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TARIFF AUTHORITY FOR MAJOR PORTS

G.NO.629

New Delhi,

30 November 2021

NOTIFICATION

This Authority, in exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), had disposed of the proposal received from Mumbai Port Trust (MBPT) for fixation of Schedule of Rate for the period 01.10.2017 to 30.09.2022 for Land/ Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division) on 01 November 2021. However, considering the time involved for notifying the (Speaking Order) along with the Rent Schedule for MBPT prescribing Lease rentals for the period 01 October 2017 to 30 September 2022 for Land / Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division), approved by this Authority, this Authority decided to notify only the Rent Schedule for MBPT prescribing Lease rentals for the period 01 October 2017 to 30 September 2022 for Land / Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division), approved by this Authority on 01 November 2021 which was notified in the Gazette of India on 12 November 2021 vide Gazette no.553. It was stated in the said Notification that this Authority will notify the Speaking Order, in due course of time. Accordingly, this Authority hereby notifies the Speaking order connected with disposal of the proposal of MBPT for fixation of Schedule of Rate for the period 01.10.2017 to 30.09.2022 for Land/ Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division), as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/51/2021-MBPT

Mumbai Port Trust

Applicant

QUORUM

- (i). Shri. T.S. Balasubramanian, Member (Finance)
- (ii). Shri. Sunil Kumar Singh, Member (Economic)

ORDER

(Passed on this 1st day of November 2021)

This case relates to a proposal received from Mumbai Port Trust (MBPT) vide its letter No. FA/OEA-L/21(88)/U-8/252 dated 16 September 2021 seeking approval for fixation of Schedule of Rates for the period 01.10.2017 to 30.09.2022 for Land / Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division).

2.1. The MBPT vide its letter dated 16 September 2021 has made the following submissions:

- (i). Government has issued Policy Guidelines on Land Management for all major ports vide letter No. PD-13017/2/2014/-PD.IV dated 17.07.2015. By Clarification Circular No. 1 of 2018 dated 14.05.2018 and Clarification Circular No.1 of 2019-20 dated 29.04.2019, the Ministry has extended the applicability of the PGLM 2015 to the non-home occupation / commercial areas of the township areas of Mumbai, Kolkata and Kandla Port.
- (ii). As provided in Clause 13 of PGLM, Land Allotment Committee (LAC) has recommended rates for four plots of land / water area leased to Mazagaon Dock Shipbuilders Ltd., (MDSL) falling in RR Zone 10/80 (Mazgaon Division). Same has been approved by MBPT Board.
- (iii). In this backdrop, the MBPT has come up with the subject proposal seeking approval for fixation of Schedule of Rates (SOR) for the period 01.10.2017 to 30.09.2022 for Land / Water area leased to Mazagaon Dock Shipbuilders Limited in terms of Clause 13 (c) of PGLM 2015.

2.2 The background and other main points made by the MBPT in its proposal dated 16 September 2021 are summarized below:

A. BACKGROUND :

Mumbai Port Trust owns about 944 Ha of land in Mumbai City. The land in the Mumbai city limits falls under the jurisdiction of A, B, C, M, G-North, E, F-North and F-South Wards. The said land stretches from Colaba to Wadala, Mahim, Worli, Govandi, Pir Pau, Mahul, etc. and is divided into 15 administrative units for management of these estates. The landed estates are divided into 2 main categories, viz. (i) lettable land and (ii) non-lettable land. Non-lettable land includes areas occupied by offices of sister department, administrative offices of Mumbai Port Trust, Port Trust quarters, Port Trust hospital, etc. The lettable category includes areas let out on long term leases, 15 monthly leases, monthly tenancies and licenses. There are also a few plots which are vacant and can be let out. The present proposal is for approval of Schedule of Rates (SOR) for the period 01.10.2017-30.09.2022 for Land / Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division).

B. POLICY GUIDELINES:

- (i). The Land Management Policy Guidelines for Major Ports, 2010 issued by the Ministry was adopted by the Board vide TR No.21 of 2011 read with Supreme Court Judgement. The Ministry subsequently, with the approval of the Cabinet, issued Policy guidelines for Land Management by Major Ports 2014 (PGLM), which was applicable for all Ports except for the land relating to the township areas of Kandla, Mumbai and Kolkata Port, for which it was stated that separate policy will be formulated. The amended policy guidelines were issued in 2015.
- (ii). The Ministry vide clarification Circular (Land Management) No.1 of 2018 dated 14.05.2018, Clarification No.2 of 09.03.2019 and Clarification No.1 of 2019-20 dated 29.04.2019 issued clarification circular on various issues of PGLM 2014/15 extending the applicability of the PGLM 2015 to the township areas of Mumbai, Kolkata and Kandla Port upto 31.03.2020 with a sunset clause. The PGLM 2015 has thus become applicable to the township areas of Mumbai Port Trust. The Ministry vide further letter dated 27.01.2021 has clarified that “*since PGLM 2014*

has been approved by the Cabinet, it is valid until it is revised by the Cabinet. Hence, compiled PGLM, 2015 issued on 29.04.2019 will be applicable for both the land of Major Port Trust and the township area subject to the conditions mentioned in the letter dated 29.04.2019.”

- (iii). In terms of the PGLM, 2015, SOR has to be recommended by LAC and approved by the Board and notified by the TAMP. The Board vide TR 146 of 2014 had constituted Land Allotment Committee headed by Dy. Chairman and comprising of Traffic Manager, FA&CAO, and Estate Manager as members to recommend new Schedule of Rates for estate lettings.

C. LEGAL ISSUES:

TAMP had vide notification No.TAMP/10/98-Misc of 28.03.2000 issued orders dated 15.03.2000 on its jurisdiction for framing scale of rates and statement of condition on the issue of applicability of SOR to all lands of all Major Ports. The said notification was challenged by the Mumbai Port by Writ Petition 1153 of 2000. In the writ petition, by interim order dated 02.05.2000, the Bombay High Court had stayed the applicability of TAMP's order to areas not falling within Port limit and Port approaches. The issue of withdrawal of Writ Petition and necessary advice for the same was been taken up with the Ministry in the light of PGLM 2015. TAMP has since by letter dated 15th July 2019 intimated that TAMP is required to fix the SOR for all areas of Mumbai Port including Township areas with effect from 01.10.2012 onwards in terms of advisory from the Ministry of Shipping and therefore notification dated 28th March 2000 may be seen to have become infructuous.

D. LAC REPORT:

- (i). As per the PGLM-2015, the Land Allotment Committee is required to consider the following factors for determining the market value of the Port land:

I). “a) *State Government's Ready Reckoner of land values in the area, if available for similar classification/ activities.*

b) Highest rate of actual relevant transactions registered in the last 3 years in the ports vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards) with an appropriate annual escalation rate to be approved by the Port Trust Board.

c) Highest accepted tender-cum-auction rate of Port land for similar transaction updated on the basis of the annual escalation rate approved by the Port Trust Board.

d) Rate arrived at by an approved valuer appointed for the purpose by the Port.

e) Other relevant factor as may be identified by the Port.

II) *The Land Allotment Committee shall, while recommending the latest market value for any land would normally take into account the highest of the factors mentioned in Para 13(a) above. Reserve price in terms of the annual lease rent would be latest SoR determined in accordance with Para 13 (a) and 13 (c) and would in no case be less than 6% of the latest value recommended by the Port trust.*

III). *The Port trust would make a proposal as outlined in Para 13 (a) to TAMP for fixing the latest SoR of the land. The TAMP would notify the latest SoR*

of the land after following due process of consultation with stake holders within 45 days of the receipt of the proposal. The Port trust board will fix a rate of annual escalation which would not be less than 2 %. SoR would be refixed once in every 5 years by TAMP”.

- (ii). MBPT land bearing i) Plot No. 355 (20801640), ii) Expansion Phase in North Yard (20801642) iii) Extension of Slipway in South Yard(20801650) and iv) Additional water area for extra Slipway (20801652) were leased to Mazagon Dock Shipbuilders Ltd. which leases have expired. These plot falls in Stamp Duty Ready Reckoner Zone 10/80 (Mazgaon Division)
- (iii). In the instant case, the LAC and subsequently the Board vide TR No.46 of 2019 had decided that the rate as per valuation report submitted by M/s.Patwardhan Consultants Pvt. Ltd. in respect of MBPT Workshop which is falling in the same Ready Reckoner Zone 10/80 which worked out to ₹.1,87,696/- per sq. mtr for FSI-1 should be adopted for the period from 01.10.2017 to 30.09.2022 for the four expired leases to be renewed in the case of Mazagaon Dock Shipbuilders Ltd. (MDSL) and fresh lease of 30 years offered. The LAC and subsequently the Board, while considering the valuation report in respect of plots falling under Unit No.7 and 8, vide TR No.289 of 2019 and 287 of 2019 respectively, has also accorded sanction for adopting the said rate for all lettings falling under Ready Reckoner Zone 10/80. The Fair Market Value (FMR) of land accordingly worked out to ₹.1,87,696/- per sq.mtr. for FSI 1 as on 01.10.2017 and the SOR @ 6% return per annum worked out to ₹.11261.76 per sq.mtr. per annum w.e.f. 01.10.2017 with 4% annual increase every October. The rate in respect of workshop land has been approved by the TAMP vide Notification No. 06 dated. 04/01/2019 in Case No.TAMP/72/2018-MBPT.
- (iv). The dues recoverable from MDSL in terms of the above decision including the revision applicable from 01.10.2012 was conveyed to MDSL with the offer for renewal. The MDSL has conveyed that the rates effective from 01.10.2017 are not acceptable to MDSL. They have also conveyed that the said rates were about 10 times the rates being paid by them and that their business cannot cater to such rates. They have further conveyed that most of the plots to be renewed are water area and therefore there is a need to review the rates. In the meeting held with the Chairman, they had shown their willingness to pay at the rate as per Ready Reckoner with applicable concessions in terms of PGLM.
- (v). The matter was submitted to the LAC when it was decided to carry out independent valuation in respect of the expired leases of MDSL. The same has also been approved by the Board vide TR No.82 of 2021 and for the said purpose to carry out valuation of one plot with water area and the other with land area. In accordance with the said TR the work of valuation of land value of subject plot of land was allocated to Shri Avinash Pendse, Architect, Designer & Valuer, Valuer on MBPT's panel. The Valuer has submitted his valuation report dated 26.07.2021 considering 5 methods/ five factors as per PGLM 2015 guidelines. As per the said valuation report the rate per sq.m. and value of subject plots for the year 2017-18 for fixation of SOR are shown in tabular form which is as follows :

Factor	FSI	Rate per Sq.mtr for land for FSI 1	Plot detail	Value of Premises	6% rate per sq.mt per year (SOR)
I) State government ready reckoner of land value in the area, if available for similar classification/ activities	1	₹. 27100/- (RR Zone.10/80	i) Expansion Phase in North Yard (20801642) ii)Additional water area for extra slipway (20801652)	₹. 5,31,41,203/- ₹. 2,50,67,500/-	₹. 1626/-
II) Highest rate of actual relevant transaction registered in the last three years in the port's vicinity.	1	-No-		-----	Nil
III) Highest Accepted Tender cum Auction Rate of Port land for Similar transaction.	1	No such transactions of land in the vicinity have occurred.			Nil
IV) Rate arrived at by an approved valuer appointed for the purpose by the Port	1	Fair market rate of land based on existing infrastructure facilities/ valuers analysis ₹.1,70,240/- per sq.meter for open plot ₹.85,120/- fper sq.meter for basin.	i) Expansion Phase in North Yard(2080164 2) ii) Additional water area for extra Slipway (20801652)	Fair Market Value of land ₹.33,38,28,723 ₹.15,74,72,000	₹ 10,214.40 ₹.5,107.20
V) Factors identified by the Port	1	No other factors have been identified by the port.		Nil	Nil

(vi). The Land Allotment Committee met on 29.07.2021 and submitted report in respect of MBPT leasehold plot of land /water area viz., i) Expansion Phase in North Yard (20801642) & ii) Additional water area for extra Slipway (20801652) with following recommendations :

(a). To adopt the Fair Market Value of land as derived based on the report of Shri Avinash Pendse for the year 01.10.2017 to 30.09.2018 as ₹.1,70,240/- for fixation of Schedule of Rate (SoR) being on the higher side. Similarly as recommended by Shri Avinash Pendse, the Fair Market Value for basin / water area will be ₹. 85,120/- per sq. mtr.

- (b). Based on the land / basin rate the SoR at 6 % p.a. return on land value would be ₹.10,214.40 per sq.mtr p.a. for FSI 1 and ₹.5107.20 per sq. mtr. per annum for basin/water area;
- (c). The above SOR shall be applicable for the period from 01.10.2017 to 30.09.2022 with 4 % annual increase every October;
- (d). This rate will be applicable only for the 4 plots of expired leases of MDSL bearing billing Code Nos.20801640, 20801642, 20801650 & 20801652 which falls under the Ready Reckoner Zone 10/80 of Mazgaon Division;
- (e). After approval of LAC, the matter was placed before the Board in terms of TR 61 of 2018 & TR 105 of 2018 for the approval of the LAC report. Thereafter proposal is being sent to TAMP for obtaining their approval
- (f). The dues at the revised rates would accordingly be conveyed to MDSL towards offer for renewal of lease in amendment to the rate conveyed consequent to TR. No. 46 of 2019.

The same was approved by the Board vide Resolution No. 123 of 2021.

2.3. Thus, MBPT has sought TAMP's approval to the SOR as recommended by the LAC constituted for the purpose and approved by its Board vide its Resolution No. 123 of 2021 in respect of 4 plots of expired leases of MDSL bearing billing Code Nos.20801640, 20801642, 20801650 & 20801652 which falls under the Ready Reckoner Zone 10/80 Mazgaon Division for the land /water area at Mazgaon Reclamation Estate i.e. ₹.10,214.40 per sq.mtr. per annum for FSI 1 for land area and ₹.5,107.20 per sq.mtr. per annum for basin/water area. The said rate shall be applicable for the period from 01/10/2017 to 30/09/2022 with 4% annual increase every October. The details of which is given below :

**SCHEDULE OF RATE FOR PLOT OF LAND AT MAZGAON RECLAMATION
(RR ZONE 10/80- MAZGAON DIVISION)**

Sr. No.	RR zone	Plot No.	Land Value per sq. mtr. for FSI = 1 (In ₹)	Rate per sq. mtr. per annum as on 1.10.2017 (In ₹)
1.	10/80	Plot bearing i) No. 355 (code no.20801640) ii) Expansion Phase II in North Yard (code no.20801642) iii) Extension of Slipway in South Yard (code no.20801650) iv) Additional Water Area for Extension of Slipway (code no.20801652)	₹1,70,240.00 for land ₹85,120/- for basin / water area.	₹10,214.40 for land ₹5,107.20 for basin / water area

2.4. The MBPT has stated that the proposal is formulated in terms of the Land Policy Guidelines for Land Management 2015. Further, the MBPT has stated that under Section 49 of MPT Act, 1963 and para 13 (c) of PGLM-2015, TAMP's approval is sought to the SOR for the period from 01.10.2017 to 30.09.2022 for four MDSL leasehold plots of land /water area falling in Stamp Duty Ready Reckoner zone 10/80 Mazgaon Division.

3.1. In accordance with the consultative procedure prescribed, a copy of the MBPT letter dated 16 September 2021 was forwarded to the concerned users/ user organizations vide our letter dated 22 September 2021 seeking their comments.

3.2. In response, M/s. Mazagon Dock Shipbuilders Ltd. (MDSL) vide its letter dated 06 October 2021 has furnished its comments. The said comments were forwarded to MBPT vide our letter dated 06 October 2021 as feedback information. The MBPT vide its e-mail dated 9 October 2021 has responded.

4. Based on a preliminary scrutiny of the proposal, the MBPT was requested vide letter dated 06 October 2021 to furnish some additional information/ clarification. The MBPT has responded vide its e-mail dated 14 October 2021. The information sought by us and the response of MBPT thereon is tabulated below:

Sr. No	Information/Clarification sought by us	Response of MBPT																																													
(i)	As already requested vide our letter dated 22 September 2021, the MBPT to furnish a comparative position of the existing lease rent that is being levied by MBPT at present to MDSL for land leased bearing billing code nos. 20801640, 20801642, 20801650 and 20801652 vis-à-vis the lease rent that has been proposed by the port in its subject proposal.	<p>The comparative statement of rates of the existing lease rent and the proposed lease rent in respect of the four expired lease of MDSL bearing billing code No. 20801640,20201642, 20801650 & 20801652 as approved by the Board as applicable to the subject four expired leases of MDSL falling under RR Zone 10/80 is as follows:</p> <table border="1" data-bbox="724 853 1386 1626"> <thead> <tr> <th data-bbox="724 853 911 1301" rowspan="2">Period</th> <th data-bbox="911 853 1002 1301" rowspan="2">Rate per sq.m per month as per present billing</th> <th colspan="2" data-bbox="1002 853 1193 1205">Rate per sq.m per month as per revised SOR for the period from 01.10.2012 to 30.09.2017 with 4% annual increase (proposal submitted to TAMP)</th> <th colspan="2" data-bbox="1193 853 1386 1205">Rate per sq.m per month applicable as per revised SOR for the period from 01.10.2017 to 30.09.2022 with 4% annual increase</th> </tr> <tr> <th data-bbox="1002 1205 1098 1301">Land area rate</th> <th data-bbox="1098 1205 1193 1301">Water area rate</th> <th data-bbox="1193 1205 1289 1301">Land area rate</th> <th data-bbox="1289 1205 1386 1301">Water area rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="724 1301 911 1361">01.10.17 to 30.09.2018</td> <td data-bbox="911 1301 1002 1361">83.25</td> <td data-bbox="1002 1301 1098 1361">102.81</td> <td data-bbox="1098 1301 1193 1361">51.41</td> <td data-bbox="1193 1301 1289 1361">351.20</td> <td data-bbox="1289 1301 1386 1361">425.60</td> </tr> <tr> <td data-bbox="724 1361 911 1422">01.10.18 to 30.09.2019</td> <td data-bbox="911 1361 1002 1422">86.58</td> <td data-bbox="1002 1361 1098 1422">106.92</td> <td data-bbox="1098 1361 1193 1422">53.46</td> <td data-bbox="1193 1361 1289 1422">885.25</td> <td data-bbox="1289 1361 1386 1422">442.62</td> </tr> <tr> <td data-bbox="724 1422 911 1482">01.10.19 to 30.09.2020</td> <td data-bbox="911 1422 1002 1482">90.05</td> <td data-bbox="1002 1422 1098 1482">111.20</td> <td data-bbox="1098 1422 1193 1482">55.60</td> <td data-bbox="1193 1422 1289 1482">920.66</td> <td data-bbox="1289 1422 1386 1482">460.33</td> </tr> <tr> <td data-bbox="724 1482 911 1543">01.10.20 to 30.09.2021</td> <td data-bbox="911 1482 1002 1543">93.65</td> <td data-bbox="1002 1482 1098 1543">115.64</td> <td data-bbox="1098 1482 1193 1543">57.82</td> <td data-bbox="1193 1482 1289 1543">957.48</td> <td data-bbox="1289 1482 1386 1543">478.74</td> </tr> <tr> <td data-bbox="724 1543 911 1626">01.10.21 to 30.09.2022</td> <td data-bbox="911 1543 1002 1626">97.40</td> <td data-bbox="1002 1543 1098 1626">120.27</td> <td data-bbox="1098 1543 1193 1626">60.14</td> <td data-bbox="1193 1543 1289 1626">995.78</td> <td data-bbox="1289 1543 1386 1626">497.89</td> </tr> </tbody> </table>						Period	Rate per sq.m per month as per present billing	Rate per sq.m per month as per revised SOR for the period from 01.10.2012 to 30.09.2017 with 4% annual increase (proposal submitted to TAMP)		Rate per sq.m per month applicable as per revised SOR for the period from 01.10.2017 to 30.09.2022 with 4% annual increase		Land area rate	Water area rate	Land area rate	Water area rate	01.10.17 to 30.09.2018	83.25	102.81	51.41	351.20	425.60	01.10.18 to 30.09.2019	86.58	106.92	53.46	885.25	442.62	01.10.19 to 30.09.2020	90.05	111.20	55.60	920.66	460.33	01.10.20 to 30.09.2021	93.65	115.64	57.82	957.48	478.74	01.10.21 to 30.09.2022	97.40	120.27	60.14	995.78	497.89
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(ii)	The draft Scale of Rates (SoR) as furnished by MBPT incorporates only the proposed Lease rent. The conditionalities governing the proposed lease rental has not been proposed by MBPT. A revised Scale of Rates incorporating the lease rentals as well as the conditionalities governing the	<p>The amended draft Scale of Rates (SoR) incorporating the following conditionalities governing the proposed lease rentals for the period 01.10.2017 to 30.09.2022 has been furnished by MBPT –</p> <p>Notes :</p> <ol style="list-style-type: none"> 1. The SoR mentioned above would increase by 4 % annually every October and would be valid till 30.09.2022 2. Actual quantum of Rent will be worked out on the base rent and factor as may be recommended 																																													

	<p>proposed lease rental to be furnished</p>	<p>by the committee appointed for the purpose of applicability of FSI.</p> <ol style="list-style-type: none"> 3. Taxes, service charges, penalties, interest rates are not included in the above rates. 4. Rate for allotment of water bodies is applicable at 50 % of the SOR rates 5. Differential Arrears, liabilities and other dues/charges for a period from 1.10.2017 to 30.09.2022 will be calculated based on above rates. 6. These rates are applicable to only the four Expired Leases of MDL as brought out above. 7. Interest would be chargeable beyond permissible period as per Board's policy from time to time. 8. Whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month.
(iii)	<p>In the subject proposal, the Valuer in his Report of November 2019 has determined the market value of the land at RR Zone no.10/80 at ₹1,70,240/- per sq.m. for the period 2017-18.</p> <p>However, in another proposal recently filed by MBPT for revision of lease rentals for non-home occupations for the period from 2017-2022, the market value of the land at RR Zone no.10/80, based on the Valuer's Report has been considered at ₹1,87,696/- per sq.m. for the period 2017-18.</p> <p>The rationale behind having two separate market value of land for the same RR Zone and for the same period, may be justified. The MBPT may consider reviewing the rentals for RR Zone 10/80 either in the subject proposal or in another proposal recently filed by MBPT for revision of lease rentals for non-home occupations for the period from 2017-2022.</p>	<p>With regard to the SoR in general for RR Zone 10/80, the LAC had recommended the adoption of SoR on the basis of Fair Market Value of ₹1,87,696 per sq. mtr. (by reducing by 4% on the land value of ₹1,95,204/-) with 4% annual increase every October effective from 01.10.2017 to 30.09.2022 which has been approved by the Board vide TR No.287 of 2020 & 289 of 2020. This rate was based on the SoR approved by TAMP for MBPT workshop under its order dated 19.12.2018 and notified under G.No.06 dated 04th January 2019 (₹11,712.20 per sq.mtr. per annum @ 6% return on land value of ₹1,95,204/- per sq. mtr. and Rs.8198/- per sq. mtr. per annum for water area @ 6% return on ₹1,36,643/- per sq. mtr.). With regard to the subject four expired leases of MDSL also, the Board had vide TR No.46 of 2019 decided to adopt the said rate as the same also falls in RR Zone 10/80. In accordance with the said SoR an offer was made for renewal of lease to MDSL in respect of the subject 4 plots. MDSL however raised objection to the high rate applicable for the period from 01.10.2017 onwards and also brought up the issue of water areas in the plots. The representation was considered by the LAC and the Board and vide TR No.82 of 2021, it was decided to carry out independent valuation in respect of the subject plots. The valuer carried out independent valuation and has recommended the rate of ₹1,70,240/- per sq.mtr. for land area and ₹85,120/- per sq. mtr. as on 01.10.2017. The SoR at 6% return per annum on the same works out to ₹851.20 per sq.mtr. per month for land area and ₹425.60 per sq.mtr. per month for water area effective from 01.10.2017 to 30.09.2018 with 4% annual increase. The same was recommended by LAC for adoption and approved by the Board vide TR No.123 of 2021 as being applicable to only the four expired leases mentioned in the subject proposal.</p>

		Thus the SoR applicable to the subject four plots have been proposed after review by the LAC and the Board and pursuant to the virtual meeting held on 28.06.2021 under the Chairmanship of the Secretary, Ministry of Port, Shipping & Waterways in the presence of Chairman, MBPT, CMD, MDSL, and Jt. Secretary, Ministry of Defence, wherein all the issues raised in the representation were brought up by the MDSL representatives.
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5. A joint hearing on the case in reference was held on 11 October 2021 at 3.30 p.m. through Video Conferencing. At the joint hearing, MBPT made a brief power point presentation of its proposal. The MBPT and the users/ user organisations have made their submission during the joint hearing:

6.1. During the joint hearing, the MDSL has stated that the proposed Lease rates of MBPT are very high and would adversely impact the business viability of MDSL. Since MDSL being a Public Sector Undertaking (PSU) and an integral part of Ministry of Defence involved in building highly critical / strategic platform like destroyers, Frigates and submarines of the Indian Navy, it has requested for a pragmatic approach in the matter. In light of the above, the MBPT was requested vide letter dated 12 October 2021 to review the proposed lease rentals and convey its decision on the matter immediately.

6.2. In this regard, the MBPT vide its letter dated 14 October 2021 has conveyed that due to paucity of time and delay in taking approval of the Board of MBPT, it is difficult for MBPT to take a further reasoned review of the proposal submitted to TAMP. Accordingly, the MBPT has conveyed that the TAMP is at liberty to take appropriate decision on the matter.

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

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

- (i). The Mumbai Port Trust (MBPT) has allotted four plots of land and water area falling in Stamp Duty Ready Reckoner (RR) Zone 10/80 to Mazagon Dock Shipbuilders Limited (MDSL). The lease of the said plots have expired. In this backdrop, the MBPT has come up with a proposal for fixation of lease rent for the land and the water area for the four plots falling in RR Zone 10/80 for the period from 01 October 2017 to 30 September 2022, based on the provisions of the Policy Guidelines of Land Management 2015 (PGLM 2015). The proposal of the port has the approval of the Board of Trustees of MBPT.
- (ii). In the subject proposal, the MBPT has sought approval for the lease rentals to be levied on MDSL for a period of 5 years from 01 October 2017 and upto 30 September 2022.

This Authority does not ordinarily give retrospective effect to the Order. But, in cases governed by special circumstances, it does require retrospective application of its Order. There are various instances, where this Authority has fixed the rates retrospectively.

To quote some few instances, in a case relating to an agreement between New Mangalore Port Trust (NMPT) and the Kudremukh Iron Ore Company Ltd., on the advice of Ministry of Law, the (then) Ministry of Surface Transport had vide its Communication No.PR-14011/5197-P4 dated 16 March 1998 advised this Authority to give retrospective effect. Similarly, based on a proposal received from MBPT, retrospective effect was given for recovery of way leave charges leviable as per the agreement between ONGC and MBPT. Also, based on a proposal received from MBPT, this Authority vide its Order No.TAMP/62/2019-MBPT dated 08 September 2020 has retrospectively approved levy of way leave charges for the pipelines for a period of 5 years from 01 October 2012 and upto 30 September 2017.

Further, it is to state that this Authority had passed an Order No.TAMP/15/2007-NMPT dated 16 June 2010 revising the lease rentals/ licence fee of the lands of NMPT, retrospectively with effect from 20 February 2007 i.e. on expiry of 5 years from the effective date of the implementation of the previously revised rates. The said Order was notified in the Gazette of India on 23 July 2010 vide Gazette no.184. A batch of Writ Petitions were filed in the Hon'ble High Court of Karnataka by various parties mainly challenging the retrospective revision of the lease rentals. The Hon'ble High Court of Karnataka vide its Order dated 28 June 2013 has disposed of all the Writ Petitions. The Hon'ble High Court at paragraph no. 16 of the Order has stated the following:

“There cannot be any dispute that collection of enhanced licence fee with retrospective effect is illegal as held by the Apex Court in the case of LALA RAM (D) by L.R. & ORS. – vs – UNION OF INDIA & ANOTHER reported in 2013 SAR (Civil) 347. But if the authority at the inception itself has made it clear to the licensees that what is being charged is only a provisional licence fee after approval by the TAMP, the action of the NMPT cannot be said to be illegal. At the time of issuing the licence itself as well as the time of renewal of licence, it has been made clear by the NMPT that it has proposed revision of licence fee to the TAMP and till such time only provisional licence fee will be charged and that licensees will have to pay the revised licence fee after approval of the TAMP. The licensees having agreed for the said conditions, entered into the contract. Therefore it is not open for the licensees to go against the terms of the contract and contend that it is not open for the authorities to charge licensees revisional licence fee from 20.2.2007. In view of the above, the challenge to the Circular pertaining to revision of licence fee w.e.f. 20.2.2007 vide Annexure-H fails.”

In this context, in the proceedings relating to the case in reference, the MBPT has categorically stated that it had intimated all the stakeholders by way of a Circular issued in December 2012 itself that the way leave charges are due for revision from 01 October 2012 onwards. The MBPT has also stated that even in the bills raised by the MBPT for the tenants/ lessees, it has been indicated by way of a footnote that the bill raised by MBPT is provisional and is subject to revision with effect from 01 October 2012.

Incidentally, reference is also drawn to the Order passed by the Gujarat High Court in March 2017, wherein the Hon'ble High Court of Gujarat has taken a view and held that TAMP would consider the proposal and follow the prescribed procedure including inviting suggestions and comments from stakeholders. The determination of Scale of Rates would take place thereafter and that because of very nature of this exercise, when the actual demand would be raised, it would relate to past period. It is the retroactiveness and not retrospectiveness. A retroactive operation of demand would not make it unsustainable in the given set of facts. Thus, the

Gujarat High Court had held a view that the ground that the demand is retrospective is, therefore, prima facie not tenable.

Under these circumstances and for the reasons given in the earlier paragraphs, the proposal of the MBPT for recovery of Lease rentals for the RR Zone 10/80 for the period from 01 October 2017 to 30 September 2022, is taken up for consideration.

- (iii). The MBPT has filed its proposal in September 2021. The said proposal alongwith the information/ clarification furnished by MBPT during the processing of the case, is considered in this analysis.
- (iv). This Authority is mandated to follow the Land Policy Guidelines issued by the Government from time to time for the purpose of determining lease rentals for the lands belonging to the Port Trusts. The Ministry of Shipping in the Government of India has announced Land Policy Guidelines for Major Ports, 2014 in January 2014 which has come into effect from 2 January 2014. Subsequently, the Ministry of Shipping has issued PGLM 2015 for implementation with effect from 17 July 2015. The MBPT has, come up with a proposal for fixing SOR for fixation of lease rent for the land and the water area for the four plots falling in RR Zone 10/80 based on the provisions of the PGLM 2015. The proposal of MBPT has the approval of its Board of Trustees.
- (v). As per clause 13(a) read with clause 11.2(e) of the Land Policy Guidelines 2014, a Land Allotment Committee (LAC) constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic shall determine the market value of land as per the methodology prescribed in clause 13(a). Accordingly, the MBPT has reported about constitution of a LAC headed by the Dy. Chairman of the Port and the Heads of Departments of Finance, Traffic and Estate being the other members.
- (vi).
 - (a). Para 13(a) of the PGLM 2015 prescribes the methodology for determination of market value of the land based on the five factors as prescribed therein. In terms of the said para of the PGLM 2015, the Land Allotment Committee may normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for similar classification/ activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity with an appropriate annual escalation rate to be approved the Port Trust Board, (iii). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (iv). Rate arrived at by an approved valuer appointed for the purpose by the Port and (v). Any other relevant factor as may be identified by the Port. The PGLM 2015 2014 also stipulates that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded.
 - (b). In this connection, the LAC has observed that there are no actual relevant transactions and tenders in the past three years in the vicinity of the area under reference. The value of the land as reflected in the Stamp Duty Ready Reckoner 2017-18 is reported at ₹27,100/- per sq.m. The Valuer has also determined the market value of the land at ₹1,70,240/- per sq.m. and for the water area at ₹85,120/- per sq.m., as brought out in the earlier part of the Order. Therefore, the LAC in its Report has recommended to take into account the value of the land as well as the water areas, as determined by the Valuer in the Valuation Report.

- (c). Clause 13 (b) of the guidelines stipulates that Reserve Price in terms of annual lease rent would be arrived, as a percentage of latest market value of land determined based on the five factors in accordance with para 13 (a) and that the percentage should not be less than 6% which is to be fixed by the Port Trust Board. Accordingly, the lease rental for the land as well as the water area has been arrived by MBPT at 6% of the market value of the land and water area at ₹10,214.40 per sq.m per annum and ₹5,107.20 per sq.m. per annum respectively.
- (vii). The MDSL has objected to the lease rentals as proposed by the MBPT on the ground that they are highly unreasonable and would adversely impact the business viability of MDSL. The MDSL has also stated that taking into consideration the likely cash out flows for lease renewal, the rentals proposed by MBPT would not be sustainable to them. Considering that the MDSL is building highly critical/ strategic platforms like destroyers, frigates and submarines for the Indian Navy and since MDSL is an integral part of Ministry of Defence, the MDSL during the joint hearing held on the matter in reference, had requested for review of the lease rentals proposed by MBPT. Accordingly, an opportunity was given to MBPT to review the rentals.

However, the MBPT has expressed its inability to review the rentals and instead has left the matter at the discretion of this Authority. Further, the MBPT in the joint hearing has categorically stated that the Ready Reckoner rates do not reflect correct market value of the land and are very low.

The proposal of the port for fixation of lease rentals is based on valuation taking into account the Fair Market Value of land based on highest of the 5 factors as per PGLM 2015 and which is based on the stipulations contained in the PGLM 2015 and has been recommended by the LAC and also has been approved by the Board of Trustees, and also as this Authority is bound by the PGLM 2015, this Authority approves the lease rental as proposed by the MBPT for the Ready Reckoner Zone 10/80 - Mazgaon Division, for the period 01 October 2017 to 30 September 2022.

Further, considering that the lessees will have to pay the arrears for the period 2017 till date and given that the economy is just coming back to normalcy, after it was hit by the COVID-19 pandemic, the MBPT is advised to grant a longer period of time to the lessees to pay the arrears of rent pertaining to the period beginning from the year 2017.

- (viii). As per Clause 12 (A) (I) of the PGLM 2015, Licence fee for water area would be 50% of licence fee of abutting land. Accordingly, the rental for the water area is ₹5,107.20 per sq.m. per annum, as proposed by MBPT. Incidentally, the MBPT has proposed a note to the effect that rate for allotment of water bodies is applicable at 50% of the SOR rates, which is approved with slight modification to state that rate for allotment of water bodies is applicable at 50% of the SOR rates for the abutting land to avoid ambiguity.
- (ix). Clause 13(c) of the Land Policy Guidelines of 2014 gives flexibility to the ports to fix annual escalation which would not be less than 2%. Also, Clause 13 (c) of the PGLM 2015 stipulates that the rates will be revised once in every five years by the Authority. Accordingly, the MBPT has proposed a note to the effect that the SOR would increase by 4 % annually every October and would be valid till 30.09.2022. The proposed note is approved.

- (x). The MBPT is seen to have proposed a note to the effect that the actual quantum of Rent will be worked out on the base rent and factor as may be recommended by the committee appointed for the purpose of applicability of FSI. Given that the base lease rent approved by this Authority shall remain intact and would be only proportionately increased based on the FSI, this Authority is inclined to approve the note as proposed by MBPT in this regard.
- (xi). The MBPT has proposed another note to the effect that the Taxes, service charges, penalties, interest rates are not included in the rates. In this regard, it is to state that the tariff approved by this Authority is exclusive of any taxes and statutory duties. The taxes and statutory duties are to be levied by the Port at the applicable rates on the tariff so approved by this Authority. In view of this position, the note as proposed by the Port is approved.
- (xii). The MBPT has proposed notes to the effect that differential arrears, liabilities and other dues/ charges for a period from 1.10.2017 to 30.09.2022 will be calculated based on the rates and another note to the effect that these rates are applicable to only the four Expired Leases of MDSL. Since the proposed notes gives clarity and removes any ambiguity, the proposed notes is approved.
- (xiii). The MBPT has also proposed notes to the effect that Interest would be chargeable beyond permissible period as per Board's policy from time to time and that whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month. Since the proposed notes give clarity and would avoid ambiguity and would instill discipline amongst the tenants/ lessees in the payment of rentals, the proposed notes are approved.

9. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the Rent Schedule for MBPT prescribing Lease rentals for the Ready Reckoner Zone 10/80 - Mazgaon Division, for the period 01 October 2017 to 30 September 2022, which has already been notified separately vide Gazette .No.553 dated 12 November 2021.

(T.S. Balasubramanian)
Member (Finance)

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

TAMP/51/2021-MBPT	:	Proposal received from the Mumbai Port Trust (MBPT) seeking approval for fixation of Schedule of Rates for the period 01.10.2017 to 30.09.2022 for Land / Water area leased to Mazagaon Dock Shipbuilders Limited – RR Zone 10/80 (Mazagaon Division).
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A summary of the comments received from Mazagon Dock Shipbuilders Ltd. (MDSL) and the response of Mumbai Port Trust (MBPT) thereon is tabulated below:

Sr. No	Comments received from MDSL	Response of MBPT
(i).	MDSL Shipyard is currently occupying an area of 75.50 Acre, out of which 31.71 Acre is leased from MBPT, 40.88 Acre is leased from the Government of Maharashtra and 2.89 acre is freehold land. The land leased from MBPT consists of 13 plots which comprises approx. 70% land & 30% waterbodies.	MDSL is currently occupying 1,28,367.58 sq.mtrs. of MBPT land/ water area leased by MBPT (i.e. 31.71 Acres)
(ii).	The lease of 04 plots out of 13, expired in year 2006. Lease for another 08 plots is expiring in 2024 and balance one plot in 2065. In spite of rigorous follow up by MDSL since 2007, the lease of above 04 plots was not renewed by MBPT, awaiting finalization of land lease policy. The lease rent as on July 2019 being paid by MDSL to MBPT is @ ₹.86.58 per Sq mtr per month. MBPT, in 2019, has proposed to revise the same to ₹.938.48 per Sq mtr per month. Vide current communication of September 2021, it is proposed to revise the lease rent to ₹.851.20 per Sq mtr per month which is more than 9.5 times the lease rent being paid in 2019 by MDSL.	Consequent to representation from MDSL and pursuant to joint meeting between the MDSL, MBPT, MOPSW and Ministry of Defense and based on the recommendation of LAC and decision of the Board, independent valuation of the four plots in possession of MDSL in which lease has expired was carried out. The SoR of ₹.851.20 is based on 6% return per month on the land value of ₹.1,70,240/- recommended by the Valuer (as against ₹.1,87,696/- given by the previous valuer in respect of MBPT workshop falling in the same RR Zone) which was considered by the LAC and approved by the Board. The said rate is based on the highest of 5 factors prescribed under PGLM 2015. It can be seen that there is about 10% reduction in the rate.
(iii).	MBPT, in July 2019, raised demand seeking upfront premium of ₹.313 crores (~272 Cr – upfront premium plus ₹.41 Cr – arrears / other charges) for long-term lease renewal / fresh lease for these 04 Plots for a period of 30 years. With the current proposal, it is estimated that upfront premium for renewal of lease of these 04 plots would be approx. ₹.192 crores and for other 08 plots (due for renewal in 2024), the same would be around ₹.2168 crores. Thus, the total lease renewal premium for the 12 plots would be in excess	The rate presently proposed would only apply to the four expired leases of MDSL which rate is valid upto 30.09.2022. The rates for the 8 leases to expire in 2024 would depend on the rates and the policy then prevailing. PGLM provides for leasing either on upfront basis or annual rental basis, thus depending on the

	<p>of ₹.2360 crores. It is pertinent to mention that MDSL's Net Worth as on 31.03.2021 is only ₹.2919 crores approximately. Taking into consideration the likely Cash out flow of ₹.2360 crores for lease renewal of 12 plots, MDSL was left with no option but to seek intervention of Ministry of Defense on this critical issue, with request to prevail upon MBPT to favorably consider transfer of all the plots under lease to MDSL on permanent ownership basis, on the basis of lease payments already made by MDSL for the past so many years.</p>	<p>comfort of MDSL they can opt either for 1 time upfront payment or annual payment for the duration of lease. As regards the request for transfer of all plots on permanent ownership basis on the basis of lease payments already made, there is no such provision in PGLM 2015 and such a request cannot be acceded to. This issue has already been clarified to MDSL in various meetings. Further MDSL is a Ltd. Co. and a listed company whose shares are traded on stock exchange.</p>
(iv).	<p>MDSL is paying only a nominal average land revenue of appx. ₹.0.37 (Thirty-Seven Paise only) per Sq. mtr per month for an area of 40.86 acre leased to MDSL by Government of Maharashtra (GoM). These plots of land are abutting to MBPT leased plots of MDSL Mumbai Yard at Dockyard. Compared to lease rates of MBPT, the land revenue rates of GoM are very reasonable. GoM is also very supportive of business endeavours of MDSL and has encouraged MDSL activities by providing financially sustainable land parcels at Anik-Chembur in Mumbai area & Nhava / Gavhan in Navi Mumbai area on freehold basis where in Stamp Duty is charged on the basis of Ready Reckoner (RR) rates of Govt. of Maharashtra which are reasonable and accepted by all stakeholders.</p>	<p>The land parcel and the rate of Govt. of Maharashtra and MBPT are not comparable. The MBPT land provides MDSL with seafront which enables them to carry out their activity of warship/submarine building and repairing. Also the rate depends upon the duration of lease and the date of grant of lease. In one of the cases of lease of MBPT land in occupation of MDSL bearing Billing Code No.20801637, the lease is due for expiry in 2065 where the lease rent being charged is Rs.0.52 per sq.mtr. per month as the said land parcel was leased out in the year 1966 for a period of 99 years when the SoR/ land value was low.</p>
(v).	<p>Earlier, MBPT has also adopted the RR rates for the lease fixation of the land belonging to them in 2006/2012. The current lease payment being made by MDSL for the 04 plots of expired leases are comparable / lower than the prevailing RR rates of GoM. The current lease rate of 04 plots with MDSL is around ₹93.64 per Sq. mtr per month and RR rates of GoM for plots of similar nature is ₹.149.05 per Sqm per month. MDSL would request that incase, the transfer of ownership rights of the leased plots to MDSL is not considered feasible, TAMP may direct MBPT to continue lease rent to MDSL at existing rates only.</p>	<p>MBPT is bound by the provision of PGLM 2015 and the factors prescribed therein for fixation of SoR and as such the request cannot be acceded to.</p>
(vi).	<p>To resolve the above issue of lease renewal at mutually acceptable rates, with the active intervention of Ministry of Defence / Department of Defence Production (DDP), a meeting of all the stakeholders at the level of Secretaries of both department i.e. Secretary (DP) & Secretary (PSW) was held on 28.06.2021. While presenting the case of MDSL on renewal of lease in the meeting, it was once again requested that MoPSW / MBPT should consider permanent transfer of leased land to MDSL on the</p>	<p>MBPT is presently bound by the provision of PGLM 2015 and the factors prescribed therein for fixation of SoR and as such nothing further is presently possible. As regards the request for transfer of all plots on permanent ownership basis on the basis of lease payments already made, there is no such provision in</p>

	<p>basis of the lease payments already made by MDSL for the past so many years. In the above meeting, it was informed that a fresh Land Policy Guidelines of Major Ports is under finalization in MoPSW wherein special discount / concession in lease rates for PSUs is also proposed. However, no timelines could be assigned with respect to promulgation of the new policy.</p>	<p>PGLM 2015 and such a request cannot be acceded to. This issue has already been clarified to MDSL in various meetings.</p>
(vii).	<p>In this regard, we also have to highlight that a high level joint meeting of MOD and MOPSW officials headed by Hon'ble Raksha Mantri was held on 19th August 2021 relating to various issues between MDSL and MBPT. Hon'ble Minister of PSW was also present in the meeting. The unresolved issue of lease renewal of MDSL plots was also discussed during the above deliberations. MDSL expects that a favorable decision would be taken by MOPSW.</p>	<p>MBPT is presently bound by the provision of PGLM 2015 and the factors prescribed therein for fixation of SoR and as such nothing further is presently possible.</p>
(viii).	<p>Considering that MDSL is building highly critical / strategic platforms like destroyers, frigates and submarines for the Indian Navy and since MDSL being an integral part of Ministry of Defence, special clause/s need to be considered to ensure that MDSL's construction activities, in exercise since inception of the shipyard from year 1774, continue unhindered in future too.</p>	<p>It has been recorded in the minutes of the meeting dated 28.06.2021 held under the Chairmanship of Secretary, Ministry of Port, Shipping & Waterways, when Chairman, MBPT, CMD, MDSL and senior representative of Ministry of Defence were present that MBPT is governed by the provision of PGLM 2015 under which highest of the 5 factors have to be considered for arriving at SOR and as such, nothing further can be done as MDSL is not covered by the special dispensation available to the Security agencies with regard to concessions in rate, nevertheless as the rate applied was on the basis of valuation done in respect of abutting MBPT workshop premises, a fresh valuation would be carried in respect of the plots due for renewal to reassess the rates. The rate presently proposed is the rate arrived at pursuant to fresh valuation and also by applying 50% of the land rate to the water area.</p>
(ix).	<p>The proposed revision in rates by MBPT submitted for approval of TAMP are considered highly unreasonable and would adversely impact the business viability of MDSL. Hence, a pragmatic approach in the matter is requested by MDSL</p>	<p>MBPT is presently bound by the provisions of PGLM 2015 and the factors prescribed therein for fixation of SOR and as such nothing further is presently possible.</p>
(x).	<p>In connection, MDSL requests TAMP that MBPT may be directed to continue to charge MDSL on the ongoing lease rates till the Ministry of PSW & MOD arrive at a mutually acceptable decision. Being</p>	<p>It has been recorded in the minutes of the meeting dated 28.06.2021 held under the Chairmanship of Secretary,</p>

	<p>largely engaged in construction of Destroyers, Frigates and Submarines to meet the strategic requirements of Indian Navy, MDSL is directly involved with Maritime aspects of National Security. Accordingly, in the matter of fixation of lease rates, MDSL need to be considered at par with other agencies involved with National Defence / Security and special dispensation needs to be considered in this regard.</p>	<p>Ministry of Port, Shipping & Waterways, when Chairman, MBPT, CMD, MDSL and senior representative of Ministry of Defence were present that MBPT is governed by the provision of PGLM 2015 under which highest of the 5 factors have to be considered for arriving at SOR and as such, nothing further can be done as MDSL is not covered by the special dispensation available to the Security agencies with regard to concessions in rate, nevertheless as the rate applied was on the basis of valuation done in respect of abutting MBPT workshop premises, a fresh valuation would be carried in respect of the plots due for renewal to reassess the SoR rates. The rate presently proposed is the rate arrived at pursuant to fresh valuation and also by applying 50% of the land rate to the water/basin area.</p>
	<p>Additional Comments of MDSL on the MBPT Proposal</p>	
<p>1.</p>	<p>FORMATION AND IMPORTANCE OF MDSL: MDSL is a defence PSU under Ministry of Defence (MoD)/ Department of Defence Production (DDP) headed by Secretary (DP), one of the 04 Secretaries placed under Hon'ble Raksha Mantri. MDSL was incorporated in 1934. Government of India took over the company in 1960 to further augment it's warship development programme as a Defence PSU under Ministry of Defence. MDSL is in the business of ship building and predominantly in Defence Ship building segment. The company is located in Mumbai, Dockyard Road, Mazgaon, Mumbai, 400 010 and is head quartered very near to the largest Navy and Coast Guard fleet of India. Mazagon Dock Shipbuilders Ltd. (MDSL) was earlier known as Mazagon Dock Ltd till year 2015 and is operating under the administrative control of the Ministry of Defence (MoD), Department Of Defence Production (DDP). MDSL is primarily catering to the requirements of Indian Navy (IN) with the main business thrust being construction of frontline Warships and conventional Submarines. MDSL is the premier Defence PSU Shipyard in India engaged in the construction of Destroyer class Warships and Submarines along with other assault Platforms like Stealth Frigates, Corvettes etc for IN. Warship building industry is highly capital intensive with requirement of highly skilled workforce to meet the</p>	<p>No specific comments have been furnished by MBPT.</p>

	<p>strategic mission requirements of Navy, since Indian Navy is the end user of these combat platforms. The vessels built and now under construction would add teeth to the blue water capability in Maritime Defence of India. Primary driver for Warship building is the force level requirements of the Navy and is governed by threat perceptions and security calculus of the pertinent region. The Government of India has remained committed to strengthen the defence capabilities at all levels and particularly Indian Navy with the required blue water capability to handle asymmetrical threats. MDSL, is thus playing a yeoman role in fulfilling aspirations of Indian Navy, as major contributor for Indian Defence Shipbuilding and Submarine construction requirements.</p>	
2.	(B) LAND LEASE ISSUES OF MDSL:	
(i).	<p>(i) MDSL Shipyard located at Mazgaon, near Dockyard Station, Mumbai- 400 010 is currently occupying an area of 75.50 Acre, out of which 31.71 Acre is leased from MBPT, 40.88 Acre is leased from the Government of Maharashtra and 2.89 acre is freehold land. The land leased from MBPT consists of 13 plots of which approx. 30% is waterbodies. All these 13 plot of MBPT land are on lease from various dates, the Page 2 of 7 oldest being leased in 1966. MDSL is in possession of these land parcels for couple of decades and over the years, substantial infrastructure has been built up by MDSL on these leased land parcels. Total investment made by MDSL / GOI in infrastructure in leased land of MBPT alone being in excess of ₹.1200 Crores and total investment exceed over the whole yard more than ₹.5000 crores. The infrastructure built over the years cannot be re-located to an alternate location. {Aerial view of MDSL Yard and Layout of MDSL Land are placed at Annexures 1 & 2 respectively. Details of Land under lease (13 Nos. plots) from MBPT are placed at Annexure- 3}</p> <p>Out of above 13 plots on lease from MBPT, the lease of 04 plots (Approx. 3.40 acres) expired in year 2006. Further, lease of another 08 plots are due to expire in 2024 and lease of balance one plot will expire in 2065. In spite of repeated follow-up by MDSL for lease renewal, the lease renewal for the above 04 plots remained pending with MBPT since 2007. The lease rates could not be finalised by MBPT, as MoPSW took time in finalising the "Land Policy Guidelines-Major Ports (PGLM) 2014/15 & due to amendments thereof. {Details of correspondence by MDSL with MBPT from 2007- 2017 and from 2019- 2020 are placed at Annexure 4 & 5}.</p>	No specific comments have been furnished by MBPT.
(ii).	<p>Subsequent to promulgation of the guidelines PGLM-2015, MBPT raised demand for lease rent in respect of the four (04 Nos) plots in 2019, seeking an upfront premium of ₹.313 crores for long-term lease renewal for these 04 plots. Considering the basis of fixing the lease rental for these four plots, it is estimated that</p>	

	<p>another ₹.2120 crores would be required for lease renewal (30 Years) of the 08 plots where the lease is expiring in 2024. Thus, the total lease renewal premium for 12 plots would be in excess of ₹.2400 crores. It is worthwhile to mention that MDSL's Net Worth as on 31.03.2021 is only ₹.2900 crores approximately.</p>	
(iii).	<p>The lease demand was considered highly unreasonable looking at the fact that the proposed lease rate of ₹.11,262 per sqm per annum is approx. 11 times the current lease rate of approx. ₹.1039 per sqm per annum. Further, the annual charges for 40.88-acre land, leased from the Government of Maharashtra, is on an average only ₹.4.50 per sqm per annum {Details of lease rates of GoM for MDSL Plots are placed at Annexure -6}.</p>	
(iv).	<p>To resolve the above issue of Lease renewal at mutually acceptable rates initially the matter was taken up by MDSL at the level of Chairman MBPT from 2020 but no breakthrough could be achieved. Considering the gravity of the issue and the fact that the demand raised by MBPT would be absolutely unsustainable by MDSL, request was made to Ministry of Defence (MoD) for their kind intervention vide MDSL letter No. CH/07/MBPT/68 dated 21 Sep 2020 and to take up the issue of lease renewal of land leased from MBPT with MoPSW which is the parent Ministry of Mumbai Port Trust at the appropriate level. {Copy of letter dtd. 21.09.2020 to MoD from MDSL seeking their intervention in the lease renewal issue is placed at Annexure -7</p>	
(v).	<p>Thereafter, a virtual meeting of all the stakeholders was also held on 28.06.2021 to discuss the issue of lease renewal at mutually acceptable rates between MBPT & MDSL, with the active intervention of DDP / MoD. {Copy of MOM of virtual meeting dated 28.06.2021 held between MOD & MoPSW placed at Annexure- 8}</p>	
(vi).	<p>While presenting the case of MDSL on renewal of lease in above meeting, it was once again requested by MDSL that MoPSW / MBPT should consider permanent Page 3 of 7 transfer of leased land to MDSL on the basis of the lease payments already made by MDSL for the past so many years. However, in the above meeting, it was informed that a fresh Land Policy Guidelines of Major Ports is under finalization in MoPSW wherein special discount /concession in lease rates for PSUs is proposed / under consideration for incorporation.</p>	
(vii).	<p>In this regard, we also have to highlight that a high level joint meeting of MoD & MoPSW officials headed by Hon'ble Raksha Mantri was held on 19th August 2021 relating to various issues between MDSL & MBPT. Hon'ble Minister of PSW was also present in the meeting. The unresolved issue of lease renewal of MDSL plots was also discussed during the above deliberations. MDSL expects that a favourable</p>	

	decision would be taken by MoPSW. {Copy of MOM of high level meeting dtd 19.08.21 held at New Delhi is placed at Annexure-9}.	
(viii).	In continuation of the details above, MDSL is first and foremost of the proposition that the leasehold land from MBPT be transferred to MDSL permanently on the basis of lease payment and other charges paid so far to MBPT. However, in case, the above proposal is not implementable due to any reasons, the lease rates may be revised nominally and reasonably, keeping in view the provisions of Ready reckoner rates of Government of Maharashtra for land parcels and water bodies of similar nature.	
3.	POLICY GUIDELINES - FACTORS IN PGLM -2015 TO BE FAVOURABLY CONSIDERED FOR MDSL	
(i).	As highlighted in PGLM-2015, land and water bodies are also equally one of the most important resources with Shipyards to promote their business as well that of Ports. MoPSW has been using these PGLM guidelines from time to time to regulate the allotment of land. In the competitive environment that the Shipyard operate, continuous review of these guidelines are imperative. In this regard, some of the concerns with respect to the adopted guidelines of the policy are deliberated below;	No specific comments have been furnished by MBPT.
(a).	It is mentioned in the scope of the land policy guidelines that PGLM 2015 is applicable to all Major Ports except for the land relating to the township areas of Mumbai for which separate policy will be formulated. MDSL is of the suggestion that a separate policy for Mumbai Port Trust areas is needed considering the unique nature of land use pattern of Mumbai Port area, instead of adopting it to all Major Ports of India.	
(b).	Renewal of existing land leases: As the Port has allotted the land / water bodies on long term basis and MDSL has created many important permanent infrastructure & facilities on the land / waterbodies. As already mentioned, MDSL is using its land & water bodies for capital intensive marine structures like Wet basins, Workshops, Heavy Goliath cranes, Submarine Section Assembly shop etc.	
(c).	As envisaged in the policy, MDSL is using the land exclusively for the purpose (Ship building) for which, it was granted and in no circumstances the usage was changed / proposed to be changed. No transfer / subletting of the lease is also proposed by MDSL.	
(d).	As per para 11.2 "Fresh leases" - clause (h), provision exists in PGLM-2015 for allotting land on nomination basis to CPSUs and Security agencies like Indian Navy, Coast Guard etc. PGLM- 15 also provides for granting concessions upto 75% of lease rents to Security agencies and Government departments. As brought out in earlier paragraphs, MDSL is an agency which needs to be treated at par with Defence agencies like Indian Navy and Indian Coast Guard	

	and such other Government departments due to the strategic Security considerations of the Nation.	
(e).	As per provision in para 11.3 “Renewal of Existing / Earlier leases”– clause (j) of PGLM-2015, the process of renewal of existing lease should be initiated by the respective Port well in advance before the term of lease expires. The automatic renewal of existing leases should be preferably done within three months of receipt of such application. If the delay in renewing such leases is wholly attributable to Port, liability to pay compensation should not be on Lessee. However, in the case of expired lease of the four (04 Nos) plots with MDSL, the lease was expired in 2006 and MDSL were continuously writing and following up with MBPT for lease renewal from 2007 till 2019 but without any concrete response from MBPT till June 2019. Only in mid-2019, MBPT issued notice to MDSL for renewing lease of 04 plots that also included arrears. MDSL is of the view that the factors which are to be favourably considered such as security reasons, exte of waterbodies in leased land were note proactively considered by MBPT in said notice of 2019.	
(f).	As per para 12 “General-Applicable to Existing and new leases) - clause (I) of PGLM-2015, license fee for water area would be 50% of license fee of abutting land. However, this aspect was also not duly considered by MBPT in it’s valuation /demand note issued to MDSL in 2019.	
(g).	Para 4 “Objectives”– clause (d) of PGLM-2015, recognises special dispensation for cases relating to Security purposes	
4	LEGAL ASPECT:	
(i).	In Feb’ 2019, MDSL was served demand letter for renewal of said 04 plots. Thereafter, in July 2019, received the demand note of ₹.272.14 Cr along with ₹.40.8 Cr. towards the Arrears including Compensation Arrears, Service Tax and Interest. With respect to the proposed Schedule of Rate (SoR) for period 01.10.2017 to 30.09.2022 for land/water area leased to MDSL at the rate of ₹.10,214.40 per Sq.mtr for land and ₹.5,107.20 per Sq. Mtr. for basin/water area. It is reiterated that the rates are very high compared to ongoing rates. To substantiate MBPT charges high rates demanded by MBPT on its tenants/lessees in past the following cases laws in Mumbai High Court/ Supreme Court are cited:	No specific comments have been furnished by MBPT.
(a).	Jayantilal Dharamsi and Ors vs Board of Trustee of Port of Bombay [1992(94) Bom LR 697] In this case, the issue of increase of rent was challenged by the Petitioner. The Petitioners were allotted the plots by MBPT for residential & commercial usage. MBPT felt that the real estate owned by them was not yielding as much of an income as it should. MBPT appointed a consultant to undertake an exercise to ascertain the market Page 5 of 7 value of lands of the entire BPT, including land	

	<p>in the docks and bunders. Based on the consultant report, MBPT revised the rent to 12 % for residential and 15 % for Commercial & Industrial usage. The Petitioners were not agreeable with the revised rent and filed the petition in the Bombay High Court.</p> <p>The High Court observed that, a mere look at the figures given in petition and the rents chargeable by MBPT would show that the increase is astronomical. That cannot be permitted, for it is clearly arbitrary and capricious being based upon an inapplicable measure. The Court held that, the demanded increases coupled with termination of tenancies are violative of the rights of the petitioners</p>	
(b).	<p>Dwarkadas Marfatia & Sons vs Board of Trustees Of The Port Of Mumbai [1989 AIR 1642]</p> <p>In this case, it was mentioned that, under the Constitutional scheme of this country the Port Trust Authorities were required by relevant law to act in pursuance of public purpose.</p>	
(c).	<p>Jamshed Hormusji Wadia Vs Board of Trustees Port of Mumbai [(2004)3 SCC 214]</p> <p>In the said case, the petitioner challenged the increase of rent, wherein Supreme Court has examined the Compromise Proposal put up by MBPT. Supreme Court observed that, the land leased out to the petitioner was unable to develop the property according to Municipal Laws as there was drainage flow underground and petitioner can neither make use of the entire property nor develop it fully in the same manner as others can they legitimately deserve some relaxation over the others being allowed to them.</p> <p>As mentioned in preceding para the 04 plots of MDSL under lease renewal comprise of approx. 40 % water bodies /seashore, which may fall under CRZ-I where there are restrictions / limitations for development and MDSL would not use the land for further development and expansion.</p>	
(d).	<p>Ministry of Defence Declaration: MDSL is Local Military Authority (LMA)</p> <p>Ministry of Defense in Feb'2020, communicated that MDSL is a Defence Establishment and Local Military Authority (LMA) for its premises. In line with above communication from MOD, MDSL may be considered to covered by the special dispensation available to Security agencies with regard to concession rate under clause 4 (d) & clause 11.2 (h) of PGLM-2015. The plots under lease are utilized for Defence/ Security purpose only, still MBPT is proposing to charge high lease rates to MDSL in lease renewal.</p>	
5.	<p>LAND ALLOTMENT COMMITTEE (LAC) REPORT:</p> <p>It is stipulated in para 13 "Market Value of land and SOR"- clause (a) of PGLM2015, that the LAC may normally take into account the highest of 5 factors as mentioned therein. However, it does not bar the LAC to take into consideration the representation made by</p>	<p>No specific comments have been furnished by MBPT.</p>

	<p>the Lessees on other specific /extraordinary issues and fix the SoR accordingly. It may be seen that no such efforts were made by LAC but they may have merely acted on a valuation report submitted by another Valuer appointed by MBPT. It may be highlighted that the unique nature of areas allotted to MDSL comprising Page 6 of 7 70% land and 30 % water bodies (considering all 13 plots of MBPT land), absence of any other commercial activities except construction /repairs of Strategic Warships & Submarines by MDSL etc which are special factors were not adequately considered either by Valuer or LAC of MBPT while arriving at SoR.</p>	
6.	5. PROPOSAL - COMMENTS ON SoR PROPOSED BY MBPT:	
(i)	The rates considered in the Valuation report by MBPT-Valuer are for commercial land and MDSL plots area is not classified as industrial, residential & commercial etc.	No specific comments have been furnished by MBPT.
(ii.)	The Plots of land within MDSL yard are used for industrial purpose and is predominantly being used for Strategic Defence related activities.	
(ii)	MBPT is proposing to charge interest on arrears since year 2007 which should not have been charged, as the delay in renewing leases is not at all attributable to MDSL.	
(iv)	As mentioned, in para 1(B) above, the lease in respect of these 04 plots to MDSL by MBPT have expired in 2006. Since then, MDSL was rigorously following up with MBPT for its renewal but same could not materialize. However, MDSL was paying regularly the monthly lease rent and continue to pay till date as per the invoices being raised by MBPT. Therefore, the issue / demand from MBPT of arrears / interest on it, as proposed by MBPT in their demand notice for lease renewal /fresh lease is unreasonable, as the leases expired in 2006 and MDSL was rigorously and earnestly following up with MBPT since then. The delay in renewal of lease in any case is not attributable to MDSL.	
(v)	The 04 plots due for lease renewal comprises of approx. 40% water bodies / seashore, which may fall under CRZ-I where there are restrictions / limitations for development. Adequate consideration needs to be given to this aspect also while fixing SoR as MDSL could not use the land for further development and expansion	
(vi)	The Govt. of Maharashtra (GoM) determines the annual lease rent as 4% of (25% of Valuation of land i.e. 25 % of Ready Reckoner Rate) whereas MBPT arrives annual lease rent as 6% (Valuation of land i.e. market rate fixed by the Valuer appointed by MBPT) {Copy of GoM resolution dtd.12.12.2012 regarding revised renewal policy is placed at Annexure-10}	
(vii)	As per clause 13 (c) of PGLM-2015, there is provision that Port Trust Board will fix rate of annual escalation which would not less than 2 %, whereas MBPT	

	considers 4% annual escalation, which is at higher side. Therefore, reconsideration & review of annual escalation to a lower rate close to 2%, need adequate consideration	
(viii)	Considering national importance of MDSL from Strategic Security angle, Govt of Kerala has assigned land of 40 acres to MDSL at free of cost to set up a National Institute for Research and Development (NIRDESH) at Kozhikode. Such steps considering foresight in Strategic future would certainly strengthen Strategic Defence outlook of India for which MDSL has been continuously contributing of MDSL since nationalisation in 1960.	
(ix).	The Govt of Maharashtra also allotted 27 Acres of land to MDSL at concessional rate on Occupancy Right Basis at Anik- chembur, Mahul Road, Mumbai in year 2016. Page 7 of 7 These land is being used as storage area by MDSL. As detailed in para 6 of covering letter the prevailing lease rate as low as 37 paise per Sqm per month.	
7	JUSTIFICATION:	
	<p>MDSL is consistently taking a considered view that all the 13 Nos of land parcels and waterbodies under lease from MBPT to MDSL, is to be transferred on ownership basis to MDSL.</p> <p>Since decision on the above is still at Ministry level of MoPSW / MoD, we are requesting to continue to charge only on the ongoing rate/s for the lease rent from MDSL by MBPT.</p> <p>The revised schedule of rates as proposed by MBPT for approval of TAMP is not agreeable to MDSL, as it is drastic and un-reasonable compared to the ongoing rates / Ready Reckoner rates of the Govt. of Maharashtra. Detailed comments for non agreeing to the same is deliberated on para 1 to 5. Considering the gravity of the issue and the fact the demand raised by MBPT would be absolutely unsustainable by MDSL, it is requested that TAMP may not endorse the proposal of MBPT.</p>	No specific comments have been furnished by MBPT.

2. A joint hearing on the case in reference was held on 11 October 2021 at 3.30 p.m. through Video Conferencing. At the joint hearing, MBPT made a brief power point presentation of its proposal. The MBPT and the users/ user organisations have made the following submissions during the joint hearing:

Mumbai Port Trust (MBPT)

- (i). Four plots of land and water area falling in Stamp Duty Ready Reckoner Zone 10/80 has been leased to Mazagon Dock Shipbuilders Ltd. The lease have expired.
- (ii). Based on the Report of the LAC and the approval of Board, it was decided to adopt the market value of the land at ₹.1,87,696/- per sq.m as determined by the Valuer in the year 2018 relating to the proceedings relating to the Order No.TAMP/72/2018-MBPT for the workshop area to be allotted to MDSL, for all lettings falling under Ready Reckoner Zone 10/80 including that of the expired four leases of MDSL.

- (iii). Accordingly, when the SOR @ 6% return per annum which worked out to ₹.11261.76 per sq.mtr. per annum w.e.f. 01.10.2017 with 4% annual increase every October, was conveyed to MDSL, the MDSL conveyed that the rates effective from 01.10.2017 are not acceptable to them as it was about 10 times the rates being paid by them. The MDSL expressed their willingness to pay at the rates as per Ready Reckoner.
- (iv). Again, a Valuer was appointed to determine the market value of land. The said Valuer applied discounting factors considering the leasehold premises and other facilities, and arrived at the market value of ₹.1,70,240/- per sq.m. for land area and ₹.85,120/- per sq. mtr. for basin/ water area. The SOR at 6% p.a. return on land value was worked out to ₹.10,214.40 per sq.mtr p.a. for FSI 1 and on water area was worked out to ₹.5107.20 per sq. mtr. p.a. The LAC has recommended and the MBPT Board has approved the said rentals for land and water area for the 4 plots of expired leases of MDSL
- (v). We request TAMP to approve the proposed rentals.

MDSL

- (i). The lease of 04 plots expired in year 2006. In spite of follow up by MDSL since 2007, the lease of above 04 plots was not renewed by MBPT. As against the lease rent of ₹.86.58 per Sq mtr per month paid by MDSL in July 2019, the MBPT has proposed to revise the same to ₹.938.48 per Sq mtr per month. The proposed revision in rates by MBPT submitted for approval of TAMP are considered highly unreasonable and would adversely impact the business viability of MDSL.
- (ii). Taking into consideration the likely Cash out flow for lease renewal, the rentals proposed by MBPT was not sustainable to us. As such, MDSL was left with no option but to seek intervention of Ministry of Defence on the matter. A meeting of all the stakeholders at the level of Secretaries of both department i.e. Secretary (Defence Production) & Secretary (Ports, Shipping & Waterways) was held on 28.06.2021. It was discussed that the rates need to be relooked and revised by MBPT.
- (iii). MDSL is paying only a nominal average land revenue of appx. ₹.0.37 (Thirty-Seven Paisa only) per Sq. mtr per month for an area of 40.86 acre leased to MDSL by Government of Maharashtra (GoM). These plots of land are abutting to MBPT leased plots of MDSL Mumbai Yard at Dockyard. Compared to lease rates of MBPT, the land revenue rates of GoM are very reasonable.
- (iv). Considering that MDSL is building highly critical / strategic platforms like destroyers, frigates and submarines for the Indian Navy and since MDSL being an integral part of Ministry of Defence, MDSL requests for a pragmatic approach in the matter.

MBPT

- (i). The Valuer appointed by the MBPT has already considering discounting factors to reduce the market value of the land. 50% discount is also proposed for the water area. We have followed the Land Policy Guidelines.

Member (F), TAMP

- (i). Why can't the MBPT go ahead based on Ready Reckoner rates, given that MDSL has given its concurrence for the same.

(Estate Manager, MBPT: The Ready Reckoner rates do not reflect correct market value of the land. The RR rates are very low.)

- (ii). MDSL is a PSU. On land alone, they cannot pay huge rentals. The MBPT may consider reviewing the rates.

MDSL

- (i). Given that MDSL is a strategic entity, special concessions should be given.
- (ii). In the meeting held on 28.06.2021, Addnl. Secretary (PSW) informed that a fresh Land Policy Guidelines of Major Ports is under finalization in MoPSW wherein special discount / concession in lease rates for PSUs is also proposed. These factors need to be looked into.
- (iii). The lease have expired in the year 2006. The MBPT has not contributed to improve the infrastructural facilities in the plots. It has to be understood that it is not practical to shift the ship building to other place.
