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TARIFF AUTHORITY FOR MAJOR PORTS

G. No. 151

New Delhi

17 April, 2020

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 proposal received from the Nhava Sheva International Container Terminal Private Limited (NSICTPL) for General Revision of its Scale of Rates under Tariff Guidelines, 2019. Considering the time involved for notifying the (Speaking) Order along with the Scale of Rates approved by this Authority, this Authority decided to notify only the revised Scale of Rates immediately. Accordingly, the Scale of Rates approved by this Authority on 20 February 2020 was notified in the Gazette of India on 03 March 2020 vide Gazette No. 99. 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 disposing of the proposal of the NSICTPL for general revision of its Scale of Rates as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

TARIFF AUTHORITY FOR MAJOR PORTS
Case No. TAMP/56/2019-NSICTPL

Nhava Sheva International Container Terminal Private Limited

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Applicant

QUORUM

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

O R D E R

(Passed on this 20th day of February 2020)

This case relates to the proposal received from Nhava Sheva International Container Terminal Private Limited (NSICTPL), a BOT Operator at Jawaharlal Nehru Port Trust (JNPT), vide its letter No. CEO/NSICT/011/2019 dated 18 November 2019 for general revision of its Scale of Rates under Tariff Guidelines, 2019.

2.1. This Authority vide its Order No. TAMP/54/2011- NSICTPL dated 14 February 2012 had revised the SOR of the NSICTPL based on the proposal then filed by NSICTPL following 2005 Tariff Guidelines. The said order was notified in the Gazette of India on 1 March 2012 vide Gazette No. 55. Vide the said Order, this Authority had effected an across the board reduction of 27.85% over the then prevailing tariff of NSICTPL. The then revised Scale of Rates and conditionalities of the NSICTPL were to come into effect after expiry of 15 days from the date of notification of the said Order in the Gazette of India and was to be in force till 31 December 2014.

2.2. Aggrieved by the said Tariff Order, the NSICTPL approached the Hon'ble High Court of Bombay challenging the tariff order dated 14 February 2012 by its Writ Petition No.2954 of 2012. The Hon'ble High Court has stayed the tariff Order dated 14 February 2012 and has allowed the NSICTPL to levy the tariff as approved vide earlier tariff Order dated 30 December 2008 vide its Order dated 2 July 2012. The Order of the High Court is still in force and the NSICTPL continues to levy the tariff as approved under tariff Order dated 30 December 2008.

3. The Ministry of Shipping (MOS), in exercise of powers conferred on it by Section 111 of the Major Port Trusts Act, 1963, has vide its letter No.PR-14019/20/2009- PG (Pt-IV) dated 5 March 2019 issued Tariff Guidelines, 2019, for BOT operators who were previously governed by 2005 Tariff Guidelines. The Tariff Guidelines, 2019, has been notified in the Gazette of India on 7 March 2019 vide Gazette No.92. Thereafter, as per Clause 1.7 of the Tariff Guidelines, 2019, Working Guidelines to operationalize the Tariff Guidelines, 2019, has been notified in the Gazette of India on 11 July 2019, vide Gazette No.244.

4.1. In this backdrop, the NSICTPL has filed its proposal dated 18 November 2019 for general revision of its SOR, following Tariff Guidelines, 2019. The main submissions made by NSICTPL are given below:

- (i). NSICTPL has carefully gone through the Tariff Guidelines, 2019 and have prepared the proposal for fixation of tariff in accordance with said guidelines, in the formats and along with supporting documents as prescribed in the Working Guidelines.
- (ii). NSICTPL intends to file an application before the Bombay High Court in W.P. No. 2954 of 2012 with respect to the same. The proposal is without prejudice to our rights and contentions including in W.P. No. 2954 of 2012 and nothing contained herein shall be deemed to be a waiver of the same.
- (iii). NSICTPL has submitted to JNPT, a letter dated 15 November 2019 for execution of Separate Agreement as per clause 1.9 of the Tariff Guidelines 2019.

[Subsequently, the NSICTPL vide its letter dated 18 February 2020 has made available a copy of separate agreement executed between NSICTPL and JNPT.]

- (iv). Since the information provided in the various Forms as well as in the Audited Accounts is confidential, it is requested not to circulate or publish the said information or documents to the general public or various stakeholders/ trade bodies.

4.2. The Highlights of the proposal are as follows:

- (i) Annual Revenue Requirement (ARR) has been computed in accordance with Clause 2.1 of the Tariff Guidelines, 2019 at INR 47,540 lakhs on 31 March 2019.
- (ii) Since bidding process of NSICTPL was finalised before 29 July 2003, the tariff computation will take into account royalty / revenue share as cost subject to maximum of the amount quoted by the next highest bidder for tariff fixation, i.e. 69.50% of the actual royalty paid. By an award dated 18 September, 2019 ("Award"), an Arbitration Tribunal has, inter alia, held that the Royalty per TEU needs to be converted to a Revenue Share and JNPT is directed to amend the License Agreement accordingly in consultation with NSICTPL within four months from the date of the award (i.e on or before 18 January 2020). Till date, an amended License Agreement is not in place. It is clarified that the proposal is submitted without prejudice to the Award and NSICTPL reserves its rights in this regard. Any further developments in this regard will be informed to TAMP.
- (iii) NSICTPL's Financial Statements are IND AS compliant. The relevant IND AS adjustments have been excluded and instead depreciation or other adjustments as per IGAAP have been included for computation of ARR in accordance with Clause 2.3.2.
- (iv) The ARR so computed has been indexed by 4.26% as per escalation factor announced by TAMP for FY 2019-2020. Indexed ARR has been computed at INR 49,566 lakh. Normal handling, storage and ancillary charges are proposed at lesser AAR at ₹ 42,312 lakhs.
- (v) NSICTPL has challenged the TAMP order dated 14 February 2012 in W.P. No. 2954 of 2012 and the order has been stayed by the Bombay High Court. Clause 3.1.1 of the Tariff Guidelines, 2019 provides that, *"The Scale of Rates of some of the BOT operators have not been reviewed due to litigations pending in the High Courts on the Tariff Orders passed by TAMP. The surplus / deficit over and above the admissible costs and permissible returns, if any, arising during the period of litigation will be subject to the orders of the respective Courts. Alternatively, MoS, concerned Major Port Trusts, concerned BOT operators and TAMP may decide on the treatment of the past period surplus arising during the period of litigation."*

While we do not admit to any past surplus, in the current application, we have foregone an amount of ₹ 7,253 lakh per annum aggregating to ₹ 21,759 lakh for a period of three years, without prejudice to NSICTPL's rights. Depending on the mutual decision pursuant to discussions in keeping with the clause above, the ARR foregone by NSICTPL in the current application should be adjusted against any past surplus, if so determined.
- (vi) As regards Coastal tariff, the tariff has been aligned at 60% of normal handling charges for Foreign Containers in accordance with Policy Directions of Government, Ministry of Shipping and Clause 8.3 of Working Guidelines 2019 with reference to Tariff Guidelines, 2019.
- (vii) The tariff proposed in the attached SOR will be indexed by 60% of Wholesale Price Index as announced by the Government of India. Such revisions will be first made on 1 May 2020 and subsequently on 1 May 2021.
- (viii) Tariff for Hazardous and Over Dimensions cargo has been proposed at a premium of 50% on Handling and Storage Charges in accordance with Clause 9.9.3.
- (ix) Exchange Rate of ₹ 70/- per US\$ has been used for calculating US Dollar denominated revenue.
- (x) The application currently does not consider the replacement of 6 Nos. Quay Cranes and 15 Nos. RTGs which are required under the License Agreement. Delivery of the equipment is expected by May 2020 and the equipment is expected to be put into operation by July 2020. Prior to commissioning, NSICTPL reserves the right to approach TAMP, as this change may have a material impact on NSICTPL's tariff computation of surplus and ARR adjustment against past surplus.

4.3. The NSICTPL has furnished detailed computation of Annual Revenue Requirement (ARR) under Form-1 and Revenue estimation at the proposed rate in Form-4. A summary position of ARR computation furnished by NSICTPL is tabulated below:

Sl. No.	Description		Y1 2016-17	Y2 2017-18	Y3 2018-19
(1).	Total Expenditure (As per Audited Annual Accounts)	Note 1			
(i).	Operating expenses (including depreciation)		38,292.10	36,895.20	36,768.83
(ii).	Finance and Miscellaneous expenses (FME)		56.90	58.60	59.80
	Total Expenditure 1=(i)+(ii)		38,349.00	36,953.80	36,828.63
(2).	Adjustments in respect of items where there is variation in figures reported as per INDAS (as per Audited Accounts) and IGAAP	Form 6 A and Note 2			
(i).	Depreciation		-	-	-
(ii).	Other expenditure items, if any, to be listed - Lease rent paid		-	-	-
	Total of Adjustments 2=(i)+(ii)		-	-	-
(3).	Less Adjustments:				
(i).	Actual Royalty / Revenue share paid to port		21,855.20	20,297.50	19,752.10
(ii).	Interest on loans		-	1.00	6.70
(iii).	Provision for bad and doubtful debts		-	4.00	-
(iv).	Provision for slow moving inventory		-	-	-
(v).	Other provisions, if any		-	-	-
	Total of 3 = [3(i)+3(ii)+3(iii)+3(iv)+3(v)]		21,855.20	20,302.50	19,758.80
(4).	Add: Admissible Royalty/ Revenue Share as per Clause 2.2. of the Tariff Guidelines, 2019	Form 2 and Note 3	15,189.36	14,106.76	13,727.71
(5).	Total Expenditure after Total Adjustments (5 = 1+2+3)		31,683.16	30,758.06	30,797.54
(6).	Average Expenses of Sl. No.5 = [Y1 + Y2 + Y3] / 3		31,079.59		
(7).	Capital Employed				
	(i). Gross Fixed Assets (Property, Plant & Equipment) as on 31st March Y3 or 31 December of Y3 followed by the BOT operator (As per IGAAP)				99,661.12
	(ii). Add: Capital Work in Progress as on 31st March Y3 or 31 December of Y3 followed by the BOT operator (As per Audited Annual Accounts)				1.81
	(iii). Add: Working Capital as per norms prescribed in clause 2.6 of the Tariff Guidelines, 2019	As per Form 3 & Note 4			
	(a). Inventory				307.60
	(b). Sundry Debtors				-
	(c). Cash				2,909.47
	(d). Sum of (a)+(b)+(c)				3,217.07
	(iv). Total Capital Employed [(i)+(ii)-(iii)]				1,02,880.00
(8).	Return on Capital Employed 16% on Sl. No.7(iv)				16,460.80
(9).	Annual Revenue Requirement (ARR) as on 31 March Y3 or 31 December of Y3 as applicable [(6)+ (8)]				47,540.39
(10).	Indexation in the ARR @ 100% of the WPI applicable for the year Y4 for example, if Y4 is 2018-19, then the applicable WPI is 3.45% and the indexed ARR for the year Y4 will be (9) x 1.0345)				4.26%
(11).	Ceiling Indexed Annual Revenue Requirement (ARR) as given in Sr. No. 10 above				49,565.61
(11A)	Voluntary Adjustment of Past Surplus (While we do not admit to any past surplus, should any such surplus arise either out of mutual discussions or by a decision of the Bombay High Court, the amount of ARR foregone by us				7,253.13

	amounting to ₹. 21,759 Lakh (₹. 7,253.13 lakh X 3) should be adjusted against the same."		
(12).	Revenue Estimation at the Proposed indexed SOR within the Ceiling indexed ARR estimated at Sl. No.11 above (after Adjustment of Past Surplus [(11)-11A]	As per Form 4 & Note 5	42,312.48

4.4. The NSICTPL has furnished in Form 4, the working of revenue estimation for the existing tariff as well as the proposed tariff for the average of the actual traffic handled by the NSICTPL during the years Y1, Y2 and Y3. As per the said form, the total revenue estimated at the proposed level of tariff is ₹ 42,312 lakhs. Tariff increase sought by NSICT is in the range of 50% to 138% in various tariff items

4.5. The NSICTPL has furnished a copy each of the Audited Annual Accounts for the financial years 2016-17, 2017-18 and 2018-19.

4.6. The Proposal of NSICT is as follows:

(a) Tariff

Sl. No.	Description	Existing tariff	Proposed Tariff	% increase over the existing tariff
(1)	(2)	(3)	(4)	(10) = (4-3)/3
	Tariff Items			
	Container traffic (in TEUs)			
A.	Foreign containers			
	(1) Loaded Containers	₹.	₹.	
	(a) 20 ft containers	3,740	6,144	64%
	(b) 20-40 ft containers	5,610	9,216	64%
	(c) Above 40 ft containers	7,057	12,288	74%
	(2) Empty Containers			
	(a) 20 ft containers	3,183	5,349	68%
	(b) 20-40 ft containers	4,774	8,024	68%
	(c) Above 40 ft containers	5,944	10,698	80%
	(3) Reefer Containers			
	(a) 20 ft containers	3,740	6,144	64%
	(b) 20-40 ft containers	5,610	9,216	64%
	(c) Above 40 ft containers	7,057	12,288	74%
	(4) HAZ Containers			
	(a) 20 ft containers	4,675	9,216	97%
	(b) 20-40 ft containers	7,012	13,824	97%
	(c) Above 40 ft containers	8,822	18,432	109%
	(5) ODC Containers			
	(a) 20 ft containers	7,479	9,216	23%
	(b) 20-40 ft containers	11,219	13,824	23%
	(c) Above 40 ft containers	14,115	18,432	31%
B	Foreign Transshipment containers			
	(1) Loaded Containers			
	(a) 20 ft containers	1,671	3,975	138%
	(b) 20-40 ft containers	2,506	5,963	138%
	(c) Above 40 ft containers	3,341	7,950	138%
	(2) Empty Containers			
	(a) 20 ft containers	1,448	3,379	133%
	(b) 20-40 ft containers	2,172	5,068	133%
	(c) Above 40 ft containers	2,896	6,758	133%
C	Others (Restow - Foreign)			
	(1) Loaded Containers			
	(a) 20 ft containers	8,309	15,208	83%
	(b) 20-40 ft containers	12,464	22,812	83%
	(c) Above 40 ft containers	16,618	30,416	83%
G	Hatch Cover (Ref Note1)			
	Foreign Vessel	6,231	11,405	83%
	Coastal	6,231	11,405	83%
I	Reefer Revenue - Supply of Electricity	6,656	6,656	0%
J	Storage			
	Full	173	311	80%
	Empty	652	1,174	80%

K	Other revenue	162	244	50%
L	Shut Outs/ Renomination	85	155	83%
M	ITRHO ₹.400 - Shipping Lines	65	65	0%
N	ITRHO ₹. 400 JNPT Terminals	50	50	0%

- (b) Revenue Requirement is foregone by Voluntary adjustment of past surplus at ₹.7253.13 Lakh per annum.

5.1. In accordance with the consultative procedure prescribed, a copy of the proposal of NSICTPL dated 18 November 2019 was forwarded to the concerned users/ user organisations seeking their comments. Based on the request made by NSICTPL regarding non-circulation of some of the documents to the users, on the ground of it being sensitive, only Form 1, 2, 3, 5 and the proposed Scale of Rates were circulated to the users as per Clause 4.3 of the Tariff Guidelines, 2019. The entire proposal (except the Annual Accounts) was however, forwarded to the Licensor Port, JNPT, for its comments.

5.2. None of the users/ user organisations have furnished their comments till the case was finalized.

6.1. As brought out at preceding para no. 2.1, 2.2 and 2.3 above, the Hon'ble High Court of Bombay has stayed the last tariff Order passed by this Authority in the year 2012 and has permitted NSICTPL to levy the then prevailing tariff, which is as per the tariff order dated 30 December 2008 passed by this Authority. The said Court Order is still in force.

6.2. In view of the High Court order, it was felt that the submission of a proposal by NSICTPL for review of its SOR, consequent processing of the proposal by TAMP, passing of the Order by this Authority and implementation of the Order by NSICTPL should not amount to contravention of the High Court Order. Hence, NSICTPL was requested vide letter dated 26 November 2019 to intimate the Hon'ble Bombay High Court about NSICTPL filing a proposal for General revision of its Scale of Rates (SOR) with this Authority under Tariff Guidelines 2019.

6.3. In this regard, the NSICTPL vide its letter dated 13 December 2019 has furnished a copy of its intimation to the Hon'ble High Court of Bombay about NSICTPL filing a proposal for General Revision of its Scale of Rates with TAMP under Tariff Guidelines, 2019.

7. A joint hearing on the case in reference was held on 23 December 2019 at the Office of the Authority. The NSICTPL made a presentation of the proposal. At the joint hearing, the NSICTPL, the licensor Port i.e. JNPT and user associations have made their submissions.

8.1. Based on the preliminary scrutiny of the proposal, additional information/ clarification was sought from NSICTPL vide letter dated 27 January 2020. The NSICTPL has responded vide its letter dated 29 January 2020 and e-mails dated 05 February 2020, 06 February 2020 and 18 February 2020. The information sought and the response of the NSICTPL thereon are tabulated below:

Sl. No.	Information sought	Response of NSICTPL
A.	<u>General</u>	
	As already requested vide our letter of even number date 26 November 2019, NSICTPL to forward a copy of the Separate Agreement duly signed by NSICTPL and JNPT.	(The NSICTPL vide its email dated 18.2.2020 has forwarded a copy of the Separate Agreement executed between NSICTPL & JNPT)
B.	<u>ARR Computation</u>	
(i).	The Form-1 reflects the Operating expenditure to the tune of ₹ 36,895.20 lakhs and ₹ 36,768.83 lakhs for the years 2017-18 and 2018-19 respectively. However, in the Audited Annual Accounts for the respective year, the total Expenditure minus Finance cost works out to an amount of ₹ 36894.20 lakhs (₹ 36953.80 lakhs – ₹ 59.60 lakhs) for the year 2017-18 and ₹. 37365.10 lakhs (₹ 37431.60 lakhs – ₹ 66.50 lakhs). The NSICTPL to consider the operating expenditure as per Audited Annual Accounts for the years 2017-18 and 2018-19.	Considered and revised in Form-1.
(ii).	The Finance cost as considered under the Form-1 i.e. ₹. 58.60 lakhs for the year 2017-18 and ₹.59.80 for the year 2018-19 is not matching with figures as reflected in the Audited Annual Accounts i.e. ₹ 59.60 lakhs and ₹. 66.50 lakhs for the years 2017-18 and 2018-19 respectively. The NSICT	Considered and revised in Form-1.

	to consider the Finance cost as per Audited Annual Account for the year 2017-18 and 2018-19.	
(iii).	The Annual Accounts for the year 2018-19 reflect 'Provision for Bad and Doubtful Debts' to the tune of ₹ 594 lakhs. Provision for doubtful debts is not an admissible cost as per clause 2.3.1 of 2019 Guidelines. The said provision is not seen to have been excluded by the NSICTPL while determining the ARR. The same to be excluded.	Considered and revised in Form-1. NSICTPL vide its e-mail dated 05 February 2020 has confirmed that the gain/ loss on foreign currency transactions as reflected in the Audited Annual Accounts is towards import of goods and services.
(iv).	The NSICTPL has not furnished the Reconciliation statement of expenses reported in Audited Annual Accounts under IND AS and expenditure considered in the cost statement as per IGAAP for each of the years under consideration in Form-6A. Form-6A furnished by NSICTPL is blank. The requisite information to be furnished.	There is no IND AS adjustments in Financials. In case of Fixed assets, company has taken carrying value of the Fixed Assets as on March 31, 2014 as the opening value for the Financial year 2015-16 as per the provision of IND AS transition Account Standards
(v).	The figures of Gross Fixed Assets as per IGAAP and Capital Work in Progress as on 31 March 2019 as considered in Form no. 1 are seen to be based on Form no. 7 furnished by NSICTPL. With regard to Form no. 7, the NSICTPL to furnish the following:	
(a).	A reconciliation statement between opening Balance of the Gross Fixed Assets for each of the asset category viz., Plant and Machinery, Furniture and Fixtures, Office equipment, Computers, Hardware Network, Vehicles and any other Fixed Assets for the year 2016-17, 2017-18 and 2018-19 as per IGAAP and INDAS.	It may be noted that there is no IND AS adjustment carried out. For F.Y. 2016-17, company has availed the deemed cost exemption in relation to the property and equipment on the date of transition and hence the net block carrying amount has been considered as the gross block carrying amount on the date. Reconciliation statement and the relevant pages of financials of F.Y.2016-17 is furnished by NSICTPL.
(b).	Workings in support of the above also to be furnished.	Working in this regard is furnished by NSICTPL.
(c).	Workings in support of Depreciation in respect of each of the asset category viz., Plant and Machinery, Furniture and Fixtures, Office equipment, Computers, Hardware Network, Vehicles and any other Fixed Assets, for each of the years 2016-17 to 2018-19.	Working in this regard is furnished by NSICTPL
(d).	The figures of disposal & addition shown under gross fixed assets schedule as considered in Form no.7 for the year 2018-19 is not seen to match with the Annual Accounts of the year 2018-19. The NSICT to consider the figures as per Audited Annual Account for the year 2018-19.	NSICTPL has Considered the figures as Audited accounts. Corrected Form no.7 of the Tariff proposal is furnished by NSICTPL.
(vi).	With regard to the Working Capital in Form no. 3, the NSICT to clarify/ to confirm that it does not any have sundry debtors on account of contractual obligation with JNPT as per clause 2.5 of the Tariff Guidelines, 2019.	It is confirmed that NSICTPL does not have any contractual obligation with JNPT as per clause 2.5 of the Tariff Guidelines, 2019.
(vii).	As per clause 2.8 of Tariff Guidelines 2019, the assessed ARR as per clause 2.1 to 2.7 is to be indexed by 100% of the Wholesale price index (WPI) applicable as communicated by TAMP to arrive at the indexed ARR for the immediate subsequent year. For example, if Y4 is 2018-19, then the indexed ARR for the year Y4 will be determined based on the applicable WPI of 3.45%. In the Instant case, the Y1 is 2016-17, Y2 is 2017-18 and Y3 is 2018-19 and the immediate subsequent year (Y4) is 2019-20. However, for the propose of indexation of ARR, NSICTPL has considered the year 2018-19 as Y4 and applied an indexation factor 3.45% instead of considering 2019-20 as Y4 and applying indexation factor of 4.26%. The NSICTPL to consider the indexation factor of 4.26% to determine the indexed ARR.	NSICTPL has considered the indexation factor of 4.26% in the proposal submitted to TAMP. Hence no change is required.
C.	<u>Revenue Estimation</u>	
(i).	In Form 4, the NSICTPL has indicated the average traffic at 6.43 Lakh TEUs based on the traffic for the years 2016-17 to 2018-19. In the same Form-4, for revenue estimation, NSICTPL has considered various container mix. The aggregate of the said container mix may be matched with the average traffic of 6.43 Lakh TEUs and a working in this regard also to be furnished.	The aggregate of the container mix has been matched with Average Traffic of 6.43 Lakhs TEUs. Working in this regard is furnished by NSICTPL.

(ii).	The proposed aggregate tariff of 'ship to yard or vice versa using port crane and 'yard to truck or vice versa considered for estimating the revenue in respect of the handling of Loaded, Empty, Reefer, Hazardous and ODC containers above 40 feet in Form-4 is not matching with the tariff as per the proposed Draft SOR. To cite an example, with regard to handling of a normal foreign loaded above 40' container, the tariff of ₹ 11866 has been considered for estimation of income at the proposed level of tariff, whereas the aggregate tariff as per proposed SOR works out to ₹ 12288 per container [₹ 10600 + ₹ 1688]. The NSICT to review all tariff items and recast the revenue estimation accordingly.	All tariff items have been reviewed NSICTPL and the revenue estimation have been recasted accordingly and corrected in revised Form -4 furnished by NSICTPL.
(iii).	The rates considered for revenue estimation in case of Transshipment Containers is seen to be lower than the rates proposed in the draft Scale of Rates. The NSICTPL to rectify the error in the revenue estimation at Form-4.	There is no error in the Form 4, as the transshipment rate mentioned is for one move (50%). However in SOR the rate is based on full cycle of transshipment is INR 7,950.
(iv).	Please confirm that the NSICTPL has estimated income for all the tariff items as proposed by it in its proposed Scale of Rates. It not, revenue to be estimated on those tariff items based on the years 2016-17, 2017-18 and 2018-19.	It is confirmed that all tariff items as proposed in the proposed Scale of Rates have been considered.
D.	<u>Proposed Scale of Rates</u>	
(i).	With regard to the proposed Scale of Rates, the NSICTPL to clarify/ furnish the following:	
(a).	The existing SOR prescribes separates charges for movement of containers from yard to CFS/ CFS to Yard – Transport and lifts at CFS for normal and reefer containers at clause 3.1.(B), for hazardous containers at clause 3.3 (B), and for over dimensional cargo containers at clause 3.4 (B). In the proposed SOR, instead of separate charges, the NSICTPL has proposed a provision stating that the rate for yard to CFS-Transport and lifts as CFS is to be mutually agreed between Terminal and customer based on the distance from Yard to CFS/ CFS to Yard. Section 48 of the MPT Act, 1963 mandates the Authority to fix the rates for services rendered. Therefore, the Authority may not be in a position to approve such a note. Therefore, specific rates for such services to be proposed.	It is proposed to drop the above mentioned charges in the SOR. Revised proposed SOR is furnished by NSICTPL.
(b).	Consequently, the income to be generated by the NSICTPL based on the said proposed tariff to be captured in the estimation of income at the proposed Scale of Rates in Form no. 4.	
(ii).	In the proposed Scale of Rates, under Section 11 – Miscellaneous Charges, the NSICTPL at sl. No. (xiii) has introduced Gangway charges at ₹ 5000/- per Vessel. The said incorporation has not been captured by NSICTPL in Form -5. In this connection, the NSICTPL is requested to clarify/ furnish the following:	It is proposed to drop the above mentioned charges in the SOR. Revised proposed SOR is furnished by NSICTPL.
(a).	The basis/ workings to arrive at the proposed new rate, keeping in view the stipulation contained in Clause 5.6.1 of the Tariff Guidelines, 2019.	
(b).	Reason for introducing a new levy along with the nature of service proposed to be rendered by NSICTPL for levy of gangway charges.	
(c).	The quantum of income that has been captured in the income estimation at the proposed level of tariff, on account of the proposed new levy.	

8.2. As brought out above, while furnishing the additional information and clarification, the NSICTPL has revised its various tariff filling forms and has also furnished a revised draft SOR. The NSICTPL vide its e-mail dated 06 February 2020 has furnished Revised tariff filing forms and the revised draft Scale of Rates. A summary position of Revised ARR computation furnished by NSICTPL vide its e-mail dated 06 February 2020 is given below:

(Amount in ₹.)

Sl. No.	Description		Y1 2016-17	Y2 2017-18	Y3 2018-19
(1).	Total Expenditure (As per Audited Annual Accounts)	Note 1			
(i).	Operating expenses (including depreciation)		38,292.10	36,894.20	36,762.13
(ii).	Finance and Miscellaneous expenses (FME)		56.90	59.60	66.50
	Total Expenditure 1=(i)+(ii)		38,349.00	36,953.80	36,828.63
(2).	Adjustments in respect of items where there is variation in figures reported as per INDAS (as per Audited Accounts) and IGAAP	Form 6 A and Note 2			
(i).	Depreciation		-	-	-
(ii).	Other expenditure items, if any, to be listed -Lease rent paid		-	-	-
	Total of Adjustments 2=(i)+(ii)		-	-	-
(3).	Less Adjustments:				
(i).	Actual Royalty / Revenue share paid to the port		21,855.20	20,297.50	19,752.10
(ii).	Interest on loans		-	-	-
(iii).	Provision for bad and doubtful debts		-	4.00	593.95
(iv).	Provision for slow moving inventory		-	-	-
(v).	Other provisions, if any		-	-	-
	Total of 3 = [3(i)+3(ii)+3(iii)+3(iv)+3(v)]		21,855.20	20,301.50	20,346.05
(4).	Add: Admissible Royalty/ Revenue Share as per Clause 2.2. of the Tariff Guidelines, 2019	Form 2 and Note 3	15,189.36	14,106.76	13,727.71
(5).	Total Expenditure after Total Adjustments (5 = 1+2+3)		31,683.16	30,759.06	30,210.28
(6).	Average Expenses of Sl. No.5 = [Y1 + Y2 + Y3] / 3		30,884.17		
(7).	Capital Employed				
	(i). Gross Fixed Assets (Property, Plant & Equipment) as on 31st March Y3 or 31 December of Y3 followed by the BOT operator (As per IGAAP)		99,652.09		
	(ii). Add: Capital Work in Progress as on 31st March Y3 or 31 December of Y3 followed by the BOT operator (As per Audited Annual Accounts)		1.81		
	(iii). Add: Working Capital as per norms prescribed in clause 2.6 of the Tariff Guidelines, 2019	As per Form 3 & Note 4			
	(a). Inventory		307.60		
	(b). Sundry Debtors		-		
	(c). Cash		2,909.52		
	(d). Sum of (a)+(b)+(c)		3,217.12		
	(iv). Total Capital Employed [(i)+(ii)-(iii)]		102,871.02		
(8).	Return on Capital Employed 16% on Sl. No.7(iv)		16,459.36		
(9).	Annual Revenue Requirement (ARR) as on 31 March Y3 or 31 December of Y3 as applicable [(6)+ (8)]		47,343.53		
(10).	Indexation in the ARR @ 100% of the WPI applicable for the year Y4 for example, if Y4 is 2018-19, then the applicable WPI is 3.45% and the indexed ARR for the year Y4 will be (9) x 1.0345)		4.26%		
(11).	Ceiling Indexed Annual Revenue Requirement (ARR) as given in Sr. No. 10 above		49,360.37		

(11A)	Voluntary Adjustment of Past Surplus – (While we do not admit to any past surplus, should any such surplus arise either out of mutual discussions or by a decision of the Bombay High Court, the amount of ARR foregone by us amounting to Rs. 21,759 Lakh (Rs. 7,253.13 lakh X 3) should be adjusted against the same.”		6,865.65
(12).	Revenue Estimation at the Proposed indexed SOR within the Ceiling indexed ARR estimated at Sl. No.11 above (after Adjustment of Past Surplus [(11)-11A]	As per Form 4 & Note 5	42,494.72

9.1 Based on the scrutiny of the NSICTPL proposal, the Licensor port JNPT was also requested vide our letter dated 27 January 2020 to furnish some information/ clarification followed by a reminder dated 04 February 2020. The JNPT has responded vide its email dated 5 February 2020. The information sought and the response of the JNPT thereon are tabulated below:

Sl. No.	Information sought	Response of JNPT
(i).	The NSICT has reported in its tariff proposal dated 18 November 2019 that it has submitted a letter dated 15 November 2019 to JNPT for execution of Separate Agreement as per the stipulation contained in Clause 1.9 of the 2019 Guidelines. The copy of the Agreement entered by NSICTPL with JNPT, duly signed by both the parties to be furnished.	Entering into a Separate Agreement with M/s NSICT as per the stipulation contained in Clause 1.9 of the 2019 Guidelines is under process.
(ii).	To furnish its comments on the computation of ARR as furnished by NSICTPL in its Form no. 1.	--
(iii).	In Form 4, the NSICTPL has indicated the average traffic at 6.43 Lakh TEUs for the years 2016-17 to 2018-19. The said average traffic at 6.43 lakh TEUs to be confirmed by JNPT.	Average Traffic of 6.43 Lakh TEUs for the financial years 2016-17, 2017-18 and 2018-19 is found to be in order.
(iv).	To furnish its comments on the estimation of revenue at the proposed level of tariff as furnished by NSICTPL in its Form no. 4.	No comments furnished by JNPT.
(v).	To furnish its comments on the ITRHO income estimated by the NSICTPL in Form no. 1.	No comments furnished by JNPT.
(vi).	To furnish its comments on the comparative statement furnished by NSICTPL in Form no. 5, highlighting the changes/ amendments proposed by NSICTPL in its proposed Scale of Rates vis-a-vis the existing Scale of Rates.	No comments furnished by JNPT.
-	-	TAMP may fix the tariff of NSICTPL as per the Tariff Guidelines, 2019 issued by the MOS.

9.2 While furnishing the information, as brought out in the preceding paragraph, the JNPT vide its email dated 05 February 2020 has also made the following submissions with regard to the Draft Scale of Rates (SOR) proposed by NSICTPL

- (i). Section 10 - Procedure and Charges for Inter Terminal Transfer of Transshipment containers between NSICT and JNPT.

The JNPT has modified the charges that to be collected on account of Inter Terminal Handling Charges from BOT Operator and following clauses have been proposed in the NSICTPL Scale of Rates as per Clause no. 3.3.6:-

“Charges for handling Transshipment containers between JNPT and BOT Terminals
If a container is discharged by the JNPT and loaded by the BOT Terminals and vice versa, the charges will be as under;

50% of Transshipment container handling charges and Lift Off/Lift On charges as per the JNPT Scale of Rates will be charges to the line by the JNPT for the same container.

The BOT will charge 50% of the Transshipment container handling charges as per its Scale of Rates, in addition, also levy a charges towards Inter Terminal Transfer as per its Scale of Rates. ”

The above clause need to be incorporated in NSICTPL Scale of Rates also. The JNPT has informed NSICTPL to incorporate the same.

- (ii). As regards the service of sending container survey report/ photo at Gate through electronic process of other charges proposed by NSICTPL, it is submitted that such facility is not provided by JNPT. However, TAMP may fix the tariff as per guidelines.
10. The proceedings relating to consultation in this case are available on records at the office of this Authority. An excerpt of the arguments made by the concerned parties during the joint hearing will be sent separately to the relevant parties. These details will also be made available at our website <http://tariffauthority.gov.in>.
11. With reference to the totality of the information collected during the processing of this case, the following position emerges:
- (i). The Scale of Rates of Nhava Sheva International Container Terminal Private Limited (NSICTPL) was last revised by this Authority vide Order dated 14 February 2012, following the Tariff Guidelines 2005. Vide the said Order, this Authority has effected an across the board reduction of 27.85% over the then prevailing tariff of NSICTPL (i.e. tariff approved for NSICTPL vide Order no. TAMP/55/2008- NSICT dated 30 December 2008). Aggrieved by said reduction in its tariff, the NSICTPL has challenged the tariff order of 14 February 2012 by its Writ Petition No.2954 of 2012 in the Hon'ble High Court of Bombay. The Hon'ble High Court have stayed the operation of the Order and has permitted the Petitioner i.e. NSICTPL to charge at the old (higher) rates. The writ petition is yet to be disposed of by the Hon'ble Court.
 - (ii). In the meanwhile, the Ministry of Shipping (MOS), as a policy direction under Section 111 of the Major Port Trusts Act, 1963, has issued Tariff Guidelines, 2019, for BOT operators who were previously governed by 2005 Guidelines. Consequent to the issue of the Tariff Guidelines, 2019, by the MOS, the tariff fixation exercise in respect of the NSICTPL is to be governed by the stipulations contained in the Tariff Guidelines, 2019 and the Working Guidelines issued to operationalize the Tariff Guidelines, 2019.
 - (iii). In this backdrop, the NSICTPL has come up with a proposal in November 2019 for revision of its tariff, following the Tariff Guidelines, 2019 and the Working Guidelines issued to operationalize the Tariff Guidelines, 2019. The revision has been sought by the NSICTPL on the tariff as approved by this Authority vide its Order dated 30 December 2008, which is now being levied by the NSICTPL based on the Order of the Hon'ble Court. As brought out earlier, the NSICT has intimated the Hon'ble High Court of Bombay about filing a tariff proposal under the Tariff Guidelines, 2019 before this Authority.
 - (iv). The NSICTPL has filed its proposal for general revision of its Scale of Rates in November 2019. Thereafter, in February 2020, the NSICTPL while furnishing the additional information/ clarification, has filed its revised proposal after rectifying the errors and incorporating the omission, but without change in the quantum of hike proposed in tariff in its original proposal of November 2019. The revised proposal of February 2020 along with the additional information/ clarification furnished by NSICTPL during the processing of the case is considered in this analysis.
 - (v). (a). Clause 2.1 of the Tariff Guidelines, 2019 requires the BOT Operator to assess the Annual Revenue Requirement (ARR) which is the average of the sum of the Actual Expenditure as per the final Audited Annual Accounts of the immediate preceding three years (Y1), (Y2) and (Y3) at the time of submitting the proposal subject to certain exclusions as prescribed in Clause 2.2., 2.3.1 and 2.3.2 of the Tariff Guidelines, 2019 and the Working Guidelines issued by this Authority plus Return at 16% on the Capital Employed obtaining as on 31st March Y3, duly certified by a practicing Chartered Accountant/ Cost Accountant.

- (b). The NSICTPL has assessed the Annual Revenue Requirement (ARR) for the three years i.e. 2016-17 (Y1), 2017-18 (Y2) and 2018-19 (Y3) duly certified by the practicing Chartered Accountant.

The figures of operating expenditure and finance & miscellaneous expenditure as considered for the years 2016-17 and 2017-18 in revised Form-1 is seen to be as per the Audited Annual Accounts. However, in respect of year 2018-19, the figure relating to operating expenditure (₹ 36,762.13 Lakhs) is not seen to be as per the Audited Annual Accounts of 2018-19. The figure of operating expenditure (₹. 37365.10 lakhs) for the year 2018-19 has been considered as in the Audited Annual Accounts of 2018-19.

- (c). While assessing the ARR, the NSICTPL has not made any adjustments in respect of items where there is variation in figures reported in IND AS (As per Audited Annual Accounts) and Indian Generally Accepted Accounting Principles (IGAAP) in ARR computation, as prescribed in Clause 2.3.2. of the Tariff Guidelines, 2019. In this regard, the NSICTPL has clarified that there is no IND AS adjustments in the financials, in case of the fixed assets, as the NSICTPL has taken carrying value of the Fixed Assets as per the provision of IND AS transition Accounting Standards. Based on the above and also since the Form 1 (wherein the said adjustments need to have been captured) has been certified by a Chartered Accountant, the position as reported by NSICTPL in this regard is relied upon.

- (d). As prescribed in Clause 2.2 and 2.3.1 of the Tariff Guidelines, 2019, the NSICTPL has excluded the following expenses, which are not admissible in ARR computation, in line with the provisions prescribed in Clause 2.2 and 2.3.1 of the Tariff Guidelines, 2019. The said adjustments are brought out for specific mention:

- (i). Clause 2.2 of the Tariff Guidelines, 2019, *inter alia*, stipulates that in those cases where the bidding process was finalized before 29 July 2003, the ARR computation will take into account the Royalty/ Revenue share payable to the landlord port by the BOT operator, to the extent of the next highest bidder .

NSICTPL is a BOT operator, who falls in the pre July 2003 era. Thus, in case of NSICTPL, the Royalty paid by NSICTPL to the Licensor port JNPT is admissible as an item of cost to the extent of the next highest bidder. Accordingly, 69.50% of the Royalty as reflected in the Audited Annual Accounts for the years 2016-17 to 2018-19 has been considered by the NSICTPL in the computation of ARR, in line with the clause 2.2 of the tariff guidelines of 2019, which was also followed when the tariff of NSICTPL was being fixed under 2005 Tariff Guidelines.

In the proceedings relating to the case in reference, the NSICTPL has made a mention about an Arbitration award, wherein it has been, *inter alia*, held that the Royalty per TEU needs to be converted to a Revenue Share and that the JNPT has been directed to amend the License Agreement. Though the License Agreement between JNPT and NSICTPL has been reported to have not been amended, it is premature to state that the said award may have impact on the quantum of the Royalty amount considered in the ARR computation of NSICTPL, in the absence of complete details not made available by NSICTPL.

- (ii). As per Clause 2.3.1 (ii) of the Tariff Guidelines, 2019, the NSICTPL has excluded the provision for bad and doubtful debts and provision for slow moving stores and spares as reflected in the Audited Annual Accounts for the years 2017-18 and 2018-19 respectively. The Audited Annual Accounts of NSICTPL does not reflect any provisions during the year 2016-17.
- (iii). The schedule of 'Finance Costs' in the audited Annual Accounts of NSICTPL reflects an amount of ₹. 1.00 lakh and ₹.6.70 lakhs towards "Interest on Bank Overdraft" for years 2017-18 and 2018-19 respectively. The NSICTPL has not considered such amount for exclusion in Form-1. Since the Interest on Bank Overdraft is in the nature of interest cost, the

said expenditure is excluded from the total expenditure in line with the provision of clause 2.3.1(ii) of the Tariff Guidelines, 2019, to arrive at the ARR.

- (iv). Following the provisions prescribed at Clause 2.2, 2.3.1 and 2.3.2 of the Tariff Guidelines, 2019, and based on the adjustments as effected as brought out above, the average expense for the years 2016-17 to 2018-19 works out to ₹ 310.83 crores, as against the average expense of ₹ 308.84 lakhs as assessed by the NSICTPL.
- (vi). (a). As per Clause 2.5 of the Tariff Guidelines of 2019, the NSICTPL has worked out the figure of Capital Employed. Capital employed comprises of Gross Fixed assets as arrived as per IGAAP plus capital work in progress as on 31 March 2019. The NSICTPL has furnished workings with regard to Gross fixed assets as per IGAAP duly certified by a Chartered Accountant. The capital work in progress has been considered based on the audited Annual Accounts for the year 2018-19. The Gross fixed assets at ₹ 996.52 crores and the Capital Work in Progress at ₹ 1.81 lakhs as on 31 March 2019, as considered by the NSICTPL is considered in the analysis.
- (b). Clause 2.6. of the Tariff Guidelines, 2019 prescribes the norms for determining the working capital. Working capital comprises of Inventory, Sundry debtors and Cash balances, as per Clause 2.6 of the Tariff Guidelines, 2019. Limit on inventory for capital spares will be one year's average consumption and in case of other items of inventory the limit will be six months' average consumption of stores excluding fuels. Limit on cash balance will be one month's cash expenses. Advance payment of Revenue Share/ royalty and lease rental / license fee to the landlord port flowing from the contractual obligations is to be treated as sundry debtors.
- (c). The NSICTPL has considered Inventory excluding fuel and customized spares to the tune of ₹. 3.08 crores, which is seen to be six months average consumption as reflected in the Audited Annual Accounts for the year 2018-19 (i.e. ₹. 6.15 crores /2= ₹.3.08 crores). The same is considered in the analysis.
- (d). The NSICTPL has not considered any amount towards Sundry Debtors as part of working capital in Form-1. In this regard, the NSICTPL has confirmed that it does not have any sundry debtors on account of contractual obligation with JNPT as required under clause 2.5 of the Tariff Guidelines, 2019.
- (e). The Cash balance as assessed by NSICTPL has been slightly revised on account of the change in the operating expenditure considered for the year 2018-19 as per Audited Annual Accounts for the said year, as discussed earlier.
- (f). Thus, based on the above, the Working Capital has been worked out at ₹32.67 crores as against the working capital of ₹32.17 cores, as considered by NSICTPL.
- (g). Thus, based on the above, the total capital employed including the working capital works out to ₹ 1029.21 crores as against the capital employed of ₹ 1028.71 crores as assessed by the NSICTPL
- (vii). As per Clause 2.7 of the Tariff Guidelines, 2019, Return on Capital Employed (ROCE) at 16% is worked out on the revised Capital Employed, which works out to ₹ 164.67 crores, which is considered in the Annual Revenue Requirement (ARR) computation.
- (viii). The ARR comprises of the average of the expenditure for the three financial years 2016-17 to 2018-19 plus 16% ROCE. Subject to modifications as explained above, the ARR has been worked out to ₹475.50 crores, as against the ARR assessed by the NSICTPL at ₹473.44 crores.

Further, as per Clause 2.8 of Tariff Guidelines, 2019, the said ARR needs to be indexed @ 100% of the WPI applicable for the year 2019-20 which is 4.26%. The indexed ceiling ARR has been worked out to ₹495.75 crores (i.e. ₹ 475.50 crores * 1.0426), as against the indexed ARR assessed by the NSICTPL at ₹ 493.60 crores. The detailed ARR calculation is attached as **Annex – I**.

A summary of the ceiling indexed ARR, is given below:

Sr. No.	Particulars	(₹ in crores)	
		ARR computation	
		As furnished by NSICTPL	As Considered by us
1	Average Expenses [Y1+Y2+Y3]/3	308.84	310.83
2	Capital employed as on 31.03.2019 including capital work in progress as on 31.03.2019 and working capital as per norms	1028.71	1029.21
3	Return on capital employed @ 16%	164.60	164.67
4	ARR as on 31 March 2019 (4=1+3)	473.44	475.50
5	Indexation in the ARR @ 100% of the WPI applicable for the year 2019-20 (4.26%)	493.60	495.75
6	Ceiling Indexed Annual Revenue Requirement (ARR)	493.60	495.75

As per clause 2.9 of the Tariff Guidelines, 2019, based on the Ceiling Indexed ARR as determined at sl. no. 6 above, the NSICTPL has to draw its proposed Scale of Rates (SOR).

- (ix). (a). As per Clause 2.10 of Tariff Guidelines, 2019, for drawing the SOR, the traffic to be considered would be the average of the actual traffic handled by the BOT operator during the years Y1, Y2 and Y3, duly certified by the concerned port. The average traffic for the years 2016-17 to 2018-19 considered by the NSICTPL at 6,43,448 TEUs, has been confirmed by the Licensor port, JNPT.
- (b). As per Clause 2.11.1 of Tariff Guidelines, 2019, the BOT Operators have the flexibility to determine the rates to respond to the market forces based on commercial judgment and draw the Scale of Rates within the ceiling of indexed ARR, duly certified by a practicing Chartered Accountant. While drawing up the proposed SOR, the NSICTPL is seen to have proposed an increase ranging from 0% to 138% on the existing tariff being levied by the NSICTPL

The NSICTPL has given detailed working of revenue estimation indicating the tariff items in the proposed SOR for corresponding average traffic for the years 2016-17 to 2018-19, as required as per Clause 2.11.1. of the Tariff Guidelines, 2019. The said revenue estimation statement as assessed by the NSICTPL has been duly certified by a Chartered Accountant.

The revenue estimation at the proposal level of tariff as assessed by NSITPL at ₹. 424.95 crores is seen to be lower than the Ceiling Indexed Annual Revenue Requirement (ARR) of ₹495.75 crores, as discussed earlier, thereby leaving a gap of ₹70.80 crores, which has been left uncovered by the NSICTPL.

- (x). The comparative statement giving the existing conditionalities and the conditionalities wherever the NSICTPL has proposed amendment/ deletion in the existing conditionalities or has proposed introduction of new provisions, along with remarks/ reasoning as furnished by the NSICTPL for the proposed modification along with the comments of JNPT thereon and with the reasoning furnished for recommending acceptance or refusal to the proposed amendments is attached as **Annex - II**. The proposed modification/ deletion in the existing conditionalities is approved taking into consideration the remarks/ reasoning furnished by the NSICTPL and JNPT and our remarks/ analysis thereon given in the said Annex-II.
- (xi). The existing SOR prescribes separate charges for movement of containers from yard to CFS/ CFS to Yard – Transport and lifts at CFS for normal and reefer containers at Section 3.1.(B), for hazardous containers at Section 3.3 (B), and for over dimensional cargo containers at Section 3.4 (B). In the proposed SOR, the NSICTPL has proposed to delete the charges for movement of containers from yard to CFS/ CFS to Yard in all the Sections as referred above. The judgment of NSICTPL in this regard is relied upon.
- (xii). This Authority vide Order No. TAMP/12/2019-MUC dated 24 July 2019 has approved revised Mandatory User Charges (MUC) for DMICDC's Logistics Data Bank (LDB) project across all the Major Port Trusts and BOT operators operating thereat. Therefore, the revised MUC on containers for the Logistics Data Bank Service rendered by DMICDC approved by this Authority for a period of two years for common adoption by all Major Port Trusts and

BOT terminals thereat shall be applicable in case of NSICTPL also. The said provision is prescribed in the Scale of Rates of NSICTPL.

- (xiii). As per the stipulation contained in Clause 1.9 of the Tariff Guidelines, 2019, the NSICTPL and the Licensor port JNPT have to enter into a separate Agreement, agreeing to abide by the Tariff Guidelines, 2019. Accordingly, the NSICTPL vide its letter dated 18 February 2020 has made available a copy of separate agreement executed between NSICTPL and JNPT.
- (xiv). (a). Before we proceed to consider the revised SOR of NSICTPL, it is pertinent here to draw reference to Clause 3.1.1 of the Tariff Guidelines, 2019, which stipulates that in case of the BOT operators, whose tariff have not been reviewed in the past due to litigations pending in the High Courts on the Tariff Orders passed by this Authority, the surplus/ deficit over and above the admissible costs and permissible return, if any, arising during the period of litigation will be subject to either the orders of the respective Courts or as per the treatment to be collectively decided by the Ministry of Shipping (MOS), concerned Major Port Trust, concerned BOT operator and this Authority.
- (b). As stipulated in Clause 3.1.1 of the Tariff Guidelines, 2019, and based on clarification / information sought by CITPL (a BOT operator at Chennai Port Trust) and PSA SICAL (a BOT Operator at V.O Chidambaranar Port Trust) on treatment of past period surplus, a Draft Policy Framework to decide on the treatment of past period surplus/ deficit, over and above the admissible costs and permissible return arising during the period of litigation in respect of BOT Operators who have approached various High Courts and have obtained stay on the operation of the last tariff Order passed by this Authority, was prepared and forwarded to the MOS vide our letter no. TAMP/61/2018-Misc dated 26 April 2019, for deliberation by MOS with the concerned BOT operators, concerned Major Port Trusts and this Authority. The MOS has been reminded in this regard vide our letters dated 23 July 2019 and 18 November 2019. The response of MOS is awaited.
- (xv). Without giving the impact of any adjustment of past period surplus during the period of litigation, the income at the estimated level of tariff has been kept at the ARR level of ₹ 495.75 crores, by considering an increase over the existing level of rates being levied by the NSICTPL i.e. the Court permitted tariff, as discussed in the earlier paragraphs. If any adjustment of surplus is carried out in the ARR of ₹ 495.75 crores, it may further reduce the ARR and may warrant a reduction in the quantum of increase as sought by NSICTPL over the existing level of tariff i.e. the Court permitted tariff.
- However, in this regard, it is to state that incase of NSICTPL, neither the Hon'ble High Court of Bombay has passed Order disposing of the Writ Petition no. Writ Petition No.2954 of 2012 paving a way for treatment of surplus/ deficit, nor has a decision been received from the MOS, on the treatment of surplus/ (deficit) arising over and above the admissible costs and permissible return during the period of litigation. In other words, neither the methodology for determination of surplus during the period of litigation nor the treatment to be meted out to the surplus accrued during the period of litigation has been firmed up. In the absence of any methodology for determination of surplus and in the absence of any treatment firmed up to deal with the surplus, this Authority is not in a position to carry out any adjustments in this regard, as of now.
- (xvi). As brought out earlier, NSICTPL has stated that while it does not admit to any past surplus, it has voluntarily considered a past period surplus adjustment of ₹ 68.66 crores per annum aggregating to about ₹ 206 crores for a period of three years.

As brought out earlier, neither the writ petition filed by NSICTPL has been disposed of by the Hon'ble High Court of Bombay paving a way for treatment of surplus/ deficit, nor there has been a Policy Framework from the MOS. It was on these grounds that no adjustment of past surplus during the period of litigation was considered while disposing of the general revision proposal of other BOT Operators whose tariff was recently fixed based on the stipulations contained in the Tariff Guidelines, 2019, and wherein the matter is pending in High Courts viz., Chennai International Container Terminal Private Limited (CITPL) and Gateway Terminals India Private Limited (GTIPL).

However, the case of NSICTPL is unique as compared to the cases relating to CITPL and GTIPL. While in the case of CITPL and GTIPL, there was no gap left uncovered between the indexed ceiling ARR and the income estimated at the proposed level of tariff, in the case of NSICTPL, there is a gap of ₹70.80 crores between the indexed ceiling ARR and the

income estimated at the proposed level of tariff. In other words, even if an adjustment of past period surplus to the tune of ₹70.80 crores is effected from the indexed ceiling ARR, the NSICTPL can still continue to levy its proposed increased rates.

Thus, this Authority has decided to earmark an amount of ₹ 70.80 crores, per annum aggregating to about ₹ 212.40 crores for 3 year to be considered for adjustment towards adjustment of the past period surplus, whenever the Hon'ble High Court of Bombay passes Order disposing of the Writ Petition no. No. 2954 of 2012 paving a way for treatment of surplus/ deficit or a decision from the MOS is received on the treatment of surplus/ (deficit) arising over and above the admissible costs and permissible return during the period of litigation whichever is earlier. In other words, past period surplus amount to the tune of ₹70.80 crores per annum is deemed to have been adjusted in the current exercise upto a period of 3 year and only a surplus over and above ₹70.80 crores per annum is to be considered for adjustment in future.

- (xvii). The proposal filed by NSICTPL is before this Authority for disposal. Since the proposal is received as a "Tariff Case", and registered as such, it cannot be kept pending indefinitely. In the fact and circumstances of the case as brought out above, this Authority is inclined to approve the proposal of NSICTPL and to allow increase in tariff, as proposed by NSITPL as discussed earlier.

The NSICTPL also should note that whenever the Hon'ble High Court of Bombay passes Order disposing of the Writ Petition no. No. 2954 of 2012 paving a way for treatment of surplus/ deficit or a decision from the MOS is received on the treatment of surplus/ (deficit) arising over and above the admissible costs and permissible return during the period of litigation, whichever is earlier, the tariff of NSICTPL approved now would be subject to review then, so as to capture the impact of the surplus that has arisen during the period of litigation.

- (xviii). It is relevant here to mention that vide letter no. TAMP/46/2015-Misc dated 24 July 2015 it has been communicated to NSICTPL that the surplus quantified for the tariff cycle immediately preceding the challenged tariff Order and the tariff fixed in the said tariff order challenged by the NSICTPL in the Hon'ble High Court will be taken up for review, based on the Ministry of Shipping (MOS) letter No. 14019/20/2009-PG dated 12 June 2015, subject to the permission of the Hon'ble High Court, as the matter is subjudice. Accordingly, an Affidavit has been filed in the Hon'ble Court in August 2015, inter alia, praying before the Hon'ble Court to permit this Authority to review the order of January 2012 to give effect to the opinion of the Learned Attorney General of India as directed by the MOS. The matter is still pending before the Hon'ble Court. After receipt of permission of the Hon'ble High Court, an exercise to quantify the surplus/ (deficit) based on the MOS letter has to be undertaken.

- (xix). As per Clause 2.12 of the Tariff Guidelines, 2019, the SOR will be indexed annually to inflation to the extent of 60% of the variation in Wholesale Price Index (WPI) announced by the Government of India occurring between 1st January to 31st December of the relevant year. Such adjusted SOR will come into force from 1st May of the relevant year to 30th April of the following year. It is relevant here to state that in the instant case indexation for the year 2019-20 is already considered in the ARR and for drawing the SOR. The next annual indexation in SOR will be applicable from 1 May 2020. That being so, a note is inserted in the SOR to the effect that the SOR approved by this Authority is subject to automatic annual indexation at 60% of the WPI to be announced by this Authority. The annual indexation will be from 01 May 2020. The indexed SOR shall be intimated by the NSICTPL to the JNPT, users and to this Authority.

12.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the Scale of Rates and conditionalities of the NSICTPL.

12.2. The revised Scale of Rates and conditionalities of the NSICTPL shall come into force after expiry of 30 days from the date of notification of the Order passed by this Authority in the Gazette of India and shall be in force for a period of three years thereafter, subject to annual indexation. The approval accorded to the Scale of Rates shall automatically lapse thereafter unless specifically extended by this Authority.

12.3. The tariff of the NSICTPL has been fixed based on the prevailing information and without considering any adjustment of past period surplus relating to the period of litigation. Therefore, whenever the Hon'ble High Court of Bombay passes Order disposing of the Writ Petition no. 2954 of 2012 paving a way for treatment of surplus/ deficit or a decision from the MOS is received on the treatment of surplus/ (deficit) arising over and above the admissible costs and permissible return during the period of litigation whichever is earlier, as stipulated in clause 3.1.1 of the Tariff Guidelines, 2019, the tariff of NSICTPL

approved now would be subject to review then, so as to capture the impact of the surplus that has accrued to NSITPL during the period of litigation.

12.4. As stipulated in Clause 7 of the Tariff Guidelines, 2019, the NSICTPL shall furnish to this Authority, annual reports on container traffic handled, average moves by crane per hour and average dwell time for containers. The annual reports shall be submitted by the NSICTPL within 90 days following the end of each of the year. Any other information which is required by this Authority from time to time shall also be furnished by NSICTPL.

12.5. An analysis of variation will also be made at the time of the next general review of tariff of NSICTPL at the end of the tariff validity period and adjustment of additional surplus will be made in the tariff to be fixed for the next cycle, in line with the stipulation contained in Clauses 3.2.1 and 3.2.2 of the Tariff Guidelines, 2019.

(T.S. Balasubramanian)
Member (Finance)

Computation of Annual Revenue Requirement under Tariff Policy, 2019 for Determination of Tariff for BOT operators operating at Major Port Trusts.					
(Rs. in lakhs)					
Sl. No.	Description		2016-17	2017-18	2018-19
(1).	Total Expenditure (As per Audited Annual Accounts)	Note 1			
(i).	Operating expenses (including depreciation)		38,292.10	36,894.20	37,365.10
(ii).	Finance and Miscellaneous expenses (FME)		56.90	59.60	66.50
	Total Expenditure 1=(i)+(ii)		38,349.00	36,953.80	37,431.60
(2).	Adjustments in respect of items where there is variation in figures reported as per INDAS (as per Audited Accounts) and IGAAP	Form 6 A and Note 2			
(i).	Depreciation		-	-	-
(ii).	Other expenditure items, if any, to be listed		-	-	-
	Total of Adjustments 2=(i)+(ii)+ ----		-	-	-
(3).	Less Adjustments:				
(i).	Actual Royalty / Revenue share paid to the port		21,855.20	20,297.50	19,752.10
(ii).	Interest on loans		-	1.00	6.70
(iii).	Provision for bad and doubtful debts		-	-	593.95
(iv).	Provision for slow moving inventory		-	4.00	-
(v).	Other provisions, if any		-	-	-
	Total of 3 = [3(i)+3(ii)+3(iii)+3(iv)+3(v)]		21,855.20	20,302.50	20,352.75
(4).	Add: Admissible Royalty/ Revenue Share as per Clause 2.2. of the Tariff Guidelines, 2019	Form 2 and Note 3	15,189.36	14,106.76	13,727.71
(5).	Total Expenditure after Total Adjustments (5 = 1+2-3+4)		31,683.16	30,758.06	30,806.56
(6).	Average Expenses of Sl. No.5 = [Y1 + Y2 + Y3] / 3				31,082.59
(7).	Capital Employed				
(i).	Gross Fixed Assets (Property, Plant & Equipment) as on 31 st March 2019 (As per IGAAP)				99,652.09
(ii).	Add: Capital Work in Progress as on 31 st March 2019 (As per Audited Annual Accounts)				1.81
(iii).	Add: Working Capital as per norms prescribed in clause 2.6 of the Tariff Guidelines, 2019	As per Form 3 & Note 4			
	(a). Inventory				307.60
	(b). Sundry Debtors				-
	(c). Cash				2,959.77
	(d). Sum of (a)+(b)+(c)				3,267.37
	(iv). Total Capital Employed [(i)+(ii)+(iii)]				102,921.27
(8).	Return on Capital Employed 16% on Sl. No.7(iv)				16,467.40
(9).	Annual Revenue Requirement (ARR) as on 31 March Y3 or 31 December of Y3 as applicable [(6)+ (8)]				47,550.00
(10).	Indexation in the ARR @ 100% of the WPI applicable for the year 2019-20 [(9) x 1.0426]				4.26%
(11).	Ceiling Indexed Annual Revenue Requirement (ARR) as given in Sr. No.10 above.				49,575.63
(12).	Revenue Estimation at the Proposed indexed SOR within the Ceiling indexed ARR estimated at Sl. No.11 above (after Adjustment of Past Surplus) [(11)-11A)]	As per Form 4 & Note 5			42,494.72

Comparison of existing SOR and conditionalities vis-à-vis proposed tariff and conditionalities

Sr. No.	Existing SOR		Proposed SOR		Reasons/ justification for amendments in conditionalities, if any, proposed by NSICTPL	Comments of Licensor Port JNPT	Analysis
	Schedule No.	Tariff and Conditionalities	Schedule No.	Tariff and Conditionalities			
1	Preface	This Scale of Rates sets out the charges payable to Nhava Sheva International Container Terminal Private Limited for use of services and facilities provided at the Nhava Sheva International Container Terminal	Preface	This Scale of Rates sets out the charges payable to Nhava Sheva International Container Terminal Private Limited for use of services and facilities provided at the Nhava Sheva International Container Terminal with effect from January 2020	--	--	Since the revised Scale of Rates and conditionalities shall come into force after expiry of 30 days from the date of notification of the Order passed by the Authority, the clause has been modified by deleting the words "with effect from January 2020".
2	1.2	"Coastal Vessel" shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the competent authority.	1.2	"Coastal Vessel" shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the competent authority.	--	--	The said definition has been modified to reflect the position contained in MOS letter dated 11 November 2014 and as per Order no. TAMP/52/2014-Genl. dated 28 November 2014, which is as given below: "Coastal vessel" shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having a valid coastal license issued by the Director General of Shipping/ Competent Authority."
3	2.1	The rates prescribed in Sections 1,2,3,4,5,6,7,8 (except item No.(ii) and(iii)), 9 and item No.(ii) and (iii) of Section 10 will be subject to upward revision by 3.86% with effect from 1.1.2011.	2.1	2.1 The Tariff prescribed in scale of rates will be increased by 60% of the variation in Wholesale price index announced by Government of India occurring between 1 st January and 31 st December of relevant year. Such adjusted SOR will come into force from 1 st May of relevant year to 30 th April of following year. The first such escalation will be effected on 1 st May, 2020 and last one will be on 1 st May, 2021. The individual tariff arrived after applying the annual escalation shall be rounded off to 1/100th of a paisa.	In line with clause 2.12 of Tariff Guidelines 2019	--	The clause has been slightly modified to reflect the position contained in clause 2.12 of Tariff Guidelines, 2019. The Modified clause is as under: "The SOR approved by the Authority is subject to automatic annual indexation at 60% of the Wholesale Price Index (WPI) to be announced by the Authority. The Annual Indexation will be from 1 st May 2020. The Indexed SOR shall be intimated by the NSICTPL to the JNPT, users and to the Authority"
4	2.6	Container related charges denominated in US dollar terms will be collected in equivalent Indian Rupees. For this purpose, the rate notified by the Reserve Bank of India or the rate notified by the State Bank of India or its subsidiary or any other Public Sector Bank (PSU) as may be specified from time to time prevalent on the date of entry of the vessel in to the port limits (in-case of import containers) and on the date of arrival of containers in the Terminal premises (in case of export containers) shall be applied for reconversion or the dollar denominated charges into Indian Rupees	2.6	Container related charges denominated in US dollar terms will be recovered in equivalent Indian Rupees. For this purpose, the rate notified by the Reserve Bank of India or the rate notified by the State Bank of India as may be specified from time to time prevalent on the date of entry of the vessel in to the port limits (in-case of import containers) and on the date of arrival of containers in the Terminal premises (in case of export containers) shall be reckoned as the day for such conversion.	In line with clause 5.5.1 of Tariff Guidelines 2019	--	The proposed modification in the Note is in line with clause 5.5.1 of Tariff Guidelines, 2019. Hence, the proposed note is approved.

5	2.8 (ii)	The rate of penal interest will be 14.25% per annum. The penal rate chosen will apply to both the NSICT and the port users equally.	2.8 (ii)	The rate of penal interest will be 15% per annum. The penal rate chosen will apply to both the NSICT and the port users equally.	In line with clause 5.4.1 of Tariff Guidelines 2019	--	The proposed modification is in line with clause 5.4.1 of Tariff Guidelines, 2019. Hence, the proposed note modification is approved.
6	Sec. 3	Charges for Hazardous container shall be 1.25 times	Sec. 3	Charges for Hazardous container shall be 1.5 times	In line with clause 9.9.3 of Working Guidelines 2019	--	Charges for handling Hazardous containers have been prescribed at 1.5 times of the normal containers, in line with the clause 9.9.3 of the working guidelines 2019. Hence, the proposed charges for handling hazardous containers is approved.
7	Sec. 4	Charges for Over Dimensional Cargo container shall be 2 times	Sec. 4	Charges for Over Dimensional Cargo container shall be 1.5 times	In line with clause 9.9.3 of Working Guidelines 2019	--	Charges for handling Over dimensional containers have been prescribed at 1.5 times of the normal containers, in line with the clause 9.9.3 of the working guidelines 2019. Hence, the proposed charges for handling Over dimensional containers is approved.
8	Sec. 7, Sec. 8 & Sec. 11	--	Sec. 7 Footnote, Sec. 8 Note 5 & Sec. 11 Note 7	Handling charges for containers more than 40' length and up to 45' in length will be 200% of the applicable charges	--	--	As per Clause 9.5 of the Working Guidelines, handling charges for Containers of length of above 40' can be prescribed at 2 times the handling charges for normal 20' containers. Since, the proposed footnote/ note is in line with the said stipulation, the proposed footnote/ note is approved. However, the proposed note is slightly modified as follows: "Handling charges for containers more than 40' length and up to 45' in length will be 200% of the applicable charges for FCL & MT 20'."
9	Sec. 10	a If a container is discharged by the JNPT and loaded by the NSICT at its terminal ,the charges will be as under: (i) 50% of transshipment container handling charges as per the JNPT Scale of Rates will be charged to the Line by the JNPT. (ii) For the same container the NSICT will charge 50% of the transshipment container handling charges as per its Scale of Rates and, in addition, also levy a charge of ₹ 1684.87 (for 20') or Rs.2527.33 (for 40') towards inter-terminal transfer. b If a container is discharged by the NSICT and loaded by the JNPT at its terminal, the charges will be as under: (i) The NSICT will charge 50% of transshipment container handling charges to the Line as per its Scale of Rates. (ii) For the same container the JNPT will charge 50% of TP handling charges and in addition, also levy charge towards inter-terminal transfer as per its Scale of Rates.	Sec. 10	a If a container is discharged by the JNPT and loaded by the NSICT at its terminal ,the charges will be as under: (i) 50% of transshipment container handling charges as per the JNPT Scale of Rates will be charged to the Line by the JNPT. (ii) For the same container the NSICT will charge 50% of the transshipment container handling charges as per its Scale of Rates and, in addition, also levy a charge of Rs. 1,807.13 (for 20') or Rs. 2,710.71 (for 40') towards inter-terminal transfer. b. If a container is discharged by the NSICT and loaded by the JNPT at its terminal, the charges will be as under: (i) The NSICT will charge 50% of transshipment container handling charges to the Line as per its Scale of Rates. (ii) For the same container the JNPT will charge 50% of TP handling charges and in addition, also levy charge towards inter-terminal transfer as per its Scale of Rates.	For tranship containers	The JNPT has proposed modification of the charges that is to be collected on account of Inter Terminal Handling Charges for Transshipment Containers from BOT Operator and following clauses have been proposed by JNPT to be incorporated in the Scale of Rates of NSICTPL:- " Charges for handling Transshipment containers between JNPT and BOT Terminals If a container is discharged by the JNPT and loaded by the BOT Terminals and vice versa, the charges will be as under; 50% of Transshipment container handling charges and Lift Off/Lift On charges as per the JNPT Scale of Rates will be charges to the line by the JNPT for the same container. The BOT will charge 50% of the Transshipment container handling charges as per its Scale of Rates, in addition, also levy a charges towards Inter Terminal Transfer as per its Scale of Rates "	In the modification proposed by JNPT, the provision requires levy of LIFT ON/ LIFT OFF charges as per JNPT SOR. In the SOR proposed by the JNPT as part of its general revision proposal, no separate rates are seen to have been prescribed for LIFT ON/ LIFT OFF services. In the absence of rates, the modification as proposed by the JNPT is not acceded to. The existing provision as proposed by the NSICTPL shall continue to be prescribed in the SOR of NSICTPL.