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TARIFF AUTHORITY FOR MAJOR PORTS

G.No.93 **New Delhi,** **06 March 2017**

NOTIFICATION

This Authority, in exercise of the powers conferred on it under Sections 48, 49 & 50 of the Major Port Trusts Act, 1963, had disposed of the proposal received from the Jawaharlal Port Trust (JNPT) for general revision of its Scale of Rates on 04 January 2017. However, considering the time involved for notifying (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 on 04 January 2017 was notified in the Gazette of India on 24 January 2017 vide Gazette No. 29. 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 reasoned Speaking Order connected with disposal of the proposal of the JNPT 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/48/2016-JNPT

The Jawaharlal Nehru Port Trust **- - -** **Applicant**

QUORUM

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

O R D E R

(Passed on this 4th day of January 2017)

This case relates to a proposal from Jawaharlal Nehru Port Trust (JNPT) for general revision of its Scale of rates.

2. The existing Scale of Rates of JNPT was fixed vide tariff Order No. TAMP/62/2012- JNPT dated 4 April 2014. This Order was notified in the Gazette of India on 19 May 2014. The said Order prescribed a tariff validity period till 31 March 2016.

3.1. The Ministry of Shipping (MOS), vide its letter No. 8(1)/2014-TAMP dated 13 January 2015 issued the new "Policy for determination of Tariff for Major Port Trusts, 2015 which is notified in the Gazette of India vide Gazette No. 30 dated 27 January 2015 by this Authority. The new "Policy for determination of Tariff for Major Port Trusts, 2015" has come into effect from 13 January 2015. Thereafter, based on the stipulation contained in Clause 1.5 of the Tariff Policy 2015, the Working Guidelines to operationalize the Tariff Policy 2015, were firmed up and notified after consulting all the Major Port Trusts.

3.2. Thus, the proposals of all the Major Port Trusts are to be disposed of, following the stipulations contained in Tariff Policy, 2015, and the Working Guidelines.

3.3. The JNPT vide its letter dated 1 April 2016 had intimated that they are in the process of revising their Scale of Rates. However, keeping in view the impending Annual Closing of Accounts and work associated therewith, the JNPT had requested to extend the validity of the existing SOR till 30 September. The JNPT had, however, not indicated the time by when it will file the proposal. This Authority vide its Order dated 19 May 2016 has extended the validity of existing SOR of upto 31 August 2016 and allowed time upto 15 June 2016 to JNPT to file its proposal for general revision of SOR

4.1. In this backdrop, the JNPT has filed its proposal following Tariff Policy, 2015, vide its letter No. JNP/Fin/TAMP/2016/174 dated 1 August 2016 for general revision of its Scale of Rates.

4.2. On initial verification of the proposal of JNPT, it was seen that the JNPT has not furnished the following, as required by the checklist to be complied by all Major Port Trusts, while filing their general revision proposal:

(i). Highlights of the Proposal;

(ii). Proposed Scale of Rates;

(iii). Comparison of existing SOR and conditionalities vis-à-vis proposed tariff and conditionalities i.e Form – 5;

(iv). Reconciliation statement relating to expenses considered in the cost statement and total expenses reflected in the Audited Annual Accounts for each of the years under consideration;

(v). Soft copy of the entire proposal with proper linkage.

(vi). Copy of the approval of the Board of Trustees of the Port.

4.3. Accordingly, we have vide our letter dated 8 August 2016 requested JNPT to furnish requisite information immediately to enable us to proceed further.

4.4. The JNPT vide its email dated 11 August 2016 and 23 August 2016 has furnished the soft copy of proposal, highlights of the proposal, Proposed Scale of Rates, and Performance Standards. With regard to the approval of the Board, the port has stated that the proposal will be placed before the Board in its ensuing Board

Meeting, and that the minutes and resolution shall be furnished after the Board approval. The JNPT has also stated that the Statement showing the comparison of existing SOR and conditionalities vis-à-vis proposed tariff and conditionalities i.e Form – 5 will be submitted subsequently.

4.5. Subsequently, the JNPT vide its letter dated 1 September 2016 has made the following submissions:

(i). Regarding Form No.5, it is to state that Port has not modified any of the conditionalties in the proposed Scale of Rates which are present in the existing Scale of Rates. Port has carried out few additions under the heading 'Notes' which are based on various orders issued by TAMP from time to time and Trade Notices issued by JNPT after June, 2014. Hence, it is felt that in absence of any additional conditionality there is no need for Form-5 in the form of a comparison chart between existing SoR and proposed SoR. An Annexure showing compilation of the additional notes is furnished by JNPT.

(ii). The Meeting of Board of Trustees of JNPT is scheduled to be held in the second fortnight of September 2016. Hence, copy of the Agenda Note and minutes of the meeting approving the subject proposal shall be furnished after approval of the Board.

5.1. The submission made by JNPT in its general revision proposal are as follows:

(i). **Revenue**:

Annual Revenue Requirement (ARR) for the year 2014-15 has been assessed in order to ascertain the revenue gap at the existing tariff level. The ARR for 2014-15 for the purpose of fixation of tariff after 6% indexation has been assessed to be ₹81,314.19 lakh and after 3.82% indexation for 2014-15 is ₹84,420.39 lakhs.

(ii). **Expenditure:**

(a). Further, in assessing the ARR in terms of Tariff Policy, the following items of expenditures have been excluded:

(i). Expenses related to Estate and proportionate expenses of Management & General Administration Overheads and Finance & Miscellaneous Expenses.
(ii). 4/5th of Contribution to pension fund.
(iii). Management & General Overheads over and above 25% of the aggregate of the Operating expenditure and depreciation.
(iv). Dredging Expenses equivalent to the amount of subsidy received from the Government

(iii). **Scale of Rates:**
The following Percentage increase has been proposed in the existing SOR. The percentage has been arrived based on ceiling indexed annual revenue requirement (ARR):

Sr. No.	Activity	Percentage increase
1.	Bulk other than Liquid	16%
2.	Container Related Charges	16%
3.	Vessel Related Charges	21%
4.	Liquid Cargo	5%

5.2. The JNPT has furnished detailed computation of Annual Revenue Requirement (ARR) under Form 1 and Revenue estimation at the proposed rate in Form 3.

(i). A summary position of ARR computation furnished by JNPT for the period 2011-12 to 2013-14 is tabulated below:

(₹ in Lakhs)

Sr. No.	Description	Y-3 (2011-12)	Y-2 (2012-13)	Y-1 (2013-14)
(1).	**Total Expenditure (As per Audited Annual Accounts)**			
(i)	Operating Expenses	27,303.78	36,036.07	35,149.30

(ii)	Depreciation	3,853.41	4,325.54	4,977.09
(iii)	Management & General Overheads	12,530.84	13,540.46	14,752.01
(iv)	Finance & Miscellaneous Expenses	7,910.81	15,667.49	31,124.32
	Sub Total 1 = (i)+(ii)+(iii)+(iv)	**51,598.84**	**69,569.56**	**86,002.73**
(2).	Less Adjustments			
(i)	**Estate related Expenses**			
	(a). Operating Expenses	3,794.65	6,711.26	3,958.40
	(b). Depreciation	400.43	387.11	381.46
	(c). Allocated Management & Administrative Overheads	1,687.18	2,381.35	1,595.50
	(d). Allocated FME	39.28	70.86	154.26
	Sub Total 2 (i) = (a)+(b)+(c)+(d)	**5,921.54**	**9,550.59**	**6,089.63**
(ii)	**Interest on loans**	**-**	**8.73**	**-**
(iii)	**4/5th of One Time Expenses, if any like Arrears of Wages, Arrears of Pension / Gratuity, Arrears of Exgratia Payment, etc. (list out each of the items)**			
	(a). Pension	-	-	-
	(b). Gratuity	-	-	-
	(c). Leave Encashment	-	-	-
	(d). Provision For Wage Revision	-	-	-
	Sub Total 2 (iii) = [(a)+(b)+(c)]	**-**	**-**	**-**
(iv)	**4/5th of the Contribution to the Pension Fund**	**6,330.61**	**11,031.97**	**23,433.25**
(v)	**Management and General overheads over & above 25% of the aggregate of the operating expenditure and depreciation**	4,103.13	2,843.30	4,209.88
(vi).	**Expenses relevant for tariff fixation of Captive Berth, if any governed under clause 2.10. of the Tariff Policy, 2015.**	**Not Applicable**		
	(a). Operating Expenses	-	-	-
	(b). Depreciation	-	-	-
	(c). Allocated Management and Administrative Overheads	-	-	-
	(d). Allocated FME	-	-	-
	Subtotal 2 (vi) = [(a)+(b)+(c)+(d)]	**-**	**-**	**-**
	Total of 2 = 2 (i)+2 (ii)+2 (iii)+2 (iv)+2 (v)+ 2 (vi)	**16,355.28**	**23,434.58**	**33,732.75**
(3).	**Total Expenditure after Total Adjustments (3 = 1-2)**	**35,243.56**	**46,134.98**	**52,269.97**
(4).	**Average Expenses of Sl. No. 3 = [Y1 + Y2 + Y3] / 3**	**44,549.50**		
(5).	Capital Employed			
	(i). Net Fixed Assets as on 31.03.2014 (As per Audited Annual Accounts)			114,293.83
	(ii). Add:Work in Progress as on 31.03.2014(As per Audited Annual Accounts)			119,456.53
	(iii). Less: Net value of Fixed assets related to Estate activity as on 31.03.2014 as per Audited Annual Accounts.			(37,241.47)
	(iv). Less : Net value of fixed assets, if any, transferred to BOT operator as on 31 March 2014 as per Audited Accounts.			(4,134.19)
	(v). Less : Net value of fixed assets as on 31 March 2014 as per Audited Accounts relevant to be considered for captive berths, if any, under clause 2.10. of the Tariff Policy, 2015.			
	(vi). Add : Working Capital as per norms prescribed in **clause 2.5.** of the Working Guidelines			
	(a). Inventory			625.82
	(b). Sundry Debtors			1,548.08

	(c). Cash			6,463.85
	(d). Sum of (a)+(b)+(c)	**-**	**-**	**8,637.75**
	(vii). Total Capital Employed [(i)+(ii)-(iii)-(iv)-(v)+(vi)(d)]	**-**	**-**	**201,012.45**
(6).	**Return on Capital Employed 16% on Sl. No. 5(vii)**	**-**	**-**	**32,161.99**
(7).	**Annual Revenue Requirement (ARR) as on 31 March 2014 [(4)+ (6)]**	**-**	**-**	**76,711.50**
(8).	**Indexation in the ARR @ 100% of the WPI applicable for the year 2014-15 i.e. @ 6% (7*1.06)**	**-**	**-**	**81,314.19**
(9).	**Indexation in the ARR @ 100% of the WPI applicable for the year 2015-16 i.e. @ 3.82% (8*1.0382)**	**-**	**-**	**84,420.39**
(10).	**Ceiling Indexed Annual Revenue Requirement (ARR)**	**-**	**-**	**84,420.39**
(11).	**Revenue Estimation at the Proposed indexed SOR within the Ceiling indexed ARR estimated at Sl No. 10 above**			**84,420.39**

(ii). The JNPT (in Form 3) has furnished working of revenue estimation considering the existing tariff and the proposed tariff for the actual traffic of 2014-15.

(iii). The Performance Standards proposed by JNPT in Form - 6 are as follows:

Sl. No.	**Performance Parameters**	**Existing Performance Standards 2015-16**	**Proposed Performance Standards 2016-17**
1	**Cargo Related Services**		
(a)	Average Ship Berth day Output (in tonnes) in respect of Major Cargo groups		
	(i) Container	26082	27000
	(ii) Dry Bulk	4316	4198
	(iii) Liquid	8933	7328
(b)	Average moves per hour (in TEUs) in respect of Containers	18.04	18.50
2	**Vessel Related Services**		
(a)	Average Turnaround Time of Vessels-Port A/c (in days)	1.43	1.72
(b)	Average Pre-Berthing Time of Vessels-Port A/c (in days)	0.16	0.16
3	Any other parameters found relevant by the Port	-	-

6.1. As per clause 5.2 of Tariff policy guidelines 2015, the Major Port Trusts shall host the draft SOR along with the proposed Performance Standards in its website, giving the designated email address of Port as well as TAMP for comments of relevant stakeholders/ users within 15 days' time. Accordingly, we have vide our letter dated 26 August 2016 requested JNPT to confirm the hosting of draft SOR and performance standards on its website. In this regard, a list of concerned users/ user organisations was also forwarded to JNPT.

6.2. In this connection, the JNPT vide its email dated 20 September 2016 has endorsed to us the copy of Trade notice being issued by JNPT to the users/ user organisations intimating them about uploading of proposed tariff revision, proposed Performance Standards and draft Scale of Rates on their website and requesting users/ user organisations to furnish their comments on or before 30 September 2016, to TAMP as well as JNPT.

6.3. In this regard, the Indian National Ship Owners Association (INSA) and M/s. Hyundai Merchant Marine India Private Limited (HMMIPL) have furnished their comments. These comments were forwarded to the JNPT for feedback comments. The JNPT vide its emails dated 21 October 2016 and 30 November 2016 has responded to the comments of INSA and HMMIPL.

7. Based on a preliminary scrutiny of the proposal, the JNPT was requested vide our letter dated 26 September 2016 to furnish additional information/ clarification on some points. The JNPT has responded vide its letter dated 29 October 2016 and 29 November 2016. The information / clarification sought by us and the response of JNPT thereon are tabulated below:

<table>
<tr><th>Sl. No.</th><th>Information sought by us</th><th>Reply of JNPT</th></tr>
<tr><td>1.</td><td><u>General</u></td><td></td></tr>
<tr><td>(i).</td><td>The JNPT vide its letter dated 1 September 2016 has stated that its proposal will be placed before the Board meeting scheduled to be held in the Second fort night of September 2016. The JNPT is requested to furnish the Minutes of the Board Meeting approving the subject proposal.</td><td>The above referred proposal of JNPT was placed before Board of Trustees in their 11th Board meeting held on 5th October, 2016 in Mumbai. This was deliberated by the Board of Trustees. Minutes of Board Meeting has been furnished by the JNPT.
From the Minutes of the Meeting, it is seen that the JNPT Board has resolved to approve the proposal of the JNPT seeking for increase in tariff rates as given below:
<table><tr><th>Sr. No.</th><th>Activity</th><th>Percentage increase</th></tr><tr><td>1.</td><td>Bulk other than Liquid</td><td>16%</td></tr><tr><td>2.</td><td>Container Related Charges</td><td>16%</td></tr><tr><td>3.</td><td>Vessel Related Charges</td><td>21%</td></tr><tr><td>4.</td><td>Liquid Cargo</td><td>5%</td></tr></table></td></tr>
<tr><td>(ii).</td><td>Vide the said letter, the JNPT has also stated that the port is in the process of hosting the proposed Scale of Rates and Performance Standards in the website of JNPT. In this regard, the JNPT vide its email dated 20 September 2016 has endorsed to us the email sent by it to the users intimating about uploading on its website about issue of a Trade Notice by JNPT with regard to tariff revision, proposed Scale of Rates and Performance Standards and requesting the users to forward their comments to us as well as JNPT. In this connection, from the email, it is seen that, JNPT has issued the email only to few users, whereas we have vide our letter of even number dated 26 August 2016 requested JNPT to communicate about hosting of draft Scale of Rates and Performance Standards as per the list enclosed therein. The JNPT is again requested to intimate all the users (as per the user list indicated by us vide our letter dated 26 August 2016) about hosting of draft Scale of Rates and Performance Standards and requesting them to furnish their comments to us as well as JNPT. A Copy of the said intimation is to be endorsed to us.</td><td>Port has already hosted draft Scale of Rates and the performance standards on its website. JNPT has also intimated all the users as per the Users List communicated by TAMP vide letter dtd. 26 August, 2016. Initially, email Id's of all the users were not available and hence three mails to users were sent separately. No comments were received by the Port from any users till 30 September 2016. Subsequently, comments were received from Indian National Ship Owners Association and clarification issued to them by Port is furnished.</td></tr>
<tr><td>2.</td><td>Form No. 1</td><td></td></tr>
<tr><td>(i)</td><td>The Finance and Miscellaneous Expenses as per the Annual Accounts for the years 2011-12 to 2013-14 reflect an amount of ₹7505.49 lakhs, ₹13,429.13 lakhs, and ₹29,079.97 lakhs respectively towards "Retirement Gratuity/ Pension/ Leave Encashment as per Actuarial Valuation". However, from the workings relating to consideration of 4/5th of contribution of Pension Fund in Form-1, the JNPT is seen to have considered the base amount at ₹7,952.54 lakhs, ₹13,860.82 lakhs and ₹29,445.82 lakhs respectively during the said three years which differ with audited accounts. The said difference to be reconciled.</td><td>Annual Accounts in the year 2011-12 includes the amount of foreign service contribution also which is not conforming part of superannuation benefits/ terminal benefits i.e. retirement gratuity, pension and leave encashment. Hence, the same has been deducted from Finance and Miscellaneous Expenses as per annual accounts. Secondly on conservative basis amount of leave encashment paid to the employees which forms a part of employee remuneration (excluding terminal benefits like gratuity paid during retirement) has also been added to this amount for working out the disallowance figure i.e. 4/5 of the contribution. JNPT has furnished the Reconciliation statement.
(The Reconciliation statement was not found attached. Thereafter, the JNPT has furnished the same vide its e-mail dated 24 November 2016</td></tr>
<tr><td>(ii).</td><td><u>Capital Employed (Sl.No. 5 (iii) & (iv) of Form-I):</u>
As per Clause 2.4 of Working Guidelines, for computation of capital employed, the port has to exclude net value of fixed asset related to estate activity and net fixed assets transferred to BOT operators as on 31 March 2014 as per Audited Annual Accounts. The JNPT has excluded ₹.37,241.47 lakhs towards net value of fixed asset related to estate activity and ₹ 4134.19 lakhs towards net value of fixed asset transferred to BOT operators. These figures could not be correlated with the figures reported in the Annual Accounts. The Port is requested to furnish working in respect of each of the above net value of fixed assets excluded.</td><td>Computation of capital employed has been done as per clause 2.4 of the working guidelines excluding net value of fixed assets related to estate activity and net fixed assets transferred to BOT operators. Working sheet related to this assessment is furnished by the JNPT</td></tr>
<tr><td>(iii).</td><td><u>Working Capital</u>:
As per Clause 2.5 of the Working Guidelines, the Limit on inventory other than capital spares and excluding fuels is six months average consumption, sundry debtors balance at two months estate income, railway terminal handling charges and cash balance will be one month cash expenses. In this backdrop, the JNPT is requested to</td><td>Working capital has been estimated as per clause 2.5 of the working guidelines described by TAMP. Detailed working statements showing inventory excluding fuel is furnished by the Port. Also, detailed working related to cash balance worked out by Port is attached.</td></tr>
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<tr><td></td><td>furnish the detailed working of the following:
(a). The inventory excluding fuel and customised spares as in the Accounts as relied upon by JNPT in Form 4 is ₹. 1251.64 lakhs. Reference to the said figure in the Annual Accounts to be indicated.
(b). The cash balance worked out by the JNPT in Form 4 at ₹. 64.64 crores.</td><td></td></tr>
<tr><td>3.</td><td><u>Revenue Estimation at the proposed Scale of Rates (FORM NO.3):</u></td><td></td></tr>
<tr><td>(i).</td><td>While estimating the revenue at the proposed Scale of Rates in Form-3, the JNPT is not seen to have estimated income arising out of levy of some services, though rates for the said services are proposed in the draft Scale of Rates. The JNPT is, therefore requested to capture the income arising out of the following services in Form-3:
<table>
<tr><th>Sr.No</th><th>Schedule</th><th>Description</th></tr>
<tr><td>(i).</td><td>Schedule 2.2 (C)</td><td>'Schedule of shifting charges for shifting from one terminal to another, Bombay port limits, anchorage or anywhere within the JNPT limits (other than 2.2 B)'.</td></tr>
<tr><td>(ii).</td><td>Schedule 2.2 (F)</td><td>Pilotage Fee for vessels Not required Tug Assistance.</td></tr>
<tr><td>(iii).</td><td>Schedule 3.3.1 (G)</td><td>Other services rendered to containers</td></tr>
<tr><td>(iv).</td><td>Schedule 3.3.4 (B)</td><td>Hatch Cover charges (one hatch to another hatch)</td></tr>
<tr><td>(v).</td><td>Schedule 3.3.5.</td><td>Storage charges on Uncleared Goods</td></tr>
<tr><td>(vi).</td><td>Schedule 3.3.6</td><td>Charges for Inter Terminal Transfer of Transhipment Containers between JNPT and NSICT.</td></tr>
<tr><td>(vii).</td><td>Schedule 3.3.7</td><td>Inter Terminal Rail Handling Operation (ITRHO)</td></tr>
<tr><td>(viii).</td><td>Schedule 3.3.8</td><td>Mandatory User Charges (MUC).</td></tr>
<tr><td>(ix).</td><td>Schedule 3.3.9</td><td>Toll Charges.</td></tr>
<tr><td>(x).</td><td>Section 3.3.1 (B)</td><td>Hazardous Containers (Export)</td></tr>
<tr><td>(xi).</td><td>Section 3.3.1 (E)</td><td>Shut out Containers</td></tr>
<tr><td>(xii).</td><td>Section 5.1 to 5.4</td><td>Charges on motor vehicles or any other equipment's passing through the port</td></tr>
<tr><td>(xiii).</td><td>Section 6.1,6.3,6.4,6.5</td><td>Miscellaneous Charges.</td></tr>
</table></td><td>Port was not able to estimate income arising out of levy of few services for which there are prevailing rates in the SOR and the proposed SOR. This is because the revenue out of these items is not of significant nature and quantitative details for these items are not available with the Port.</td></tr>
<tr><td>(ii).</td><td>On comparison of the rates as considered in the Annexures (pertaining to the Form 3) and the proposed draft Scale of Rates, it is seen that the rates considered in the Annexures are different from the rates proposed by JNPT in proposed draft SOR. The port is requested to have a relook at the proposed tariff for all items and correct them wherever necessary to ensure that the rates as considered in the Annexures to Form-3 and the rates proposed by JNPT in the proposed draft SOR are the same.</td><td>Rates considered in form 3 and proposed draft SOR are different from each other as the rates of form 3 are the actual percentage of increase required for matching the estimated revenue by considering traffic of 2014-15. However, the rates of increase proposed are rounded off to the nearest integer for the purpose of simplicity.</td></tr>
<tr><td>(iii).</td><td>In the Annexure K of the Form 3, the heading is given as "Dwell time charges for container stored in the port premises and shallow water berth", whereas in the proposed SOR the heading is indicated as dwell time charges for container stored in the port premises". The reason for indicating different headings in two different places to be furnished.</td><td>The heading indicated in the Annexure-K of the Form 3 may be read as 'Dwell Time Charges for containers stored in Port premises in place of Dwell Time Charges for containers stored in Port premises and Shallow Water Berth.</td></tr>
<tr><td>(iv).</td><td><u>In the Annexure K of the Form 3, the port has not estimated dwell time income from the following:</u>
<u>(a). ICD – (Import/ Export and Loaded/ Empty) moved by road/ rail.</u>
<u>(b). Transhipment – (Loaded/ Empty).</u>
<u>(c). Shutout – (Loaded/ Empty).</u>
<u>(d). Back to town – (Loaded/ Empty).</u>
The JNPT is requested to estimate the dwell time income for all the above category of containers.</td><td>It is practically not possible to estimate the dwell time income for lack of quantitative details in case of following items:
a) ICD - Import/Export and Loaded/Empty.
b) Transhiprnent - Loaded/Empty
c) Shut out - Loaded/Empty
d) Back to town - Loaded/Empty</td></tr>
<tr><td>(v).</td><td>Charges for dry bulk and general cargo - (Annexure M to O):
The port under the Schedule 4.6.2 in the proposed SOR has introduced Wharfage charges for handling of the liquid cargo at JNPT Shallow Water Berth. In this regard, the JNPT is requested to furnish the following:</td><td>Under 4.6.2 of the SOR port has introduced wharfage charges for handling liquid cargo at JNPT Shallow Water Berth in this regard following clarifications are furnished :</td></tr>
<tr><td></td><td>(a). Basis to arrive at each of the rates proposed at Section 4.6.2 for each of the Liquid Cargo.</td><td>The base rate for each of the liquid cargo items are as per the BPCL SOR which port had been following since commencement of these services by Port. BPCL terminal being in the vicinity of Shallow Water Berth of JNPT port has adopted that SOR with the consent of users and TAMP had been informed earlier in this regard.</td></tr>
<tr><td></td><td>(b). In Annexure– M to Form– 3 which captures the estimated</td><td>The cargo items considered in Annexure-M to Form 3 are</td></tr>
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	income to be earned at the proposed level of tariff, the cargo items considered in Annexure-M is different from the cargo items listed in Section 4.6.2 of the Scale of Rates. The JNPT may ensure same list of cargo to be reflected in Section 4.6.2 of SOR and in Annexure-M of Form-3.	as per the list of cargo reflected under 4.6.2 of proposed SOR. The item has been included under form 3 as wharfage-liquid in place of giving a detailed list which is given in Annexure-M.
	(c). The rates as reflected in Section 4.6.2 of SOR do not match with the rates considered in Annexure-M of Form-3, for estimation of income. The JNPT is requested to ensure considering same rates in Section 4.6.2 of SOR and in Annexure-M of Form-3.	As mentioned earlier in point no.3(ii) above the proposed rate of increase has been rounded off to the nearest integer for the purpose of simplicity.
	(d). In Wharfage Schedule at Section 4.1, wharfage rates are prescribed for different cargo items in the proposed SOR. In the income estimation workings at Annexure-N to form-3, the wharfage income is seen to be estimated at a consolidated figure of ₹3.78 crores, without estimating individual wharfage income for each cargo item. The JNPT is requested to furnish wharfage income for each cargo item listed under the wharfage schedule at the proposed level of tariff.	Comments are same as mentioned in point no. 3(i). This is because the revenue out of these items is not of significant nature and quantitative details for these items are not available with the Port.
(vi).	In the Form 3, the JNPT has estimated revenue from container handling charges at shallow water berth [Sr. no. 2(A) (l)], C R O from NSICT/GTI [Sr. no. 2(A) (m)] and Other General Income [Sr. no. 3(D)] to the tune of ₹21.71 crores, ₹12.36 crores and ₹3.17 lakhs respectively. However, in the proposed SOR the rates for the said services do not appear to have been proposed. The port is requested to examine and propose necessary rates in its proposed SOR.	All the rates proposed under Charter III i.e. "Charges to services rendered to Containers and Containerized cargo" are applicable for Main Container Berth as well as Shallow Water Berth both forming part of JN Port. Hence, no separate rates have been proposed for Main Container Berth and Shallow Water Berth for all the services rendered by the Port. The charges for C R O from NSICT/ GTIPL have been mentioned under Section 3.3.6 of the proposed SOR. The charges for 'Other General Income' have been stated under section 2.5 of the proposed SOR.
4.	**<u>Proposed Scale of Rates:</u>**	
(i).	In the General Terms & Conditions, the JNPT is not seen to have incorporated the notes relating to the latest coastal concession, notes relating to application of indexation factor on achievement of performance standards, notes relating to classification of vessel for levy of Cargo Related Charges & Vessel Related Charges. The JNPT is requested to propose suitable notes in this regard.	The following may be added under General Terms and conditions of Chapter-I Clause 1.2 at (xiii) (i), (ii) and (iii). Criteria for levy of Cargo Related Charges (CRC) at Concessional Coastal rate. ***(i). Foreign going Indian Vessel having General Trading License issued for 'worldwide and coastal' operation should be accorded applicable coastal rates with respect to Handling Charges (HC) i.e. Ship to Ship transfer and transfer from/to quay to/from storage yard including Wharfage in the following scenario:*** ***(a) Convened to coastal run and carrying coastal cargo from any Indian Port and destined for any other Indian Port.*** (b) Not converted* to coastal run but carrying coastal cargo from any Indian Port and destined for any other Indian Port. *****The Central Board of Excise and Customs Circular No.15/2002- Cus dated 25th February 2002 allows carriage of coastal cargo from One Indian Port to another Port in India, in Indian flag foreign going vessels without any custom conversion. (ii). In case of a Foreign flag vessel converted to coastal run on the basis of a License for specified period or voyage issued by the Director General of Shipping, and a Custom Conversion Order, the coastal cargo/container loaded from any Indian Port and destined for any other Indian Port should be levied at the rate applicable for coastal cargo/container. (iii). A foreign going vessel of Indian flag having a General Trading License can convert to Coastal run on the basis of a Customs Conversion Order. Such vessel that converts into coastal run based on the Custom Conversion Order at her first port of call in Indian Port, no further custom conversion is required, so long as it moves on the Indian Coast. The following may be added under General Terms and Conditions of Chapter-I, Clause 1.2 at xv: "80% discount on vessels related charges and Cargo Related Charges for coastal transportation of vehicles though Ro-Ro ship will be granted for a period of two years with effect from 20" September 2016". 2. Notes relating to application of indexation factor on achievement of Performance standard, The following may be added Under General Terms and Conditions of Chapter-I, Clause 1.2 at xiv.
(ii).	This Authority has passed the following common adoption order to be complied by all Major Port Trusts. It is however seen that the port has not included the provisions in the above common adoption order in the proposed SOR. In this connection, the JNPT is requested to incorporate suitable provisions in its Scale of Rates and to consider the impact of the same in the income estimation: (a). Order No. TAMP/14/2016-Misc dated 9 February 2016 relating to prescription of lower charges for cargo & vessels related services as well as special discount in port charges for the services rendered after regular hours by the Major Port Trusts and BOT Operators operating thereat in pursuance of MOS letter No. PD/14033/101/2015-PD.V dated 3 February 2016. (b). Letter No. TAMP/35/2013-Misc. dated 7 August 2014 directing all Major Port Trusts to prescribe a suitable note in their respective SOR regarding applicability of wharfage rates for Defence Stores in such a way that there is no ambiguity in mind of users on the application of the prescribed rates. (c). Letter No. PD-25021/7/2015-PD.1. dated 16 April 2015 of MOS directing to all Major Port Trusts to follow the TAMP letter No. TAMP/53/2002-Misc dated 25 March 2015 regarding wharfage charges on vessel manifested as cargo in the Import General Manifest (IGM) or Export General Manifest (EGM).	

		(a). The SOR is subject to automatic annual indexation at 100% of the WPI to be annually announced by the Authority. The next annual indexation will be from I April 2017 subject to the JNPT achieving the performance standard notified along with the SOR. If Performance Standards prescribed in the SOR are not achieved, there will be no indexation in the SOR for that particular year. (b). The Port should declare the Performance Standards achieved by it annually for the period 1 January to 31 Dec vis-a-vis the Performance Standards notified by the Authority at the level committed by the port within one month of end of the calendar year to the concerned users as well as to the Authority. If the Performance Standards as notified by the Authority are achieved by the Port, then the Port will automatically index the SOR at 100% of WPI announced by the Authority and apply the indexed SOR w.e.f. 1 April of the relevant year. The indexed SOR by the JNPT to be intimated by the Port of the concerned users and to the Authority. 3. Note relating to classification of vessel for levy of Cargo Related & Vessel Related Charges. This was earlier incorporated in Chapter-I, Para 1.2 of General Terms and conditions under Clause xiii and the same is now modified at Clause xiii (ii) (iii) as mentioned above at Sr. No. 1. Further, with reference to Sr. No. 4(a), JNPT would like to state that, JNPT is operating 24/7 virtually for 365 days in a year barring few Port Closed Holidays. Hence no separate discount is envisaged for working after regular hours.

8. A joint hearing on the case in reference was held on 10 October 2016 at the Office of this Authority. At the joint hearing, the JNPT made a Power Point presentation of the proposal. At the joint hearing, the JNPT and the concerned users/ organization bodies have made their submissions at the joint hearing.

9.1. Subsequently, the JNPT vide its letter dated 15 November 2016 has forwarded the proposal for equalizing the rates for moving containers from container yard to Railway Flat or vice versa and from container yard to Truck or vice versa.

9.2. The submissions made by JNPT in its above referred letter are as follows:

(i). The NITI Aayog in its meeting held on 9 August 2016 has advised to equalize the rates charged by JNPT for handling of containers moved by road and rail towards promoting the transfer of containers by rail.

(ii). The current share of rail volume at JN Port, as a total percentage of total container throughput, is less than 15%. This is considerably low as earlier share of around 26% in 2009-10. Measures have been taken by JNPT to improve the rail share, such as grant of rebate for rail movement from CFS. However, the negative trend is continuing.

(iii). JNPT is capable of handling 30 trains per day with the current infrastructure. The Port is currently handling around 12-15 rakes on a day. This is heavy underutilization of terminal asset.

(iv). The shift of container movement from Rail to Road has resulted in more trucks being deployed on the road to move these containers. This extra number of trucks has led to excess pressure on the limited road infrastructure outside the terminal resulting in traffic congestion and local unrest.

(v). In order to reverse this trend, it is recommended to incentivize containers moving by rail so as to reduce movement by road. It is, therefore, proposed to equalize the rates of handling containers being transferred by rail and road. This would make the entire ICD movement across all destinations move competitive.

(vi). For retaining the gross revenue, a marginal increase is to be made in the cost of moving boxes by road, however the overall benefit like reducing road congestion would justify this marginal increase.

(vii). A comparative position of the existing rates and the proposed rates, as given by JNPT is as follows:

Particulars	Size	Existing Rate in ₹	Proposed Rate in ₹	Difference in ₹
Road	20'	476.00	844.00	368.00
	40'	714.00	1,266.00	552.00
Rail	20'	1,547.00	844.00	(368.00)
	40'	2,320.50	1,266.00	(1,054.50)

(viii). A proposal was moved vide Item No. 9 in the Board Meeting held on 28 October 2016. The Board of Trustees after deliberation approved the proposal. The JNPT has furnished a copy of the Minutes of the Board Meeting according approval to equalize the handling charges for both rail and road as advised by NITI Aayog in order to promote transfer of containers by rail at JNPT with the revised handling charges of ₹ 844/- for 20' and ₹ 1266/- for 40' containers for both rail and road.

(ix). The common handling charges for both rail and road have been proposed by assuming 25% carriage by rail in future. The rates are designed to retain the total income even if the separate rates were continuing.

9.3. Thus, the JNPT has requested to notify the following proposed rates at the earliest:

"3.3.1 CHARGES FOR HANDLING AND MOVEMENT OF CONTAINERS:

The following consolidated charges for handling and movement of container shall be payable by the Shipping Lines or Agents of vessels or cargo agents for services rendered in respect of containers and containerized cargo passing through the port.

A. NORMAL CONTAINERS/ REEFER CONTAINERS :

Sr. No.	Description	Rate per TEU (in ₹)			
		Foreign Container		Coastal Container	
		Loaded	Empty	Loaded	Empty
3	From Container Yard to Railway flat or vice versa (ICD Container Rail only)	844.00	844.00	844.00	844.00
4	From Container Yard to Truck or vice versa (direct delivery and export intake)	844.00	844.00	844.00	844.00

"

9.4. Considering that the proposal of JNPT has emanated on account of the advice of the NITI Aayog to promote the transfer of containers by rail so as to keep a check on the congestion in the roads as well as the pollution emitted by the vehicles carrying the containers by road, any delay in the implementation of the rates proposed by JNPT, may go against the spirit of the advice rendered by the NITI Aayog. In view of the above position, this Authority vide its Order no. TAMP/48/2016-JNPT dated 17 November 2016 has authorised the JNPT to collect the proposed equalisation charges with immediate effect on an adhoc basis.

9.5. Given that the JNPT general revision proposal is under process, it was decided to capture the financial implication arising out of the implementation of the proposed rates with immediate effect in the overall revenue estimation in the said case in reference. Accordingly, the rates approved then, were to have a prospective effect.

9.6. Subsequent to this, the proposal of JNPT for equalizing the rates for moving containers from container yard to Railway Flat or vice versa and from container yard to Truck or vice versa, was taken up on consultation with the relevant stakeholders. Only one of the users viz., M/s. Hyundai Merchant Marine India Private Limited (HMMIPL) has furnished its comments. The comments of HMMIPL have been forwarded to the JNPT for feedback comments. The JNPT has not responded to the comments of HMMIPL, till the case was taken up for finalisation.

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

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

(i). The existing Scale of Rates of the Jawaharlal Nehru Port Trust (JNPT) was last approved vide Order No. TAMP/62/2012- JNPT dated 4 April 2014. This Order was notified in the Gazette of India on 19 May 2014. The said Order prescribed a tariff validity period till 31 March 2016.

(ii). The Ministry of Shipping (MOS), vide its letter No. 8(1)/2014 TAMP dated 13 January 2015 has issued the new "Policy for determination of Tariff for Major Port Trusts, 2015" which was notified in the

Gazette of India vide Gazette No. 30 dated 27 January 2015 by this Authority. The new “Policy for determination of Tariff for Major Port Trusts, 2015” has come into effect from 13 January 2015. Thereafter, as stipulated in Clause 1.5. of the Tariff Policy, 2015, the Working Guidelines was issued by this Authority in consultation with all the Major Port Trusts to operationalize the Tariff Policy. The Working Guidelines was notified on 4 June 2015 vide Gazette no.207.

(iii). In this backdrop, given that the validity of the existing Scale of Rates of the JNPT is till 31 March 2016, the JNPT has come up with a proposal for revision of its tariff for the period from 01 April 2016 to 31 March 2019, following the Tariff Policy, 2015 and the Working Guidelines.

(iv). The general revision proposal has been filed by the JNPT in August 2016. Subsequently, the JNPT has furnished the information/ clarification sought by us vide its letters dated 29 October 2016 and 29 November 2016. Simultaneously, the JNPT had also filed a proposal for equalization of rates of containers moved by rail and road on 15 November 2016. The said proposal was taken up on consultation. Thereafter, the JNPT proposal for general revision of its Scale of Rates has been taken up for finalization. For the purpose, the proposal filed by JNPT in August 2016 along with submissions made by the port during the processing of the case are considered in this analysis.

(v). (a). Clause 2.1 of the Tariff Policy, 2015 requires each Major Port Trust to assess the Annual Revenue Requirement (ARR) which is the average of the sum of Actual Expenditure as per the Audited Accounts of the three years 2011-12 (Y1), 2012-13 (Y2) and 2013-14 (Y3) subject to certain exclusions as prescribed the Clause 2.2. of the Tariff Policy 2015 and the Working Guidelines issued by this Authority plus Return at 16% on the Capital Employed including capital work-in-progress obtaining as on 31st March 2014, duly certified by a practicing Chartered Accountant/ Cost and Management Accountant.

(b). The JNPT has assessed the Annual Revenue Requirement (ARR) based on Audited Annual Accounts for three years i.e. 2011-12 (Y1), 2012-13 (Y2) and 2013-14 (Y3) duly certified by a practicing Chartered Accountant. The JNPT has excluded the expenses not admissible in ARR computation for arriving at the Average annual expenses for the year 2011-12, 2012-13 and 2013-14. The following adjustment done by JNPT in line with provisions prescribed in Clause 2.2. of Tariff Policy 2015 and Clause 2.2. of Working Guidelines are brought out for specific mention:

(i). The JNPT has excluded expenses (i.e. operating expenses, allocated Management & Administrative overheads and allocated Finance and Miscellaneous Expenses) related to estate activity to the tune of ₹ 5921.54 lakhs, ₹ 9550.59 Lakhs and ₹ 6089.63 lakhs respectively for the years 2011-12, 2012-13 and 2013-14. Interest on loans to the tune of ₹ 8.73 Lakhs during the year 2012-13 has also been excluded.

(ii). As per Clause 2.2(iii) of Tariff Policy 2015 and the Working Guidelines, 1/5 of one-time expenses like arrears of wages, pension/ gratuity, ex-gratia payments arising out of wage revision etc. are to be included from the Annual Revenue Requirement (ARR). Likewise, 1/5th of the Contribution to Pension Fund is to be included for the calculation of ARR. This means 4/5th of the above mentioned expenses are to be excluded in the ARR computation.

In this connection, the JNPT has excluded ₹ 6330.61 Lakhs, ₹ 11031.97 Lakhs and ₹ 23433.25 Lakhs for the years 2011-12, 2012-13 and 2013-14 respectively as a 4/5th of the Contribution to the Pension Fund. For the purpose, the JNPT, in addition to the amount towards ‘Retirement Gratuity/ Pension/ Leave Encashment as per Actuarial Valuation’ as reflected in the Annual Accounts, has considered the amount of leave encashment paid to the employees which forms part of employee remuneration (excluding terminal benefits like gratuity paid during retirement) and has excluded the amount pertaining to the foreign service contribution (which do not form part of superannuation benefits/ terminal benefits i.e. retirement gratuity, pension and leave encashment). The amount of Leave encashment paid to the employees being part of the Salary expenditure; and, therefore can be a part of the operating expenses and not to be treated differently. Suitable changes are carried out in the 4/5th of the Contribution to the Pension Fund as assessed by the Port. Thus, as against an amount of ₹ 6330.61 lakhs, ₹ 11031.97 lakhs and ₹ 23433.25 lakhs excluded by JNPT from the operating expenses, only an amount of ₹ 5966.78 lakhs, ₹ 10688.54 lakhs and ₹ 23,146.17 lakhs is considered for exclusion.

(iii). As per Clause 2.2. (iv) of Tariff Policy 2015 and Clause 2.2. (iv) of the Working Guidelines, Management and General Administration Overheads subject to a cap of 25% of aggregate of the operating expenditure and depreciation is only to be considered in the ARR calculation.

The Management and General Administration Overheads reported in the Audited Annual Accounts is ₹ 10843.66 Lakhs, ₹ 11159 Lakhs and ₹ 13156 Lakhs for years 2011-12, 2012-13 and 2013-14 respectively. Thereafter, the JNPT has assessed 25% of the Operating Expenses (including depreciation but excluding operating expenses relating to Estate) as per Audited Annual Accounts at ₹ 6740.53 Lakhs, ₹ 8315.81 Lakhs and ₹ 8946.63 Lakhs. As per the working furnished by the JNPT in Form-2, the JNPT has identified an amount of ₹ 4103.13 Lakhs, ₹ 2843.30 Lakhs, and ₹ 4209.88 Lakhs of Management and General Administration Overheads as excess of 25% of aggregate of operating expenses and depreciation and hence has excluded the same from ARR in the years 2011-12, 2012-13 and 2013-14 respectively complying with the provisions of Tariff Policy, 2015.

(iv). As per Clause 2.2(v) of the Working Guidelines notified by this Authority all expenses relevant for captive berths are to be excluded from the computation of ARR. The JNPT has not indicated any existence of Captive berths and has, therefore, not estimated any expenditure under this head.

(vi). Following the provisions prescribed at Clause 2.3. of the Tariff Policy, 2015 and Clause 2.3. of the Working Guidelines, the average expenses for the years 2011-12, 2012-13 and 2013-14 works out to ₹ 44,880.95 lakhs as against ₹44549.50 Lakhs arrived at by the JNPT.

(vii). (a). The JNPT has arrived at capital employed in line with provision prescribed in Clause 2.4. of the Working Guidelines. The JNPT has considered the net fixed assets as on 31 March 2014 as reported in the Audited Annual Accounts plus capital work-in-progress.

(b). For computation of capital employed, as per Clause 2.4 of Working Guidelines, the port has to exclude net value of fixed asset related to estate activity and net fixed assets transferred to BOT operators as on 31 March 2014 as per Audited Annual Accounts. The JNPT has excluded ₹ 37241.47 lakhs towards net value of fixed asset related to estate activity and ₹ 4134.19 lakhs towards net value of fixed asset transferred to BOT operators. The JNPT has given details of the asset related to estate activity and the asset transferred to BOT operators. The details as furnished by the Port are relied upon.

(c). As stated earlier, the JNPT has stated that there are no fixed assets relating to captive berth.

(d). Working capital comprises of Inventory, Sundry debtors and Cash balances. The Sundry debtors and Inventory is reported to have been computed as per norms prescribed in clause 2.5. of Working Guidelines.

To arrive at the Cash balance, the JNPT is seen to have considered one month expenses (excluding depreciation but including the finance and miscellaneous expenses). To arrive at the cash balance at one month cash expenses, the finance and miscellaneous expenses is not taken into account. Accordingly, the cash balance is reworked out at one month cash expenses excluding finance and miscellaneous expenses. Thus, the cash balance works out to ₹ 3870.15 Lakhs instead of ₹ 6463.85 Lakhs.

(e). Thus, the total capital employed including the working capital works out to ₹ 1984.19 crores instead of ₹ 2010.12 crores as assessed by the JNPT.

(f). Return on Capital Employed at 16% is worked out on the revised Capital Employed, which works out to ₹ at ₹317.47 crores, which is considered in the ARR computation.

(viii). The ARR is the average of the expenditure for the three financial years 2011-12 to 2013-14 at ₹ 448.81 crores plus 16% Return on Capital Employed at ₹ 317.47 crores, aggregating to ₹ 766.28 crores as on 31 March 2014. Further, as per Clause 2.7. of Working Guidelines, the said ARR has been indexed @ 100% of the Wholesale Price Index (WPI) applicable for the year 2014-15 and 2015-16 at 6% and 3.82% respectively. The ceiling indexed ARR works out to ₹843.28 crores for the year 2015-16, as against ₹ 844.20 crores assessed by the Port.

The detailed working of ARR calculation, as given by the port duly certified by Chartered Accountant subject to the change in the average expenses and cash balance, as discussed earlier, is relied upon. A summary of certified ceiling indexation ARR is given below:

(₹ in Crores)

Sr. No	Particulars	2011-12	2012-13	2013-14
1	Average Expenses		448.81	
2	Capital employed as on 31.03.2014 including capital work in progress as on 31.03.2014 and working capital as per norms		1984.19	
3	Return on capital employed @ 16%		317.47	
4	ARR as on 31 March 2014 (4=1+3)		766.28	
5	Indexation in the ARR @ 100% of the WPI applicable for the year 2014-15 (6%)		812.26	
6	Indexation in the ARR @ 100% of the WPI applicable for the year 2015-16 (3.82%)		843.28	
7	Ceiling Indexed Annual Revenue Requirement (ARR)		**843.28**	

(ix). (a). As per Clause 2.6. of Tariff Policy 2015, the Major Port Trusts 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 JNPT is seen to have proposed about 21% increase in the vessel related charges, about 16% increase in the container and cargo related charges (except liquid cargo) and about 5% in the Liquid Cargo charges. The Port has given detailed working of revenue estimation indicating each of the tariff items in the proposed SOR for corresponding traffic handled in 2014-15 as required as per Clause 2.9. of the Working Guidelines, to arrive at the revenue requirement of ₹ 844.20 crores, as assessed by it.

(b). Considering that the ARR has been reworked at ₹843.28 crores, as brought out above, there can be a view that the proposed SOR of JNPT is to be modified so as to result in an income at the level of ARR of ₹ 843.28 crores, instead of ₹ 844.20 crores, as assessed by the Port.

(c). In this connection, it is to state that the difference between the ARR and the income at the proposed level of tariff works out to ₹ 0.92 crores. As a percentage, it works out to 0.11%. In other words, the rates proposed in the proposed Scale of Rates are to be reduced by 0.11%, as an arithmetical exercise to maintain parity between the income at the proposed level of tariff and the ARR. However, considering the miniscule quantum of reduction warranted in the proposed Scale of Rates, this Authority is inclined to maintain the rates as considered by JNPT in the calculation of income at the proposed level of tariff.

(d). It is also noted that rates considered in the calculation of income at the proposed level of tariff has been rounded off to the nearest integer by JNPT while prescribing the rates in the Scale of Rates. Considering that the rounding off the rates to the nearest integer is a significant impact at the overall macro level, it is felt appropriate to take into account the rates as they are considered by JNPT in the calculation of income at the proposed level of tariff, without rounding off.

(e). Considering the position that the increase in the vessel, container and cargo related charges as sought by the JNPT is closer to the ceiling indexed Annual Revenue Requirement and based on the judgment of the Port, this Authority is inclined to grant the increase as proposed by the port. It is noteworthy that the impact on revenue on account of the said increase in tariff is that the JNPT would earn about 23% additional revenue on account of this revision over the actual income from vessel, container and cargo related charges reported for the year 2014-15.

(f). **During the proceedings relating to the case in reference as well as during the joint hearing, the users have objected to the increase in the tariff proposed by the JNPT, on the ground that it will have an impact on their trade. It is reported by the users, that some of the cargo is moving out of JNPT. The JNPT has sought to argue in the joint hearing that the proposal increase is only about 0.05% of the overall logistics cost. The argument is not refuted by the users. It is to be noted that the increase in vessel related charges and the cargo related charges, as sought by the JNPT, is closer to the ceiling indexed Annual Revenue Requirement. Since the increase sought by the JNPT is within the purview of the stipulations of the Tariff Policy, 2015, grant of the increase in the cargo/container related charges and vessel related charges, is inevitable. In this regard, it is relevant here to mention that as per Clause 8.1. of the Tariff Policy 2015, the**

rates prescribed in the Scale of Rates are ceiling levels; rebates and discounts are at floor levels. The JNPT, therefore, can exercise the flexibility to charge lower rates and/or allow higher rebates and discounts based on commercial considerations. The JNPT is advised to ensure that as a result of revision in the SOR there will not be loss of traffic to the port. In fact, the JNPT has committed during the proceedings of this case that it will continue to devise tailor made incentive schemes and grant discounts and rebates, as has been done by it in the past.

(x). As brought out in the earlier part of the Agenda, the JNPT has filed a proposal for equalizing the rates for moving containers from container yard to Railway Flat or vice versa and from container yard to Truck or vice versa, while the general revision proposal was in process. Considering that the proposal of JNPT has emanated on account of the advice of the NITI Aayog to promote the transfer of containers by rail so as to keep a check on the congestion in the roads as well as the pollution emitted by the vehicles carrying the containers by road, delay in the implementation of the rates proposed by JNPT, this Authority has given adhoc approval to the proposal of the Port. Given that the JNPT general revision proposal was under process, it was decided to capture the financial implication arising out of the implementation of the proposed rates with immediate effect in the overall revenue estimation in the said case in reference. In this connection, the Port has stated that the equalized rates proposed by the port have been designed in such a manner so as to retain the total income even if the separate rates were continuing. In other words, the JNPT has confirmed that there would not be any additional income arising out of the equalization of rates. The adhoc rates approved by this Authority and being implemented by JNPT is, therefore, regularized.

(xi). (a). The JNPT in its Scale of Rates has introduced Wharfage charges for handling of the liquid cargo at JNPT Shallow Water Berth (SWB). In this connection, it is recalled that the JNPT in June 2014 had intimated us about it permitting M/s. Ganesh Benzoplast Limited (GBL) for laying 2 nos. of pipelines from SWB-03 to interconnect the same to the existing pipeline at BPCL Jetty so that vessel can berth on either of the berths i.e. BPCL berth or JNPT Shallow Water Berth and discharge the liquid cargo. The JNPT had also stated that the liquid cargo ships handled through GBL pipeline at Shallow Water Berth has commenced in November 2013. In this connection, the JNPT had stated that it is in the process of formulation of a detailed proposal for this service and that as an interim arrangement, it may be permitted to adopt BPCL's notified Scale of Rates on ad-hoc basis until the proposal of the Port is finally approved by TAMP, with retrospective effect i.e. November, 2013.

As per Clause 2.17.2 of the 2005 tariff guidelines (which was then applicable in respect of JNPT), the filing of the proposal for levy of rates and levy of proposed rates on adhoc basis till the rate is finally notified should be simultaneous. However, the JNPT had delinked submission of the proposal from levy of rates on adhoc basis. Thus, the JNPT was requested to come with a well analysed separate proposal, supported by the cost details to prescribe the rates for the said service in line with the stipulation contained in the Clause 2.17.1 to 2.17.4 of the tariff guidelines of 2005. The JNPT did not come up with any proposal in this regard. However, JNPT continued to carry out operations at SWB and levied charges as applicable in respect of BPCL, without the approval of this Authority.

Now, the JNPT has proposed introduction of Wharfage charges for handling of the liquid cargo at JNPT Shallow Water Berth, based on the rate for each of the liquid cargo items as per the BPCL SOR, on the ground that the BPCL is in the vicinity of Shallow Water Berth and that the port had been adopting the BPCL rates since commencement of the services by Port, with the consent of users. JNPT has also stated that TAMP had been informed earlier in this regard. In this connection, it is relevant to mention here that given that the JNPT Scale of Rates did not prescribe rates for handling of liquid cargo at SWB, the port ought to have come up with a proposal before this Authority and sought approval of this Authority. However, the JNPT has chosen to not come up with a proposal inspite of a specific request made to JNPT. Mere intimation on the part of JNPT does not have a statutory backing. The JNPT may note that levy of rates without the approval of this Authority would be at the risk of the Port.

(b). The definition for the terms 'Vaporiser', 'compressor' and "pigging' introduced by the Port is in line with the definition prescribed in the existing Scale of Rates of BPCL for similar terms and hence, is approved.

(c). As stated earlier, JNPT has sought approval for levy of Wharfage charges for handling various types of the liquid cargo at JNPT SWB. Accordingly, the JNPT has proposed rates for the various cargo items in its proposed draft Scale of Rates. It has also captured the income that is accrue to JNPT on account of levy of Wharfage charges for handling various types of the liquid cargo at JNPT SWB. However, in this connection, it is noted that the cargo items considered in the income estimation are different from the cargo items listed in the Scale of Rates. Also, the rates as considered in the income estimation are different from the rates proposed in the Scale of Rates. Inspite of a specific request to JNPT to ensure considering same cargo items and same rates in the income estimation as well as the proposed Scale of Rates, the JNPT has not carried out any such exercise. In view of the above position, the cargo items as listed and the rates as considered in the income estimation by JNPT is incorporated in the Scale of Rates.

(d). The JNPT has introduced Note no. (a) to (g) with regard to the levy of Wharfage charges on the Liquid cargo, below the Wharfage Schedule. These notes are seen to be in line with the Notes prescribed in the existing Scale of Rates of BPCL and hence, are approved.

(xii). In view of the direction of the MOS dated 11 May 2016 and consequent Order no. TAMP/4/2004-Genl dated 19 May 2016, with regard to the non restatement of the coastal rates with reference to the fluctuation in exchange rate, the Ceiling Coastal Rates are prescribed by JNPT upfront in the Scale of Rates without taking into account the exchange rate fluctuation of Indian Rupee vis-a-vis the USD ($).

(xiii). This Authority has passed common adoption Order No. TAMP/14/2016-Misc dated 9 February 2016 relating to prescription of lower charges for cargo & vessels related services as well as special discount in port charges for the services rendered after regular hours by the Major Port Trusts and BOT Operators operating thereat in pursuance of MOS letter No. PD/14033/101/2015-PD.V dated 3 February 2016, to be complied by all Major Port Trusts. With regard to a specific request to the port to incorporate suitable provisions in its Scale of Rates, JNPT has stated that it is operating 24/7 virtually for 365 days in a year barring few Port Closed Holidays and hence, does not envisage separate discount for working after regular hours. In this regard, it is to state that all the Ports operate 24/7 for 365 days. Introduction of prescription of lower charges for cargo and vessels related services as well as special discount in port charges for the services rendered after regular hours, is with the objective of encouraging the users to make use of the port facilities even after regular hours. In view of the position, a provision is included in the Scale of Rates of JNPT to the effect that in order to decongest the ports and encourage exporters / importers to utilize the port services beyond regular hours, lower charges will be levied for cargo and vessels related services as well as special discount will be offered in port charges for the services rendered after regular hours, in line with a similar provision incorporated in the Scale of Rates of JNPT.

(xiv). Based on a communication from the Ministry of Shipping (MOS), the Major Port Trusts including JNPT were requested to prescribe a suitable note in their respective SOR regarding applicability of wharfage rates for Defence Stores in such a way that there is no ambiguity in mind of users on the application of the prescribed rates. In this regard, inspite of a specific request, the JNPT has not prescribed wharfage rate for 'Defence Stores' in its Scale of Rates. The Port is advised to come up with a proposal for prescription of a note in this regard, within 3 months from the date of notification of the Order in the Gazette of India.

(xv). The MOS vide its Letter No. PD-25021/7/2015-PD.1. dated 16 April 2015 has directed all Major Port Trusts to follow the TAMP letter No. TAMP/53/2002-Misc dated 25 March 2015 regarding wharfage charges on vessel manifested as cargo in the Import General Manifest (IGM) or Export General Manifest (EGM). Since the JNPT has not incorporated the relevant note, the note to the effect that Vessels calling the Port on her first voyage, which are declared as cargo in the Import General Manifest or Export General Manifest for the purposes of Customs Act, 1962, shall not be treated as cargo and no wharfage shall be levied on such vessels, if the vessels come into the port on their own steam and sail out of the port limits on their own steam. However, when loading or unloading of vessels takes place within the Port limits, wharfage shall be payable on such vessels. The said note is incorporated in the JNPT Scale of Rates.

(xvi). While estimating the revenue at the proposed Scale of Rates, the JNPT is not seen to have estimated income arising out of charges prescribed for rendering of some services viz., shifting from one terminal to another, Pilotage Fee for vessels not required Tug assistance, other services rendered to containers, Hatch Cover charges (one hatch to another hatch), Storage charges on Uncleared Goods, Mandatory User Charges (MUC), Toll Charges , Inter Terminal Rail Handling Operation (ITRHO), Charges for Inter Terminal Transfer of Transhipment Containers between JNPT and NSICT, Hazardous Containers (Export), Shut out Containers, dwell time of containers, some Miscellaneous Charges etc., though rates for the said services are proposed in the draft Scale of Rates. The port has stated that it is not in a position to estimate income arising out of levy of these services, since the revenue out of these items is not significant and quantitative details for these items are not available with the Port. Considering the position that the port has confirmed that the income arising out of levy of these charges would be very insignificant, the judgment of the Port in this regard is relied upon.

(xvii). As per Clause 3.1. of the Tariff Policy 2015, the Major Port Trusts shall also commit Performance Standards for cargo related services in terms of average ship berth day output, average moves per hour in case of container handling. For vessel side services, the port shall prescribe Performance Standards in terms of average turnaround time of vessels and average pre-berthing time of vessels and any other parameter which is found relevant by the Port. The JNPT has committed Performance Standards for cargo related services in terms of average ship berth day output in tonnes/ day for major cargo items and for containers at moves/ hour. The JNPT has also proposed Performance Standards for vessel related services in terms of average turnaround time and average pre-berthing time on port account. The Tariff Policy, 2015 does not prescribe any method or basis for proposing performance standards. The performance standards as proposed by the JNPT is prescribed along with SOR.

(xviii). As per Clause 2.8. of the Tariff Policy, 2015, SOR will be indexed annually to the inflation to the extent of 100% variation in Wholesale Price Indexed (WPI) announced by the Government of India occurring between 1 January 2014 and 1 January of the relevant year and the adjusted indexed SOR will come into force from 1 April of the relevant year to 31 March of the following year. Further, as per clause 3.2 of the Tariff Policy 2015 to be read with clause 2.8 of the Tariff Policy 2015, annual indexation in SOR at 100% of the WPI is applicable subject to achievement of Performance Standards committed by Major Port Trusts. If a particular port does not fulfil the Performance Standard, no indexation would be allowed during the next year. It is relevant to state that in the instant case indexation for the year 2015-16 is already considered in the ARR computation and for drawing the SOR. The next annual indexation in SOR will thus be applicable from 1 April 2017 subject to increase in inflation index and achievement of Performance Standards in the year 2016-17. That being so, a note is proposed by the JNPT in the SOR to the effect that the SOR approved by this Authority is subject to automatic annual indexation at 100% of the WPI to be announced by this Authority. The annual indexation will be from 1 April 2017 subject to increase in inflation index announced by us and the JNPT achieving the Performance Standards notified alongwith the SOR. If Performance Standards prescribed in the SOR are not achieved, there will be no indexation in SOR for that particular year. The Tariff Policy, 2015 stipulates that annual indexation in the SOR will be automatic subject to achievement of Performance Standards. It does not require the Major Port Trusts to approach this Authority for the same. In order to have transparency, the port is advised to declare the Performance Standards achieved for the period 1 January to 31 December vis-à-vis the Performance Standards notified by this Authority at the level committed by the port within one month of end of the calendar year to the concerned users as well as to this Authority. If the Performance Standards as notified by this Authority are achieved by the port, then the port can automatically index the rates prescribed in this SOR at 100% of WPI announced by this Authority and apply the indexed SOR w.e.f. 1 April of the relevant year. The indexed SOR by the JNPT to be intimated by the port to the concerned users and to this Authority. The Note in this regard as proposed by the Port is considered.

(xix). The validity of SOR of the JNPT prescribed vide the last tariff Order was upto 31 March 2016. As per Clause 3.8. of Working Guidelines, the SOR notified shall remain valid for 3 years after expiry of 30 days from the date of notification of the Order in the Gazette of India. Therefore, and since the Tariff Policy, 2015 requires computation of tariff based on ARR on the actuals reported in the Audited Accounts for three years, the validity of the revised SOR is prescribed till 31 March 2019.

(xx). **As per clause 8.1. of the Tariff Policy 2015, the rates prescribed in the Scale of Rates are ceiling levels; rebates and discounts are floor levels. The JNPT can exercise the flexibility to charge lower rates and/or allow higher rebates and discounts.**

(xxi). Further, as per Clause 2.7. of the Tariff Policy 2015, it is for the JNPT to ensure that as a result of revision in the SOR, there will not be any loss of traffic to the port.

12.1. In the result, and for the reasons give above, and based on a collective application of mind, this Authority approves the revised SOR and the Performance Standards of the JNPT, which has already been notified separately in the Gazette of India.

12.2. **The effective date of the implementation of the revised Scale of Rates and conditionalities governing the application of revised Scale of Rates will remain the same as already indicated in the separate Order dated 04 January 2017 and shall be in force till 31 March 2019. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.**

12.3. The validity of the existing SOR of JNPT is deemed to have been extended with effect from 01 September 2016 till the revised Scale of Rates comes into effect.

12.4. The JNPT has committed Performance Standards for cargo related services in terms of average ship berth day output in tonnes/ day for major cargo items and for containers at moves/ hour. The JNPT has also proposed Performance Standards for vessel related services in terms of average turnaround time and average pre-berthing time on port account.

12.5. The indexation of SOR as provided in Clause 2.8 of the Tariff Policy, 2015 is to be read with Clause 3.2. of Tariff Policy 2015. If JNPT does not fulfil the Performance Standard prescribed, it is not eligible for indexation.

12.6. As per Clause 7.1. of the Tariff Policy 2015, the JNPT shall furnish to this Authority annual reports on cargo traffic, ship berth day output, average turnaround time of ships, average pre-berthing waiting time as well as the tariff realized for each of its berth. The annual reports shall be submitted by the Port within 60 days following the end of each of the year. Any other information which is required by this Authority shall also be furnished to this Authority from time to time.

12.7. The indexation of SOR as provided in Clause 2.8 of the Tariff Policy, 2015 is to be read with Clause 3.2. of Tariff Policy 2015. If JNPT does not fulfil the Performance Standard prescribed, it is not eligible for indexation.

12.8. As per Clause 7.1. of the Tariff Policy 2015, the JNPT shall furnish to this Authority annual reports on cargo traffic, ship berth day output, average turnaround time of ships, average pre-berthing waiting time as well as the tariff realized for each of its berth. The annual reports shall be submitted by the Port within 60 days following the end of each of the year. Any other information which is required by this Authority shall also be furnished to this Authority from time to time.

12.9. As per Clause 4 of the Working Guidelines, this Authority shall publish all the information received by it from JNPT under clause 7.1. of the Tariff Policy, 2015 on its website. However, this Authority shall consider a request from JNPT about not publishing certain data/information furnished which is commercially sensitive. Such requests should be accompanied by detailed justification regarding the commercial sensitiveness of the data/ information in question and the likely adverse impact on their revenue/ operation upon such publication. This Authority's decision in this regard would be final.

12.10. If there is any error apparent on the face of records considered, or for any other justifiable reasons, the JNPT can approach this Authority for review of the tariff fixed and the conditionalities prescribed giving adequate justification/ reasoning within 30 days from the date of notification of the Order in the Gazette of India.

(T.S. Balasubramanian)
Member (Finance)

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

F. No.TAMP/48/2016-JNPT	**-**	**Proposal from Jawaharlal Nehru Port Trust (JNPT) for General Revision of its Scale of Rates.**

A summary of comments received from users / user organisations and the response of the JNPT thereon is tabulated below:

<table>
<tr><th>Sl. No.</th><th>Comments of the users / user organisations</th><th>Reply furnished by JNPT</th></tr>
<tr><td>1.</td><td>Indian National Shipowners Association (INSA)</td><td></td></tr>
<tr><td>(i).</td><td>The trade notice circulated by port suggests that the new Policy for determination of Tariff for major ports is the only reason for increasing tariff for four categories of charges. The desired hike is to the extent of 5% to 21%. Since there are no other details provided to users it is impossible to understand if there is any other rational involved that warranted a hike in tariff that was implemented just 6 months before (i.e. June 2014) the declaration of new Policy January 2015.
Unless users are provided details, assisting TAMP in disposal of case will be arbitrary & assumptions that may not be correct.</td><td rowspan="3">Our last Tariff Revision was carried out in the year 2014 and due for revision. In the meantime TAMP notified tariff policy for Major Port Trusts namely 'Policy for determination of tariff for Major Port Trusts, 2015' vide Gazette Notification 13 dtd 27th January 2015 and working guidelines for implementation of this policy were notified on 04th June, 2015.

As per this new Tariff Policy 2015, Ports are required to assess their Annual Revenue Requirement (ARR) which is the average of the sum of actual expenditure as per the final audited accounts of the three years commencing from 2011-12, 2012-13 and 2013-14 plus return of 16% on capital employed including Capital Work in Progress as on 31st March 2014 and actual traffic figures of 2014-15.

Also an escalation of 6% for FY 2014-15 and 3.82% for FY 2015-16 has been applied as prescribed in the guidelines to arrive at the indexed ARR.

As per ARR so worked out and certified by practising Chartered Accountant and taking into account Scale of Rates effective from 18.6.2014 following increase is required in order to match ARR:
<table><tr><td>Activity</td><td>Tariff increase proposed by Port</td></tr><tr><td>Bulk other than Liquid</td><td>16.00%</td></tr><tr><td>Container related charges</td><td>16.00%</td></tr><tr><td>Vessel related charges</td><td>21.00%</td></tr><tr><td>Liquid Cargo</td><td>5.00%</td></tr></table></td></tr>
<tr><td>(ii).</td><td>Attention is drawn to section 8 of the policy titled “OTHER ASPECTS”. Contents of sub section 8.1 are reproduced below.
8. OTHER ASPECTS
8.1 The rates prescribed in the Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The ports may, if they so desire, charge lower rates and/ or allow higher rebates and discounts.
………………..
It is evident that the policy emphasizes that the mathematical calculations may not be the reason to seek higher tariff.</td></tr>
<tr><td>(iii)</td><td>No information on the proposal including the proposed tariff is available on the web site of port. It is requested that TAMP may arrange to provide the same, if users are to be involved in the disposal of the proposal.</td></tr>
</table>

(iv).	The policy allows yearly indexing with respect to the inflation that will help ports to have yearly increase in tariff subject to other conditions. It lays strong emphasis on the performance improvement and ensuring no loss of traffic due to any proposed hike. It is, therefore requested that JNPT should provide the performance details of own and other two terminals on same parameters to help us understand the status of improvement by the port.	Thus, it will be appreciated that since the time of last revision there has been increase in various input cost and increase is required in order to maintain the surplus and undertake various measures for meeting infrastructure needs of JNPT. The performance standard, trade notice as well as draft scale of rates was also uploaded in our website as well as sent through mail.
2.	**Hyundai Merchant Marine India Private Limited (HMMIPL)**	
(i).	The current overall situation for shipping lines is very tough with freight rates & volumes at all-time lows. Hyundai Merchant Marine has been a regular caller at JNPT & our prestigious CIX service has been patronising the Port for a long period of time. We are looking to promote India trade, keeping in sync with the theme of the government & hope for more friendly policies to be implemented which will assist to overcome the current situation & boost volumes as well as revenue. View above, the proposal by JNPT to increase the tariff charges will cause be a big financial dent to carriers, in an already difficult scenario. The tariff increase will render carrier services CIX service of HMM in particular, uncompetitive which will have an adverse impact on our business & we will have to review the possibilities of continuing with the service at Nhava Sheva at huge losses. In the interest of all stake holders, it is requested to defer the proposal for increase in tariff at JNPT until the situation turns better.	Since the tariff revision is towards revenue optimization in the long run, proposal submitted to TAMP needs to be pursued. If the emerging market conditions demand that upward revision need to be deferred or rebates to be given on its revised rates, for growth of business or to sustain the existing business, such proposal can be decided by the Board of Trustees of the Port at the appropriate time.

2. A joint hearing on the case in reference was held on 10 October 2016 at the Office of the Authority. At the joint hearing, the JNPT made a Power Point presentation **(page nos. 198-214/c)** of the proposal. At the joint hearing, the JNPT and the concerned users/ organization bodies have made the following submissions:

<u>Mumbai & Nhava Sheva Ship Agent's Association (MANSA)</u>

(i). The increase proposed is too high, considering that the level of imports/ exports have gone down and the volumes are moving to other ports. Even the hinterland cargo is moving to private ports. In the overall interest of the JNPT, and in the global economic scenario where the growth rate is only 2% to 3% MANSA does not recommend any increase in rates.

(ii). The performance data mentioned by JNPT in their Presentation is bookish in nature and is far away from reality.

(iii). JNPT needs to keep its rates competitive, so as to retain its traffic.

Gateway Terminal India Private Limited (GTIPL)

(i). We support the proposal of the port.

Bharat Petroleum Corporation Limited (BPCL) and Oil and Natural Gas Corporation (ONGC)

(i). We have no comments on the JNPT proposal.

Jawaharlal Nehru Port Trust (JNPT)

(i). Port cost is less than 5% of total logistic cost our increase comes to only 0.05% of the overall logistics cost incurred by the users. Hence, the impact of the proposed increase will be insignificant.

(ii). JNPT is funding for development of Chabahar Port in Iran, which will bring in more trade opportunities for the country.

(iii). The increase sought by JNPT is to have financial foundation so as to enable us take up similar projects in future.

(iv). For the purpose of ease of doing business, we have to devise an e-platform to ensure failure proof sustainability. We have to incur costs for the same.

(v). There has been a reduction in the dwell time period. This involves meticulous planning and deployment of additional resources, which again, involves costs.

(vi). The increase in tariff sought is to enable the port to undertake all these activities and thus be market friendly.

(vii). The growth rate of JNPT is 10%, whereas the private terminals operating in JNPT have reported a negative growth.

(viii). The JNPT has devised tailor made incentive schemes in the past and has given discounts and rebates. We will continue to do so in the future also.

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