPL and in the Review Application dated 21 March 2018 of VSPL despite repeated disallowance by TAMP:

(a). Unlike the License Agreements entered under Tariff Guidelines, 2008 fixing Upfront Tariff Guidelines for Terminal capacity, there is no bar under Tariff Guidelines, 2005 under which VSPL is governed to incur any capex to augment capacity either by way of Capital equipment, development of additional storage or any infrastructure for the allowability of any Capex under the Tariff Guidelines, 2005 Authorities is governed by clause 2.9.5 and 2.9.6 of the Tariff Guidelines, 2005. Said clauses are quoted below:

“2.9.5: Reasonableness of capital base will be assessed. Cost of fully commissioned Business Assets that can be directly identified as created for the port business and in use will only be considered while computing allowable depreciation and ROCE.

2.9.6: Reasonableness of fresh investments made for creation of capacity will be assessed on the basis of (i) Reduction in unit operating cost, (ii) Additional traffic generated, (iii) Improvements in operational efficiency and (iv) Combination of any or all these factors.”

- (b). It is an undeniable fact that the Capex of ₹16.08 crores fulfill all the above stated criteria for consideration by the Authorities. The increase in cargo volume by entry of Panamax vessels after widening of channels is on the record of the Port and the Authorities.
- (c). The fact that the VSPL's License Agreement provides for ultimate draft of 12.5 Meters only is no longer valid with entering into Supplementary License Agreement on 20 June 2015 providing for draft of -16.10 Meters at VSPL berths which formed part of original License Agreement. As such the capex is within the purview of our License Agreement.
- (d). Rejecting the Capex on the plea that it is the obligation of the Licensor to dredge to -16.10 Meters in the Water channels of Inner Harbour except at berth fronts is also not proper as same amounts to penalizing VSPL for having undertaken the obligation of the Licensor and partly fulfilled the same by spending the said Capex that has widened the entrance channel besides dredging of Inner Harbour channels that led to the undertaking and completion of balance Capital dredging by Licensor to dredge upto -16.10 Meters at all Inner Harbour Channels.
- (e). Trade which has been all along benefitted by freight saving by the said Capex especially due to widening of channels by chartering Panamax vessels and this benefit remain unrecovered from trade either by Licensor or Licensee. As it is the Licensee who have invested, the Capex claimed by the Licensee is just and proper.
- (f). License Agreement and tariff fixation under 2005 Guidelines does not contain any restriction to incur capex beyond License Agreement as long as it enhances business growth, benefit to trade and as above said License Agreement provides for mutual cooperation of Licensor and Licensee to achieve the objectives of the License Agreement.
- (g). As the deepening to -16.10 Meters was completed by VPT and at our berth fronts in February, 2016, enabling berthing of fully laden Panamax vessels, the said Capex of ₹16.08 crores may be allowed at least from the current tariff cycle of 2017-2020.

6. Based on the preliminary scrutiny of the Review Application, the VSPL was requested vide our letter dated 15 May 2018 to furnish additional information/ clarifications on a few points. After reminder dated 29 May 2018, the VSPL vide its letter dated 18 June 2018 has furnished its reply. A summary of the additional information/ clarifications sought by us and the information/ clarifications furnished by the VSPL are tabulated below:

Sl. No.	Information/ clarifications sought by us	Information/ clarifications furnished by VSPL
A.	<p><u>Reduction in maintenance dredging cost for the years 2017-18 to 2019-20 to the tune of 50% than the estimate of VSPL:</u></p> <p>The copy of the contract entered between the VSPL and the Dredging Corporation of India now furnished by the VSPL is dated 20 March 2018. Since the year 2017-18 is already over, the actual expenditure incurred by VSPL towards maintenance dredging may be</p>	<p>Actual expenditure incurred in the year 2017-18 towards maintenance dredging is ₹1,68,15,000/- Copy of the Invoice by Dredging Corporation of India is furnished [Annexure-A].</p>

	furnished.	
B.	<u>Disallowance for Capex of ₹16.08 Crores incurred towards Capital dredging in 2009-10:</u>	
(i).	<p>The main submission of VSPL for review is that the only ground for not allowing the Capex of ₹16.08 crores by the Authority hitherto was that it is not in accordance with its Main License Agreement. Now, with the entering of Supplementary License Agreement dated 20 June 2015, the validity of the said reasoning has expired and now this Capex is brought within the ambit of its Main License Agreement. On this ground, the VSPL has requested to consider allowing this Capex post execution of Supplementary Agreement with VPT in the current tariff proposal. In this regard, the VSPL is requested to furnish the following information:</p>	<p>VSPL deny the remark of the VPT that the expenditure of ₹16.08 crores is not in line with the provisions of the License Agreement. Again VPT has not commented anything about the Supplementary Agreement entered on 20 June 2015.</p> <p>In this regard, kind attention is drawn to the following provisions of the Supplementary Agreement.</p>
	<p>(a). The Supplementary/ Separate License Agreement entered between the VPT and VSPL dated 20 June 2015 is with reference to further deepening in front of EQ8 and EQ9 berths to (-) 16.10 mtrs. Clause 1.3 of the said agreement stipulates the "Effective Date" of the said agreement "means the date of execution of this Agreement, which shall be confined to the intended purpose of deepening/ dredging". Clause 3.2. of the Agreement states that "Except as amended in this Agreement, the Main Agreement remains unmodified and in full force and effect."</p> <p>The VPT vide its letter dated 25 April 2018, while furnishing its comments on the Review Application filed by VSPL at point no.3 has reiterated that the expenditure of ₹16.08 crores incurred by the VSPL in the year 2009-10 is not in line with the provision of the License Agreement.</p> <p>The VSPL is, therefore, requested to furnish reference of the relevant clause in the Supplementary Agreement to support the contention of the VSPL that Capex of ₹16.08 crores incurred towards Capital dredging in 2009-10 is brought within the ambit of the Main License Agreement dated 28 November 2001, post execution of Supplementary Agreement.</p>	<p>Clause 1.1 (iii) of Supplementary License Agreement mentions that "in the event of any discrepancy or conflict or divergent view or interpretation that may arise between the terms and conditions of the Main License Agreement and provisions of this Agreement, then the provisions of Main Agreement shall override and supersede those of this Supplementary/ Separate Agreement at all times, <u>except in the matter of the dredging that was not covered by the Main License Agreement</u>" i.e. <u>in the matter of dredging upto -16.10 Meters, Supplementary Agreement provisions prevail.</u></p> <p>In view of above clause, clauses 1.3 and 3.2 of Supplementary License Agreement referred to in this para are not relevant in so far as Dredging upto -16.1 is concerned. Clause 3.2 specifically provides that the Supplementary Agreement forms an integral part of the Main License Agreement. Hence in the matter of dredging upto -16.10 Meters, the draft of 16.10 Meters is deemed to be incorporated in the Main License Agreement. In other words, the dredged draft of -10.70 Meters and ultimate dredged draft of 12.5 Meters wherever occur in Main License Agreement stands amended to -16.10 Meters post execution of Supplementary Agreement.</p> <p>The contention of the VPT that the expenditure of 16.08 crores incurred by VSPL in the year 2009-10 is not in line with the provisions of the License Agreement is not tenable post entering into Supplementary License Agreement as the</p>

		<p>Main License Agreement does not deal with the dredging upto -16.1 Meters. In view of Clause 1.1(iii) of Supplementary License Agreement wherein it was specifically mentioned that the dredging upto -16.1 m was not covered by the Main License Agreement, it follows that in the matter of dredging, the Main License Agreement stands amended to the effect that the dredged draft is -16.10 Meters.</p> <p>However, for better understanding of the Authorities, a note containing the sequence of events and the correspondence exchanged between VPT and VSPL for undertaking capital dredging at the Northern Arm entrance Channel and Turning Circle by VSPL at its cost beyond the provisions of the Original License Agreement which have ultimately culminated into formulating a Separate/ Supplementary License Agreement for dredging upto -16 m is furnished. [VSPL in said note has reproduced points which are brought out in earlier paragraphs but only in elaborate manner, hence, not reiterated here.]</p> <p>The Clause 1.1(iii) is the relevant clause of Supplementary License Agreement which was quoted in para (a)(1) above to support the contention of the VSPL that Capex of 16.08 crores incurred towards Capital Dredging in 2009-10 is brought within the ambit of the Main License Agreement dated 28 November 2001 post execution of Supplementary Agreement.</p>
(ii).	(a). As per Clause 3.9(c) (i) (e) of the Main License Agreement dated 28 November 2001 entered between VPT and the VSPL, VPT has to carry out capital dredging at the cost and responsibility of the licensee on deposit terms stipulated in the LA. The VSPL is requested to clarify as to which part of the area this capital dredging pertains to and quote the relevant clause in the Main License Agreement in support of the clarification (to be) furnished by VSPL in this regard.	Regarding clarification required on carrying out Capital Dredging by VPT under Clause 3.9(c)(i)(e) of the Main License Agreement dated 28 November 2001, it refers to Berth Front Capital Dredging of VSPL Berths EQ.8 and EQ.9 upto -12/12.5 Meters. Appendix-I of Vol-I Para 2.2- 3 rd para which mentions "Shall also cater to ultimate dredge depth of -12 M to accommodate larger vessels and Appendix-12 Vol. I page 132 – Last para which states "M/s.STUP consultants have designed the Terminal – EQ8 berth 255 meters long and EQ.9 berth 315 meters long to accommodate vessels of even upto 45,000 DWT, later on future dredging upto -12.5 meters" of Main License Agreement are relevant.
	(b). As per Clause 3.9(c) (i) read with 3.9(c) (i) (a) of the License Agreement dated 28 November 2001 entered between VPT and the VSPL, the licensor shall provide at no cost of the licensee the services of scheduling the	The contents of Clause 3.9(c)(i) and 3.9(c)(i)(a) are self-explanatory. However, it is clarified that VPT as our Licensor shall provide berthing, sailing, pilotage and towage of vessels bound for VSPL Berths

	<p>entry, berthing and sailing of vessels, pilotage and towage on a non-discriminatory basis subject to priority norms set out in the Appendix 18 and sailing schedule as determined by the Deputy Conservatory of the port depending on the individual characteristics and tidal conditions.</p> <p>The VSPL is requested to kindly explain the meaning of this clause for our understanding.</p>	<p>at no cost to the VSPL on a non-discriminatory basis subject to priority norms for berthing of vessels as set out by the Government of India. But, the VPT is collecting Pilotage and Berthing charges etc. from our Customers which is not in line with the provisions of our License Agreement.</p>
(iii).	<p>In Point (vi) of the detailed note to Presentation furnished by VSPL at the joint hearing held on 25 April 2018, the VSPL has stated that in view of delay in completion of Phase I dredging by VPT and since the required draft to perform SAIL 30 years contract could not be achieved within permissible time, VSPL intimated its decision to withdraw from MOU to complete dredging to -13.5 mtrs. and same was approved by VPT with the approval of the Government and communicated vide VPT letter dated 4 September 2009. Please indicate the extent of achievement of draft of -13.5 mtrs. at all inner harbour channels cited as one of the requirements to handle fully laden panamax vessels in pursuance of the 30 years contract entered with the SAIL on 31 January 2005.</p>	<p>As explained through a presentation during joint hearing on 25 April 2018, though it is the obligation of Licensor to dredge Entrance channel, Inner Harbour Turning Circle and northern arm channel leading to EQ-8 and EQ-9 berths, VSPL with an aim of maximizing its throughput to its envisaged maximum capacity, was proactive and undertook the entrance channel, Turning Circle and Inner Harbour from 12.5 Meters to 13.5 Meters in continuation of Phase 1 dredging from 10.70 Meters to 12.0 Meters by VPT. This is in line with Clause 7.3(b)(iv) of License Agreement that cast an obligation on Licensor and Licensee to mutually cooperate with each other in order to achieve the objective of License Agreement. This proactive action has led to entry of Panamax vessels into the Inner Harbour for the first time on 13 February 2007 and thereafter paved the way for entry of all Panamax vessels after lighterage at General Cargo Berth (GCB) in the outer Harbour. As shown by the power point presentation during the Joint hearing, it is by utilization of the capex of ₹16.08 crores by VSPL, the entrance channel length was widened from 97.5 Meters to 111 Meters and Turning Circle radius was increased from 180 Meters to 220 Meters thereby making entry of Panamax vessels into Inner Harbour berths a reality. VSPL too could handle SAIL Panamax vessels from 11 May 2008 due to this development under a Short term contract. Number of Panamax vessels with draft of 14.0 Meter arriving at VPT post 2008 was phenomenal and it is solely due to widening of the entrance channel, and Turning circle radius by rock dredging at entrance channel, entire Inner Harbour berths of VPT including VSPL could berth Panamax vessels with draft of 14.0 meters atleast after lighterage. Otherwise, the entire business volume from Panamax vessels would have been lost to Gangavaram Port as the only deep draft GCB in Outer harbour was handed over to BOT Licensee for Mechanisation. This fact has been already acknowledged</p>

		<p>by VPT to TAMP that the Capex spent by VSPL towards widening of entrance channel paved the way for entry of Panamax vessels benefitting not only VSPL but entire inner Harbour berths of VPT. Thus, even if it is viewed that the said Capex was spent beyond the provisions of the License Agreement as it is not VSPL's obligation to deepen entrance channel, and it is the obligation of Licensor to provide Port Infrastructure of deep draft of 12.0 Meters initially and 16.10 Meters as per Supplementary Agreement, still the fact remains that Part of this obligation was volunteered by VSPL with the consent of VPT in order to enhance its throughput by better utilisation of the Project Facilities and Services. Further, there is no bar under the 2005 Tariff Guidelines to incur any capex that augment the capacity by additional infrastructure or Capital equipment and same needs to be allowed if it satisfies the requirement of Clause 2.9.5 and 2.9.6 of 2005 Tariff Guidelines. It is an undenying fact that because of the said Capex, the trade has benefitted by freight savings, VPT has benefitted by collecting Vessel related charges from all Panamax vessels that entered the Northern arm of Inner Harbour after widening of entrance channel. The extent of achievement of draft of 13.5 Meters at all Inner Harbour berths could be noted from details of the expenditure bill copies attached towards incurring of Capex of ₹16.08 crores.</p> <p>To sum up, VSPL has submitted the following:</p> <p>(a). There is no bar under 2005 Tariff Guidelines to incur any capex even outside Licence Agreement provisions provided same results in improvement in tariff growth, savings to Port Users, Enhanced Operational efficiency, etc. as per clauses 2.9.5 and 2.9.6 of the Tariff Guidelines, 2005.</p> <p>(b). With the entering of Supplementary Agreement, VPT's obligation of providing draft level in the Main License Agreement stands amended to -16.10 Meters at Entrance channel, Inner Harbour Channels and at our berth fronts. Otherwise, their obligation as per Clause 3.9(C)(i) of providing Marine service of scheduling entry and berthing of vessels could not be fulfilled. Further, it is the obligation of the Licensor as per clause 3.9(C)(i)(f) of License Agreement to provide general Port</p>
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		<p>infrastructure necessary for Management, operation and maintenance of the Project Facilities and Services. Providing requisite draft to cater to various vessel specifications commensurating with the berth design and capacity of the Licensee is a Port infrastructure to be provided by Licensor.</p> <p>(c). Though it is the obligation of Licensor to provide adequate draft facility as stated above, there is no bar in our License Agreement to undertake the obligation of the Licensor by the Licensee in part or full with the consent of the Licensor to achieve the objective of our License Agreement.</p> <p>(d). VPT took up and could complete the deepening to 16.1 Meter from the point of widening of entrance channel and Turning circle radius done by the said Capex of VSPL.</p> <p>(e). The Capex has benefitted all Inner Harbour berths of VPT by enabling handling of Panamax vessels after lighterage from 2008 till completion of dredging to -16.10 Meters. Besides, VSPL and VPT, the Trade has benefitted by chartering Panamax vessels after lighterage.</p> <p>(f). Though the benefit of the Capex of ₹16.08 crores accrued from 2008 with entry of Panamax vessels to our berths, the deepening to -16.10 Meters was completed by VPT in February 2016 enabling berthing of fully laden Panamax vessels. Hence, it is requested for allowing of this Capex atleast from the current tariff cycle 2017-2020.</p>																																																
(iv).	<p>In Point (vii) of the detailed note to Presentation furnished by VSPL at the joint hearing held on 25 April 2018, the VSPL has given break up of ₹16.08 crores of which ₹14.24 crores is towards payment against Running bills to Dharati Dredging; ₹1.86 crores towards apportionment of finance cost; ₹6.95 crores towards mobilisation of dredger advance. The VSPL is requested to clarify what each of the items pertains to. Also, please explain as to why the Encashment of B.G for recovery of advance is subtracted to arrive at ₹16.08 crores along with the reasons for encashment of B.G. Also, please clarify the nature of expenditure of syndicate fee of ₹9.00 lakhs given in the table attached to the detailed note giving break up of ₹16.08 crores.</p>	<p>It is confirmed that the Capex of ₹16.08 crores claimed is the amount paid to the Dredging contractor to the extent of actual work done towards widening of entrance channel, Turning Circle radius by Rock dredging and soft soil dredging at some area of Inner Harbour and incidental works.</p> <p>The details of expenditure of each bill attached towards incurring the capex of ₹16.08 crores are furnished below: [Annexure C]</p> <table border="1" data-bbox="895 1720 1428 2036"> <thead> <tr> <th>Sl. No.</th> <th>Name of Contractor</th> <th>Name of Work done/ Expenditure</th> <th>Bill no. Ref.</th> <th>Amount in ₹</th> <th>Remarks</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Dharti Dredging Co.</td> <td>Jet Probing and dredging of Entrance channel and Turning Circle</td> <td>1st R.A. Bill</td> <td>23,19,777/-</td> <td>Bill copy attached</td> </tr> <tr> <td>2.</td> <td>---DO---</td> <td>---DO---</td> <td>2nd R.A. Bill</td> <td>77,58,243/-</td> <td>---DO---</td> </tr> <tr> <td>3.</td> <td>---DO---</td> <td>Dredging of 35316 CUM soil dredging and Jet Probing</td> <td>3rd R.A. Bill</td> <td>3,28,09,863/-</td> <td>---DO---</td> </tr> <tr> <td>4.</td> <td>---DO---</td> <td>Dredging at IHC and IHTC and Jet Probing</td> <td>4th R.A. Bill</td> <td>2,74,70,028/-</td> <td>---DO---</td> </tr> <tr> <td>5.</td> <td>---DO---</td> <td>---DO---</td> <td>5th R.A. Bill</td> <td>1,27,11,305</td> <td>---DO---</td> </tr> <tr> <td>6.</td> <td>---DO---</td> <td>EQ-8 and EQ-9</td> <td>5th R.A. Bill</td> <td>63,65,955/-</td> <td>---DO---</td> </tr> <tr> <td>7.</td> <td>---DO---</td> <td>Dredging in Rock, soft soil and EQ-8</td> <td>6th R.A. Bill</td> <td>1,64,45,307/-</td> <td>---DO---</td> </tr> </tbody> </table>	Sl. No.	Name of Contractor	Name of Work done/ Expenditure	Bill no. Ref.	Amount in ₹	Remarks	1.	Dharti Dredging Co.	Jet Probing and dredging of Entrance channel and Turning Circle	1 st R.A. Bill	23,19,777/-	Bill copy attached	2.	---DO---	---DO---	2 nd R.A. Bill	77,58,243/-	---DO---	3.	---DO---	Dredging of 35316 CUM soil dredging and Jet Probing	3 rd R.A. Bill	3,28,09,863/-	---DO---	4.	---DO---	Dredging at IHC and IHTC and Jet Probing	4 th R.A. Bill	2,74,70,028/-	---DO---	5.	---DO---	---DO---	5 th R.A. Bill	1,27,11,305	---DO---	6.	---DO---	EQ-8 and EQ-9	5 th R.A. Bill	63,65,955/-	---DO---	7.	---DO---	Dredging in Rock, soft soil and EQ-8	6 th R.A. Bill	1,64,45,307/-	---DO---
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8.	---DO---	---DO---	7 th R.A. Bill	1,44,73,108/-	---DO---
9.	---DO---	---DO---	8 th R.A. Bill	1,21,86,143/-	---DO---
10.	---DO---	Rock and soft dredging at IHC, IHTC and Northern Arm	9 th R.A. Bill	24,09,333/-	---DO---
11.	---DO---	---DO---	10 th R.A. Bill	74,79,360/-	Bill not traceable as record is > 10 years.
12.	Coastal Overseas	Dredging extended length of EQ-9	Bill No.DRDG /02/07-08 dated 2.5.2007	69,89,250/-	Bill copy attached
13.	VPT	Dredger charges	QMAR/11 /02.1.08	11,72,481/-	---DO---
14.	Lender	Finance Cost Apportioned from 1.1.2006 to 31.3.2008		1,77,24,814/-	N.A.
15.	Syndication fees	Apportionment		9,00,000/-	N.A.
16.	Marin and Indian School of Mines	Simulation studies		26,77,979/-	Bill of Marin and Strategy weighments attached.
17.	TOTAL BILL			17,18,92,946/-	
18.	Excess of B.G recovery over and above the Mobilisation advances paid			(1,09,87,697/-)	**
19.	Amount Capitalised			16,09,05,249/-	

** Mobilisation advances paid for mobilisation of dredger unrecovered was ₹6,95,12,303/- as on 31 March 2008. This was fully recovered by encashment of B.G. of Dharti Dredging Co. for ₹8,05,00,000/-. Balance B.G. amount of ₹1,09,87,697/- was credited to the Capex cost as shown above.

Finance cost apportioned till an asset is brought into commercial operation has to be added (Capitalised) as part of cost of the asset as per Accounting Standards. Afterwards, same is a revenue expenditure and not allowable as Finance cost of operation for tariff computation.

Syndicate fee of ₹9.00 lakhs was paid towards service charges for arranging Term loan for our Project by a Loan Syndicator. ₹9.00 lakhs is the apportionment of syndicate fees for this Capex.

Dredging contractor could not complete even Phase 1 dredging of VPT founding it to be unviable due to various reasons like window periods, idle time of Dredgers due to naval vessels movement etc. and left. VSPL awarded Phase II dredging to the same contractor of VPT. The payment of ₹16.08 crores was made for the actual work quantities done as per Running bills. At the time of leaving, there was unrecovered mobilisation advance for ₹6.95 crores which was recovered from the Performance B.G of ₹8.05 crores of the Contractor.

7. The Licensor Port, VPT was also requested vide our letter dated 15 May 2018 to furnish additional information on a few points by 25 May 2018, which was followed by reminders dated 29 May 2018, 20 June 2018 and 5 July 2018. In response, the VPT vide its letter dated 16 August 2018 has furnished its reply. A summary of the additional information sought by us and the corresponding replies furnished by the VPT is tabulated below:

Sl. No.	Information sought by us	Reply furnished by VPT
A.	<u>Disallowance for Capex of ₹16.08 Crores incurred towards Capital dredging in 2009-10:</u>	
(i).	(a). At the joint hearing, the VSPL has claimed that the benefit of widened channel and increase in the radius of turning cycle on account of capex done by the VSPL was available to the VPT and to the trade. Even the VPT has, at the joint hearing, stated that the port has benefitted of widening of channel done by VSPL. The VPT to elaborate how the port has benefitted on account of the widened channel and increase in the radius of turning cycle on account of capex done by the VSPL and also indicate from which year such benefit(s) accrued to VPT.	(a). It is to inform that, deepening & widening of inner channel and inner turning circle was done by VPT under phase-I dredging up to (-) 11.8 mtrs. and (-) 12.35 mtrs. respectively with its own funds which was completed in 2009. Therefore, the contention that, VPT and Trade have benefitted on account of capex done by the VSPL towards widening & deepening up to (-) 13.5 mtrs., at inner channel and at inner turning circle is not correct. (b). In this context, it is to mention that M/s.VSPL had made a request to VPT to allow them to take up the deepening and widening of inner channel and inner turning circle waterways leading to EQ-8 and up to EQ-9 up to (-) 13.50 mtrs., at their own risk and cost to facilitate panamax vessels to their berths and an MOU was signed with VSPL on 24.11.2006 in this regard, which is a separate and distinct and has no relevance to BOT agreement existing between VPT & VSPL. It was mentioned therein that, the expenditure towards the same can't be considered as an expenditure under the license agreement, and VSPL shall not claim any compensation on this account. Further, mentioned that, VSPL should take up the deepening works only on receipt of intimation from VPT regarding completion of Phase-I dredging work. VSPL has taken up further deepening in inner harbour turning circle but could complete only a portion of it, which is not at all useful for handing higher draft vessels the purpose intended for and for which the MOU was signed. Finally the MOU was withdrawn as sought by VSPL.
	(b). The VPT vide its letter dated 25 April 2018 while furnishing its comments on the Review Application filed by VSPL at point no.3 has reiterated its earlier stand that the expenditure of ₹16.08 crores incurred by the VSPL in the year 2009-10 is not in line with the provision of the License Agreement. When the VPT admits that the widening of	As already stated above, the expenditure of ₹16.08 crores which was purportedly incurred by VSPL towards deepening & widening of channel has not at all benefitted the Port as VSPL failed to complete the dredging work required for bringing the higher draft vessels intended for and only a part/ portion of the work was

	channel done by VSPL on account of capex of ₹16.08 crores has benefitted the port, the VPT is requested to clarify as to whether the review sought by the VSPL to consider this capex in the tariff can be considered in view of clause 2.9.5 and 2.9.6 of the Tariff Guidelines of 2005, citation of said clauses being one of the reasons given by VSPL for claiming the capex of ₹16.08 crores.	completed, which was not at all useful for handling higher draft vessels. Having failed to complete the work of deepening of inner channel of inner harbor to (-) 13.5 mtrs., and widening of turning circle of inner harbor to facilitate entry of large size vessels, VSPL sought for withdrawal of MOU and accordingly the MOU was withdrawn in 2009.
(ii).	The main submission of VSPL for review of this time is that the only ground for not allowing this Capex by the Authority hitherto was that it is not in accordance with the Main License Agreement. Stating that with the entering of Supplementary License Agreement dated 20 June 2015, the validity of the said reasoning has expired and now this Capex is brought within the ambit of its Main License Agreement, the VSPL has requested us to consider allowing this Capex post execution of Supplementary Agreement with VPT atleast from the current tariff cycle of 2017-2020. In this regard, the VPT is requested to furnish the following information:	The supplementary agreement dated 20 June 2015 entered between VPT and VSPL is for taking up the berth front dredging of EQ-8 and EQ-9 berths of VSPL for a width of 50 m from face of the berth and up to (-) 16.10 mtrs., depth by VPT through DCI at the request of VSPL as a deposit work. Therefore, the supplementary agreement entered between VPT and VSPL dated 20 June 2015 is not at all relevant for admitting the capital dredging expenditure of ₹16.08 crores stated to be incurred by VSPL during the year 2009-10 for deepening & widening of inner channel and inner turning circle, taken up as part of MOU signed in November 2006. It is seen that the expenditure was shown during 2009-10, but MOU was terminated and withdrawn in 2009.
	(a). Please clarify whether the Supplementary Agreement (SA) entered between the VPT and VSPL dated 20 June 2015 is relevant for admitting the capital dredging expenditure of ₹16.08 crores incurred by VSPL for widening the channel and deepening the inner harbour.	As already stated above, VPT has not benefitted from the deepening & widening work of inner channel, inner harbour turning circle taken up by VSPL as they have failed to complete the work and a part/ portion of work was only completed, which is not useful for bringing higher draft vessels the purpose which it was intended for.
	(b). The VSPL has furnished, at the joint hearing, a detailed note to its power point presentation a copy of which is attached herewith. Therein, the VSPL at point not 3(iii) has stated that as per Article 3.9(a)(i)(b), it is the obligation of the VSPL (the licensee) to make efforts to maximize cargo handled so as to achieve optimum utilisation of the project facilities and services. Further, under Article 7.3(iv) of its Main Licence Agreement, it is the obligation that licensor and licensee to mutually cooperate to achieve the objectives of the License agreement. Further, the VSPL has stated that the said Capex has facilitated widening of entrance channel that paved the way for entry of Panamax vessels to the inner harbour berths of not only VSPL but also the berths of VPT. At the joint hearing, even the VPT has also accepted that the benefit of widened channel on account of capex done by the VSPL was available to the VPT. In view of the above and in view of the	As stated above, the MOU of November 2006 signed between VPT and VSPL and the Supplementary Agreement dated 20 June 2015 entered between VSPL and VPT are distinct and different and there is no relation between the two. The MOU of November 2006 entered between VPT and VSPL is for deepening and widening of entrance channel of inner harbour and inner turning circle and waterways leading to EQ-8 and 9 berths up to (-) 13.50 mtrs., at their own risk and cost to handle panamax vessels in their berths. Since they have failed to complete the work and only a portion or part was completed, the MOU was withdrawn during 2009 at their request. The Supplementary Agreement of 2015 is for taking up the berth front dredging for only 50m width of VSPL berths up to (-) 16.1 mtrs., as a deposited work at the request of VSPL. Hence, the expenditure of ₹16.08 crores reported by

	<p>provisions of LA referred by the VSPL as stated above, the VPT is requested to justify for maintaining its earlier stand that the capital dredging expenditure of ₹16.08 crores cannot be considered as an expenditure under the Main License Agreement and VSPL shall not claim incremental tariff on this account.</p>	<p>VSPL in the year 2009-10 cannot be considered for review of berth hire charges as the work taken up was not completed fully and did not serve any intended purpose. Thus, VPT has not benefitted by the work taken up by VSPL through MOU 2006 and the MOU clearly states that this investment can't be considered as an expenditure under the license agreement and shall not claim any compensation on this account.</p>
	<p>(c). The MOU of November 2006 entered between the VPT and VSPL wherein the VSPL had undertaken to deepen and widen entrance channel, inner harbour turning circle and waterways of northern arm of inner harbour to - 13.5 mtrs. is already withdrawn. In view of that and in view of the Supplementary Agreement dated 20 June 2015 entered between VSPL and VPT (to the main License Agreement) wherein the Licensor VPT has permitted the VSPL to proceed with the execution of deepening of the berth front of EQ8 and EQ9, the VPT is requested to examine whether the proposal of the VSPL for review of this capex ₹16.08 crores can be considered for review of berth hire charges.</p>	<p>The Supplementary Agreement signed with VSPL is for deepening of the berth front of EQ8 and EQ9 berths up to 50m in front of the berths only. The main dredging of Inner Channel, Inner Turning Circle and Northern arm up to 50m in front of EQ8 and EQ9 berths was completed by VPT at its cost. Hence, the expenditure of ₹16.08 crores reported by VSPL in the year 2009-10 cannot be considered for review of berth hire charges.</p>
(iii).	<p>(a). As per Clause 3.9(c) (i) (e) of the License Agreement dated 28 November 2001 entered between VPT and the VSPL, the VPT is obliged to carry out capital dredging at the cost and responsibility of the licensee on deposit terms, as stipulated in the LA. The VPT is requested to clarify as to which part of the area the capital dredging pertains to and give the relevant clause in the Main License Agreement in support of the clarification (to be) furnished by VPT.</p>	<p>(1). As per Clause 3.9 operations and maintenance phase c) Obligations of the licensor i) Marine and Port services. The relevant portion is as under: “e) Carry out capital dredging, at the cost and responsibility of licensee and after the licensee make a deposit of apportioned capital dredging cost of the berth i.e. ₹5 crores with the licensor and the deposit will be adjusted once the actual capital dredging cost is known after completion of capital dredging. The licensor shall be undertaking this work through a reputed contractor and the dredging for all the neighboring berths are to be taken up simultaneously in view of interdependence.”</p> <p>(2). Appendix 12 – Executive summary (page 131 of the license agreement). The relevant portion is as under; “We have assumed that dredging would be carried out by us at our cost in coordination with VPT or the cost of dredging to be paid to VPT shall be deposited prior to the commencement of the dredging of the channel. The option of dredging by VPT or us would be decided by us after receipt of LOI.”</p> <p>(3). M/s.Gammon India had informed that as per the bid (Executive summary-</p>

		<p>Appendix 12 page). Option to carry out dredging either by VPT or themselves would be exercised after issue of LOI. They further informed that vide licensee's letter vide 2.8.2001, they exercised option to carry out dredging by themselves.</p> <p>(4). In view of the option provided vide Appendix-12, it is agreed that the dredging would be carried out by themselves.</p>
	<p>(b). As per Clause 3.9(c)(i) read with 3.9(c)(i)(a) of the License Agreement dated 28 November 2001 entered between VPT and the VSPL licensor shall provide at no cost of the licensee the services of scheduling the entry, berthing and sailing of vessels, pilotage and towage on a non-discriminatory basis subject to priority norms set out in the Appendix 18 and sailing schedule as determined by the Deputy Conservatory of the port depending on the individual characteristics and tidal conditions. The VPT is requested to kindly explain this clause in gist for our understanding.</p>	<p>The instant clause outlines the procedure to be followed for berthing of vessels at the Berth Nos.EQ-8 and EQ-9 operated by VSPL. In this regard, it is stated that as per the instant clause, the vessels will be berthed at EQ-8 and 9 on first-cum-first serve basis following the consent given by VSPL. It may be submitted that VPT follows a very transparent policy for berthing of vessels both at the Inner Harbour as well as the Outer Harbour. The berthing policy is amended from time to time as per the requirement of the trade, trend of cargo traffic and directives given by the Ministry. The said policy is approved by the BOT of VPT and is also notified to the Trade and published in the Port's webpage. It may be further reiterated that the vessels are called for working in the Port based on their seniority as per their arrival/ reporting at the Roads/ territorial waters of VPT subject to readiness of documents and payment of all port related charges. Furthermore, vessels enjoying priority in calling as per policy of the port and various priority directives given by the Ministry from time to time is also reflected in the Berthing Policy.</p>
<p>(iv).</p>	<p>The VSPL has stated in Point (vi) of the detailed note to Presentation furnished by VSPL at the joint hearing held on 25 April 2018, that in view of delay in completion of Phase I dredging by VPT and since the required draft to perform SAIL 30 years contract could not be achieved within permissible time, VSPL intimated its decision to VPT to withdraw from MOU to complete dredging to -13.5 mtrs. and same was approved by VPT with the approval of the Government and communicated vide VPT letter dated 4 September 2009. Please indicate the extent of achievement of draft of -13.5 mtrs. at all inner harbour channels cited as one of the requirements to handle fully laden panamax vessels in pursuance of the 30 years contract entered by VSPL with the SAIL on 31 January 2005.</p>	<p>As already explained above at point no.(i) and (ii), VSPL had failed to complete the dredging up to (-) 13.5 mtrs., required as agreed under MOU and to bring the higher draft vessels. Having failed to do the same VSPL sought withdrawal of MOU and was accepted by VPT after taking approval of the Board/ GOI.</p> <p>As the MOU was withdrawn, there is no achievement of any additional draft in the channel or other areas.</p>

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

9. A summary of the points made by the VSPL in the review application, relevant extract from the tariff Order dated 19 January 2018 and our analysis thereon are dealt herein below in seriatim.

(i). **Consider maintenance dredging cost for the years 2017-18 to 2019-20 as estimated by VSPL during the last general revision Order instead of reduction in maintenance dredging cost to the tune of 50% of the estimate of VSPL for each of the said years in Order dated 19 January 2018:**

(a). Submissions made by VSPL:

(i). The deficit position arrived under Vessel Related activity includes difference in reckoning maintenance dredging expenditure at 50% of VSPL's Projection of ₹3.11 crores (i.e.) at ₹1.55 crores by the Authority. The Authority has considered only 12 shifts engagement of Port dredger based on Actuals for 2014-15. But, it is has to be noted that from June, 2014, VPT implemented window periods to the effect that berths shall be shut down on alternate days for Capital dredging of channels to -16.10 Meters and the dredging was in full swing and done at VSPL berth front during 2015-16 when this expenditure was NIL. In other words, the maintenance dredging expenditure was less during 2014-15 to 2016-17 only on account of Capital dredging done during the said period. That shall not be the basis for reducing number of shifts by 50% for the years 2017-18 to 2019-20.

(ii). Hitherto, the maintenance dredging at our berth front was done by engaging the Port dredger at a cost of about ₹5.00 Lakhs per shift. After Dredging to -16.10 Meters, the maintenance dredging activities are required to be done by engaging DCI Dredgers of Higher capacity (Trailer Suction Hopper Dredger) at a huge cost. For the current year 2017-18, VSPL has actually spent ₹1.67 Crores towards maintenance dredging by engaging DCI dredger XX. (Copy of agreement with DCI is furnished). Hence on that basis, our estimated dredging expenditure of ₹3.11 Crores for 2017-18 to 2019-20 may be allowed for computation of surplus under vessel related activity.

(iii). Hence, VSPL requests that the maintenance dredging expenditure estimated for the years 2017-18 to 2019-20 for ₹3.11 crores may be allowed without any reduction.

(b). Relevant extract of Para no.16 (xv) (d) in the Order No.TAMP/19/2017-VSPL dated 19 January 2018:

"The actual maintenance dredging cost reported for the years 2016-17 is ₹13.50 lakhs. The maintenance dredging cost is estimated by VSPL for the years 2017-18 to 2019-20 based on 'per shift' rate applied by the VPT for the year 2016-17 and on the basis of 24 number of shifts per annum dredgers expected to be deployed for maintenance dredging. The unit rate of maintenance dredging cost considered by VSPL is ₹4,23,692/ shift applying 2% annual escalation on the unit rate of ₹4,15,384 per shift for the year 2016-17. The VSPL has furnished a copy each of bill raised by VPT to support the unit rate of dredging of ₹4,15,384 per shift claimed by VPT for the year 2016-17. The VPT has also stated that escalation

applied by VSPL on the unit rate of 415384 per shift is reasonable. Hence the unit rate for estimating the maintenance dredging cost is considered as estimated by VSPL.

The number of shifts considered by VSPL for estimating this cost is 24 shifts for each of the years 2017-18 to 2019-20. The VSPL has stated that maintenance dredging is incurred as per the instructions of VPT based on their periodical hydrographic surveys and depends on the siltation of soil. The VPT has stated that VSPL deployed VPT dredger for 12 shifts in 2014-15, nil shifts in 2015-16 and 3 shifts in 2016-17. Hence, the VPT has stated that reasonableness of deployment and maintenance dredging cost estimated by VSPL cannot be certified. The number of shifts considered by VSPL at 24 are found to be double than the highest number of shifts for maintenance dredging reported in the year 2014-15 by the VPT. In the absence of the VPT furnishing the estimate of number of shifts for the years 2017-18 to 2019-20, the number of shifts considered by the VSPL is moderated and considered at 12 for each of the years being the highest number of shifts during the last three years 2014-15 to 2016-17 furnished by VPT. ”

(c). Analysis:

- (i). The VSPL during the proceedings relating to its general revision proposal which was disposed of by this Authority vide Order dated 19 January 2018, had estimated maintenance dredging expenditure for the years 2017-18 to 2019-20 at ₹101.69 lakhs, ₹103.72 lakhs and ₹105.79 lakhs respectively considering number of shifts at 24 for each of the years. The aggregate maintenance dredging cost was ₹3.11 crores.
- (ii). This expense was moderated for reasons recorded in para 16 (xv) (d) of the Order and it was considered at ₹50.84 lakhs, ₹51.86 lakhs and ₹52.90 lakhs for the years 2017-18 to 2019-20 respectively aggregating to ₹1.56 crores.
- (iii). The VSPL has now submitted that the maintenance dredging expenditure was less during 2014-15 to 2016-17 only on account of Capital dredging done by the VPT during the said period. That shall not be the basis for reducing number of shifts by 50% for the years 2017-18 to 2019-20. The actual expenses reported by the VSPL is ₹1.67 crores for the year 2017-18. The VPT has also confirmed that VSPL has paid ₹1.68 crores towards maintenance dredging during the year 2017-18 to M/s.DCI based on the documents submitted. The submissions and justification now furnished by the VSPL were not furnished either by the VPT or by the VSPL during the last general revision of the VSPL.
- (iv). Based on the submissions now made, the VSPL has sought review of this item and has requested to consider total estimated maintenance dredging expenditure for the years 2017-18 to 2019-20 for ₹3.11 crores.
- (v). In view of submissions now made by VSPL and confirmation given by VPT and based on actual expenditure of this item reported by VSPL and VPT for the year 2017-18, there is merit to review this item. Therefore, the maintenance dredging expenditure is considered at ₹1.02 crores, ₹1.04 crores and ₹1.06 crores for the years 2017-18 to 2019-20 respectively as estimated by VSPL as against 50% moderation done in the last general revision Order.

Consequent to the above modification, the modified total operating cost works out to ₹8,079.63 lakhs, ₹8,355.73 lakhs and ₹8,633.33 lakhs in the years 2017-18 to 2019-20 aggregating to ₹25,068.70 lakhs as against ₹8,028.79 lakhs, ₹8,303.87 lakhs and ₹8,580.44 lakhs respectively aggregating to ₹24,913.10 lakhs considered in the Order dated 19 January 2018.

(ii). **Consider capex of ₹16.08 crores incurred in the year 2009-10 towards Capital dredging which was disallowed by the Authority in last tariff revision Order dated 19 January 2018 as well as previous tariff Orders in view of supplementary agreement now entered between the VPT and VSPL dated 20 June 2015. This item to be considered for the current tariff cycle 2017-18 to 2019-20:**

(a). Submissions made by VSPL

(i). This item of capex has been repeatedly disallowed by the Authority for two reasons viz. (i) It is not as per the LA (ii) The MOU entered with the VPT does not permit to consider this capex for tariff revision purpose.

(ii). (a). VSPL commenced its operations at its berths in 2005. At that time VPT had declared a dredged depth of -10.70 Meters.

In order to maximize the throughput, VSPL had entered into a 30 year contract with SAIL on 31 January 2005, to handle fully laden Panamax vessels which required a dredged draft of -14.0 Meters at its berths and -13.5 Meters at all Inner Harbour Channels. Since the present facility was to handle only Handymax vessels with a beam of upto 27 Meters, VSPL entered into a MOU on 24 November 2006 with VPT to undertake further widening and deepening of all Inner Harbour waterways to -13.5 Meters at its cost and awarded the contract to the same DDIL.

(b). The Dredging Company first widened the Inner Harbour Channel and Turning circle from 97.5 Meters to 111 Meters doing Rock Dredging and started work on account of VSPL at the Inner Harbour channel first as more than 50% area of Inner Harbour channels were common to both waterways leading to VSPL and VPT berths in the Inner Harbour.

(c). Subsequently, in view of the abnormal delay in completion of Phase 1 dredging by VPT and since the required draft to perform SAIL 30 years contract could not be achieved within the permissible time, VSPL intimated its decision to withdraw from the MOU to complete dredging to -13.5 Meters and same was approved by VPT with the approval of the Government and communicated vide VPT letter dated 4 September 2009.

(iii). The benefit of widened channel and increase in the radius of turning cycle on account of capex done by the VSPL was available to the VPT and to the trade. As it is the Licensee who have invested, the Capex claimed by the Licensee is just and proper.

(iv). (a). There is no bar under Tariff Guidelines, of 2005 under which VSPL is governed to incur any capex to augment capacity either by way of Capital equipment, development of additional storage or any infrastructure for the allowability of any Capex. The Authority is governed by clause 2.9.5 and 2.9.6 of the Tariff Guidelines, 2005.

(b). Clause 2.9.5 stipulates that reasonableness of capital base will be assessed and cost of fully commissioned Business Assets that can be directly identified as created for the port business and in use will only be considered while computing allowable depreciation and ROCE.

Clause 2.9.6 also stipulates that reasonableness of fresh investments made for creation of capacity will be assessed on the basis of (i) Reduction in unit operating cost,

(ii) Additional traffic generated, (iii) Improvements in operational efficiency and (iv) Combination of any or all these factors.

VSPL are covered under 2005 guidelines. As per 2005 guidelines, there is no limit on capex. There is no limit on capex in LA as well. Clause 2.9.5. and 2.9.6 of the tariff guidelines of 2005 permit to allow the reasonable investment by the BOT operator for creation of capacity.

(c). It is an undeniable fact that the Capex of ₹16.08 crores fulfill all the above stated criteria for consideration by the Authorities. The increase in cargo volume by entry of Panamax vessels after widening of channels is on the record of the Port and the Authorities.

(v). The fact that the VSPL's License Agreement provides for ultimate draft of 12.5 Meters only is no longer valid with entering into Supplementary License Agreement on 20 June 2015 providing for draft of -16.10 Meters at VSPL berths which formed part of original License Agreement. As such the capex is within the purview of our License Agreement.

The Authority in Order dated 19 January 2018 has solely relied on the assertion of the VPT which is erroneous on the facts as VPT has only reiterated its earlier stand purely based on original License Agreement and not replied anything how that reason still holds good post execution of Supplementary License Agreement forming part of the original License Agreement. The Authority too have not dealt the issue under the said para of the Order as to why this is not an allowable expenditure when the issue of requirement of clause 2.9.11 of Tariff guidelines, 2005 that Capex shall be as per License Agreement is now settled with the execution of Supplementary Agreement thereby bringing this Capex within the ambit of our License Agreement. Hence it is requested that this issue be dealt objectively by the Authority independent of the views of VPT as they have offered no adverse remark on allowing this Capex under the Supplementary License Agreement but only reiterating stand with reference to the original License Agreement.

Accordingly, VSPL requests the Authority to atleast allow the above said capex of ₹16.08 crores for depreciation and an eligible investment for ROCE at least from the current tariff cycle of the years 2017-18 to 2019-20 as the deepening to -16.10 Meters was completed by VPT and at VSPL berth fronts in February, 2016.

(b). Relevant extract of Para no.16 (v) (q) in the Order No.TAMP/19/2017-VSPL dated 19 January 2018:

“(q). During the tariff revision in March 2009, the VSPL had proposed capital dredging of ₹49.95 crores in the year 2009-10 towards deepening/widening of channel.

As per the LA, it is the obligation of the Licensor to undertake capital dredging at the cost and responsibility of the Licensee i.e. the VSPL. The VPT and the VSPL had entered into a Memorandum of Understanding in November 2006 wherein the VSPL had undertaken to deepen and widen entrance channel, inner harbour turning circle and waterways of northern arm of inner harbour to - 13.5 mtrs. The MOU had clearly stated that the VSPL shall not claim any compensation or incremental tariff on account of the capital dredging proposed to be undertaken as per the MOU. The VPT had also categorically stated during the 2009 revision that the capital dredging cost must not be included in the tariff revision exercise as per the MOU.

Since the capex relating to capital dredging claimed by VSPL was not found to be in line with the LA or as per the MOU entered between VSPL and VPT, the proposed capex was not allowed in the tariff revision of March 2009. Subsequently, during the tariff revision in October 2011, the VSPL reported that an expenditure of ₹16.08 crores has been incurred towards deepening of channel / berth and capitalized the same during the year 2009-10 and had requested to consider the same citing that the MOU entered by it with VPT had been withdrawn. Whilst the VPT had confirmed that the MOU with VSPL has been withdrawn, it had reiterated its earlier stand that the said capital expenditure incurred by VSPL is not required to be considered for tariff revision since the same is not in line with the provisions of the License Agreement. Therefore, the capital expenditure of ₹16.08 crores reported by VSPL in the year 2009-10 on this account was excluded in past period analysis carried out in the October 2011 Order. Same approach was followed in Order dated May 2015.

In the current revision the VSPL has again requested to allow the capex of ₹16.08 crores incurred towards deepening of channel/ berth and capitalized in the year 2009-10 by the VSPL citing that supplementary License Agreement dated 20 June 2015 has been entered between VSPL and VPT and hence has requested this Authority to re-consider this item. The VSPL has stated that the change with reference to the earlier tariff revision is that now a supplementary agreement has been entered permitting VSPL to deepen their berth fronts to -16.10 Meters and as such the Capex is brought within the ambit of License Agreement. When VSPL was requested to give reference to the relevant clause allowing the dredging cost in the fixation of tariff, the VSPL has stated that the Supplementary agreement was unilaterally finalized by VPT and VSPL had no choice except to enter the same for getting the dredging completed. Hence, there is no such specific clause in the Supplementary Agreement allowing this Capex in fixation of tariff. However, the VSPL

has contended that hitherto, the expenditure was not allowed by this Authority for the reason that the same was entered outside the purview of the License Agreement by an MOU and in the said MOU there was a condition that VSPL shall not seek any tariff increase for this Capex. The said MOU having been withdrawn by mutual consent of Licensor and Licensee is not relevant now. The VSPL has stated that supplementary agreement dated 20 June 2015 entered between VSPL and VPT now forms part of the main License Agreement and accordingly this Capex is automatically brought under the purview of the License Agreement. The VSPL has referred to the provision in Tariff guidelines of 2005 which stipulates the eligibility conditions for allowing any Capital expenditure if done by the BOT operator as per the License Agreement. Clause 2.9.11 of the Tariff Guidelines of 2005 stipulates that in the case of private terminal operator, if the investment made is in accordance with the obligations under the concession agreement it will be considered for ROCE even if full capacity utilisation is not achieved.

The VPT was also requested to clarify whether to consider the request of the VSPL to allow the said capex of ₹16.08 crores incurred by VSPL towards deepening of channel/ berth and capitalized in the year 2009-10 by the VSPL in view the submissions now made by VSPL in the current proposal. The VPT has reiterated that the said capital expenditure of ₹16.08 crores reported by VSPL in the year 2009-10 is not in line with the provisions of License Agreement. The VPT has, however, while furnishing its reply not drawn reference to the supplementary agreement dated 20 June 2015 entered between VSPL and VPT to the main License Agreement wherein the Licensor VPT has permitted the VSPL to proceed with the execution of deepening of the berth front of EQ8 and EQ9 based on the technical feasibility conducted by IIT Madras.

The VSPL has stated that the said capex of ₹16.08 crores is in line with Article 7.3(iv) of its Licence agreement with VPT which stipulates that VPT and VSPL shall mutually cooperate to achieve the objective of the License agreement so as to achieve high throughput performance by optimum utilization of Project facilities of VSPL. The VSPL has stated that the said Capex has facilitated widening of entrance channel that paved the way for entry of Panamax vessels to the inner harbour berths of not only VSPL but also the berths of VPT.

In this regard it is to state that since the capex relating to capital dredging claimed by VSPL was not found to be in line with the LA or as per the MOU entered between VSPL and VPT, the proposed capex was not allowed in the tariff revision of March 2009. Subsequently, during the last tariff revision in October 2011, the VSPL reported that an expenditure of ₹16.08 crores has been incurred towards deepening of channel / berth and capitalized the same during the year 2009-10 and had requested to consider the same citing that the MOU entered by it with VPT had been withdrawn. Whilst the VPT had confirmed that the MOU with VSPL has been withdrawn, it had reiterated its earlier stand that the said capital expenditure incurred by VSPL is not required to be considered for tariff revision since the same is not in line with the provisions of the License Agreement. Therefore, the capital expenditure of ₹16.08 crores reported by VSPL in the year 2009-10 on this account was not considered in the tariff revision order of 2015.

In the current revision, the VSPL has requested referring to the supplementary agreement to the main License Agreement entered on 20 June 2015 between VSPL and VPT, this Authority to admit ₹16.08 crores incurred by VSPL towards capital dredging in the year 2009-10. The said supplementary agreement refers to the proposal of VSPL dated 27

December 2014 for capital dredging. The VPT in the current exercise has reiterated that the said capital expenditure of ₹16.08 crores reported by VSPL in the year 2009-10 is not in line with the provisions of License Agreement. In view of the VPT categorically stating that the said capex is not as per the LA and in view of clause 2.9.11 of the tariff guidelines of 2005, the capex incurred by VSPL in the year 2009-10 is not considered. In the last tariff Order it was not considered hence same position is maintained for the past period analysis. That being so, net fixed assets and depreciation are suitably adjusted to excluded this item. The port and VSPL may sit together and resolve the matter.”

(c). Analysis:

(i). The VSPL during the proceedings relating to its general revision proposal which was disposed of by this Authority vide Order dated January 2018, had requested to allow capex of ₹16.08 crores incurred by VSPL towards capital dredging in the year 2009-10.

(ii). With regard to above submissions of VSPL at (ii) (a) to (c), above, it is relevant here to state that as per Clause 3.9(c) (i) (e) of the Main License Agreement dated 28 November 2001 entered between VPT and the VSPL, it is the obligation of the Licensor i.e. VPT to undertake capital dredging at the cost and responsibility of the Licensee i.e. the VSPL. In order to cater to the vessel of SAIL, the VSPL undertook itself the task of deepening and widening of entrance channel of inner harbour and inner turning circle and waterways and for this VSPL had entered into a Memorandum of Understanding with the VPT in November 2006 to undertake this task at their own risk and cost to handle panamax vessels in their berths. The MOU entered between the VPT and the VSPL had clearly stated that the VSPL shall not claim any compensation or incremental tariff on account of the capital dredging proposed to be undertaken as per the MOU. The VPT had also categorically stated during the earlier revision of the VSPL case that the capital dredging cost must not be included in the tariff revision exercise as per the MOU.

The MOU of November 2006 signed between VPT and VSPL has been withdrawn in the year 2009. The Supplementary Agreement dated 20 June 2015 entered between VSPL and VPT is distinct and different and there is no relation between the two as stated by the VPT.

The deepening and widening of inner channel and inner turning circle was done by VPT under phase-I dredging up to (-)11.8 mtrs. and (-)12.35 mtrs. respectively by the VPT with its own funds and was completed in the year 2009.

(iii). With regard to above submission of VSPL at (iii) on this point of review, the VPT was requested to furnish the details about benefit of widened channel on account of capex done by the VSPL available to the VPT.

The port has categorically stated that the expenditure of ₹16.08 crores which was purportedly incurred by VSPL towards deepening and widening of channel has not at all benefitted the Port as VSPL failed to complete the dredging work required for bringing the higher draft vessels intended for and only a part/portion of the work was completed, which was not at all useful for

handling higher draft vessels. The VPT has held that the VSPL having failed to complete the work of deepening of inner channel of inner harbor to (-)13.5 mtrs., and widening of turning circle of inner harbor to facilitate entry of large size vessels, had sought for withdrawal of MOU and accordingly the MOU was withdrawn in 2009.

Further, deepening and widening of inner channel and inner turning circle was done by VPT under phase-I dredging up to (-)11.8 mtrs. and (-)12.35 mtrs. respectively with the port owned funds which was completed by the VPT in the year 2009. Therefore, the contention of VSPL that VPT and Trade have benefitted on account of capex done by the VSPL towards widening & deepening up to (-)13.5 mtrs., at inner channel and at inner turning circle is denied by the land lord port VPT.

- (iv). The VSPL at (iv) (a) to (c) on this point of review has referred to clause 2.9.5. and 2.9.6 of the Tariff Guidelines of 2005. The relevant clause is 2.9.11 of the Tariff Guidelines of 2005. The said clause stipulates that in the case of private terminal operator, if the investment made is in accordance with the obligations under the concession agreement it will be considered for ROCE even if full capacity utilisation is not achieved.

As per the Clause 3.9 (c) (i) (e) Concession Agreement, it is the obligation of the Licensor i.e. VPT to undertake capital dredging at the cost and responsibility of the Licensee. This refers to the dredging done in Berth Front of VSPL Berths EQ.8 and EQ.9 upto -12/12.5 Meters as stated by the VSPL. Whereas, the capital expenditure of ₹16.08 crores incurred in the year 2009 claimed by the VSPL is with reference to the expenditure incurred by the VSPL for deepening and widening of inner channel and inner turning circle waterways leading to EQ-8 and up to EQ-9 up to (-)13.50 mtrs which as per MOU is at their own risk and cost to facilitate panamax vessels to their berths. Subsequently, MOU was withdrawn in the year 2009 by VSPL. The VPT has stated that the MOU is separate and distinct and has no relevance to Concession agreement existing between VPT & VSPL. Since the said investment is not found to be as per the Concession Agreement and the VPT, the licensor port categorically denying to consider this item in the tariff fixation, the review of this item is not found warranted.

- (v). The main submission of VSPL at para (v) of this point for review is that with the entering of Supplementary License Agreement dated 20 June 2015, the validity of the said reasoning has expired and now this Capex is brought within the ambit of its Main License Agreement.

When VSPL was requested to give reference of the relevant clause in the Supplementary Agreement to support the contention of the VSPL that Capex of ₹16.08 crores incurred towards Capital dredging in 2009-10 is brought within the ambit of the Main License Agreement dated 28 November 2001, post execution of Supplementary Agreement, the VSPL has not given the relevant clause in Supplementary Agreement. Moreover, as stated earlier the VPT has categorically stated that MOU signed between VPT and VSPL on 24 November 2006 is a separate and distinct and

has no relevance to BOT agreement existing between VPT & VSPL.

The supplementary agreement dated 20 June 2015 entered between VPT and VSPL is for taking up the berth front dredging of EQ-8 and EQ-9 berths of VSPL for a width of 50 m from face of the berth and up to (-) 16.10 mtrs., depth by VPT through DCI at the request of VSPL as a deposit work. Therefore, the VPT has categorically stated that supplementary agreement entered between VPT and VSPL dated 20 June 2015 is not at all relevant for admitting the capital dredging expenditure of ₹16.08 crores stated to be incurred by VSPL during the year 2009-10 which was for deepening & widening of inner channel and inner turning circle, taken up as part of MOU signed in November 2006.

As regards the point made by the VSPL that this Authority has solely relied on the assertion of the VPT and not replied anything how that reason still holds good post execution of Supplementary License is not correct. It can be seen that this Authority has elaborately dealt with this item in para 16 (v) (q) of the Order dated 19 January 2018.

(vi). In view of above analysis, review of this item is not warranted.

(iii). **Consider discount / rebate to Steel Authority of India Limited (SAIL) in the revenue projections from the years 2017-18 to 2019-20 which was disallowed by the Authority in last tariff revision Order dated 19 January 2018:**

(a). Submissions made by VSPL

(i). Under para 16(xi) (b) of the Tariff order, our request for exclusion of discount of ₹17.08 crores for the years 2017-18 to 2019-20 was not considered by the Authority on the following grounds:

(a). Tariff has to be determined with reference to the cost position reflected based on revenue estimation at the existing SOR approved in the last general revision order. This approach is followed uniformly while determining tariff of all private operators under 2005 Tariff Guidelines.

(b). If the request is considered, it would warrant higher tariff increase which have to be borne by users other than SAIL.

(c). The rates agreed between VSPL and SAIL as an individual user agreement between two parties and that cannot form the basis for tariff determination.

(ii). VSPL submits that above contentions may no longer hold good post issue of following clarifications by the Authority based on the opinion of the A.G, vide letter No.TAMP/46/2015-Misc. dated 24 July 2015. As per opinion of AG both financial and Physical parameters will be taken into account for the purpose of clause 2.13 of the Tariff Guidelines, 2005 and 20% of the surplus would be allowed to be retained by the operator. It is only surplus over and above the 20% that shall be shared equally between the operator and the users. Thus, the Income to be considered for the purpose of clause 2.13 will be the actual income earned by the operator based on their audited accounts and not on any notional income.

- (iii). In the current tariff order our actual income for 2014-15 to 2016-17 has been considered as per audited accounts which is net of discounts and rebates in line with the above said clarification. The VSPL has already entered into a three years contract with SAIL from August 2017 and during the said period the rate is fixed and SAIL being a PSU there is no scope of collecting any rate other than the discounted rate prescribed in the contract. During review of actual income collected from SAIL in next tariff cycle with respect to projection, the actual revenue collected (Audited) is going to be allowed by the Authority. It is thus fair and reasonable that current tariff fixation shall not be based on any such notional income knowing that same is not going to be collected. Hence, it is requested to exclude the notional income.

The VSPL, therefore, requests the Authority, to exclude the discount/ rebate of ₹5.7 crores, ₹5.69 crores and ₹5.69 crores in the years 2017-18 to 2019-20 respectively aggregating to ₹17.08 crores from the projected income.

- (b). Relevant extract of Para no.16 (xi) (b) in the Order No.TAMP/19/2017-VSPL dated 19 January 2018:

“The VSPL has requested to reduce estimated discount of ₹5.7 crores, ₹5.69 crores and ₹5.69 crores in the years 2017-18 to 2019-20 respectively aggregating to ₹17.08 crores likely (to be) offered to SAIL in view of short term contract entered by VSPL with SAIL from the estimated revenue for the years 2017-18 to 2019-20. In this regard, it is relevant to mention that the tariff has to be determined by this Authority with reference to the cost position reflected based on revenue estimation at the existing Scale of Rates approved by this Authority in the last general revision Order. This approach is followed uniformly while determining the tariff of all the Private Terminal Operators governed under tariff guidelines of 2005. If the request of the VSPL to consider the income net of discount of ₹17.08 crores is accepted, it would warrant higher tariff increase than the increase proposed by VSPL. The differential increase will have to be borne by users other than SAIL, which is not desirable. Further, the rates agreed between VSPL and SAIL as an individual user in an agreement is between the said two parties and that cannot form the basis for tariff determination. Hence, the request of VSPL to reduce the impact of estimated rebate/ discount from the income estimation in the tariff determination process could not be acceded to.

Though the VSPL has requested that the impact of rebate/ discount of ₹17.08 crores estimated by it for the years 2017-18 to 2019-20 should be captured in cost statement, it is seen that the income estimates considered by VSPL in the cost statement is as per the SOR approved by this Authority in tariff Order of May 2015. It does not capture the effect of estimated rebate/ discount.”

- (c). Analysis:

- (i). The opinion of the AG conveyed by the MOS and communicated to all BOT operators governed under the Tariff Guidelines of 2005 is with reference to clause 2.13 of the Tariff Guidelines 2005. Clause 2.13 of the Tariff Guidelines of 2005 is for review of the actual physical and financial performance at the end of the prescribed tariff validity period with reference to the projections relied upon at time of fixing the then prevailing tariff. If

performance variation of more than + or – 20% is observed as compared to the projections, tariff will be adjusted prospectively. While doing so 50% of the benefit/ loss already accrued will be set off while revising the tariff.

- (ii). Accordingly, while revising the tariff of the VSPL in January 2018, the actual physical and financial parameters of the previous tariff cycle i.e. 2014-15 to 2016-17 whose validity period ended on 31 March 2017 was reviewed vis-à-vis the estimates considered in the May 2015 Order for the said years. While doing so, based on the opinion of AG, the actual income reported in the Audited Accounts of the years 2014-15 to 2016-17 which is net of the discount allowed by VSPL to SAIL were considered. This is brought out in para 16 (viii) (e) of the Order dated 19 January 2018.
- (iii). The request of the VSPL to reduce estimated discount of ₹5.70 crores, ₹5.69 crores and ₹5.69 crores in the years 2017-18 to 2019-20 respectively aggregating to ₹17.08 crores likely (to be) offered to SAIL in view of short term contract entered by VSPL with SAIL from the estimated revenue for the years 2017-18 to 2019-20 is not in line with clause 2.13 of Tariff Guidelines of 2005 referred by VSPL.

The reasons for not excluding the discount / rebates to be offered by VSPL to SAIL from income estimates for the years 2017-18 to 2019-20 is brought out in para 16 (xi) (b) of the Order dated 19 January 2018. It is, therefore, reiterated that the tariff has to be determined by this Authority with reference to the cost position reflected based on revenue estimation at the then existing Scale of Rates approved by this Authority. The rates agreed between VSPL and SAIL as an individual user in an agreement is between the said two parties and that cannot form the basis for tariff determination. Hence, the request of VSPL to reduce the impact of estimated rebate/ discount from the income estimation of the years 2017-18 to 2019-20 for the tariff determination process of the current cycle cannot be acceded to.

- (iv). Thus, discount / rebates given / to be given cannot form basis of tariff fixation. Discounts / rebates allowed by VSPL shall, however, be considered while analysing the actuals with reference to the estimates during next review as per clause 2.13 of the tariff guidelines of 2005 and taking into consideration the opinion of AG in this regard.

Thus, based on the above analysis, there is no case for review of this item sought by VSPL.

It is also relevant here to state that same approach was followed in VSPL Orders dated October 2011, May 2015 and January 2018 also. This approach was followed not only in the case of the VSPL but also in the case of all BOT Operators a governed by the tariff guidelines of 2005.

- (iv). **Consider advance payment of lease rentals under Sunday debtors which was disallowed by the Authority in last tariff revision Order dated 19 January 2018:**

- (a). Submissions made by VSPL

Under para 16(vi)(b) of the Order dated 19 January 2018, it is stated that the License Agreement entered by VSPL with VPT does not prescribe any advance payment of lease rentals and such prepayments can be considered only if the same follows from the provisions of the License Agreement.

Clause 5.2 of License Agreement entered between VPT and VSPL provides that Land lease rentals shall be paid by Licensee yearly as per the terms and conditions of the land lease agreement to be entered into separately. Payment of advance lease rental is as per the terms of the said land lease agreement only and accordingly the same flows only from the provisions of the License Agreement. Hence, it is requested that advance lease rental may be considered as an item of Sundry debtor.

- (b). Relevant extract of Para no.16 (vi) (b) and 16 (xxv) (b) (ii) in the Order No.TAMP/19/2017-VSPL dated 19 January 2018:

Para no.16 (vi) (b)

“(b). As per the Order passed by this Authority dated 30 September 2008 clarifying certain areas of approach followed in tariff fixation under 2005 guidelines, prepayments of certain expenses which flow from the provisions of the Licence Agreement can be considered as Sundry Debtors.

The License Agreement entered by the VSPL with the VPT, does not prescribe any advance payment of lease rentals.

As per Article 5.1 of the LA entered between VSPL and VPT, the revenue share is payable on or before 7th day of the immediately subsequent month. It is thus clear that as per LA, the VSPL is not required to make any advance payment of revenue share also. In the case of the VSPL, it is found that none of the items flowing from the License Agreement qualify for consideration.”

Para 16(xxv) (b) (ii)

“As per the Order passed by this Authority on 30 September 2008 refining 2005 guidelines, prepayments of certain expenses which flow from the provisions of the Licence Agreement can be considered as Sundry Debtors. As analysed in the past period analysis, in the case of the VSPL, it is found that none of the items flowing from the License Agreement qualify for consideration as sundry debtors.”

- (c). Analysis:

- (i). As per the Order passed by this Authority on 30 September 2008 clarifying certain aspects of tariff setting under 2005 guidelines, prepayments of certain expenses which flow from the provisions of the Licence Agreement can be considered as Sundry Debtors.
- (ii). Clause 5.2 of License Agreement entered between VPT and VSPL provides that Land lease rentals shall be paid by Licensee yearly as per the terms and conditions of the land lease agreement to be entered into separately. The said License Agreement does not explicitly state the words "advance". Hence on this premise, lease rental was not considered as part of sundry

debtors in the past period analysis as well as in the future estimates for arriving at the working capital.

The VPT has also not made any adverse remarks about the advance payment of lease rental stated by the VSPL. The VPT in their comments has referred that advance lease rental is not treated as Sundry Debtors as per Accounting Practices and left the matter to this Authority to decide. For fixation of tariff this Authority is not governed by the Accounting Standards which is for the BOT operators to follow for maintaining their Accounts.

Since the said advance payments are governed by LA provisions there is a case to consider such pre-payments as part of working capital for the purpose of allowing return in line with the Order of this Authority dated 30 September 2008. Recognising that the advance payment will get adjusted against the rent payable for the respective month and at the end of the year entire advance is adjusted, the average of the pre-payment at 50% of the lease rentals is considered as part of working capital. This is in line with the approach followed in the case of Central Warehousing Corporation, Chennai Container Terminal Limited, South West Port Limited, etc.

(iii). Accordingly, the 50% of the actual lease rent reported in the Audited Annual Accounts of the VSPL for the years 2014-15 to 2016-17 is considered in the past period analysis. By doing so, the working capital continues to be negative for the years 2014-15 to 2016-17 as well as for the year 2017-18 to 2019-20 and hence considered as nil while working out the Capital employed.

(v). **Consider the provision for bad debts in actuals for the years 2014-15 to 2016-17 to the tune of ₹120.80 lakhs which was disallowed by the Authority in last tariff revision Order dated 19 January 2018:**

(a). Submissions made by VSPL

Under para 16(v)(n), the Authority has not allowed the bad debts and provision for bad debts amounting to ₹120.38 Lakhs for the years 2014-15 to 2016-17 citing that as per the provisions contained in the existing SOR of VSPL, service are rendered on payment of relevant charges in advance. But our SOR does not appear to have such provision. Actually, only berth hire is collected in advance and our customers normally pay cargo handling charges only after delivery of cargo at their destination or after loading of cargo into Rail Rakes. Accordingly on a turnover of ₹354.05 crores for the said three years period, bad debts provisions of ₹1.20 crores is incidental and normal for our operation size. Accordingly request the Authority to allow the said expenditure of ₹120.38 lakhs in the actuals for the years 2014-15 to 2016-17 so that same may be followed in future, if approved.

(b). Relevant extract of Para no.16 (v) (n) in the Order No.TAMP/19/2017-VSPL dated 19 January 2018:

“(n). The Management & Administration overheads considered by VSPL include ₹8.22 lakhs for the year 2016-17 towards bad debts written off and ₹57.27 lakhs and ₹54.89 lakhs for the years 2014-15 and 2015-16 respectively towards provision for doubtful receivables/ advances. This item was not a part of the estimates of Management & Administration overheads considered for the relevant years at the time of revision of tariff in May 2015. Further, as per the provisions contained in the existing

Scale of Rates of VSPL, services are rendered on payment of the relevant charges in advance. That being so, the question of tariff fixing exercise recognising the credits extended by VSPL and writing off bad debt and making provision for doubtful debts does not arise. Hence, the bad debts written off and provision for doubtful debts are excluded for the purpose of analysis of the performance of VSPL.”

(c). Analysis:

It is admitted that the sentence made in the said para of the Order that "as per the provisions contained in the existing Scale of Rates of VSPL, services are rendered on payment of the relevant charges in advance" is not prescribed in the SOR of the VSPL. Notwithstanding this position, it is relevant to state that bad debts written off and provision for doubtful receivables/ advances are not treated as admissible cost while fixing the tariff. This approach is uniformly followed across all the BOT operators governed under the Tariff Guidelines of 2005 in their tariff fixation exercise. That being so, the point made by the VSPL to recognise writing off bad debt only in the case of the VSPL does not arise. Further, it is also relevant here to state that same approach was followed in earlier tariff revision Order of VSPL also.

In view of the above, this Authority does not like to review this item.

(vi). **Consider increase in Berth hire Charges by 25% increase requested by VSPL as against 15% as considered by the Authority in Order dated 19 January 2018**

(a). Submissions made by VSPL

The estimated deficit for Vessel Related Activity for the years 2017-18 to 2019-20 has been arrived at ₹4.17 crores as against VSPL's estimate of ₹12.77 crores. If the Authority considers the grievance points of VSPL on the above mentioned points for review and gives effect to the same in arriving at the deficit position under Vessel Related activity, then proposed increase of 25% in berth hire could be found justified by the Authority. The VSPL has thus sought to increase the berth hire charges by 25% as against 15% approved by the Authority vide Order dated 19 January 2018.

(b). Relevant extract of para 16 (xxix) and (xxix) (a) in the Order No.TAMP/19/2017-VSPL dated 19 January 2018:

“(xxix). The consolidated cost statement and main activity-wise cost statements and sub-activity wise cost statement for the years 2017-18 to 2019-20 at the existing tariff i.e. as per the rates approved by this Authority in the May 2015 Order have been modified in line with the above analysis. The modified cost statements are attached as Annex - II (a) to (e). The summarised position of the results disclosed in the financial / cost statements at the existing level of tariff i.e. as per the rates approved by this Authority in the May 2015 Order are tabulated below:

Sl. No.	Particulars	Operating Income (₹ in lakhs)				Net Surplus (+) / Deficit (-) (₹ in lakhs)				Net Surplus (+) / Deficit (-) as a % of Operating Income			
		2017-18	2018-19	2019-20	Total	2017-18	2018-19	2019-20	Total	2017-18	2018-19	2019-20	Average
1.	VSPL as a whole	2854.75	3111.84	13371.21	39337.79	-575.92	-363.48	-134.58	-1073.99	-4.48%	-2.77%	-1.01%	-2.73%
2.	Vessel related	1396.55	1424.48	1452.56	4273.59	-232.40	-138.02	-47.42	-417.84	-16.64%	-9.69%	-3.26%	-9.78%
3.	Cargo related	1458.20	11687.36	11918.65	35064.21	-343.53	-225.46	-87.16	-656.15	-3.00%	-1.93%	-0.73%	-1.87%

	(a) BMHS	3300.00	3366.00	3433.50	10099.50	-1047.00	-944.36	-830.33	2821.69	-31.73%	-28.06%	-24.18%	-27.94%
	(b) Conventional handling of cargo	8158.20	8321.36	8485.15	24964.71	703.57	718.99	743.17	2165.54	8.62%	8.64%	8.76%	8.67%

The above table ----- The increase/decrease proposed in various items by the VSPL is discussed below:"

(a). Berth hire charge:

The VSPL in the original proposal had maintained status quo in the berth hire charges. In the revised proposal, the VSPL has proposed 25% increase in the berth hire charge i.e. from USD 0.0072 to USD 0.0090 in view of the average deficit of 30% reflected in the cost statement prepared by VSPL for the vessel related activity i.e. towards berth hires services.

It is seen that from the table above that the vessel related activity reflects an average deficit of 9.78% for the years 2017-18 to 2019-20 and in absolute terms the aggregate deficit for the said period comes to ₹418.07 lakhs. By the time the Order comes into effect, it may be around March 2018. That being so, if the total deficit of ₹418.07 lakhs is spread over the estimated revenue from berth hire charges for 1 month i.e. March 2018 in the year 2017-18 and 2018-19 and 2019-20, the tariff increase required comes to 13.96%. As against that, the VSPL has proposed 25% increase in the berth hire charge. However, since even after considering the estimated additional revenue from tariff increase / decrease and deletion of one tariff item sought by VSPL in cargo handling activity as brought out in the analysis there remains a marginal deficit of ₹32.85 lakhs for the terminal as a whole, this Authority decides to grant 15% tariff increase in the berth hire charges so that the entire deficit reflected in the cost statement is getting covered after considering the impact of additional income from tariff increase/ decrease proposed in cargo handling activity as well.

As regards, coastal vessel the increase proposed by VSPL works out to 84.5% as against 25% increase proposed in the foreign going vessel. This appears to be on account of VSPL applying the prevailing exchange rate of 1US\$ = ₹64.18 on the rate proposed for foreign going vessel and applying 60% concession thereon for arriving at the proposed rate. The prevailing coastal concession policy issued by the Ministry of Shipping, do not permit restatement of coastal vessel rates with reference to exchange rate at the time of each general revision of Scale of Rate. Clause 6.1.2. of the 2005 tariff guidelines do not permit restatement of coastal vessel rates with reference to exchange rate at the time of each general revision of Scale of Rates. That being so, the rate for coastal vessel is prescribed applying 15% increase over the existing rate. As against 25% increase proposed by VSPL in the minimum berth hire charges for both foreign and coastal vessel, 15% increase in the minimum berth hire charges is approved as considered for berth hire charges.

At 15% increase granted in the berth hire, the additional revenue likely to be earned for the said period i.e. March 2018 till 31 March 2020 will be ₹450.73 lakhs."

(c). Analysis:

(i). Based on the analysis on the items dealt in earlier paragraphs, the cost statement for the years 2017-18 to 2019-20 has been modified on account of acceptance of maintenance dredging cost as estimated by the VSPL.

- (ii). Since the increase granted in the last tariff revision Order was based on the consolidated position, it will be suffice to modify the consolidated cost statement of the VSPL considered in the last tariff Order. Subject to above analysis, the cost statement giving the consolidated position considered in the tariff Order of January 2018 is modified and attached as **Annex**.
- (iii). The summary of the cost position as given in para 16 (xxix) of the Order dated January 2018 is given below for ease of reference:

(₹ in lakhs)

Particulars	2017-18	2018-19	2019-20	Total
Operating Income	12854.75	13111.84	13371.21	39337.79
Net Surplus / (Deficit)	(575.92)	(363.48)	(134.58)	(1,073.99)
Net Surplus / (Deficit) as a percentage of Operating Income	(4.48%)	(2.77%)	(1.01%)	(2.73%) Avg.

- (iv). The summary of the cost position reflected in the modified cost statement based on the review application is summarized below:

(₹ in lakhs)

Particulars	2017-18	2018-19	2019-20	Total
Operating Income	12854.75	13111.84	13371.21	39337.79
Net Surplus / (Deficit)	(626.77)	(415.34)	(187.48)	(1,229.59)
Net Surplus / (Deficit) as a percentage of Operating Income	(4.88%)	(3.17%)	(1.40%)	(3.13%) Avg.

The above table depicts a total deficit of ₹1,229.59 lakhs for the years 2017-18 to 2019-20 based on the review application as against total deficit of ₹1073.99 lakhs estimated in the January 2018 Order.

- (v). In the last tariff revision which culminated in January 2018 Order, this Authority granted a tariff increase of 44% in Shore handling charges, 7% decrease in Bulk Material Handling Service (BMHS), 33% increase in Dust suppression system, 5%-34% increase in wharfage and deletion of charges of Railway siding as proposed by the VSPL. As regards Berth hire charges, this Authority had approved 15% increase as against 25% increase in berth hire charges sought by the VSPL. In the current review application, the VSPL has reiterated to grant 25% increase in berth hire charges based on the review application.
- (vi). In the January 2018 Order, the estimated deficit of ₹1073.99 lakhs was covered by granting tariff increase as stated above and additional revenue estimated in the January 2018 Order for the period of 2017-18 from March 2018, 2018-19 and 2019-20 in para 16 (xxix) (c) is reproduced below:

Particulars	Increase/ decrease proposed by VSPL and approved by this Authority	Additional income ₹ in lakhs
Shore handling charges	Increase from ₹45.00 per tonne to ₹65.00 (44% increase)	₹1188.26
BMHS	Reduction in BMHS rate if integrated services are availed from ₹150.00 to ₹140.00 per tonne (7% decrease)	-₹495.22
Railway siding charges	Deleted	-₹342.97
Dust	Increase from ₹1.50 per tonne to ₹2.00 per	₹65.78

suppression system	tonne (33% increase)	
Wharfage	Increase proposed for few cargo items as given above	₹207.39
Total additional income from cargo handling activity for the above items (A)		₹623.26
Berth hire charges	Increase from 0.0072 US\$ to 0.0083 US\$ (15% increase) (B)	₹450.73
Total (A+B)		₹1073.99

- (vii). Thus, of the estimated net deficit of ₹1073.99 lakhs, ₹623.26 lakhs was met from increase granted in cargo handling activity and ₹450.73 lakhs from berth hire charges. Following the same approach, based on the revised total deficit of ₹1,229.59 lakhs for the years 2017-18 to 2019-20 as per the modified cost statement, deficit that should have been met from increase in berth hire charges comes to ₹606.33 lakhs (₹1,229.59 lakhs – ₹623.26 lakhs). In the last tariff revision Order of January 2018, 15% increase was already granted in the berth hire charges. Hence, the additional revenue that would have accrued to VSPL on this account for one month of March 2018 in 2017-18 and for 8 months (April to November 2018) in the year 2018-19 is estimated at ₹159.90 lakhs. So the balance deficit i.e. ₹446.43 lakhs (₹606.33 lakhs – ₹159.90 lakhs) is made good for balance tariff cycle period. By the time the Order approved comes into effect it is around December 2018. Hence, the revised increase granted will be for 4 months for the year 2018-19 from December 2018 and for the year 2019-20. The working for arriving at the revised increase in berth hire charge is tabulated below:

Particulars	Amount (₹ in Lakhs)
Revised deficit to be met from the berth hire charges for remaining period of the current tariff cycle i.e. from December 2018 to March 2019 (4 months) and for the year 2019-20]	446.43
Total Estimated income from Berth Hire charges at the tariff considered in the income estimated in January 2018 Order (i.e. 0.0072 US\$ per GRT/ hour) [For the year 2018-19 i.e. from December 2018 to March 2019 (4 months) on pro rata basis and for the year 2019-20]	1,927.39
Tariff increase to be granted in Berth Hire charges say from 01 December 2018 over the then prevailing berth hire charges of May 2015 Order terms of % (₹444.71-₹1927.39)	23.16% Rounded off to 23%

- (viii). Thus, based on the above position, the percentage increase to be granted works out to 23% from the berth hire prevailing in May 2015 Order (i.e. from 0.0072 US\$ to 0.0089 US\$) as against 25% increase sought by the VSPL in the review application.

10. The rates approved by this Authority will come into force after expiry of 30 days from the date of notification of the Order in the Gazette of India. The validity of the rates will continue till 31 March 2020 as ordered in January 2018 Order. The actual financial and physical performance will be reviewed following the applicable tariff guidelines during the next tariff revision, which is due from 01 April 2020 along with the review of estimates for the year 2016-17 with reference to actuals based on audited accounts.

11.1. In the result, and for the reason given above, and based on a collective application of mind, the berth hire charges prescribed in Schedule 2.1.1 under Section – 2 Vessel Related

Charges in the existing Scale of Rates of VSPL approved vide Order No.TAMP/19/2017-VSPL dated 19 January 2018 is revised as follows:

- (i). **Berth Hire charges prescribed under Schedule 2.1.1. under Section – 2 Vessel Related Charges in the existing SOR is modified and replaced as follows:**

“2.1.1. Schedule of Berth Hire for Vessels

Description	Rate per GRT per hour or part thereof	
	Foreign-going vessel (in US \$)	Coastal vessel (in ₹)
Berth EQ 8 & EQ 9	0.0089 subject to a minimum of US\$ 177/-	0.2333 subject to a minimum of ₹4,666/-

11.2. The revised rates approved in the Order shall come into effect after expiry of 30 days from the date of notification of the Order in the Gazette of India. The validity of the revised rates will continue to be in force till 31 March 2020 as stipulated in the Order dated 19 January 2018.

11.3. The VSPL is directed to suitably modify the schedule of Berth hire for vessels prescribed in the existing SOR.

(T.S. Balasubramanian)
Member (Finance)

VIZAG SEAPORT PRIVATE LIMITED - GENERAL REVISION OF SCALE OF RATES

(Rs. in Lakhs)

Consolidated Income & Cost statement for the Terminal as a whole

Sr. No.	Particulars	Estimates at the existing level of tariff as given by VSPL				Estimates considered by TAMP in January 2018 Order				Estimates considered by TAMP in January 2018 Order modified based on the Review Application			
		2017-18	2018-19	2019-20	Total	2017-18	2018-19	2019-20	Total	2017-18	2018-19	2019-20	Total
	Traffic (in tonnes)	6200000	6324000	6449000	18973000	6200000	6324000	6449000	18973000	6200000	6324000	6449000	18973000
	Capacity (in tonnes)	7700000	7700000	7700000		7700000	7700000	7700000		7700000	7700000	7700000	
I	Total Operating Income												
	(i) Vessel related income	1393.28	1421.15	1449.17	4263.60	1396.55	1424.48	1452.56	4273.59	1396.55	1424.48	1452.56	4273.59
	(ii) Cargo related income	11458.20	11687.36	11918.65	35064.21	11458.20	11687.36	11918.65	35064.21	11458.20	11687.36	11918.65	35064.21
	Total - I	12851.48	13108.51	13367.81	39327.81	12854.75	13111.84	13371.21	39337.79	12854.75	13111.84	13371.21	39337.79
II	Operating Costs (excluding depreciation)												
	(i) Operating & Direct labour	474.11	490.86	508.17	1473.13	467.12	490.86	508.17	1466.15	467.12	490.86	508.17	1466.15
	(ii) Maintenance labour	569.65	581.04	592.66	1743.36	569.65	581.04	592.66	1743.36	569.65	581.04	592.66	1743.36
	(iii) Equipment Running costs	1700.67	1751.13	1803.13	5254.92	1648.78	1707.38	1768.37	5124.53	1648.78	1707.38	1768.37	5124.53
	(iv) Maintenance dredging	101.69	103.72	105.79	311.20	50.84	51.86	52.90	155.60	101.69	103.72	105.79	311.20
	(v) Royalty / revenue share	469.48	478.87	488.32	1436.66	469.89	479.29	488.76	1437.94	469.89	479.29	488.76	1437.94
	(vi) Equipment hire	4079.36	4236.32	4398.20	12713.88	4080.38	4237.39	4399.31	12717.08	4080.38	4237.39	4399.31	12717.08
	(vii) Lease Rentals payable as per concession agreement	133.24	134.59	135.96	403.80	133.24	134.59	135.96	403.80	133.24	134.59	135.96	403.80
	(viii) Insurance	70.32	71.72	73.16	215.20	70.32	71.72	73.16	215.20	70.32	71.72	73.16	215.20
	(ix) Other expenses	526.40	537.58	548.99	1612.97	526.40	537.58	548.99	1612.97	526.40	537.58	548.99	1612.97
	(x) Technical service fee	12.16	12.16	12.16	36.48	12.16	12.16	12.16	36.48	12.16	12.16	12.16	36.48
	Total - II	8137.06	8397.99	8666.54	25201.60	8028.79	8303.87	8580.44	24913.10	8079.63	8355.73	8633.33	25068.70
III	Depreciation	1582.11	1577.65	1553.45	4713.22	1517.03	1512.57	1488.17	4517.78	1517.03	1512.57	1488.17	4517.78
IV	Overheads												
	(i) Management & Administration overheads	1073.94	1095.91	1118.33	3288.17	1078.63	1100.70	1123.22	3302.55	1078.63	1100.70	1123.22	3302.55
	(ii) Preliminary expenses & upfront payment write-off	33.10	33.10	33.10	99.31	33.10	33.10	33.10	99.31	33.10	33.10	33.10	99.31
	Total - IV	1107.04	1129.01	1151.43	3387.49	1111.74	1133.80	1156.32	3401.86	1111.74	1133.80	1156.32	3401.86
V	Operating Surplus / (Deficit) (I) - (II) - (III) - (IV)	2,025.27	2,003.86	1,996.38	6,025.50	2,197.19	2,161.59	2,146.28	6,505.06	2,146.34	2,109.73	2,093.38	6,349.46
VI	Finance & Miscellaneous Income (FMI)												
	(i) Discounted terminal value receivable as per the LA	4.32	4.32	4.32	12.95	6.06	6.79	7.61	20.46	6.06	6.79	7.61	20.46
	Total FMI	4.32	4.32	4.32	12.95	6.06	6.79	7.61	20.46	6.06	6.79	7.61	20.46
VII	Finance & Miscellaneous Expenses (FME)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
VIII	FMI Less FME (VI) - (VII)	4.32	4.32	4.32	12.95	6.06	6.79	7.61	20.46	6.06	6.79	7.61	20.46
IX	Surplus Before Interest and Tax (V) + (VIII)	2,029.58	2,008.17	2,000.70	6,038.45	2,203.25	2,168.38	2,153.88	6,525.52	2152.41	2116.52	2100.99	6369.92
X	Capital Employed	19527.27	17973.19	16443.99	17981.49	17369.84	15824.17	14302.90	15832.30	17369.84	15824.17	14302.90	15832.30
XI	RoCE - Maximum permissible 16%	3124.36	2875.71	2631.04	8631.11	2779.17	2531.87	2288.46	7599.51	2779.17	2531.87	2288.46	7599.51
XII	Capacity Utilization	80.52%	82.13%	83.75%		80.52%	82.13%	83.75%		80.52%	82.13%	83.75%	
XIII	RoCE considered	3124.36	2875.71	2631.04	8631.11	2779.17	2531.87	2288.46	7599.51	2779.17	2531.87	2288.46	7599.51
XIV	Net Surplus / (Deficit) (IX) - (XIII)	(1,094.78)	(867.54)	(630.34)	(2,592.66)	(575.92)	(363.48)	(134.58)	(1,073.99)	(626.77)	(415.34)	(187.48)	(1,229.59)
XV	Adjustment by VSPL 50% of net deficit of the years 2014-15 to 2016-17.	(535.02)	(535.02)	(535.02)	(1,605.05)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
XVI	Net Surplus / (Deficit) after adjustment of past deficit (XIV) - (XV)	(1,629.80)	(1,402.56)	(1,165.35)	(4,197.71)	(575.92)	(363.48)	(134.58)	(1,073.99)	(626.77)	(415.34)	(187.48)	(1,229.59)
XVII	Net Surplus / (Deficit) as a % of operating income (XVI/I)	-13%	-11%	-9%	-11%	-4.48%	-2.77%	-1.01%		-4.88%	-3.17%	-1.40%	
XVIII	Average Net Surplus/(Deficit) as a % of operating income		-10.70%				-2.73%				-3.13%		

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

F.No. TAMP/24/2018-VSPL - Review application filed by the Vizag Seaport Private Limited (VSPL) for review of the Order No.TAMP/19/2017-VSPL dated 19 January 2018 in respect of general revision of Scale of Rates of VSPL.

A summary of the comments received from Visakhapatnam Port Trust (VPT) and users/ user organisations and reply furnished by Vizag Seaport Private Limited (VSPL) thereon are tabulated below:

SI. No.	Comments received from the VPT and users/ user organisations	Reply furnished by VSPL
1.	Visakhapatnam Port Trust (VPT)	
(i).	<u>Increase in berth hire charges by 15% against the request of VSPL for increase by 25% - TAMP to decide.</u>	VSPL feels the same is already covered under replies furnished to INSA comments as well as the presentations and submissions made during the joint hearing on 25 April 2018 and hence VSPL have no further remarks to add.
(ii).	<u>Reduction in maintenance dredging cost for 2017-18 to 2019-20 to the tune of 50% than estimated.</u> From the data available with VPT, VSPL has incurred ₹49.84 lakhs in 2014-15 and ₹13.12 lakhs in 2016-17 and ₹9.01 lakhs in 2017-18. Further, VSPL has paid ₹1.68 crores towards maintenance dredging during the year 2017-18 to M/s.DCI based on the documents submitted. Hence, TAMP to take action on the projections submitted by VSPL.	
(iii).	<u>Disallowance of Capex of ₹16.08 crores incurred towards Capital dredging in 2009-10 -</u> The said capital expenditure of ₹16.08 crores reported by VSPL in the year 2009-10 is not line with the provisions of License Agreement. Hence, VPT doesn't agree for considering of the same for reviewing.	
(iv).	<u>Regarding Allowing Discount/ Rebates to SAIL in projection for 2017-18 to 2019-20 -</u> No comments to offer as TAMP has to take action as per guidelines.	
(v).	<u>Regarding not considering Advance payment of lease rentals under Sundry Debtors -</u> It is stated that as per the accounting definitions and practices, advance payment of lease rentals is not treated as Sundry debtors. It is also not in line with TAMP Guidelines. Hence, TAMP may decide.	
(vi).	<u>Regarding non allowing of provision for bad debts in actuals for 2014-15 to 2016-17 for ₹120.38 lakhs -</u> It is stated that the same cannot be considered as it is beyond the TAMP guidelines. Hence, TAMP may decide.	

2.	Indian National Shipowners' Association (INSA)	
(i).	Request for increase in berth hire charges approved with 15% hike. The rationale provided is to reconsider deficit for Vessel Related activities. INSA do not see any valid reason for amending estimates as there is no other valid reason provided.	The increase in berth hire charges requested is based on the Revenue requirement under vessel related charges to earn the permitted 16% ROCE which could not be earned by VSPL despite its operation of 13 years.
(ii).	Request for reconsidering Maintenance Dredging. The rationale given is longer periods of dredging will be carried out so expenditure will be higher. INSA feel the cost of dredging is related to the quantum of material dredged and estimated dredging requirement has to be based past experience.	It may be noted that the draft at VSPL berths has been increased from 14.0 Meter dredged depth to -16.10 Meters in the current tariff cycle. Hence, maintenance dredging based on past experience will not hold good from current tariff cycle. Earlier, small dredger craft of VPT was used for maintenance dredging whereas now Trailer Suction Hopper Dredger from DCI was engaged at a huge cost of ₹1.67 crores for just two days of maintenance dredging. Necessary documents in this regard already submitted to the Authorities.
(iii).	Request for allowing CAPEX towards Capital Dredging. The time when capital dredging was done, provisions of the License agreements are relevant factors and may be dealt accordingly.	As elaborately explained during the joint hearing on 25.04.2018, the Capex of ₹16.08 crores was spent for widening of entrance channel, Inner Harbour Turning Circle to pave way for entry of Panamax vessels benefitting all Inner Harbour berths of VPT and entire trade. The trade got benefit of freight saving by chartering Panamax vessels and VPT too has acknowledged this fact to the Tariff Authorities. Thus this Capex has immensely contributed to the cargo throughput of entire VPT and VSPL as Panamax vessels could enter all the Inner Harbour berths of VPT atleast after lighterage at the General Cargo berth. It is the proactive action of VSPL despite no obligation under License Agreement to enhance its Project facilities and services and but for this no Panamax vessel could have entered the Inner Harbour berths after lighterage and with the limitation in capacity of GCB in outer harbor, the Panamax vessels would have got diverted to Gangavaram Port. License Agreement cast joint obligation of Licensor and Licensee to maximize the cargo throughput and there is no prohibition either in our License Agreement or in the tariff guidelines for the licensee to undertake the obligation of the Licensor in the interest of Port and trade.
(iv).	Request to consider discount/rebate to SAIL for calculations. INSA agree with Authority's stand that the commercial agreement between SAIL and VSPL cannot be a cause of burden for other common users.	The rationale of our request in the light of the clarification of TAMP based on the opinion of the AG was explained during the hearing on 25 April 2018 that in view of the current development, discounts need to be allowed by reconsidering the uniform policy of the Authorities which were followed prior to the said opinion of the AG.
(v).	Request to consider lease rentals under sundry debtors. In our view, the Tariff guidelines (Government Guidelines) and conventional practice may be considered by the Authority.	As explained during the joint hearing on 25 April 2018, these are allowable in line with the provisions of our License Agreement with VPT.
(vi).	Request to allow for provisions of bad debts. INSA have no comments on practice of Credits provided by VSPL. But it should not be on account of common user suffering by way of	As explained during the joint hearing, bad debts do happen practically and the approach followed hitherto may require review by the Authorities considering practical difficulties based on 13 years of commercial operations.

increased tariff in future revision. Therefore Authority's decision of not allowing Bad debts for reasons given is justifiable.	
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2. A joint hearing in this case was held on 25 April 2018 at the VPT premises. The VSPL made a power point presentation of its Review Application. At the joint hearing, the VSPL and VPT have made the following submissions:

Vizag Seaport Private Limited (VSPL)

- (i). We entered into a 30 years contract with SAIL in January 2005 to handle fully laden Panamax vessels which required draft of (-)14.0 mtrs.
- (ii). The then facility at VPT was to handle only handy max vessels with beam of upto 27 metres.
- (iii). The VPT contended that licence agreement envisages the port to deepen upto (-)12.5 mtrs. only. Port cannot deepen upto 14 mtrs. as per the LA.
- (iv). Since we had entered into long term contract with SAIL, we committed to SAIL that we will dredge between 12.50 mtrs. to 14.00 mtrs.
- (v). When we approached VPT, VPT said VSPL to enter into a separate Agreement to increase draft to (-)14 mtrs. We agreed to do it at our cost to increase the draft to (-)14.00 mtrs.
- (vi). In order to handle panamax vessels, we entered into an Memorandum of Understanding with VPT on 24.11.2006 to undertake further widening and deepening of inner harbor water ways to -13.5 mtrs. at the cost of VSPL.
- (vii). The contract was awarded to M/s Dharti Dredging and Infrastructure Company Ltd (DDIL) the same dredging company to whom VPT had awarded the contract of dredging, widening and deepening of inner harbor water ways and turning circle to -11.8 mtrs. and 12.8 mtrs. respectively.
- (viii). We made payment to the contractor. No doubt the capital expenditure of ₹16.08 crores sought by us for inclusion in tariff revision is not part of project cost. Terminal benefits were pre-decided based on project cost.
- (ix). 2005 guidelines was not there when VSPL signed the License Agreement with VPT in 2001. The 2005 guidelines do not preclude BOT operator from incurring capital expenditure to improve the capacity.
- (x). The Supplementary Agreement was entered with the VPT in June 2015 which allows the VSPL to increase the draft of berths to 16.5 mtrs. Hence this matter has been overcome now with the entering of the supplementary agreement.
- (xi). Makes brief power point presentation of the review application.
- (xii). Major item in the review application is to allow the capital expenditure of ₹16.08 crores towards capital dredging.
- (xiii). This item of capex has been repeatedly disallowed by the Authority for two reasons viz. (i) It is not as per the LA (ii) The MOU entered with the VPT does not permit to consider this capex for tariff revision purpose.
- (xiv). The VSPL commenced commercial operations in the year 2005. At that point of time the declared draft was 10.70 mtrs. We could not handle panamax vessels.
- (xv). Though the LA provides for 12.5 mtrs. draft by VPT, this materialised only in the year 2015. Had VSPL remained silent and not taken any action till the year 2015, consequences would have been adverse.
[VPT Chairman: If VSPL had not done it, VPT would have done it.]

- (xvi). Panamax vessels could not be handled with the available width of channel of 97.5 mtrs. because there are 3 bents in inner harbor channel.
- (xvii). After widening, the width of inner harbor became 111 mtrs. All the berths at inner harbor including that of VPT berths, could handle panamax vessels. Radius of turning cycle was also increased so that vessel of 220 mtrs. can turn.
- (xviii). In 2016, fully laden panamax vessel could be handled. Full benefit of capex is available after increasing the draft of 16.10 mtrs.
- (xix). The benefit of widened channel and increase in the radius of turning cycle on account of capex done by the VSPL was available to the VPT and to the trade.
- (xx). The position that the LA provides for ultimate draft of 12.5 mtrs. is no longer valid with VSPL having entered into Supplementary Agreement on 20 June 2015 with VPT. The Supplementary Agreement permits VSPL to increase the draft of VSPL berth to -16.10 mtrs. berths. As such the capex of ₹16.08 crores is within the purview of the LA.
- (xxi). Rejecting the said capex is not proper as it amounts to penalizing VSPL for undertaking the obligation of licensor and partly fulfilling the same by spending the said capex that led to undertaking and completion of balance capital dredging by licensor to dredge upto 16.10 mtrs. at all inner harbor channels.
- (xxii). The increase sought by us in berth hire charge is marginal.
[Chairman, VPT: Why now only you are asking increase?]
[CFO, VSPL: Because we can handle Panamax vessels after widening.]
- (xxiii). We are covered under 2005 guidelines. As per 2005 guidelines, there is no limit on capex. There is no limit on capex in LA as well.
- (xxiv). Clause 2.9.5. and 2.9.6 of the tariff guidelines of 2005 permit to allow the reasonable investment by the BOT operator for creation of capacity.
- (xxv). As regards maintenance dredging, it is to state that an expense of ₹1.68 crores is incurred towards maintenance dredging in the year 2017-18.
- (xxvi). Reconsider estimated rebates to be given to SAIL in the income estimates.
[Member (Finance), TAMP: Discount given based on commercial consideration cannot form basis of tariff fixation. Rebates allowed by VSPL are considered while analysing the actuals with reference to the estimates during review as per the tariff guidelines of 2005.]
- (xxvii). As regards provision of bad debts, it is to state that VSPL is not able to receive payment in advance. Credits are offered. Hence, provision of bad debts may be considered.

Visakhapatnam Port Trust (VPT)

- (i). This capex is a separate expenditure which is not as per LA. It should not be forming part of revision.
- (ii). The capital expenditure incurred by VSPL for widening of channel and increasing radius of turning circle was beyond the provisions of LA.
- (iii). The VPT has got benefit of widening of channel done by VSPL. If VSPL had not done, panamax vessel could not have been handled.
[Member (Finance), TAMP: Limited issue is whether this capex is to be considered in tariff revision.]
