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Tariff Authority for Major Ports

G.No. 640 **New Delhi ,** **9 December 2021**

NOTIFICATION

This Authority, in exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), has disposed of the proposal received from Mumbai Port Trust (MBPT) for fixation of Schedule of Rates and revision of rent / compensation in respect of 7 plots for two quinquennial period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022, for let out land falling under various RR Zones of MBPT on 01 November 2021. However, considering the time involved for notifying the Speaking Order along with the Rent Schedule for MBPT, this Authority decided to immediately notify only the Rent Schedule for MBPT prescribing Lease rentals in respect of 7 plots for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones of MBPT. Accordingly, the Rent Schedule for MBPT prescribing Lease rentals in respect of 7 plots for the period 01.10.2012 to 30.09.2017 and for the period 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones of MBPT, approved by this Authority on 01 November 2021 was notified in the Gazette of India on 12 November 2021 vide Gazette no.555. It was stated in the said Notification that this Authority will notify the Speaking Order, in due course of time. Accordingly, this Authority hereby notifies the Speaking order connected with the disposal of proposal of MBPT for fixation of Schedule of Rates and revision of rent / compensation in respect of 7 plots for the period 01.10.2012 to 30.09.2017 and for the period 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones of MBPT, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/53/2021-MBPT

Mumbai Port Trust - - - **Applicant**

QUORUM

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

O R D E R

(Passed on this 1st day of November 2021)

This case relates to a proposal received from Mumbai Port Trust (MBPT) vide its letter No. FA/OEA-L/38(21)/Gen/271 dated 23 September 2021 for fixation of Schedule of Rates and revision of rent / compensation in respect of 7 plots for the period 01.10.2012 to 30.09.2017 and for the period 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones of MBPT.

2.1. The main highlights of the MBPT proposal dated 23 September 2021 are as follows:

(i). Government has issued Policy Guidelines on Land Management for all major ports vide letter No. PD-13017/2/2014/-PD.IV dated 17.07.2015. By Clarification Circular No. 1 of 2018 dated 14.05.2018, and Clarification Circular No.1 of 2019-20 dated 29.04.2019 Ministry has extended the applicability of the PGLM 2015 to the non-home occupation / commercial areas of the township areas of Mumbai, Kolkata and Kandla Port. Clause 13 (c) of PGLM of 2015 requires the port to refix the SOR once in five years and obtain TAMP's approval thereto.

(ii). As provided in Clause 13 of PGLM, Land Allotment Committee (LAC) has recommended rates for various Ready Reckoner Zones. Same have been approved by MBPT Board. [MBPT has furnished Board Resolution approving the LAC recommendations]

(iii). In this backdrop, the MBPT has come up with the subject proposal seeking approval for fixation of Schedule of Rates and revision of rent / compensation in respect of 7 plots for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones which is submitted for approval to the SOR in terms of Clause 13 (c) of PGLM 2015.

2.2 The background and other main points made by the MBPT in its proposal dated 23 September 2021 are summarized below:

A. Background :

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

(ii). The Board vide various TRs of 2021 accorded approval to Schedule of Rates (SoR) for the period from 01.10.2017 to 30.09.2022 in respect of Mumbai Port Trust letout land falling under various Ready Reckoner Zones applicable to all the Expired leases/Fifteen Monthly leases/Monthly Tenancies/Licenses of the plots Non Home occupations.

B. Policy Guidelines:

(i). The Land Management Policy Guidelines for Major Ports, 2010 issued by the Ministry was adopted by the Board vide TR No.21 of 2011 read with Supreme Court Judgement. The Ministry subsequently, with the approval of the Cabinet, issued Land Policy Guidelines for Land Management by Major Ports 2014 (PGLM), which was applicable for all Ports except for the land relating to the township areas of Kandla, Mumbai and Kolkata Port, for which it was stated that separate policy will be formulated. The amended policy guidelines were issued in 2015.

(ii). The Ministry vide clarification Circular (Land Management) No.1 of 2018 dated 14.05.2018, Clarification No.2 of 09.03.2019 and Clarification No.1 of 2019-20 dated 29.04.2019 issued clarification circular on various issues of PGLM 2014/15 extending the applicability of the PGLM 2015 to the non-home occupation/ commercial areas of the township areas of Mumbai, Kolkata and Kandla Port upto 31.03.2020 with a sunset clause. The PGLM 2015 has thus become applicable to the township areas of Mumbai Port Trust. The Ministry vide further letter dated 27.01.2021 has clarified that "*since PGLM 2014 has been approved by the cabinet, it is valid until it is revised by the cabinet. Hence, compiled PGLM, 2015 issued on 29.04.2019 will be applicable for both the land of major port trust and the township area subject to the condition mentioned in the letter dated 29.04.2019."*

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

I). Five factors

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

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

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

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

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

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

III). *The Port trust would make a proposal as outlined in Para 13 (a) to TAMP for fixing the latest SoR of the land. The TAMP would notify the latest SoR of the land after following due process of consultation with stake holders within 45 days of the receipt of the proposal. The Port trust board will fix a rate of annual escalation which would not be less than 2 %. SoR would be refixed once in every 5 years by TAMP".*

C. Legal Issues :

TAMP had vide notification No. TAMP/10/98-Misc of 28.03.2000 issued orders dated 15.03.2000 on its jurisdiction for framing scale of rates and statement of condition on the issue of applicability of SOR to all lands of all Major Ports. The said notification was challenged by the Mumbai Port by Writ Petition No.1153 of 2000. In the writ petition no. by interim order dated 02.05.2000, the Bombay High Court had stayed the applicability of TAMP's order to areas not falling within Port limit and Port approaches. The issue of withdrawal of Writ Petition and necessary advice for the same was taken up with the Ministry in the light of PGLM 2015. TAMP has since by letter dated 15th July 2019 intimated that TAMP is required to fix the SOR for all areas of Mumbai Port including Township areas with effect from 01.10.2012 onwards in terms of advisory from the Ministry of Shipping and therefore notification dated 28th March 2000 may be seen to have become infructuous. Therefore, the Writ Petition was also withdrawn by High Court order dated 08.08.2019.

D. LAC Recommendations:

(i). **Fixation of SoR rates for remaining Ready Reckoner zones for Non-Home occupations**.

Earlier TR No.222 of 2015 Board has approved rates for 23 Ready Reckoner zones. The same methodology of 6% return on Ready Reckoner 2012 with 4% annual escalation is adopted as base rate of SoR for remaining zones. List of zones will be made applicable for computation of rental/compensation for Non-Home Occupations, Home Occupations and Mixed (Home + Non-Home), P.T. Structure falling in these zones.

A summary of the proposed land value and lease rentals for the 3 plots for the period of 01.10.2012 to 30.09.2017 is tabulated below :

Sr.No	RR Zone	Unit	Division	Proposed Land value and lease rent
1	17/116	Unit-14 (Mahim Bunder)	Lady Jamshetji Road-Portion between city light Cinema junction to Mahim Church Junction.	Value of land as per Ready Reckoner 2012 is ₹. 71,800 per Sqm as on 1.10.2012 Lease Rent = ₹ 359 per

Sr.No	RR Zone	Unit	Division	Proposed Land value and lease rent
				Sqm per month w.e.f. 1.10.2012.
2	1/5	Unit-14 (Pilot Bunder)	Cuff parade Portion towards North of Dr. Homibhabha Road and East Portion of Prakash Pethe Marg	Value of land as per Ready Reckoner 2012 is ₹. 2,14,000 per Sqm as on 1.10.2012 Lease Rent = ₹ 1070 per Sqm per month w.e.f. 1.10.2012
3	2/13	Unit-15	P D Mello Road (Frere Road)from General Post Office to Boundary of North of A Ward	Value of land as per Ready Reckoner 2012 is ₹. 1,25,800 per Sqm as on 1.10.2012 Lease Rent = ₹ 629 per Sqm per month w.e.f. 1.10.2012

(ii). **Fixation of SoR 2012-17 (From 01.10.2012 to 30.09.2017) for the zones which required special consideration**

(a). **Fish based occupations of Sassoon Dock (1/6A):** Land rate given by valuer (i.e.**<u>80% of land rate of SDRR 2019-20</u>**) as on **April 2019** taken as base rate (**₹.1,50,880/- per sqm as on 01.10.2018**) and de-escalated 4% every October for SoR 2012-17. The above land rate/SoR will increase with 4% every October.

(b). **Land at existing JD Island:** Land rate of ₹.23,444/- per sqm as on 01.10.2012 as Fair Market Value for existing land at Jawahar Dweep (JD) Island. Schedule of Rates (SoR) by considering 6% p.a. return = ₹.117.22/- per sqm per month. The above land rate/SoR will increase with 4% every October.

(c). **Land/Wharf/Jetty letout to Fish based occupations at Ferry Wharf (3/36):** LAC recommends following rate as on 01.10.2012 arrived by de-escalating the land/jetty rate of 01.10.2017 with 4% every October. Land/Jetty rate of ₹.1,17,098/- per sqm for FSI 1 as on 01.10.2012. Schedule of Rates (SoR) by considering 6% p.a. return (As on 01.10.2012). For Land/Jetty = ₹.585.49 per sqm per month. The above land/jetty rate/SoR will increase with 4% every October.

(d). **Shed/MbPT Structure letout to Fish based occupations at Ferry Wharf (3/36):** LAC recommends Shed Rate/MbPT structure rate of ₹.1,36,856/- per sqm for FSI 1 as on 01.10.2012. Schedule of Rates (SoR) of ₹.684.28 per sqm per month by considering 6% p.a. return (As on 01.10.2012). The land rate/SoR will increase with 4% every October.

(iii). **Fixation of SoR 2017-2022 (From 01.10.2017 to 30.09.2022) for the zones which required special consideration.**

(a). **Fish based occupations Sassoon Dock (1/6A) :** Land rate given by valuer (i.e.**80% of land rate of SDRR 2019-20**) as on **April 2019** taken as base rate (**₹.1,50,880/- per sqm as on 01.10.2018**), de-escalated and escalated 4 % every October for SoR 2017-22.

(b). **Land at existing JD Island:** Land rate of ₹.28,523/- per sqm as on 01.10.2017 as Fair Market Value for existing land at Jawahar Dweep (JD) Island. Schedule of Rates (SoR) by considering 6% p.a. return = ₹.142.62/- per sqm per month. The above land rate/SoR will increase with 4% every October.

(c). **Land area of about 15 Ha undergoing Reclamation adjoining to Jawahar Dweep (JD) Island (SoR for the Period 2019-22)**: Land rate of ₹.24680/- per sqm as on 01.10.2019 as Fair Market Value for land area undergoing Reclamation adjoining to Jawahar Dweep (JD) Island. Schedule of Rates (SoR) by considering 6% p.a. return = ₹.123.40/- per sqm per month. The above land rate/SoR will increase with 4% every October. The SoR will apply for fresh allotments at Reclaimed JD land.

(d). **Maratha Mandir Building at Jawhar Dweep (SoR for the period 2019-22):** Rate of ₹.48,426/- per sqm as on 01.10.2019 (arrived by 4% increase on the rate of ₹.44,773/) as Fair Market Value for Maratha Mandir Building at Jawahar Dweep (JD) Island. Schedule of Rates (SoR) by considering 6% p.a. return = ₹.242.13/- per sqm per month. The above rate/SoR will increase with 4% every October. The above SoR will apply for expired leave & license/letting and for fresh allotments at MbPT Maratha Mandir Office building.

(e). **Land/Wharf/Jetty letout to Fish based occupations at Ferry Wharf (RR Zone 3/36 of Princess Dock):** Land rate of ₹.1,48,166/- per sqm for land/jetty at Ferry Wharf for 01.10.2018 to 30.09.2019. Taking 4% de-escalation on the above rate LAC recommends Land/Jetty rate of ₹.1,42,467/- per sqm for FSI 1 as on 01.10.2017. Schedule of Rates (SoR) of ₹.712.34 per sqm per month by considering 6% p.a. return (As on 01.10.2017). The land rate/SoR will increase with 4% every Oct.

(f). **Shed/MbPT Structure letout to Fish based occupations at Ferry Wharf (3/36):** Shed Rate/MbPT structure of ₹.1,73,166/- per sqm for passenger shed/MbPT structures at Ferry Wharf for 01.10.2018 to 30.09.2019. Taking 4% de-escalation on the above rate LAC recommends Shed Rate/MbPT structure rate of ₹.1,66,506/- per sqm for FSI 1 as on 01.10.2017. Schedule of Rates (SoR) of ₹.832.53 per sqm per month by considering 6% p.a. return (As on 01.10.2017). The land rate/SoR will increase with 4% every October.

(g). **Jamshedji Bunder (RR Zone 1/6A of Colaba Division):** The land rate of ₹.1,74,381/- per sqm for FSI-1 as on 01.10.2017. LAC recommends Schedule of Rates (SoR) by considering 6% p.a. return (As on 01.10.2017) of ₹.871.91 per sqm per month for FSI-1. The land rate/SoR will increase with 4% every October.

E. As per the valuation reports forwarded alongwith the proposal in reference for each of the 7 plots under various RR Zones for the period 01.10.2017 to 30.09.2022, a summary of the rate per sq.m. and FMV of land for FSI 1 of subject plots are shown in tabular form, which is as follows :

	SUMMARY OF MARKET VALUE UNDER DIFFERENT FACTORS LAID DOWN IN PGLM, 2014								
Sr. No	**RR Zone**	**nit**	**Division**	**State Govt. ready reckoner rate in year 2018-19**	**Highest rate of actual relevant transactions in last 3 years in Port's vicinity**	**Highest accepted tender cum action rate of port land**	**Rate arrived by Approved Valuer**	**Any other relevant factor identified by Port**	**Rate Recommended by LAC**
1	1/6A	Unit-12 & 14 (Fish based occupations of Sassoon Dock)	On East Sea, on West Shahid Bhagat Singh Road, on South Homi Bhabha Road on North division boundary. (Refer Note No.9)	₹.1,88,600 per Sqm as on 1.10.2018	No such transaction	No such transaction	₹. 1,50,880 Per Sqm. as on 1.10.2018 (80% of the Ready Reckoner)	Option 1. ₹.98,900 per Sqm as on 1.10.2012 Option 2 ₹. 79,120 per Sqm as 1.10.2012 (80% of the Ready Reckoner, 2012)	₹.1,50,880 Per Sqm. as on 1.10.2018 (80% of the Ready Reckoner ₹.1,45,077 Per Sqm. as on 1.10.2017 (1,50880/104 *100) Lease Rent = ₹.725.38 per Sqm per annum
2	1/6A	Unit-14 (Fish based occupations of Jamshedji Bunder)	On East Sea, on West Shahid Bhagat Singh Road, on South Homi Bhabha Road on North division boundary.	₹. 1,88,600 per Sqm as on 1.10.2017	No such transaction	No such transaction	₹.1,74,381 Per Sqm. as on 1.10.2018 (40% reduction on rate on lease hold land ₹.2,90,635)	Nil	₹. 1,74,381 Per Sqm. as on 1.10.2017 Lease Rent = ₹.871.91 per Sqm per annum
3	3/36	Bunders Unit-14 (Fish based occupations of Ferry Wharf-Land/Jetty)	All portion of B Ward on Eastside of P.D' Mello Road upto sea shore (Victoria Dock & Princess Dock).	₹.56,400 per Sqm as on 1.10.2018	No such transaction	₹.56,400 per Sqm as on 1.10.2018(Rent Charger per New wharf in 2018 at ₹.705 per Sqm Per month at the rate of 15% Ready Reckoner	₹.1,48,166 Per Sqm. per Land 1.10.2018	Nil	₹.1,48,166 Per Sqm. as on 1.10.2018 ₹.1,42,467 Per Sqm. as on 1.10.2017 (1,48,166/104*100) Lease Rent = ₹..712.34 per Sqm per annum
4	3/36	Bunders Unit-14 (Fish based occupations of Ferry Wharf – PT Structure)	All portion of B Ward on Eastside of P.D' Mello Road upto sea shore (Victoria Dock & Princess Dock).	₹. 56,400 per Sqm as on 1.10.2018	No such transaction	No such transaction	₹. 1,48,166 Per Sqm. per Land 1.10.2018 b. ₹. 25,000 Per Sqm per Present Construction of Shed c= `1, 48,166+` 25,000 =₹. 1,73,166 per Sqm	Nil	₹. 1,73,166 Per Sqm. as on 1.10.2018 ₹.1,66,506 Per Sqm. as on 1.10.2017 (1,73,166 /104*100) Lease Rent = ₹..832.52 per Sqm per annum
5	--	Unit-12 JD Island	Existing land at JD Island	₹. 19,400 Per Sqm per Land nearest Mahul Zone 90/419	No such transaction	No such transaction within the vicinity of 2 Kms. However, JNPT IOCL agreement rate is ₹.28,523/- per SQ.M for land	JNPT & IOCL agreement on main land which is ₹. 30,850/- per Sqm (without premium) as on 01.10.2019 for existing	Nil	₹.28,523 Per Sqm. as on 1.10.2017 Lease Rent = ₹.142.62 per Sqm per annum

							developed JD Island . ₹.28,523 Per Sqm. as on 1.10.2017 [₹.30,850 /(1.04*1.04)]		
6	--	Unit-12 JD Island	Reclaimed land adjoining to JD Island	₹.19,400 Per Sqm per Land nearest Mahul Zone 90/419	No such transaction	No such transaction	JNPT & IOCL agreement is ₹.30,850/- per Sqm as on 01.10.2019. ₹..24680 per Sqm. (`.20% discount on ₹. 30,850 towards reclaimed land)	Nil	₹. 24,680 Per Sqm. as on 1.10.2019 Lease Rent = ₹. 123.40 per Sqm per month w.e.f. 1.10.2019.
7	--	JD Island	Maratha Mandir at JD Island	₹. 43,450 Per Sqm per Land	No such transaction	No such transaction	JNPT & IOCL agreement is ₹.30,850/- per Sqm as on 01.10.2019. ₹.28,523 Per Sqm. as on 1.10.2017 [₹.30,850 /(1.04*1.04)] The cost of land and structures works out to ₹.44773 per Sqm.	Nil	₹. 44,773 Per Sqm. as on 1.10.2017 ₹.48,426 per Sqm as on 1.10.2019 (₹.44773 x 1.04 x 1.04) Lease Rent = ₹. 242.13 per Sqm per month w.e.f. 1.10.2019.

F. **Application of FSI factor in calculation of actual quantum of compensation.**

The computation of rentals/ compensation based on FSI consumed and areas will be likely to be contentious issue even after base SoR rates for one sq. mtr. of land are approved by TAMP. Linking of SoR rates of land to FSI consumed of the buildings / structures have several repercussions and complexities such as how to compute FSI, exemption of fungible FSI as per DC rules and permissible FSI, etc. To study these aspects in detail, vide TR 122 of 2021 the Board has accorded approval for formation of a committee of experts consisting of a retired Chief Engineer / Director of Planning of MCGM, Retired High Court Judge and a group of MbPT officials comprising Advisor (Planning), Chief Engineer, CLO, FA&CAO, Secretary and Estate Manager (I/C) alongwith Govt. registered Valuers on MbPT panel. Committee will give its recommendations on above issues and the matter will be brought before the LAC and Board for computation of actual rents/compensation on factors recommended by the Committee.

Port Trust is billing the monthly tenants with MCGM Property Cesses (WBT, SBT, EGC & ED) @ 55.5% of Annual Rent as per SC Judgement and recovery of the same was MbPT's responsibility.

LAC vide report dated 23.08.2021 recommended that same practice is to be followed in future, however, the MCGM cesses will be reworked out in accordance with the proposed SOR 2012-2017 as may be approved by the TAMP, in respect of all the monthly tenancies and licenses upto 11 months (non-home occupations) of all the Ready Reckoner zones of Mumbai Port Trust land. The same is approved by the Board vide TR 155 of 2021. The same will be made applicable to SoR 2017-2022.

All the demand notices of differential arrears as per the revised SoR for 2012-2017 and 2017-2022 will be issued to all monthly tenancies, fifteen monthly leases, expired leases and licenses as a compensation for wrongful use of the premises without interest and giving time limit of 3 months from the date of receipt of demand notices and interest at the applicable rates will be charged for delayed payments subject to TAMP's approval.

2.3. Thus, MBPT has sought TAMP's approval to the SOR arrived on the basis of various Board resolutions for the period from 01.10.2012 to 30.09.2022. The MBPT has stated that these rates will be applicable to all the Expired Leases, Fifteen Monthly Leases, Monthly Tenancies and Licenses along with vacant plots (for calculation of Reserve Price, Annual Rent / upfront premium for allotment) of the plots / structures falling under the respective ready reckoner zones. The details of which are as given below :

(i) REVISION OF SOR FOR THE PERIOD FROM 01.10.2012 TO 30.09.2017 FOR NON-HOME OCCUPATIONS

Sr. No.	RR Zone	Unit	Description as per Ready Reckoner	TR No.	Land value of open land as per State Government RR 2012 Per SqM for FSI-1.00 Reckoner 2012 (₹.)	Proposed base rates per sqm per month for FSI 1.00 (as per 6 % return p.a. in terms of Land policy) on land Values as per Ready Reckoner 2012 01.10.12 TO 30.9.13 with 4% annual escalation (₹.)
1	17/116	Unit-14 (Mahim Bunder)	Lady Jamshetji Road-Portion between city light Cinema junction to Mahim Church Junction.	TR 153 dated 24.08.2021	71800	359
2	1/5	Unit-14 (Pilot Bunder)	Cuff parade Portion towards North of Dr. Homibhabha Road and East Portion of Prakash Pethe Marg	TR 153 dated 24.08.2021	214000	1070
3	2/13	Unit-15	P D Mello Road (Frere Road)from General Post Office to Boundary of Nort of A Ward	TR 153 dated 24.08.2021	125800	629

NOTES:

1. Actual quantum of Rent will be worked out on the base rent and factor as may be recommended by the committee appointed for the purpose of applicability of FSI.
2. Taxes, service charges, penalties, interest rates are not included in the above rates.
3. Rate for allotment of water bodies is applicable at 50% of the SOR rates.
4. Differential Arrears, liabilities and other dues/charges for a period from 01.10.2012 to 30.9.2017 will be calculated based on above rates.
5. These rates are applicable for Non-Home Occupations.
6. Interest would be chargeable beyond permissible period as per Board’s policy from time to time.
7. Whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month.

(ii) REVISION OF SOR FOR THE PERIOD FROM 01.10.2012 TO 30.09.2017 FOR NON-HOME OCCUPATIONS

Sr. No.	RR Zone	Unit	Description as per Ready Reckoner	TR No.	Land value of open land as per State Government RR 2012 Per SqM for FSI-1.00 Reckoner 2012 (₹.)	Proposed base rates per sqm per month for FSI 1.00 (as per 6 % return p.a. in terms of Land policy) on land Values as per Ready Reckoner 2012 01.10.12 TO 30.9.13 with 4% annual escalation (₹.)
1	1/6A	Unit-12 & 14 (Fish based occupations of Sassoon Dock)	On East Sea, on West Shahid Bhagat Singh Road, on South Homi Bhabha Road on North division boundary. (Refer Note No.9)	TR 135 dated 24.08.2021	1,19,243	596.11
2	3/36	Bunders Unit-14 (Fish based occupations of Ferry Wharf-Land/Jetty)	All portion of B Ward on Eastside of P.D' Mello Road upto sea shore (Victoria Dock & Princess Dock).	TR 139 dated 24.08.2021	1,17,098	585.49
3	3/36	Bunders Unit-14 (Fish based occupations of Ferry Wharf – PT Structure)	All portion of B Ward on Eastside of P.D' Mello Road upto sea shore (Victoria Dock & Princess Dock).	TR 139 dated 24.08.2021	1,36,856	684.28
4	--	JD Island	Existing land at JD Island	TR 137 dated 24.08.2021	23,444	117.22

NOTES:

1. Actual quantum of Rent will be worked out on the base rent and factor as may be recommended by the committee appointed for the purpose of applicability of FSI.
2. Taxes, service charges, penalties, interest rates are not included in the above rates.
3. Rate for allotment of water bodies is applicable at 50% of the SOR rates.
4. Differential Arrears, liabilities and other dues/charges for a period from 01.10.2012 to 30.9.2017 will be calculated based on above rates.
5. These rates are applicable for Non-Home Occupations.
6. Interest would be chargeable beyond permissible period as per Board’s policy from time to time.
7. Whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month.

(iii) REVISION OF SOR FOR THE PERIOD FROM 01.10.2017 TO 30.09.2022 FOR NON-HOME OCCUPATIONS

Sr. No.	RR Zone	Unit	Description as per Ready Reckoner	TR No.	Fair market value of open land as per valuers report for the year 2017-18 Per SqM for FSI-1.00 (₹.)	Proposed base rates per sqm per month for FSI 1.00 (as per 6 % return p.a. in terms of Land policy) on FMV as 01.10.17 TO 30.9.18 with 4% annual escalation (₹.)
1	1/6A	Unit-12 & 14 (Fish based occupations of Sassoon Dock)	On East Sea, on West Shahid Bhagat Singh Road, on South Homi Bhabha Road on North division boundary. (Refer Note No.9)	TR 135 dated 24.08.2021	1,45,077	725.38
2	1/6A	Unit-14 (Fish based occupations of Jamshedji Bunder)	On East Sea, on West Shahid Bhagat Singh Road, on South Homi Bhabha Road on North division boundary. (Refer Note No.9)	TR 136 dated 24.08.2021	1,74,381	871.91
3	3/36	Bunders Unit-14 (Fish based occupations of Ferry Wharf-Land/Jetty)	All portion of B Ward on Eastside of P.D' Mello Road upto sea shore (Victoria Dock & Princess Dock).	TR 139 dated 24.08.2021	1,42,467	712.34
4	3/36	Bunders Unit-14 (Fish based occupations of Ferry Wharf – PT Structure)	All portion of B Ward on Eastside of P.D' Mello Road upto sea shore (Victoria Dock & Princess Dock).	TR 139 dated 24.08.2021	1,66,506	832.53
5	--	Unit-12 JD Island	Existing land at JD Island	TR 137 dated 24.08.2021	28,523	142.62
6	--	Unit-12 JD Island	Reclaimed land adjoining to JD Island	TR 137 dated 24.08.2021	24,680	123.40*
7	--	JD Island	Maratha Mandir at JD Island	TR 137 dated 24.08.2021	48,426	242.13#

* SoR for reclaimed land adjoining to JD Island w.e.f 01.10.2019 instead of 01.10.2017
# SoR for Maratha Mandir at JD Island w.e.f 01.10.2019 instead of 01.10.2017

NOTES:

1. Actual quantum of Rent will be worked out on the base rent and factor as may be recommended by the committee appointed for the purpose of applicability of FSI.
2. Taxes, service charges, penalties, interest rates are not included in the above rates.
3. Rate for allotment of water bodies is applicable at 50% of the SOR rates.
4. Differential Arrears, liabilities and other dues/charges for a period from 01.10.2017 onwards.
5. These rates are applicable for Non-Home Occupations.
6. Interest would be chargeable beyond permissible period as per Board's policy from time to time.
7. Whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month.

2.4. The MBPT has stated that the proposal is formulated in terms of the Land Policy Guidelines for Land Management 2015. Further, the MBPT has stated that under Section 49 of MPT Act, 1963 and para 13 (c) of PGLM-2015, TAMP's approval to the SOR for the period from 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 applicable to all Non-home occupations of the Expired Leases, Fifteen Monthly Leases, Monthly Tenancies and Licenses of the plots falling under the respective Ready Reckoner zones.

3.1. With regard to the proposal of the port, it may be recalled that, this Authority had passed an Order dated 15 March 2000 setting out the legal position about this Authority's jurisdiction in respect of framing scale of Rates and Statement of Conditions for use of port properties.

3.2. The MBPT filed a Writ Petition in the Bombay High Court in April 2000 challenging the Order dated 15 March 2000 and praying, *interalia*, that this Authority has no power to fix rates of those premises belonging to the MBPT and situated outside the port limits.

3.3. The Hon'ble Division Bench of Bombay High Court passed an interim order on 2 May 2000 restraining this Authority from giving effect to the Order dated 15 March 2000 to the extent that the decision taken therein shall not apply to any property or place not within the limits of the port or port approaches.

3.4. The efforts taken in the past with the (then) Department of Shipping, Ministry of Surface Transport suggesting to settle the issue whether or not this Authority has jurisdiction over all the properties of a Port Trust through policy direction of the Government rather than by a judicial review did not yield result**.** Since the matter was in the final stage of hearing and there was no response from the Government in this regard, a legal counsel was engaged to defend the order of 15 March 2000 passed by this Authority in the High Court of Bombay based on the advice rendered by the Senior Counsel.

3.5. In this backdrop, the Ministry of Shipping (MOS) under cover of its letter no. Secy(S)/Visit-Mumbai/Land management/ 2018(333951) dated 25 March 2019 had forwarded a copy of the Minutes of the Meeting held on 21 August 2018 at Mumbai under the Chairmanship of Secretary, MOS with regard to clarifications on the Land Policy Guidelines, 2015. Forwarding the copy of the Minutes, the Way forward forming part of the Minutes indicated that MBPT will withdraw the Writ Petition and Ministry will advise TAMP that consequent to PGLM 2015 read with clarifications dated 14th May 2018, the SOR with effect from 01.10.2012 onwards be fixed by TAMP for all areas of Mumbai Port including Township area.

3.6. In response to MOS letter dated 25 March 2019, vide letter dated 28 March 2019 *interalia*, it was communicated to the MOS that TAMP will abide by the directions of the MOS in the matter in reference, with regard to fixation of lease rent/ license fee for the MBPT lands for the period from 01 October 2012 onwards, subject to MBPT withdrawing the Writ Petition.

3.7. In this backdrop, the MOS vide its e-mail dated 16 May 2019 had *interalia*, directed this Authority fix the SOR for all areas of Mumbai Port including Township Areas with effect from 01.10.2012 onwards, consequent to the Policy Guidelines for Land Management, 2015 (PGLM 2015) read with clarification on PGLM dated 14.05.2018, only after the writ Petition is withdrawn by MBPT. Vide the said letter, MOS requested MBPT to withdraw the Writ Petition no. 1153 of 2000 from the Bombay High Court and intimate the same to the MOS and TAMP.

3.8. In this connection, the MBPT has withdrawn the Writ Petition and the Hon'ble Bombay High Court vide its Order dated 08 August 2019 has passed an Order disposing off the Writ Petition as withdrawn.

3.9. Thus, the MBPT has come up with a proposal seeking approval for Schedule of Rates and revision of rent / compensation in respect of 7 plots for the period 01.10.2012 to 30.09.2017 and 7 plots for the period 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones. Simultaneously, the MBPT has also filed another 6 similar proposals seeking approval for Schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 1.10.2017 to 30.09.2022 for non-home occupations / home occupations in Township Areas of MBPT, which have been dealt separately.

4. While acknowledging the proposal, MBPT was requested vide letter dated 01 October 2021 to furnish some information/ clarification. The MBPT vide its letter No. FA/OEA/-I/38 (21)/Gen/313 dated 13 October 2021 has responded. The information/ clarification sought and the response of the MBPT thereon is tabulated below:

Sr.	Information/ clarification sought by us	Response of MBPT
1.	The MBPT to furnish a comparative position of the zonewise prevailing/ existing lease rent that is being levied by the MBPT at present to various registered users/ tenant / lessees, vis-à-vis the lease rent that has been proposed by the Port in its subject proposal.	Comparative position of the zone wise prevailing / existing lease rent / compensation that is being levied by the MbPT to various registered tenants / lessees and the proposed rent / compensation based on new SoR as proposed by MbPT is furnished.
2.	On preliminary scrutiny of the proposal, it is found that LAC report / valuation report for the unit-14 (Mahim Bunder) under 17/116 RR Zone, unit-14 (Pilot Bunder) under 1/5 RR Zone and unit-15 (P.D'Mello) under 2/13 RR Zone are not found attached to the proposal dated 23 September 2021. The MBPT to furnish the LAC report / valuation report for each of the said three plots.	The MBPT has furnished a copy each of the copy of proceedings of LAC Meeting held on 18.08.2021 for SoR 2012-17 in respect of RR zone 17/116 (Mahim Bunder- Unit 14), RR zone 1/5 (Pilot Bunder- Unit 14), RR zone 2/13 (P.D.Mello Road - Unit 15).
3.	(i). The base rate of lease rentals for the period 2012-17 in respect of plot no. Unit-12 & 14 (Fish based occupations of Sassoon Dock) under RR Zone 1/6A is proposed at ₹.596.11 per sqm per month based on 80% of Land rate of Ready Reckoner 2019-20 and de-escalated @ 4% p.a. to arrive the Market value as on 01 October 2012. However, in another the MBPT proposal dated 6 August 2021,	It is to clarify that the RR zone 1/6A (which is bounded on East by Sea; on West by Shahid Bhagatsingh Road; on South by Homi Bhabha Road; on North by division boundary) is spread in 03 parts; Part-1 is in Unit 12 (Excluding the Sassoon Dock area), Part-3 is in Jamshedji Bunder (Unit-14) and Part-2 is in Sassoon Dock area (Unit 12 & 14) & the same was submitted for SoR 2012-17

	submitted earlier, the MBPT has proposed lease rentals at ₹.494.50 per sqm. per month for plot no. 12 (On East Sea, on West Shahid Bhagat Singh Road, on South Homi Bhabha Road on North division boundary) under the same RR Zone 1/6A based on Ready Reckoner 2012 as on 1.10.2012.	proposal dt. 06.08.2021 proposing the rate of ₹. 494.50 per sq.m per month as on 01.10.2012 for RR zone 1/6A(Part-1) which excludes the area of Sassoon Dock (Unit 12 & 14) which is mainly used for fish based occupations. It was clearly brought out in the para 6(h) of SoR 2012-17 proposal dt. 06.08.2021 and also in the note No. 9 of the Annexure-I (Table of SoR rates) viz. Estate Land of Old Sassoon Dock, Ferry Wharf and Jawahar Dweep are excluded from above rates. Accordingly, this proposal is submitted separately since the area of Sassoon Dock falling under RR zone 1/6A(Part-2) was excluded in the earlier proposal dt. 06.08.2021 of SoR 2012-17. The valuation of the said Sassoon Dock area was done separately and Valuer had recommended the FMV as 80% of the Ready Reckoner land rate of 2019-20 considering that the Sassoon Dock is reserved & used for fishing industries and related activities. The rate arrived by Valuer as on 2019 was de-escalated by 4% to arrive at the base rate of Rs. 725.38 per sq.m per month as on 01.10.2017 which is further de-escalated by 4% to arrive the rate as on 01.10.2012 which works out to Rs. 596.11 per sq.m per month. The rate of Rs. 494.50 per sq.m per month is based on the 6% return on the Ready Reckoner of 2012 is for the area falling under the RR zone 1/6A excluding the Estate Land of Sassoon Dock. Since the different methods are considered for the area the Sassoon Dock area 1/6A(Part-2) and outside Sassoon Dock area falling under RR zone 1/6A (Part-1) therefore different rates of lease rentals proposed for plots falling under the same RR zone.
	(ii). Similarly, in respect of Plot no. Bunders Unit-14 (Fish based occupations of Ferry Wharf-Land/Jetty) under the RR Zone 3/36, the base rate of lease rentals for the period 2012-17 has been proposed at ₹.585.49 per sqm per month based on market value of the land at ₹.148166 per sqm. as on 1.10.2018 as arrived by the Valuer and de-escalated @ 4% p.a. to arrive the Market value as on 01.10.2012. Further, In case of the Bunders Unit-14 (Fish based occupations of Ferry Wharf – PT Structure) under RR Zone 3/36, the MBPT has proposed lease rentals at ₹.684.28 per sqm per month based on market value of the land ₹.148166 per sqm. and ₹.25,000 per sqm towards structures as on 1.10.2018 as arrived by the Valuer, aggregated to ₹.1,73,166 per sqm which has been de-escalated @4% p.a. to arrive the Market value as on 1.10.2012. However, in another MBPT proposal dated 6 August 2021 submitted earlier, the MBPT has proposed a lease rental ₹.134 per sqm. per month for plot no. 8, Docks [All portion of B Ward on Eastside of P.D' Mello Road upto sea shore (Victoria Dock & Princess Dock)] under the same RR Zone 3/36 based on Ready Reckoner 2012 as on 1.10.2012.	
	(iii). In this regard, the MBPT is requested to clarify as to why a different methodology has been adopted for each of the plots falling in the same RR Zone and to justify prescription of different rates of the Lease rentals for the plots falling in the same RR Zone.	It is to clarify that the RR zone 3/36 is in two parts, spread over the MbPT dock area, Wadi Bunder area of Unit 9, Mallet Bunder area of Unit 14(Part-1) and the New Ferry Wharf area of Unit 14(Part-2). There are also tenancies along with the Port Trust structure (Passenger shed) given in the Ferry Wharf area which is on Wharf/Jetty and the passenger shed (MbPT structure) thereat (3/36, Part-2). The Ferry Wharf area falling under RR zone 3/36(Part-2) was excluded in the earlier SoR 2012-17 proposal dtd

		06.08.2021 which was clearly brought out in the para 6(h) and also in the Note no. 9 of the Annexure-I (Table of SoR rates) of SoR 2012-17 proposal dtd 06.08.2021. The Valuer in his report has given land value of Rs. 1,48,166/- per sqm and together with structure (passenger shed) of Rs. 1,73,166/- per sq.m (adding Rs. 25,000/- per sqm) as on 01.10.2018. The same was de-escalated by 4% to arrive at the market value of Rs. 585.49 per sqm per month as on 01.10.2012 for Land/Wharf/Jetty area of Ferry Wharf and Rs.684.28 per sqm per month for land with MbPT structure (passenger shed) at Ferry Wharf. Land under RR zone 3/36(Part-1) also covers other let out land not on the jetty/wharf and therefore, as mentioned in Note no.9 below the SoR table 2012-17 (i.e at Annexure-I) viz “Estate lands of Old Sassoon Dock, Ferry Wharf and Jawahar Dweep are excluded from the above rates”. Different methodology is used for computation of SoR for land which is not on Jetty/Wharf under RR zone 3/36 (Part-1) which are based on the 6% return of the RR value of zone 3/36 as on 01.10.2012, whereas for Ferry Wharf (3/36, Part-2) area, the Valuer was appointed to carry out valuation of Passenger Shed and the Jetty/Wharf both are Port Trust structures built and maintained by Port Trust and therefore, different base-rate is considered for revision of SoR.
4.	Similar differential rentals for different plots falling in the zones 1/6A and 3/36 for the period 2017-2022 has been noticed in the MBPT’s proposal dated 03 August 2021 and the proposal in reference. The MBPT is requested to justify the prescription of different rates of the Lease rentals for the plots falling in the same RR Zone.	As explained in preceeding paras above, since the RR zone 1/6A is in 03 parts and 3/36 split into 02 parts. In subject proposal of SoR 2017-22, the RR zone 1/6A is split into 3 parts (Unit 12 – excluding Sassoon Dock, Unit 14- Jamshedji Bunder & Sassoon Dock- Unit 12&14) the Ready Reckoner Zone the and the RR zone 3/36 is split into two parts (Ferry wharf area- Unit 14 & Other than Ferry Wharf area- Unit 9 & 14) are submitted. In the proposal dt. 03.08.2021, no SoR for RR zone 1/6A & 3/36 was submitted and the same were submitted separately submitted on 23.09.2021 with in subject Proposal no. 1 and the Proposal no. 4 of SOR for the period

		1.10.2017 to 30.09.2022 for remaining 19 zones.

5.1. Considering the huge list of registered tenant / lessees as suggested by the MBPT, the MBPT was requested vide letter dated 01 October 2021 to upload subject proposal in its website and intimate to all the registered tenant / lessees about hosting of the subject proposal in the MBPT website and give the designated email address of Port as well as TAMP for furnishing comments within 15 days' time.

5.2. Accordingly, the MBPT vide its email dated 07 October 2021 has confirmed that it has informed all Tenants / Lessees about hosting of subject proposal for comments/ opinion of the users on the subject proposal in reference. The MBPT has furnished a copy its Notice No. EM/AS(G)/F-382/1922 dated 06 October 2021, wherein the MBPT has intimated the Tenants/ Lessees about hosting of subject proposal in the website of MBPT and has sought for comments/ opinion of the users on the subject proposal in reference, to be sent to the Authority as well as MBPT.

5.3. In this connection, submissions/ comments have been received from various lessees/ tenants. As intimated by MBPT in its Notice, a copy of the said comments have also been forwarded by the lessees/ tenants/ users to MBPT as well. Accordingly, the MBPT was requested to furnish its reply on the issues raised by various lessees / tenants. The MBPT vide its email dated 23 October 2021 has responded.

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

7.1. Before going into the analysis of the proposal, it is noteworthy to mention that MBPT in the first week of August 2021 has filed two similar proposals seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for `non-home occupations in Township Areas of MBPT. The said proposals were taken up on consultation with the relevant users/tenants/lessees. We have received numerous representations from various individual tenants/ lessees strongly objecting to the said proposal, on the ground that there is no provision under the Major Port Trust Act, 1963, permitting MBPT to charge the rent retrospectively. It has also been stated that retrospective revision will be highly destructive for all the occupants and it is likely that the same may be challenged in Court of law. Some lessee/ tenants have also stated that the retrospective revision would act as a financial shock to their business and it will be very difficult for them to sustain it financially. Further, considering the adverse impact that the COVID-19 pandemic had on the business, it has been further stated that the retrospective revision and the payment of arrears thereon, would further strain the financial condition of the lessees/ tenants. Thereafter, a joint hearing was held on 03 September 2021 on the said proposal, wherein, users/tenants/ lessees has raised similar issues no other than issues brought out in written submission. Subsequently, users/tenants/lessees were given an opportunity to submit their writing submission, if any, on the power point presentation of the proposal made by MBPT during the Joint Hearing. We have received written submission from the various user/ users/tenants/lessees reiterating the submissions made earlier and during the joint hearing, which have been duly brought to the notice of the Authority.

7.2. An action has already been initiated to notify the said orders in the Official Gazette of India. Simultaneously, the MBPT has also filed another 6 proposals seeking approval for (i). Schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 for non-home occupations in Township Areas of MBPT, (ii). Schedule of Rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to

30.09.2022 for residential and mixed used occupations (iii). Schedule of Rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for Port Trust structures falling under various RR Zones, (iv). Schedule of rates and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 for non-home occupations in Township Areas of MBPT, (v), Schedule of Rates and revision of rent / compensation for the period 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT – 19 RR Zones and (vi). Schedule of Rates (SOR) and revision of rent / compensation for the period 01.10.2012 to 30.09.2017 (12 Zones) and 01.10.2017 to 30.09.2022 (09 Zones) for let out land falling under various Ready Reckoner Zones, which are being dealt separately.

7.3. The present proposal in reference has already been taken up on consultation and the users/tenants/lessees have made their submissions similar to that of submission made earlier with regard to proposals of MBPT seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT, which have been forwarded to MBPT for its comments. The response of the MBPT is also similar to the response given in the earlier similar proposals.

7.4. Since, the submissions made by users/ response of MBPT thereon is akin to the earlier proposals of MBPT seeking approval for schedule of rates and revision of rent / compensation for the quinquennial periods of 01.10.2012 to 30.09.2017 and 01.10.2017 to 30.09.2022 for non-home occupations in Township Areas of MBPT and given that the proposal in reference has already been taken on a consultation with stakeholders, as provided in PGLM, 2014, it was decided not to hold joint hearing on the case in reference.

7.5. In this regard it may be noted that, mere non holding of Joint hearing shall not be construed as this Authority having not followed the consultation process.

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

(i). The Mumbai Port Trust (MBPT) has large portions of land in the City of Mumbai. It is to state that the lease rentals for the Port estates was last fixed by the MBPT in the year 1982 i.e. more than a decade and a half, before this Authority had come into existence in the year 1997. From the submissions made by MBPT, it is understood that the revision of lease rentals carried out by the MBPT in the year 1982, gave rise to litigations, which eventually culminated in the Supreme Court passing an Order, wherein the lease rentals approved by the Board of Trustees for the lands of MBPT for the period from 1982 upto 30 September 2012 as per the Compromise formula, had been upheld by the Hon'ble Supreme Court of India. As such, the Government has advised the MBPT in May 2019 to fix the SOR for all areas of Mumbai Port Trust including Township areas with effect from 01 October 2012 onwards.

It is in this backdrop that the MBPT has come up with 6 separate proposals seeking retrospective fixation of Schedule of lease rentals for various Ready Reckoner Zones of MBPT Township.

(ii). In this connection, we have received numerous representations from various individual tenants/ lessees strongly objecting to the retrospective fixation of the lease rentals, on the ground that there is no provision under the Major Port Trust Act, 1963, permitting MBPT to charge the rent retrospectively. It has also been stated that retrospective revision will be highly destructive for all the occupants and it is likely that the same may be challenged in Court of law. Some lessee/ tenants have also stated that the retrospective revision would act as a financial shock to their business and it will be very difficult for them to sustain it financially. Further, considering the adverse impact that the COVID-19 pandemic had on the business, it has been stated that the retrospective revision and the payment of arrears thereon, would further strain the financial condition of the lessees/ tenants

In this connection, it is relevant here to mention that the lease rentals approved by the Board of Trustees for the lands of MBPT for the period from 01 October 1982 upto 30 September 2012 as per the Compromise formula had been upheld by the Hon'ble Supreme Court of India. As such, the Government has advised the MBPT in May 2019 to fix the SOR for all areas of Mumbai Port including Township areas with effect from 01 October 2012 onwards.

As pointed out by the lessees/ tenants, there is no provision under Major Port Trust Act, 1963, permitting MBPT to charge the rent retrospectively. But, at the same time, it is to be noted that the Major Port Trust Act, 1963, also does not prohibit retrospective revision of rates. In this context, it is noteworthy that this Authority also does not ordinarily give retrospective effect to the Order. But, in cases governed by special circumstances, it does require retrospective application of its Order. There are various instances, where this Authority has fixed the rates retrospectively.

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

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

"*There cannot be any dispute that collection of enhanced licence fee with retrospective effect is illegal as held by the Apex Court in the case of LALA RAM (D) by L.R. & ORS. – vs – UNION OF INDIA & ANOTHER reported in 2013 SAR (Civil) 347. But if the authority at the inception itself has made it clear to the licensees that what is being charged is only a provisional licence fee after approval by the TAMP, the action of the NMPT cannot be said to be illegal. At the time of issuing the licence itself as well as the time of renewal of licence, it has been made clear by the NMPT that it has proposed revision of licence fee to the TAMP and till such time only provisional licence fee will be charged and that licensees will have to pay the revised licence fee after approval of the TAMP. The licensees having agreed for the said conditions, entered into the contract.*

Therefore it is not open for the licensees to go against the terms of the contract and contend that it is not open for the authorities to charge licensees revisional licence fee from 20.2.2007. In view of the above, the challenge to the Circular pertaining to revision of licence fee w.e.f. 20.2.2007 vide Annexure-H fails."

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

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

Under these circumstances and for the reasons given in the earlier paragraphs, the proposal of the MBPT for recovery of Lease rentals for the 7 plots for the period 01.10.2012 to 30.09.2017 and 7 plots for the period 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones of MBPT, is taken up for consideration.

(iii). It has been brought out by various tenants/ lessees that the revision as proposed by MBPT is contrary to the guidelines passed by the Hon'ble Supreme Court in the matter of Jamshed Hormusji Wadia vs. The Board of Trustees of the Port of Bombay, on the ground that the Hon'ble Supreme Court had upheld the "Compromise Proposals" mooted by MBPT themselves and considerably reduced the rent and interest burden on the lessees. The lessees have also stated regarding MBPT reportedly not adhering to the Compromise proposal and resultantly some Writ Petitions being still pending before the Hon'ble High Court of Bombay. Considering that the matter is subjudice, the tenants/ lessees are of the view that the question of proposed revision of SOR for the period of 2012 to 2017 and beyond, does not arise.

In this regard, it is to state that, based on the Order passed by the Hon'ble Supreme Court in the matter of Jamshed Hormusji Wadia vs. The Board of Trustees of the Port of Bombay in January 2004, the compromise proposal covered the revision for two period spans i.e. one for the period from 01 October 1982 to 30 September 1992 and the other for the period from 01 October 1992 to 30 September 2012. Thereafter, as rightly brought by the MBPT, the MBPT has the liberty to fix the lease rentals, albeit based on the Land Policy Guidelines issued by the Government. Infact, it is relevant to mention here that the 'Compromise formula' as upheld by the Hon'ble Supreme Court allowed the port to review and revise the letting rates after 20 years (i.e. from 01 October 1992 to 30 September 2012), for good and sufficient reasons. As such, the Government has advised the MBPT in May 2019 to fix the SOR for all areas of Mumbai Port including Township areas with effect from 01 October 2012 onwards. The MBPT in its proposal has brought out in detail, the chronology of the events, which eventually has led to the submission of the present proposal under reference. Nevertheless, as a measure of abundant caution, it can be presumed that the MBPT, as a statutory body, would have kept in view the pending litigations and would have carried out due diligence on its part, before approaching this Authority with the subject proposal. Thus, the proposal filed by MBPT now for revision of rent / compensation in respect of 7 plots for the period 01.10.2012 to 30.09.2017 and 7 plots for the period 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones of MBPT, is being treated in isolation, without getting influenced by the past revision of lease rentals or the pending writ petitions.

(iv). Many of the tenants/ lessees have brought out issues relating to their particular tenancies viz., non-renewal of lease agreements, non-transfer of lease in the name of heirs, non-issuance of bills/ invoices by MBPT to lessees/ tenants etc. Even the MBPT has highlighted issues about the tenants committing breaches in their properties/ sub-letting without knowledge of MBPT and pocketing the sub-let rentals/ depriving MBPT of its rightful share/ encroachments/ carrying unauthorized constructions etc. In this regard, it is to state that this Authority is mandated under Section 49 of the Major Port Trusts Act, 1963, to frame Scale of Rates (SOR) at which, and the statement of conditions under which any property belonging to, or in possession or occupation of the Board or any place within the limits of the port approaches is used for the purposes specified u/s 49 of the Act. As such, this Authority is required by the Act to fix the lease rentals for the port estates. Matters relating to tenancies are in the domain of the Port. This Authority has no role to play on the said matters. As such, the tenants/ lessees are advised to approach the MBPT in matters relating to their tenancies. The MBPT is also advised to look into the grievances of the tenants/ lessees and take earnest steps to sort out the issues amicably.

(v). The MBPT has filed its proposal in September 2021. The said proposal alongwith the submissions made by the tenants/ lessees and the information/ clarification furnished by MBPT during the processing of the case, is considered in this analysis.

(vi). The lessees/ tenants have extensively quoted the observations made by the Hon'ble Supreme Court in the case of Dwarkada Marfatia & Sons v/s Board of Trustees of Port of Bombay, Ratti Ji Kapadia v/s State of Maharashtra etc., so as to put forth their point that the MBPT is not expected to behave like an ordinary landlord with arbitrariness or capriciousness and indulge in rack renting, profiteering and indulging in whimsical or unreasonable bargains but is expected to behave fairly and in a reasonable manner, so as to determine the rentals.

In this regard, it is to state that this Authority is mandated to follow the Land Policy Guidelines issued by the Government from time to time for the purpose of determining lease rentals for the lands belonging to the Port Trusts. The Ministry of Shipping in the Government of India has announced Land Policy Guidelines for Major Ports, 2014 in January 2014 which has come into effect from 2 January 2014. Subsequently, the Ministry of Shipping has issued amended Land Policy Guidelines, 2014 under Section 111 of the MPT Act, 1963 for implementation with effect from 17 July 2015. The subject proposal of MBPT seeking revision of lease rentals for the period from 01 October 2012 to 30 September 2017 and for the period of 01 October 2017 to 30 September 2020 is based on the provisions of the amended Land Policy Guidelines for Major Port Trusts, 2015, as issued by the Government of India in the then Ministry of Shipping (MOS).

(vii). As per clause 13(a) read with clause 11.2(e) of the Land Policy Guidelines 2014, a Land Allotment Committee (LAC) constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic shall determine the market value of land as per the methodology prescribed in clause 13(a). Accordingly, the MBPT has reported about constitution of a Land Allotment Committee (LAC) headed by the Dy. Chairman of the Port and the Heads of Departments of Finance, Traffic and Estate being the other members.

(viii). (a). Para 13(a) of the Land policy guidelines of July 2015 prescribes the methodology for determination of market value of the land based on the five factors as prescribed therein. In terms of the said para of the amended Land policy guidelines of 2014, the Land Allotment Committee may normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for similar classification/ activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity with an appropriate annual escalation rate to be approved the Port Trust Board, (iii). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (iv). Rate arrived at by an approved valuer appointed for the purpose by the Port and (v). Any other relevant factor as is identified by the Port. The amended Land Policy guidelines of 2014 also stipulates that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded.

(b). In connection with the Valuation as per various methods as stipulated in the Guidelines, the LAC for the reasons as documented in its Report has decided to determine the market value of the land on the following basis.

(1). State Government Ready Reckoner as applicable for the year 2012 for the following 3 plots:

(i). Unit-14 (Mahim Bunder) Lady Jamshetji Road-Portion between city light Cinema junctions to Mahim Church Junction under RR Zone. 17/116;

(ii). Unit-14 (Pilot Bunder), Cuff parade Portion towards North of Dr. Homibhabha Road and East Portion of Prakash Pethe Marg under RR Zone 1/5;

(iii), Unit-15, P D Mello Road (Frere Road) from General Post Office to Boundary of North of A Ward under RR Zone 2/13 for arriving the Lease rentals for the period 01.10.2012 to 30.9.2017.

(2). Valuation as per various methods recommended by the LAC for the following 04 Ready Reckoner (RR) Zones for arriving the Lease rentals for the period 01.10.2012 to 30.9.2017.

(i). <u>Fish based occupations of Sassoon Dock (1/6A):</u>
Land rate given by valuer (i.e.<u>80% of land rate of SDRR 2019-20</u>) as on April 2019 taken as base rate and de-escalated 4% every October for SoR 2012-17.

(ii). <u>Land at existing JD Island:</u>

Land rate as on 01.10.2012 as Fair Market Value for existing land at Jawahar Dweep (JD) Island. October.

(iii). Land/Wharf/ Jetty letout to Fish based occupations at Ferry Wharf (3/36):
Land rate as on 01.10.2012 arrived by de-escalating the land/jetty rate of 01.10.2017 with 4% every October. Land/Jetty rate for FSI 1 as on 01.10.2012;

(iv). Shed/MbPT Structure letout to Fish based occupations at Ferry Wharf (3/36):
Shed Rate/MbPT structure rate for FSI 1 as on 01.10.2012.

(3). Valuation as per various methods recommended by the LAC for the following 07 Ready Reckoner (RR) Zones for arriving the Lease rentals for the period 01.10.2017 to 30.9.2022.

(i). Fish based occupations Sassoon Dock (1/6A): Land rate given by valuer (i.e.80% of land rate of SDRR 2019-20) as on April 2019 taken as base rate

(ii). Land at existing JD Island: Land rate as on 01.10.2017 as Fair Market Value for existing land at Jawahar Dweep (JD) Island.

(iii). Land area undergoing Reclamation adjoining to Jawahar Dweep (JD) Island: Land rate as on 01.10.2019 as Fair Market Value for land area undergoing Reclamation adjoining to Jawahar Dweep (JD) Island. Schedule of Rates (SoR).

(iv). Maratha Mandir Building at Jawhar Dweep: Land Rate as on 01.10.2019.

(v). Land/Wharf/Jetty letout to Fish based occupations at Ferry Wharf (RR Zone 3/36 of Princess Dock): Land rate for land/jetty at Ferry Wharf for 01.10.2018 to 30.09.2019. Taking 4% de-escalation on the above rate

(vi). Shed/MbPT Structure letout to Fish based occupations at Ferry Wharf (3/36): Shed Rate/MbPT structure for passenger shed/MbPT structures at Ferry Wharf for 01.10.2018 to 30.09.2019. Taking 4% de-escalation on the above rate

(vii). Jamshedji Bunder (RR Zone 1/6A of Colaba Division): The land rate for FSI-1 as on 01.10.2017.

(c). Clause 13(b) of the guidelines stipulates that Reserve Price in terms of annual lease rent would be arrived, as a percentage of latest market value of land determined based on the five factors in accordance with para 13(a) and that the percentage should not be less than 6% which is to be fixed by the Port Trust Board. Accordingly, the lease rental has been arrived by MBPT at 6% of the market value of the land i.e. Ready Reckoner (RR) value as on 2012 in respect of 3 plots as brought out at para no. 8 (viii) (b) (1), Land Value as recommended by the LAC as a special consideration for the 4 plots as brought out at para no. 8 (viii) (b) (2) and Land Value as recommended by the LAC as a special consideration for the 7 plots as brought out at para no. 8 (viii) (b) (3).

(d). As brought out above, the LAC for the reasons as documented in its Report has recommended different methods of valuation for each of group of plots (3 plots / 4 plots/ 7 plots) to determine the market value of the land, and has recommended lease rentals thereon. The Board of Trustees of MBPT has also approved the lease rentals as per the recommendations of the LAC and the same has been proposed by the Port in its proposal.

(ix). In this connection, all the individual tenants/ lessees who have been taken on consultation in the case in reference have strongly objected to the lease rentals proposed by the port on the ground that the proposed rentals are manifold times higher than the current rentals that are being paid by the tenants/ lessees. The tenants/ lessees have also questioned the Valuation undertaken by the Valuer/(s), based on which the subject proposal has been formulated by MBPT. Further, given that the rentals is being fixed retrospectively, the tenants/ lessees fear for the arrears that would get accumulated on account of the proposed revision. Also, given that post the COVID-19 pandemic, the global economy is just struggling back to normalcy, any retrospective revision is stated to cause a huge financial shock to the tenants/ lessees. The tenants/ lessees have also submitted that they have been duly paying their rentals and taxes on time and as such, they should not be subjected to the increase in rentals as proposed by the MBPT. The tenants have also stated that since the land allotted by MBPT lacks basic facilities/ necessities, the MBPT should not go ahead with increasing the rentals and that the port should continue with the rentals based on the 'Compromise formula' as upheld by the Hon'ble Supreme Court.

In this context, it is relevant here to mention that the Land Policy Guidelines issued by the Government, requires the lease rentals to be revised every five years based on the prevailing market value of the land. The 'Compromise formula' as upheld by the Hon'ble Supreme Court allowed the port to review and revise the letting rates after 20 years (i.e. from 01 October 1992 to 30 September 2012), for good and sufficient reasons. The market value of the land is bound to go up particularly in a metropolis, with the passage of time. Moreover, in a city like Mumbai, where land is an extremely scarce resource, the rentals show an increasing trend on a year on year basis. Further, it is noteworthy that the rentals which had been paid by the tenants/ lessees during the years from 2012 to till date is based on the 'Compromise formula' as upheld by the Hon'ble Supreme Court. This 'Compromise formula' was not based on the then prevailing market value of the land, but was fixed at a lower level. Given that the base of the rentals fixed then was lower, even with the 4% increase in rentals per annum, the resultant rental that prevailed in the year 2012 (and based on which the tenants/ lessees have paid rentals to MBPT) is substantially lower than the rental that has been determined for the year 2012 /2017 now based on the market value of the land. Given that the rentals for the estates of MBPT is being determined based on the market value of the land following the stipulations contained in the Land Policy Guidelines, the lease rentals are bound to go up, when compared to the existing lease rentals being paid by the tenants/ lessees, which are not based on market value of the lands. It is noteworthy that the MBPT has framed its proposal following the Land Policy Guidelines and thus, the hike in the lease rentals is inevitable.

Land being a valuable resource, a port must strive to ensure the maximum income from its landed estates. Though the MBPT is seen to have adopted the rates based on the single factor of Stamp Duty Ready Reckoner amongst the five factors mentioned in para 13 (a), determining the market value of land based only on a single approach may not always reflect the correct position.

Nevertheless, taking into account the position that the market value of the land based on the State Government Ready Reckoner has been recommended by the LAC and given that the Board of Trustees of MBPT has approved the recommendation of the LAC, this Authority is inclined to prescribe the Lease Rent in respect of 3 plots viz. Unit-14 (Mahim Bunder) under RR Zone 17/116, Unit-14 (Pilot Bunder) under RR Zone 1/5 and (iii), Unit-15, P D Mello Road (Frere Road) under RR Zone 2/13 for the period 1.10.2012 to 30.9.2017 based on Stamp Duty Ready Reckoner Rates 2012, as proposed by the MBPT.

As regards to the other plots, the lease rentals determined by the Port considering the Fair Market Value (FMV) of land being highest of the 5 factors as per PGLM has been recommended by the LAC and also has been approved by the Board of Trustees of MBPT. Given that the proposal of the port for fixation of lease rentals is based on valuation taking into account the Fair Market Value (FMV) of land being highest of the 5 factors as per PGLM, is based on the stipulations contained in the Land Policy Guidelines 2015, and has been recommended by the LAC and also has been approved by the Board of Trustees, and also as this Authority is bound by the Land Policy Guidelines, 2015, this Authority approves to prescribe the lease rentals for 04 plots viz. (i). Unit 12 & 14 (Fish based occupation of Sassoon dock) under RR Zone 1/6A, (ii). Unit 14 (Fish based occupation of Ferry Wharf/Land or Jetty) under RR Zone 3/36, (iii) Unit 14 (Fish based occupation of Ferry Wharf- PT Structure) under RR Zone 3/36 and (iv) JD island of MBPT for non-home occupations in Township Areas of MBPT for the period 01 October 2012 to 30 September 2017 and 07 plots viz. (i). Unit-12 & 14 (Fish based occupations of Sassoon Dock) under RR Zone 1/6A, (ii). Unit-14 (Fish based occupations of Jamshedji Bunder) under RR Zone 1/6A, (iii) Bunders Unit-14 (Fish based occupations of Ferry Wharf-Land/Jetty) under RR Zone 3/36, (iv). Bunders Unit-14 (Fish based occupations of Ferry Wharf – PT Structure) under RR Zone 3/36, (v) Unit no. 12 of JD Island – Existing JD Island, (vi) Unit no. 12 of JD Island – Reclaimed land and (vi) JD Island for non-home occupations in Township Areas of MBPT for the period 01 October 2017 to 30 September 2022, as proposed by the port.

(x). With regard to objection to the Valuation of the port land as carried out by the Valuer, it is noteworthy that Valuation of the port land is in the domain of the port and as such not within the purview of this Authority. This Authority does not have the technical expertise to delve deep into the Valuation aspects. The Land Policy Guidelines requires this Authority to fix the rentals based on the proposal filed by the port.

Some tenants/ lessees have put forth an argument that given that the MBPT has been increasing the rentals at the rate of 4% per annum, the question of MBPT now proposing increase in rentals does not arise. In this regard, it is to state that, like any other products, increase in rentals per annum is to meet the rising inflationary costs. But in the case in reference, the base of the rental is being reviewed, so as to bring it to the level of market value of land that had prevailed in the year 2012/2017.

Given that the lease rentals are being enhanced for MBPT, the MBPT in consultation with the tenants/ lessees, is advised to look into the requirements of the basic amenities/ infrastructure/ facilities in the leased/ licensed plots, and take steps to make them available to the lessees/ tenants.

Further, considering that the lessees/ tenants will have to pay the arrears for the period 2012 till date and given that the economy is just coming back to normalcy, after it was hit by the COVID-19 pandemic, the MBPT is advised to grant a longer period of time to the lessees/ tenants, to pay the arrears of rent pertaining to the period beginning from the year 2012.

(xi). Clause 13(c) of the Land Policy Guidelines of 2014 gives flexibility to the ports to fix annual escalation which would not be less than 2%. Accordingly, the MBPT in its proposal has indicated that the lease rental for the 7 plots each as fixed for the year 2012-13 and 2017-18 for the period 1.10.2012 to 30.09.2017 and 1.10.2017 to 30.9.2022 respectively will be subject to 4% annual escalation. However, no note is seen to have proposed by the port in the matter. Thus, a note is, therefore, prescribed in the Schedule stating that the lease rent is subject to an increase @ 4% p.a. and that first such increase shall be effective from 01 October 2013 and 01 October 2018 in case of respective 7 plots.

(xii). Clause 13 (C) of the amended Land Policy Guidelines, 2014 stipulates that the rates will be revised once in every five years by the Authority. Since the rental is being prescribed with effect from 01 October 2017, accordingly, a note is being prescribed in the Rent Schedule that the annual lease rentals may remain in force for a period of five years thereon.

(xiii). The MBPT has proposed a note to the effect that rent will be worked out on the basis of actual Built- Up Area, subject to minimum of FSI 1.00. Given that the base lease rent approved by the Authority shall remain intact and would be only proportionately increased based on the FSI, this Authority is inclined to approve the note as proposed by MBPT in this regard.

(xiv). The MBPT has proposed another note to the effect that the rates are exclusive of all Taxes (GST, Municipal Taxes, etc.), Service Charges, Penalties, and Interest etc. and that the same are separately payable by lessees/ tenants/ licensees, as may be applicable. In this regard, it is to state that the tariff approved by this Authority is exclusive of any taxes and statutory duties. The taxes and statutory duties are to be levied by the Port at the applicable rates on the tariff so approved by this Authority. In view of this position, the note as proposed by the Port is approved.

(xv). The MBPT has proposed notes to the effect that the rates are applicable for non–Home Occupations. Since the proposed notes gives clarity on the categories of lessees/ tenants, who would be covered from the lease rentals approved vide the subject proposal, the proposed notes are approved with slight modification to fall in line with the notes prescribed in the earlier order for revision of SOR for non home occupations.

(xvi). The MBPT has also proposed notes to the effect that Interest would be chargeable beyond permissible period as per Board's policy from time to time and that whether demanded or not, rent/ compensation/ license fee for a month would have to be paid by the tenants/ lessees/ licensees/ occupants on or before the 15th day of each succeeding month. Since the proposed notes give clarity and would avoid ambiguity and would instill discipline amongst the tenants/ lessees in the payment of rentals, the proposed notes are approved.

(xvii). The MBPT has proposed a note to the effect that rate for allotment of water bodies is applicable at 50% of SOR. The said notes is seen to in line with the PGLM, 2014. Hence, it is approved.

(xviii). The MBPT has proposed a note to the effect that differential arrears, liabilities and other dues of charges for a period from 01.01.2017 onwards. The said note seen to be ambiguous Hence, the proposed note is slightly modified to reflect that the differential Arrears, liabilities and other dues/charges for a respective period are calculated based on above rates.

9 In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the Rent Schedule prescribing Lease rentals in respect of 7 plots for the period 01.10.2012 to 30.09.2017 and for the period 01.10.2017 to 30.09.2022 for MBPT for let out land falling under various RR Zones, which has been notified separately vide Gazette No. 555 dated 12 November 2021.

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE COMMENTS RECEIVED FROM VARIOUS TENETS/ LESSEES/ USERS

TAMP/53/2021-MBPT	**:**	**Proposal received from the Mumbai Port Trust (MBPT) for fixation of Schedule of Rates and revision of rent / compensation in respect of 7 plots for the period 01.10.2012 to 30.09.2017 and 7 plots for the period 01.10.2017 to 30.09.2022 for let out land falling under various RR Zones of MBPT.**

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A summary of the comments received from various users/ tenants/ lessees which were similar in nature have been grouped together by MBPT. The response of Mumbai Port Trust (MBPT) on each of the group wise comments are tabulated below:

Sr. No.	Comments of various Tenants / Lessees	Response of MBPT.
1.	**Similar Representations received from Individual Tenants/ Lessees – Group 1.**	
(i). (ii). (iii)	At the outset, let us begin by recording that as users of the property being Old RR No. 1388 admeasuring about 1122.7 sq meters, we have always been willing to furnish and pay the basic rent as per the Hon'ble Supreme Court sanctioned compromise proposals. In our case, our landlord originally were the trustees of Estate of Late Khan Bahadur Hormusji Maneckji Bhiwandiwala in whose name the lease originally stood. He lawfully gave out rooms on tenancy basis under due consent and approval of the Board of Trustees of the Port of Mumbai. In or around the year 1986, he requested tenants to attorn tenancy to one Mr. Abdul Kayum Suleman Kodia and without prejudice to the validity of the title of the said Mr. Kodia, the tenants have been paying and/ or have been ready and willing to pay rent to the said Mr. Kodia as per instructions of the lessee/ landlord. In or around the year 1980, an LE & C Suit bearing no. 410/527 of 1980 was decreed in favour of the Port Trust whereafter, Obstructionist Notice was drawn in respect of the flats and the matters have been pending before the Hon'ble Small Causes court in respect of the eviction sought by the Port Trust against the the various actual users of the building known as "Sea View Terrace" situated at 69-71 & 120A-120B-120C of Wodehouse Road & SBS Road. It is a matter of record that as per the	Following MbPT's replies are Without Prejudice to The MbPT's Rights and Contentions in the pending litigation and terminations notices served and MbPT's rights to take legal action against breaches /violations under the applicable laws/lease/Tenancy terms and to take further action as per applicable laws stipulated under PGLM Guidelines / directives issued by Ministry and as may be decided by the Board of Trustees of Port of Mumbai from time to time. The reply prepared by MbPT is based on: 1) The revision of SoR is based on the Hon'ble Supreme Court Orders in Jamshedji Wadia case and subsequent clarification and opinion received from Shri Mukul Rohatagi, the former Attorney General for India. 2) Ministry's clarification and directions to TAMP to fix the rates from 01.10.2012 3) The provisions in PGLM 2014-15 and subsequent clarifications received thereto 4) Due intimation given by Estate Manager to the tenants/lessees regarding revision from time to time. 5) The Major Port Trust Act, 1963 does not restrict the retrospective revision of any rates. 6)The revision sought by MbPT is justifiable and reasonable.

	mandate of the Hon'ble Supreme Court as laid down in the case of Jamshed Hormusji Wadia v/s The Board of Trustees of the Port of Mumbai, the actual users as of 2004 were to be regularized on the terms stated therein and the fresh leases were to be executed for a period of 30 years w.e.f. 1994 until 2024. However, for reasons best known to the Port Trust, regardless of the judgement of the Hon'ble Supreme Court, the MbPT has failed to execute such fresh leases. In fact, the decree in LE & C suit and obstructionist notices have all become infructuous in view of the judgement of the Hon'ble Supreme Court stated aforesaid. It is pertinent to record that the said judgement was one in representative capacity after notice under Order 1 Rule 8 of CPC was issued and therefore, bound every person concerned including the Port Trust. In law, the leases are deemed to be renewed till 2024 and hence, the proposed schedule of rates cannot be proposed by the Port Trust for the period contemplated in the proposal.	
(iv)	It is pertinent to note that we had also written to the Port Trust vide our repeated communications that regardless of whether or not the originally lessee is paying the amounts claimed to be due to MbPT, we, as actual users/ residents/ tenants and as members of a collective association of persons ready and willing to form a society, are always ready and willing to pay the amounts as per the compromise proposals. We had also claimed that a lease be executed in favour of our proposed society in tune with the judgement of the Hon'ble Supreme Court.	
(v).	Unfortunately, the MbPT even did not encash one of our demand draft and yet, failed to execute lease in our favour and is now trying to benefit from its own wrong which is not permissible in law. We specifically express our reservation and objection to the proposed increase in the schedule of rates as we are the aggrieved parties entitled to have lease in our names. If any such increase will be allowed in the SOR's as proposed, we will be the end sufferers. Please note that such retrospective proposals are not just immoral but also illegal and against the legitimate expectation from any public body / authority. If such proposals are retrospectively adopted, it would make our	

	rentals a sum of Rs. 1421338/- Calculated at Rs. 1266/- per month per square meter as of 2012 and a sum of Rs. 1662763.608 as of 2017 calculated at Rs. 1481.04 and Rs. 19,80,000/- as of today calculated at Rs. 1700/- per square meter as against the currently calculated amount which is less than a fraction of the amounts proposed which we have always been ready and willing to pay as per the calculation based on the 2004 Supreme Court judgement. By no stretch of imagination can this sudden proposed steep increase in tariffs be called reasonable.	
(vi).	Be it recorded that we enjoy all protection of the law applicable to old tenants. We maintain that as per the modifications to the Maharashtra Rent Control Act, 1999 which superseded the Old Bombay Rent Act, 1947, section 7(6) thereof defines “local authority” which was earlier not defined in the 1947 Act. Therefore, as the term “local authority” was not defined in the old law, the definition was borrowed from the General Clauses Act and hence, the Port Trust was taken as a “local authority” and as such, exempted from the folds of the Rent Act. However, with the onset of the Maharashtra Rent Control Act, 1999, the Port Trust is not exempt from the folds and clutches of the Rent Act as it does not fall within the new definition of “local authority” laid down under the Maharashtra Rent Control Act, 1999. The Act supersedes all earlier rent laws and has also received the Presidential Assent. In terms of the said Rent Law, an increment of only 4% per year on the rents is permissible and the landlord cannot arbitrarily increase rent in the way and manner it deems fit.	
(vii).	Without prejudice to the applicability of the Maharashtra Rent Control Act, 1999 to the Mumbai Port Trust, be it noted that the Mumbai Port Trust, being a public body is subject to the Constitution and is bound to behave fairly and reasonably and cannot behave like private landlord so as to monitize its land and extract maximum rents. In the case of Jayantilal Dharamsey v/s Board of Trustees for the Port of Mumbai, the Hon’ble Supreme Court had held and I quote as under: *“…… It cannot be arbitrary or capricious. The underlying philosophy of the Rent Act is to stop private landlords from acting in a particular manner. But for the*	

	exemption, the properties held by the authorities mentioned in Section 4 of the Rent Act would equally be covered by the rigorous provisions of the Rent Act. However, it has been held in the aforesaid various judgments and in fact in a series of judgments of the Apex Court and several judgments of different High Courts, no doubt under different Rent Act regimes, that the exempted landlords are so exempted because the Legislature has reposed faith in them of not behaving like private landlords. In other words, though they are free to terminate the leases and recover rent with upward increase from time to time, they are expected to behave in fair and reasonable manner." Therefore, even otherwise, the actions of the Port Trust have to be reasonable as even assuming without admitting that they enjoy exemption from the Rent Act, such exemption could only make them at a responsibility of behaving in a manner more fair than a landlord that is governed under the rent act and exempted categories are not made so as to allow them to do as they please but because some categories are assumed to not behave unreasonably. This being said, please also note that from time to time, the Port Trust has tried to indulge in rack-renting and arbitrary increase in rent. This has led to the matter being taken up before the Courts on multiple occasions. The entire litigation history is summarised in the judgement of the Hon'ble Supreme Court in the case of Jamshedji Hormusji Wadia v/s Board of Trustees for the Port of Mumbai. In terms of the judgement of the Supreme Court, compromise proposals were sanctioned and were made binding upon all. Please note that Rule under Order 1 Rule 8 of the CPC was issued and the judgement was made applicable not just to the contesting parties but all tenants and land users of the Port Trust. .	
(viii)	It is a matter of fact that the Mumbai Port Trust has failed to comply with the said judgement in letter and spirit. As per the judgement, fresh leases were to be executed but the Port Trust miserably failed to do so. On the contrary, the port trust has since then been trying to subvert the judgement and wriggle from its clutches.	

	There have been several litigations even post the judgement rendered by the Hon'ble Supreme Court in the case of Jamshed ji Hormus ji Wadia.	
(ix)	In a matter as sensitive as the current one involving thousands nay over a lakh of tenants, a time of 14 days to respond is horrendously dismal and nothing but unreasonable. In fact, notice was served 4-5 days later and 5-6 days have been lost only in logistics out of the 14 days and group of residents like ours have not been able to even assimilate inputs from their members and individuals have not been able to seek instructions from their lawyers/ advisors. This is regardless of the fact that current times are plagued by the Pandemic Situation.	
(x).	Without prejudice to all the above, We were shocked to see the schedule wherein all calculations are being done based on ready-reckoner rates and no heed is given to reasonableness. The percentage of ready reckoner is taken at 6% whereas In the case of residents, the yield should not have been more than 1.8% as is the law in force. It may be appreciated that para-materia when studied reveals that similar lease for Collectors land is taken at 0.25% of ready reckoner. Therefore, clearly the schedules smack of unreasonableness which is unbecoming of a public organization. We may be permitted to refer to the material dealing with Collectors lease rates as and when produced. Further, any old tenant should not be given a steep increase in rentals and basis has to be that which the tenant has been paying/ has expressed willingness to pay. If any revision to the compromise proposal is sought, it should be with the nod of the Hon'ble Supreme Court that sanctioned compromise proposals. WE maintain that the guiding light for TAMP should be the Hon'ble Supreme Court sanctioned compromise proposals and/or similar lessors like Governer of Maharashtra, Railways, etc. and not the rates arbitrarily suggested and proposed by Mumbai Port Trust which is unfortunately interested in monetizing land and not behaving reasonably. Please also appreciate that our land is not that on Port Area and the purpose of a Port Trust is to manage Ports and not rack rent/ profiteer from land. In doing so, the port trust is running contrary	

	to the judgement of the Hon'ble Supreme Court in the case of Dwarkadas Marfatia v/s the Board of Trustees for the Port of Mumbai. Please note that merely levying high rates and failing to recover them is not as good as levying reasonable rates and receiving them from tenants with good will. That is the idea of a welfare state. The Mumbai Port Trust tenants are happy to pay reasonable rents. However, steep increases are but naturally going to be unwelcome and would attract litigation leading to waste of resources of the Port Trust and the tenant concerned and waste of precious judicial time. As per the law related to rentals, an increase of over 4% per year is illegal and the Schedule of Rates proposed for 2012-17 and 2017-22 leads to over 5000% increase in rents which is clearly an arbitrary action for any public organization.	
(xi)	The proposal is also faulty because it treats tenants whose leases have allegedly expired at par with fresh allotments notwithstanding renewal obligations created by the Supreme Court judgement. Further, the Port Trust has weighed all tenants with the same weight and has adopted a one-size-fits-all theory which will not work given the number of categories of tenants.	
(xii)	Many associations have Written to the Port Trust from time to time and conducted several meetings but in vain as the Port Trust Chairman has changed from time and again and verbal assurances have never been honoured. Various representations have been taken even to the shipping ministry and various leaders of political parties and we have been given positive assurances which have even been reported by the Press from time to time but we are surprised to see that the rates do not reflect any reasonableness. We expected a revision of rates on the downside but are surprised to see an exponential increase. The number of residential and commercial tenants of the port trust and the actual land users exceed 5 Lakh people. Such rates if adopted and accepted will create mayhem and large scale evictions leading to panic situation. There could be large scale protests and revolts due to fear of eviction.	
(xiii)	As comments have been sought on a proposed Schedule of Rates for 2012-2017	

	and 2017-2022, we record that we were taken aback to see that extremely high schedule of rates have been proposed on the basis of 6% return on the Ready Reckoner Value of the properties for commercial tenants/ lessees and residential tenants / lessees alike without any intelligible differentia. We request you to kindly consider our grievances so that exemplary schedules are not finalized taking basis of 6% of Ready Reckoner Value. Such acceptance of arbitrary amounts leading to steep increase disregarding totally the last basic rent would be illegal and would only be a ground of litigation that can be obviated.	
(xiv)	Some points which we invite your attention to are as under:- **a) Rates proposed for renewing leases in respect of Collector's land:** Alike the Board of Trustees for the Port of Mumbai, the collector too has a lot of land parcels that are given out on long leases to various lessees, many of which have also come to an end. The collector's model can be of assistance to fix up rates for renewal of leases in respect of land owned by MbPT. The amounts that the State Government has decided for renewal are a fraction of the amounts that the MbPT has proposed. For instance, in respect of the collectors land, the annual lease charge against renewal is taken at 2% of 25% of the Ready Reckoner (RR) Rate on plots admeasuring more than 500 sq. meters and 1% of 25% of Ready Reckoner (RR) Rates on plots admeasuring up to 500 sq. meters for residential users. We request that the rates that the Port Trust proposes are at par or at-least not totally disproportionate with that in respect of similar land owned by the Collector.	Parawise comments are as follows: a). The contents are incorrect and unacceptable, MbPT is bound by PGLM 2015 issued by MoSP&W, GoI which have been scrupulously followed by MbPT while computing SoR. The comparison with the practice followed by Collector of Mumbai, State Govt. and any other PSUs is irrelevant and not applicable in this present case. The Hon'ble Supreme Court order dated 13.01.2004, Board's compromise formula was only valid upto 30.09.2012 (only for 20 years i.e. 01.10.1992 to 30.09.2012) and such there is no violation of S. C. and no permission of S. C. Judgement is necessary for revision of rate from 2012. The Para 13 of PGLM, 2015 has stated the methodology of calculation of latest market value of port land and accordingly as stated in para 4 above, MbPT fixed SoR 2017-22. Present monthly rental are as per valuation report of 1980's which are no way comparable with present market rate. An average Kirloskar land values of Rs. 1406/- per sqm for FSI 1.33 has increased to Rs. 1,75,718/- per sqm for FSI 1.00 as on 2017, i.e. increase of almost 125 times of the land values of 1980's. Rentals as per Supreme Court Judgement dt. 13.01.2004 as on 01.10.2017 was on an average of Rs. 35/- per sqm per month for FSI 1.00 which will be revised to on an average of Rs. 878 per sqm per month for FSI 1.00 i.e. increase by almost 25 times. Infact, MbPT had fixed rent as 10% return on Kirloskar land values with 4% every year from 01.10.1994 onwards in terms of Supreme Court Wadia Judgment. However, the rental returns from 01.10.2017 onwards will be just 6% of the FMV given by valuer in MbPT estate areas. SoR 2017-2022 MbPT had engaged Govt. approved Valuers on panel and entrusted the work of valuation of MbPT land as per the jurisdiction of RR

		zonesThe para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones
	b) Levy of Market Rents for Old Tenants / Profiteering/ Behaviour like Private Landlord is not permissible for a Public Body like the Mumbai Port Trust:- If the rates proposed by MbPT on the basis of 6% of ready reckoner are taken, the total amount of lease rent would almost be equivalent to the running leave and license rates in the market making it unaffordable and impossible for the land users to continue to stay forcing many of them out of their properties or forcing them into litigation. Evicting someone who have been possessing a property for decades together since generations in this manner is neither easy nor fair. The Hon'ble Supreme Court in the case of Dwarkadas Marfatia v/s Board of Trustees for Port of Mumbai and also in the case of Jamshedji Hormusji Wadia v/s Board of Trustees for the Port of Mumbai has clearly held that MbPT being a public body is subject to the Constitution and is expected to behave reasonably and not like a private landlord. The Port Trust, being a public organization cannot indulge in rack-renting/ profiteering.	b. i) It is observed from the inspection that the market real estate sale transactions are at very high rate as compared to current rent charged by MbPT based on compromise formula upheld by SC judgement, 2004. The erstwhile lessee/tenant who are unauthorizedly holding over the plots even after the expiry of the lease without valid lease agreement or extending their period of occupation beyond the permitted period in the agreement still want to enjoy meagre/ concessional rates based on the compromise formula of 1982. ii) It is estimated that 80% of MT, FML, expired leases have unauthorisedly and unlawfully subletted the premises and transferred the premises to third party which is a violation of tenancy, lease agreement even after the expiry of lease. Therefore, all such parties who are illegally and unauthorisedly holding the premises are liable to pay compensation for unlawful use of premises at prevailing SoR rates. These parties have failed to surrender the premises after termination of lease / tenancy terms and continue to hold over the MbPT land without any valid agreement and failed to give vacant possession to MbPT. As these Monthly tenancies, FML, expired leases and licensees are not having any running contract with MbPT. MbPT had correctly and rightfully worked out the SoR for MT, FML,

		expired leases and licensees based on PGLM guidelines by adopting the highest of 5 factors as furnished by Govt. approved Valuers who are empanelled by MbPT and the SoR rates are worked out @ 6% return on the prevailing market rates and also concessions and rebates have been given by the valuers taking into consideration the present infrastructure and lack of benefits.
	c). Coercive Actions should be kept in Abeyance so that Occupants are not forced to move court every now and then:- IT shouldn't happen that while proposal is made to TAMP for revision of schedule, demands are made based on exemplary schedules at par with market rates on the one hand, pending the participatory process before the MbPT/ TAMP in so far as the quantum of rates are concerned, action under PPE Act is initiated for eviction of tenants. That would not be fair. Without approval, the Port Trustis already making demands self-supposing make rents and Termination notices/ PPE Notices are being issued. This is incorrect and should be deprecated.	c). So far, MbPT has not resorted to any litigation or coercive action for recovery of dues as per proposed SoR. As proposed by the Board in Para 4(c) of TR 122/2021 three months' time is given for payment of differential arrears as per the final approved SoR and not interest will be levied on the same for the said period. MbPT is duty bound and committed to enforce the applicable law and procedure as laid down in PGLM 2015, and only after notification of final SoR rates by TAMP, MbPT will raise demand of differential arrears giving them the reasonable time for payment of dues of 3 months or as may be allowed/stipulated by the TAMP without charging interest thereon on the differential arrears payable as per SoR.
	d). **All Tenants should not suffer for alleged breaches by a few/ One size fits all model shouldn't be adopted:** It is requested that the rates should consider matters on a case-to-case basis and shouldn't adopt a one -size- fits-all model. It has been observed that in some cases breaches have been carried out by one tenant and due to such breach an entire complex suffers from enhanced charges. Such things should be avoided.	d). Proposal is for the revision of rentals w.e.f 1.10.2017 based on para 13 of PGLM,2015. The said revision will be applicable to all MT, FML and expired leases in MbPT jurisdiction. The rent/compensation will be computed based on the FSI factors and other parameters as may be decided by MbPT.
	e) Retrospective levies should be avoided/ neither legal nor moral:- Retrospective levies with effect from a past period should be avoided as it is neither permissible legally nor is it morally correct. The Port Trust may endeavour to work out all policies only after mutual consultations and that too from a prospective date and not from retrospective dates.	e). Regarding MbPT refixing letting rates retrospectively after 30.09.2012, the matter was referred to respective MbPT advocate dealing in the matter in the Supreme Court for opinion and accordingly, letter dated 15.04.2014 addressed to MoS, GoI requesting them to forward copy of opinion from Ministry of Legal Affairs. Opinion from PT Advocate and AG (Mr. Mukul Rohatgi) was obtained by MbPT on applicability of Wadia Judgment Rates (SCJ) post 30.09.2012 and MbPT's rights to revise the rentals w.e.f 01.10.2012 onwards. The opinion received from PT Advocate and AG, GoI confirming the Port Trust's rights to revise rentals w.e.f 01.10.2012. Accordingly, then Chairman, directed to prepare SoR

		rates for Estate Lettings from 01.10.2012 onwards affected by SC Judgment. The letter dated 09.10.2014 was written to MoS, seeking Ministry's direction on revision of SoR on township areas of MbPT (Estate lettings). Meanwhile, vide TR No. 123 of 2014 committee of officers was constituted (Chairman, EM and FA) by MbPT for fixation of rentals w.e.f 01.10.2012 onwards. The Ministry sought further information from MbPT on 08.10.2015 which was forwarded to Ministry on 02.12.2015 and Ministry was once again requested to give directions on fixation of SoR from 01.10.2012 and also approve the cases settled under compromise policy by the Board interms of SC Judgment, 2004. However, neither such approval for renewal of settled cases under compromise formula (61 cases) had been received from Ministry nor any directions received from Ministry till the issuance of general clarification circular No. 01 of 2018, PGLM 2015 which was extended to the township areas of MbPT covering the lettings affected by SC Judgment 2004 i.e. MT, FML, Expired leases and licenses. Accordingly, Board vide TR 122/2021 forwarded SoR proposal approved by Board vide TR 222 of 2015 based on the LAC report dated 29.12.2014 which annexed as part of proposal for revision of SoR for the period 2012-17.
	f) Compromise Proposals are the way forward: A similar panic situation had been created in the 1990's when the Port Trust and the Tenants worked on a compromise which eventually was sanctioned even by the Hon'ble Supreme Court in the 2004 celebrated case of Jamshedji Wadia v/s BPT (Compromise Formula Case). At that point in time, the situation was resolved through mutual compromise. IT is requested that once again, there is a need for working out compromise proposals to ensure peace for the tenants even if the Port Trust is not willing to behave reasonably and follow the principles of the Rent Act. For such purpose, meeting between port trust authorities and tenants/ tenant representatives is the need of the hour to prevent unwarranted litigation at a mass scale. WE are confident that you would consider our difficulties and suggestions and adopt a reasonable, humanitarian and pragmatic approach so that we tenants are not constrained to rush to the courts to protect their livelihood. A	f). The contents are incorrect and unacceptable as already stated in earlier para 4, MbPT is bound by PGLM 2015 issued by MoSP&W, GoI which have been scrupulously followed by MbPT while computing SoR. The comparison with the practice followed by Collector of Mumbai, State Govt. and any other PSUs is irrelevant and not applicable in this present case. The Hon'ble Supreme Court order dated 13.01.2004, Board's compromise formula was only valid upto 30.09.2012 (only for 20 years i.e. 01.10.1992 to 30.09.2012) and such there is no violation of S. C. and no permission of S. C. Judgement is necessary for revision of rate from 2012. The Para 13 of PGLM, 2015 has stated the methodology of calculation of latest market value of port land and accordingly as stated in para 4 above, MbPT fixed SoR 2017-22.

	mutually acceptable win-win situation can be arrived at which would be much appreciated by everyone.	

2.	**Similar Representations received from Individual Tenants/ Lessees – Group 2.**	
(i).	This has reference to notice dated 06.10.2021 whereby comment to the proposal for Revision of Schedule of Rates (SOR) 2017-2022 as per ready reckoner zones for let out areas of Non-Home occupations in estate lands of Mumbai Port Trust.	Following MbPT's replies are Without Prejudice to The MbPT's Rights and Contentions in the pending litigation and terminations notices served and MbPT's rights to take legal action against breaches /violations under the applicable laws/lease/Tenancy terms and to take further action as per applicable laws stipulated under PGLM Guidelines / directives issued by Ministry and as may be decided by the Board of Trustees of Port of Mumbai from time to time. The reply prepared by MbPT is based on: 1) The revision of SoR is based on the Hon'ble Supreme Court Orders in Jamshedji Wadia case and subsequent clarification and opinion received from Shri Mukul Rohatagi, the former Attorney General for India. 2) Ministry's clarification and directions to TAMP to fix the rates from 01.10.2012 3) The provisions in PGLM 2014-15 and subsequent clarifications received thereto 4) Due intimation given by Estate Manager to the tenants/lessees regarding revision from time to time. 5) The Major Port Trust Act, 1963 does not restrict the retrospective revision of any rates. 6)The revision sought by MbPT is justifiable and reasonable.
(ii).	By the present proposal the MBPT is trying to revise schedule of Rates retrospectively i.e., for the period from 2017-2022 and levy of interest for the said period which is unlawful, unjust and without any plausible reason.	Regarding MbPT refixing letting rates retrospectively after 30.09.2012, the matter was referred to respective MbPT advocate dealing in the matter in the Supreme Court for opinion and accordingly, letter dated 15.04.2014 addressed to MoS, GoI requesting them to forward copy of opinion from Ministry of Legal Affairs. Opinion from PT Advocate and AG (Mr. Mukul Rohatgi) was obtained by MbPT on applicability of Wadia Judgment Rates (SCJ) post 30.09.2012 and MbPT's rights to revise the rentals w.e.f 01.10.2012 onwards. The opinion received from PT Advocate and AG, GoI confirming the Port Trust's rights to revise rentals w.e.f 01.10.2012. Accordingly, then Chairman, directed to prepare SoR rates for Estate Lettings from 01.10.2012 onwards affected by SC Judgment. The letter dated 09.10.2014 was written to MoS, seeking Ministry's direction on revision of SoR on township areas of MbPT (Estate

		lettings). Meanwhile, vide TR No. 123 of 2014 committee of officers was constituted (Chairman, EM and FA) by MbPT for fixation of rentals w.e.f 01.10.2012 onwards. The Ministry sought further information from MbPT on 08.10.2015 which was forwarded to Ministry on 02.12.2015 and Ministry was once again requested to give directions on fixation of SoR from 01.10.2012 and also approve the cases settled under compromise policy by the Board interms of SC Judgment, 2004. However, neither such approval for renewal of settled cases under compromise formula (61 cases) had been received from Ministry nor any directions received from Ministry till the issuance of general clarification circular No. 01 of 2018, PGLM 2015 which was extended to the township areas of MbPT covering the lettings affected by SC Judgment 2004 i.e. MT, FML, Expired leases and licenses. Accordingly, Board vide TR 122/2021 forwarded SoR proposal approved by Board vide TR 222 of 2015 based on the LAC report dated 29.12.2014 which annexed as part of proposal for revision of SoR for the period 2012-17.
(iii).	The proposed revision for SOR for the period of 2017-2022 is in respect of Non-Home occupation (Commercial Occupation) and leaving all the Home -Use (Residential Occupations) and Home and Non-Home (mixed user occupations) and occupation given on nominal rents to Public Bodies and for Public amenities kept out of the purview of proposed revision. It is clearly discriminatory in nature and will affect only Non-Home occupation without any reason or rhyme given by the MBPT.	The revision of SOR is applicable to all MT, FML, Licenses and expired leases who are not having any running contract with MbPT. The subject revision is also applicable to all Govt. organisation and public bodies. However it it not applicable to running leases. Hence the contentions raised are incorrect.
(iv).	It is double waxing as it will affect the genuine persons who were and are regularly paying the rent. By proposed revision the MBPT is trying to recover the rent for the past period for which tenants, lessees or licensees have already paid the rent at the prevalent rate and also proposing to charge the interest thereon which is totally unjust and against the principle of natural justice.	All parties were made aware by Circular No.EM/ASG/F-361/5873 dated 28.12.2012 whereby it was informed to all the lessees, tenants and occupants that revision of compensation / rent in respect of all the leases / tenancies excepting subsisting long term leases of Port Trust premises is due from 01.10.2012 onwards. They were also informed that the lessees, tenants and occupants will be informed about the revised letting rates, rates of compensation, in due course of time. Also, all the lessees and tenants are billed as provisional compensation rates with footnote clearly indicating as follows – “THIS BILL IS PROVISIONAL AND WITHOUT PREJUDICE TO THE BOARD’S RIGHTS AND CONTENTIONS TO REVISE

		RENT/COMPENSATION w.e.f. 01/10/2012" Hence all the lessees and tenant were very well aware of the revision of the rentals and had not objected to the notices issued and the invoices raised with disclaimers.
(v).	The Proposed revision of SOR Period from 01.10.2017 to 01.10.2022 is contra to the Compromise Proposal and Judgment of Hon'ble Supreme Court in the for case of Jamshed Wadia for the sake of brevity relevant part of the judgment is produced hereinafter: "The summary of the "compromise proposals", which is based on a detailed note submitted by the office of the BPT for being placed before the Board, is as under: - "(i) Nature of occupations may continue as at present on revised rents. Development may be in accordance with the Development Plan and the Development Control Regulations and BPT Master Plan including restructuring from time to time to cater for port's and city's needs. (ii) Occupations may be classified for the purpose of levy of rents either as 'NonHome Occupation' or as 'Home Occupation' as defined in the Development Control Regulations on the basis of actual use. (iii) Letting rates for 'Non-Home Occupation' per sq. metre of floor space per month of built-up area (as derived from valuation by Kirloskar Consultants) shall be as under for the period 1.10.1982 to 30.9.1992. (a) Sassoon Dock Estate: Rs.22.03 (b) Wellington & Apollo Reclamation Estates: Rs.26.91 (c) Ballard and Mody Bay Estates : Rs.24.00 (d) Elphinstone Estates (TPS) : Rs.14.44 (e) Bunders South : Rs.21.38 (f) All other Estates: Rs.12.66 Letting rate for 'Home Occupation' may be at 20 per cent of the above rates. Letting rates for future years from 1.10.1992 to 30.9.2012 for 'Non-Home Occupation' and 'Home Occupation' shall be as given in the Annexures". Notwithstanding the fixation of letting rates for 20 years for good and sufficient reasons, Board may review and revise the letting rates All the appeals are directed to be disposed of in terms of the following directions: - (i) by this judgment and in these proceedings the controversy as to the rates of rent applicable to the lessees shall be deemed to have been resolved for the period 1.4.1994 to 31.3.2000; (ii) the 'Compromise Proposals' as approved by the Board of Trustees of the Port of Mumbai in their meeting held on 13.8.1991 which are	The compromise formula modified under Wadia Judgement/Supreme Court Order dated 13.11.2004, was valid for the period of 20 years, i.e. from 1992 to 30.09.2012. MbPT had sought advice of P.T. advocate, Supreme Court regarding applicability / validity of S.C. judgement before LAC report dated 29.12.2014 and before TR 222 of 2015 were passed, which has categorically confirmed that MbPT is not bound to levy lease rentals beyond 30.09.2012 at the SoR rates applied by the Supreme Court (Wadia Judgement). The said advice was based on Addl. Solicitor General of India, Shri Trivedi opinion dated 07.02.2005 which clearly stated that compromise proposal was for period ending 2012 and therefore fresh revision is expected to be fair and reasonable, thereafter. MbPT had obtained the opinion of learned Attorney General of India Shri Mukul Rohatgi on 29.07.2016 confirmed that SC judgment Rate was valid only upto 30.09.2012 and opined that the Board is empowered to re-fix the rentals / compensation rates w.e.f. 01.10.2012. i. MbPT is governed by policy guidelines issued by Ministry from time to time and MbPT has honoured the Supreme Court judgement till its validity, i.e. 30.09.2012. ii. Also as per guidelines issued by MoSP&W, GoI, and rates approved by TAMP. The TAMP is authorised to approve the SoR retrospectively w.e.f. 01.10.2012 onwards, subject to withdrawal of Writ Petition 1153 of 2000 filed by MbPT against TAMP, which is withdrawn on 08.08.2019. These facts were rightly pointed out in para 3 of proposal for SoR 2012-17 simultaneously submitted to TAMP. Thus, there is no violation of S. C. Judgement dt. 13.01.2004 and MbPT is legally within its rights and empower to revise the rates w.e.f. 01.10.2012 onwards. There is no provision of compromise proposal in PGLM 2015 issued by MoSP&W, GoI. The validity of rates under S.C. judgement was only upto 30.09.2012 and thereof MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoSP&W, GoI. PGLM 2015 guidelines are very clear in fixation of SoR/Revision

	very fair, just and reasonable, subject to the modification that the revision in rent from 1.4.1994, shall be on the basis of rates of return at 10% for non-residential uses and 8% for residential uses, based on Kirloskar Consultants' report, instead of 15% and 12% respectively as was suggested in the 'Compromise Proposals'. The 'Compromise Proposals' so modified shall bind the parties, and all the lessees even if not parties to these proceedings in view of the proceedings taken by the High Court under Order 1 Rule 8 of the C.P.C.; (iii) the rates of rent for the period upto 31.3.1994 shall remain as suggested in the 'Compromise Proposals'; (iv) the interest chargeable by the Board of Trustees of the Port of Mumbai in respect of arrears of rent for the period commencing 1.4.1994 upto the date of actual payment shall be calculated at the rate of 6% per annum, (v) subject to the abovesaid modifications, all other terms and conditions of 'Compromise Proposals', shall remained unchanged; (vi) within a period of eight weeks from today lease deeds consistently with the 'Compromise Proposals', subject to the modifications as above said, shall be executed by the lessees and even if lease deeds are not executed the terms of 'Compromise Proposals' shall bind the lessees; (vii) such of the tenants as may wish to contend that there are certain real and material distinguishing features to be considered for the purpose of carving out an exception and relaxing the general terms and entitling them to reduction in the rates of rent applicable as above said, may file representations each setting out specific grounds and relevant facts precisely in that regard in the office of the Bombay Port Trust under a written acknowledgement. The Bombay Port Trust shall maintain a register of all such representations filed. No representation filed after the expiry of six weeks from today shall be received or entertained. (viii) We request the High Court to appoint a retired Judge, preferably (and not necessarily) of the rank of District Judge, as a Sole Adjudicator of the objections/representations filed in terms of the above decision. The High Court shall appoint a place of sitting and the amount of remuneration to be paid per case (and not on per day basis) to the Adjudicator. The fee shall be paid by each lessee filing the representation for decision. The requisite secretarial and clerical assistance shall be	of SoR as per Para 13 and MbPT is following the same. Hence the contentions raised are irrelevant. iii. Supreme court judgement is not an indefinite licence to lessees and tenants to go on committing the major breaches of lease terms and occupying the premises even after the expiry indefinitely and multiple transfers and still want to enjoy meagre/ concessional lease rentals based on 1980 land values and regularisation of breaches as per compromise rates of 1982 and restrict Port Trust to major revenue return on its let out land. Therefore, contentions raised are incorrect.

	provided by the Bombay Port Trust or as directed by the High Court. The learned Adjudicator shall commence his proceedings on expiry of eight weeks from today and on the record of representations being made available to him and shall conclude the same within a period of 4 months thereafter. The Adjudicator shall not be bound to record evidence and may determine and dispose of the representations by summary hearing, receiving such affidavits and documents as required by him, and/or carrying out inspection of the leased properties, if he deems fit to do so. The Adjudicator shall examine and decide to what relief in the rate of rent and/or any other term of lease such representing lessee is entitled. The decision by the Adjudicator shall be final and binding on the parties. In case of any difficulty in implementing this procedure, directions may be sought for from the High Court. (ix) The abovesaid procedure is not to be utilised as justification for withholding the payment of any arrears of rent to be calculated in terms of these directions. The payments have to be made and made regularly. Any amount becoming due for refund in terms of any relief granted by the Adjudicator shall be refunded or adjusted thereafter. (x) We expect the lessees to cooperate in finalisation of the disputes. We also expect the lessees to desist from preferring immaterial or frivolous objections or objections just for their sake. If any one does so the learned Adjudicator may impose costs on him which shall be payable to and recoverable under law by the BPT as arrears of rent. (xi) For the purpose of appointing an Adjudicator and dealing with application, if any, seeking resolution of difficulties, in terms of the preceding direction, we request the learned Chief Justice of the High Court of Bombay at Mumbai to assign this matter for being placed before any learned judge of his Court. We, on our part, suggest in the interest of expeditious disposal, that the matter may be assigned to any one of the judges available in the High Court out of those who had earlier dealt with the matter (i.e., the learned Single Judge who passed the order dated 1/4-10-1990, the two learned Judges who passed the judgment dated 11/12-3-1993 and the two learned judges who passed the order dated 1-8-2000). His acquaintance with the facts of the case would accelerate the hearing and	

	disposal. However, this is only a suggestion and is not in any manner intended to fetter the power of the learned Chief Justice to assign the matters for hearing in the High Court. (xii) The issue as to the applicability of the Maharashtra Rent Control Act, 1999, to the Port of Mumbai and the property held by it is left open to be decided in appropriate proceedings. The appeals and all the pending applications shall stand disposed of. There shall be no order as to costs in these proceedings.	
(vi).	As per the Jamshed Wadia's judgment, the Hon'ble Supreme Court has accepted the Compromise Proposal and the controversy regarding the rate of rent applicable to the lease resolved for the period from 01.01.1994 to 31.03.2000. As per the compromise formula as produced in the said judgment the MBPT was given the liberty to review and revise the letting rates from 1.10.2021 however it does not mean to revise the rate of rent in the year 2021 (after more than 9 years). In the said judgment the issue of applicability of Maharashtra Rent Control Act, 1999 to the Port of Mumbai and the property thereof was left open to be decided in the appropriate proceedings. The said issue of applicability is pending before the Hon'ble Supreme Court in the SLP No. 20645 of 2017 (Hussainali Punjwani/MBPT). As per the Maharashtra Rent Control Act, 1999. The Rent has to be fixed by the Hon'ble designated Courts i.e., Small causes Courts, at Mumbai. At present the Number of Suits is pending for the adjudication against the tenants/ occupants before the Hon'ble Small Causes Court, at Mumbai. The proposed revision for SOR will be therefore illegal. So far as the proceedings pending before the Ld. Eviction Officers, under the Public Premises Act is concerned, the proposed revision for SOR for the Period from 01.10.2017 to 01.10.2022 has to be as per the Judgment of Banatwala & Co. vs. LIC of India. In the Banatwala & Co. it is held that "In the circumstances, we hold as follows: - (a) The provisions of the Maharashtra Rent Control Act, 1999 with respect to fixation of Standard Rent for premises, and requiring the landlord not to cut off or withhold essential supply or service, and to restore the same, when necessary, are not in conflict with or repugnant to any of the provisions of the Public Premises (Eviction	As already stated the validity of Supreme Court Jamsedji Wadia Judgement 2004 was only up to 30.9.2012. With respect to applicability of Maharashtra Rent Control Act following are the comments i. The letting rates under the Compromise Proposal had been fixed taking into account the market values of the land rates prevailing in the year 1980. Apart from the fact that the Port Trust tenancies have never been covered by the Rent Control Legislation and all the entities that have now been exempted under Section 3(1) (b) of the Maharashtra Rent Control Act 1999 would otherwise have been covered by and enjoyed the protection of the Rent Control Legislation then in force, even if the quondam Rent Act had applied to the Port Trust tenancies. The important factor to be considered is that the tenants of the Port Trust who have been exempted from the Maharashtra Rent Control Act are legislatively mandated, inter alia, not to have any statutory or other limitations or constraints in the fixation of payment of rents. It is further submitted that to continue to insist on levy of letting rates frozen on the basis of land values of 1980 in the year 2006-2007 or such exempted persons despite the fact such persons do not any longer enjoy even the protection of the Rent Act would be extremely unfair to the Port Trust and would be in effect be contrary to the principle laid down by the Supreme Court in the Wadia Judgement. ii. Even though the Maharashtra Rent Control Act (and the old Bombay Rent Act) would not and does not apply to the lettings by the Port Trust, the fact that such entities have lost the protection of the Rent Act and are now legislatively mandated to face the open market in land and rentals, such revise the letting rates for such categories of tenants.

	of Unauthorised Occupants) Act, 1971. (b) The provisions of the Public Premises Act, 1971 shall govern the relationship between the public undertakings covered under the Act and their occupants to the extent they provide for eviction of unauthorised occupants from public premises, recovery of arrears of rent or damages for such unauthorised occupation, and other incidental matters specified under the Act. (c) The provisions of the Maharashtra Rent Control Act, 1999 shall govern the relationship between the public undertakings and their occupants to the extent this Act covers the other aspects of the relationship between the landlord and tenants, not covered under the Public Premises Act, 1971. (d) The application of appellant and similar applications of the tenants for fixation of Standard Rent or for restoration of essential supplies and services, when necessary, shall be maintainable under the Maharashtra Rent Control Act, 1999.	Contentions are incorrect as rent act is not applicable to MbPT.
(vii).	As per the aforesaid said Judgment by Hon'ble Supreme Court, the Maharashtra Rent Control Act, 1999 govern the relationship between the public undertakings and their occupants to the extend the rent act covers and the other aspects of the relationship between the Landlord and tenants which are not covered under the Public Premises Act, 1971. Therefore, Application for the fixation of the standard rent should be maintainable under the Maharashtra Rent Control Act, 1999. The present revision therefore is not tenable in law, in view of the provision the Maharashtra Rent Control Act, 1999.	The issues are already clarified in para 6.
(viii).	The Proposed revision of SOR for the Period from 01.10.2017 to 01.10.2022 is based on Ready Reckoner, whose authenticity is in question and the same is generic in nature and cannot be sole basis for proposed revision. The proposed revision should be based on physical verification and inspection of the conditions and circumstances of the premises and the lands in question.	The propose SOR 2017 is based on the valuation report submitted by the registered Valuers as per the provision of para 13 of PGLM, 2015. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for

		respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. Hence the contentions are incorrect.
(ix).	Most of the Plots of lands of the MBPT are subject matter of the litigation either before the Hon'ble Small Causes Court, at Mumbai or Ld. Eviction Officer, in short sub-judice. It is therefore necessary for revision of the rent through the intervention of the Courts wherein the land is sub judice.	The proposed revision is without prejudice to the MbPT's Rights and Contentions in the pending litigation and terminations notices served and MbPT's rights to take legal action against breaches /violations under the applicable laws/lease/Tenancy terms and to take further action as per applicable laws stipulated under PGLM Guidelines / directives issued by Ministry and as may be decided by the Board of Trustees of Port of Mumbai from time to time.
(x).	On the factual aspects, since March, 2020 both Covid -19 and lockdown thereafter has made bad impact on the business of the tenants and occupants of the Non-Home occupants and constrained them to shut down their businesses. The proposed revision of SOR would add to their agonies and sufferings which may lead to the complete destruction of the business as well personal lives of the tenants, lessee, licensees. It is therefore the question of Right to life as guaranteed by Article 21 and Article 19(1)(g) of the constitution of India is at stake. Secondly, the proposed revision of SOR would lead to the multiple litigations as several proceedings are pending before Small Causes Court at, Mumbai and before the Eviction Officers at Mumbai.	The SoR was due from 01.10.2017 which was prior to pandemic. Covid-19 pandemic started from March 2020 and in the present circumstances most of the premises had been operational prior to 2017. i. There are no such directions from MoSP&W, Govt. of India on giving any concession, relaxation, compensation and assistance during pandemic time. In this connection, attention is invited to Delhi High Court Judgement, Ramanad and others V/s. Dr. Girish Soni and others dated 21.05.2020 which has held that the period of lockdown on account of Covid-19 does not excuse in payment of rental amounts A+and no concession in rental charges is admissible. ii. As the parties have continued to occupy the premises and MbPT being Public body had continued to provide its services during COVID period. MbPT had also rendered the monthly invoices of compensation and paid the GST on the invoice for this period. Thus there is no question of granting any relief. MbPT's expenditure on infrastructure and also liability for salary wages, maintenance etc. had continued even in COVID pandemic period. Since rentals from MbPT land assets is one of the important part of MbPT revenue, no such concessions are admissible on this ground in the proposed SoR w.e.f. 01.10.2017.
(xi).	As per the Proposal available on the website of the BPT and TR 105 of 2018, the reason for excluding residential occupation (home- use) and Mixed user occupation (Home and Non-Home) and occupations	The proposed revision of rentals is on policy in vogue i.e. PGLM,2015. This has no relevance to "New Township Policy".

	given on nominal rates to public bodies for public amenities for want of New Township Policy. However, in the case of non-home occupants, the revision of SOR is proposed without the New Township Policy.	
(xii)	It is also noteworthy that tenants will be further burden with the revision of Schedule of Rates (SOR) for the period 2017-2022. The revision is therefore for the 10 years all together and which will make the life of the Non-Home occupants difficult.	It is to state that the unregistered sale transactions are happening at the rate which is much higher then the proposed SOR. Also the Ready Reckoner rates of adjoining MCGM land is 3 to 4 times higher as compared to the Ready Reckoner rated in the MbPT areas. These rates are also comparable to the proposed SOR 2017-2022. MbPT being a public body is asking for the fair and just rent by undertaking valuation as per provision PGLM, 2015.
(xiii).	In view of the aforesaid submission, it is most humbly submitted that the proposed revision is contrary to law of the land and also against the principal of natural justice and hence it should be cancelled.	The proposed revision is as per provision PGLM, 2015.
3.	**Similar Representations received from Individual Tenants/ Lessees – Group 3.**	
		Following MbPT's replies are Without Prejudice to The MbPT's Rights and Contentions in the pending litigation and terminations notices served and MbPT's rights to take legal action against breaches /violations under the applicable laws/lease/Tenancy terms and to take further action as per applicable laws stipulated under PGLM Guidelines / directives issued by Ministry and as may be decided by the Board of Trustees of Port of Mumbai from time to time. The reply prepared by MbPT is based on: 1)The revision of SoR is based on the Hon'ble Supreme Court Orders in Jamshedji Wadia case and subsequent clarification and opinion received from Shri Mukul Rohatagi, the former Attorney General for India. 2)Ministry's clarification and directions to TAMP to fix the rates from 01.10.2012 3).The provisions in PGLM 2014-15 and subsequent clarifications received thereto 4).Due intimation given by Estate Manager to the tenants/lessees regarding revision from time to time. 5) The Major Port Trust Act, 1963 does not restrict the retrospective revision of any rates. 6) The revision sought by MbPT is justifiable and reasonable.
(i).	At the outset it may be recorded that we are in occupation of RR No. 693 and have been	The parawise comments are as follows: The Rent Control Legislation and all the

	paying our rent from time to time as per the compromise proposal sanctioned by the Hon'ble Supreme Court. Our lease is expired and pending renewal. Moreover, in our case, due to the existence of a super structure which is protected under the section 4(4A) of the Rent Act, the new schedule cannot be allowed as the Rent Act permits only an increase of 4% year on year with such further permitted increases as considered reasonable.	entities that have been exempted under Section 3(1) (b) of the Maharashtra Rent Control Act 1999 would otherwise have been covered by and enjoyed the protection of the Rent Control Legislation then in force, even if the quondam Rent Act had applied to the Port Trust tenancies. The important factor to be considered is that the tenants of the Port Trust who have been exempted from the Maharashtra Rent Control Act are legislatively mandated, inter alia, not to have any statutory or other limitations or constraints in the fixation of payment of rents. It is further submitted that to continue to insist on levy of letting rates frozen on the basis of land values of 1980 in the year 2006-2007 or such exempted persons despite the fact such persons do not any longer enjoy even the protection of the Rent Act would be extremely unfair to the Port Trust and would be in effect be contrary to the principle laid down by the Supreme Court in the Wadia Judgement. Even though the Maharashtra Rent Control Act (and the old Bombay Rent Act) would not and does not apply to the lettings by the Port Trust, the fact that such entities have lost the protection of the Rent Act and are now legislatively mandated to face the open market in land and rentals, such revise the letting rates for such categories of tenants.
(ii).	Without prejudice to the above, at the outset, it may be recorded that as per the Supreme Court judgement of 2004 in the case of Jamshed Hormusji Wadia v/s Board of Trustees for the Port of Mumbai, the Port Trust was supposed to execute fresh leases for a period of 30 years with effect from 1994. The Port Trust has failed to do that and now, cannot take advantage of their own wrong and contend that the lease has expired. It may also be noted that in the 2004 judgement, breaches/ change of user etc. up to 2004 were to be regularized. Our Lease expired in the year 2000 and all formalities for renewal had been submitted within the stipulated period, objections to the same were also complied and set proper, however after paying all dues and several reminders over the years for transferring the property to the name of Heirs and change of registered address the same has not been done. Further, at the very outset, considering the complexities involved the time of 14 days for inviting comments seems to be very short and unreasonable. You are requested to kindly	The issue raised is not relevant to present proposal. TAMP is requested not to grant additional time to stakeholders to file reply as this will negatively impact rental income to the public exchequer.

	grant at least 3 months to make comments.	
(iii).	Please appreciate that in the absence of such documents being uploaded it would not be possible to properly deal with the matter and make comments. For the purpose of assimilating inputs from our legal advisors/ consultants, and to go through old documents and papers it would also be advisable to hold physical meetings to understand the problems involved and the difficulties. From a lay person point of view, all we can say is that the proposed rates are absolutely arbitrary, unreasonable and not sustainable.	After receipt of instructions from TAMP, MbPT had uploaded the proposal on MbPT website on 06.10.2021 and time limit of 15 days was granted to the stakeholders for filing reply as per the directions of TAMP which ended on 26.08.2021. The entire proposal submitted to TAMP along with all the DA of the Proposal such as (i) supporting TRs (ii) LAC reports and (iii) statements of SOR were uploaded on MbPT website. The said information can be downloaded from MbPT website with access to all Registered lessees/ tenants/ occupants and all stake holders. (ii) All the registered lessees/tenants/occupants were served with notice informing them last date for submission of comments on 20.10.2021. Also 15 days' time granted by TAMP is more than sufficient and no further time is required for submission of comments by the Registered lessees/ tenants/ occupants, any further extension of time in the matter will unnecessarily delay the process. Therefore TAMP is requested not to grant any such extension of time for submission of comments and may proceed as per the scheduled hearing date.
(iv).	Besides, please note that the charges as calculated based on the Schedule of rates proposed by you would be unreasonable and horrendously high. The schedule of rates is based on arbitrary calculations unsubstantiated by any material and are even higher than the "market rates" i.e. the current ready reckoner values. The SOR for 2017-22 goes on an ad-hoc valuation which isn't even substantiated by any material. This is without prejudice to the fact that such market valuation reports cannot be made the basis of the rent fixed. Further, the SOR 2012-17 takes rent on the basis of 6% return on market value. When worked at using this factor, the rates would be exponentially higher than the amounts the tenants were paying under the original contract. It may be appreciated that market rent / rack renting cannot be adopted by the MbPT which is clearly held by the Supreme Court in the case of Dwarkadas Marfatia v/s Board of Trustees of the Port of Mumbai and also in the case of Jamshed Hormusji Wadia v/s Board of Trustees for the Port of Mumbai. Moreover, market rates (ready reckoner value) for Free Hold land cannot be equated with or made a yardstick for	While computation of SoR 2017-2022 MbPT had engaged Govt. approved Valuers on panel and entrusted the work of valuation of MbPT land as per the jurisdiction of RR zones. MbPT is constituted under Major Port Act, 1963 and under supervision and control of MoSP&W. PGLM, 2015 are the statutory direction under Section 111 of Major Port Act. Hence MbPT is bound by such statutory direction for implementation of PGLM, 2015 and accordingly scrupulously followed guidelines issued by Ministry of Shipping and Waterways (MoSP&W), Government of India (GoI) for fixation of current SoR which is approved by Board of Trustees and submitted to the TAMP being statutory authority constituted under section 47 A of Major Port Act for fixation of SoR under section 49 of the said act. The para 13 of PGLM 2014 clearly states that the highest of 5 factors for determination of rentals on Major Port Trust land i.e. (i) State Govt. RR (ii) Average rate of actual transactions registered in last 3 years in the Port vicinity with annual escalation not less than 2%. (iii) Highest accepted tender of Port land for similar transactions. (iv) Rate arrived at by an approved Valuer appointed for the purpose

	determining the market rates of Leasehold land. Besides, it is a fact that for the collector's land- lease is being renewed by charging 0.25 % of ready reckoner rates with 4% increment year on year whereas in the case of the Port Trust, it is proposed at 6% of market value (which is even higher than ready reckoner value) with yearly increase and despite charging such heavy rates, the port trust doesn't even make a whisper if they are renewing leases by executing fresh lease deeds.	of the Port. (v) Any other factor. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22.
(v).	We have been regularly paying rent as per the compromise proposals sanctioned by the Hon'ble Supreme Court which are binding on tenants as well as MbPT. In fact, we have never refused to pay whatever is reasonable and all impositions of rentals etc. must satisfy the test of reasonableness. Arbitrarily imposing such a high schedule of rates is not reasonable and conscionable and we do not welcome any such exponential increase in rents that has been arbitrarily proposed by the Port Trust. Please also appreciate, and we say this at the cost of repetition, that, as per the judgement of the Hon'ble Supreme Court in the case of Dwarkadas Marfatia v/s Board of Trustees of the Port of Mumbai, the Port Trust being a public authority cannot behave like a private landlord and cannot indulge in profiteering or levying rack-rents. The Hon'ble Supreme court has clearly held that being a public body, the Port Trust cannot resort to profiteering or rack renting like a private landlord and cannot charge market rents to existing tenants. Therefore, such imposition of rents based on market values and ready reckoner rates is not the solution to the current issue.	Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. The land values as of 1980's as considered by the Kirloskar consultant in their valuation report and approved by the Board vis-à-vis land values as on 2017, which shows that on an average Kirloskar land values of Rs. 1406/- per sqm for FSI 1.33 has increased to Rs. 1,75,718/- per sqm for FSI 1.00 as on 2017, i.e. increase of almost 125 times of the land values of 1980's. Whereas in the comparison of rentals as per Supreme Court Judgement dt. 13.01.2004 as on 01.10.2017 was on an average of Rs. 35/- per sqm per month for FSI 1.00 which will be revised to on an average of Rs. 878 per sqm per month for FSI 1.00 i.e. increase by almost 25 times. It may be seen that the land values have increased by 125 times but MbPT rental have increased only by 25 times over the SC Judgments (1980 values). Infact, MbPT had fixed rent as 10% return on Kirloskar land values with 4% every year from 01.10.1994 onwards in terms of Supreme Court Wadia Judgment. However, the rental returns from 01.10.2017 onwards will be just 6% of the FMV given by valuer in MbPT estate areas. The RR values of MbPT are less as compared to abutting non-MbPT lands. Thus, it may be seen that the SoR proposed by MbPT is infact lesser than the prevailing market value. Therefore, the SoR rates are fair and reasonable and justifiable. The land values in the Ready Reckoner Zones of MbPT lands are varying from Rs. 19,400 to Rs. 2,80,000 and average value works out to Rs. 1,50,000, whereas land rates of Ready Reckoner Zones outside MbPT lands varies between Rs. 19,400 to Rs. 3,77,200 and average value works out to Rs. 1,98,000. Considering the mean value (RR 2017) of is

		Rs. 1,74,000 for lands in MbPT area and outside MbPT area. The MbPT valuers have recommended FMV which are average of Rs. 1,75,718 for lands which ranges between Rs. 53,820 to Rs. 3,31,600. It is further submitted that periodical revision every five years as mandated under PGLM 2014-15 is to ensure that concerned lessees/tenants do not evade payment of rentals. The Port Trust being a public body should not be deprived of its legitimate return from let out land of the Port. These revisions of SoR will be made applicable to MT, FML, Expired lese and Licenses whose period of occupation is over and lessee/tenants are continued to occupy the premises unauthorisedly beyond the leases period. In fact, the Port Trust is not seeking to charge market rents from such lessee/ tenants but only seeking to charge a revised reasonable rent in accordance with the balance propounded by the Supreme Court in the Wadia Judgement fixed on the basis of the market value of land which is nearly 4 decades old and merely because MbPT as a landlord, is an instrumentality of the State. Also the comparison with the practice followed by Collector of Mumbai, State Govt. and any other PSUs is irrelevant and not applicable in this present case. Thus there is no violation of SC Judgement 2004 by effecting the revision as per SOR w.e.f. 01.10.2017 as per applicability of PGLM 2014-2015 issued by Ministry time to time which obligatory directives under Section 111 of MPT act and is bound by the said directives for implementation.
(vi).	It may also be recorded that the ready reckoner rates of the State Government cannot be made the parameter based on which rents are to be collected. If that be so, then the state government lease renewal is done at merely 0.25 % of that rate. The Schedule of rent/lease charges has to be decided in accordance with the COMPROMISE PROPOSAL sanctioned by The Hon'ble Supreme Court in case of Jamshed H Wadia vs. The Board of Trustee of the Port of Bombay (2004) (3) SCC 214 and based on the principles of the said judgement, the rates need to be computed with 4% yearly enhancement or in any event, they can be decided now by working out a fresh compromise proposal by and between the tenants/ lessees on the one hand and the Port Trust on the other. As of recently, after working 4% increment of rent year on year, the current rent as per the	The contents are incorrect and unacceptable, MbPT is bound by PGLM 2015 issued by MoSP&W, GoI which have been scrupulously followed by MbPT while computing SoR. The comparison with the practice followed by Collector of Mumbai, State Govt. and any other PSUs is irrelevant and not applicable in this present case. The Hon'ble Supreme Court order dated 13.01.2004, Board's compromise formula was only valid upto 30.09.2012 (only for 20 years i.e. 01.10.1992 to 30.09.2012) and such there is no violation of S. C. and no permission of S. C. Judgement is necessary for revision of rate from 2012. The Para 13 of PGLM, 2015 has stated the methodology of calculation of latest market value of port land and accordingly as stated in para 4 above, MbPT fixed SoR 2017-22. There is no provision of compromise proposal in PGLM 2015 issued by MoSP&W, GoI. The validity

	current regime works out to about Rs. 37.50 per square meter per month , inclusive of GST AS of October 2021, bill which is already very high and enough to take care of the charges of the port trust. Looking at the SOR, one can observe that the rental for the zone 1/6A associated with RR No. 693 i.e. the ready reckoner entry corresponding to our plot, is likely to be R.494.50 /- as of Rs. 1.10.2012 and Rs.578.49 /- per square meter as of 1.10.2017 and after 2017 a flat rate of Rs. 1700.02 p. per square meter per month till 2022.	of rates under S.C. judgement was up to 30.09.2012 and thereof MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoSP&W, GoI. The renewal of lease shall be granted as per the procedure laid down in Para 11, 12 and 13 of PGLM 2015 guidelines.
(vii)	WE fail to understand how the return of 6% has been made a benchmark for residential users. It is submitted that the Trust resolutions uploaded on the website are not clear and are full of legal jargons which are impossible for ordinary tenants to comprehend and it would be appreciated if there is more clarity and simplicity in the manner in which the Port Trust proposes to levy rents/ lease charges. Such charges and schedules from 2012 onwards should be based on a factor of what was being paid up to 2012 as per the Hon'ble Supreme Court's sanctioned compromise formula and should be based on some reasonable percent increment taking the amount of rent paid in 2012 as a benchmark. The port trust is seeking to impose rates which are exponentially higher than those charged by similar land owners and order of magnate times higher than the current rates.	MbPT is constituted under Major Port Act, 1963 and under supervision and control of MoSP&W. PGLM, 2015 are the statutory direction under Section 111 of Major Port Act. Hence MbPT is bound by such statutory direction for implementation of PGLM, 2015 and accordingly scrupulously followed guidelines issued by Ministry of Shipping and Waterways (MoSP&W), Government of India (GoI) for fixation of current SoR which is approved by Board of Trustees and submitted to the TAMP being statutory authority constituted under section 47 A of Major Port Act for fixation of SoR under section 49 of the said act. Hence the suggestion given by stakeholder cannot be accepted.
(viii).	It is also requested that clarity be got in so far as the amounts are concerned pertaining to each of the units owned by the Port Trust, separately. We suggest that every property would have a different calculation based on the merits of the matter of such property and hence a generic working and a one-size-fits-all approach is not possible nor desirable. It is also a matter of concern as to how the residents residing on land allegedly owned by BPT since 80-100 years are served these notices with just about a couple of weeks' time to respond	TAMP is authorize to fix the SoR Rates for the entire land of MbPT falling under the respective Ready Reckoner zones for FSI 1.00 as a base rate and Board will accordingly decide SoR/Rental on case to case basis. Land values of any plot in Mumbai city is directly linked to its potential permissible FSI and consumed FSI of authorised structure since the FSI on MbPT land varies from 0.5 to 5 or even more in some exceptional cases. MBPT has proposed the SOR rates for FSI 1 as a base rate for TAMP's approval.The calculation of higher FSI/ more than FSI 1 or less than FSI 1 shall be worked out as per para 5 of TR 122 of 2021 approved by the board on 03.08.2021 which stated that a committee will be constituted for working out appropriate factor for determination of actual rental based on FSI consumed by Authorised structure on the premises. The final rental

		will be worked out on case to case basis as decided by the Board. Also the lessee/ tenants and unauthorised occupants had been enjoing the occupation of MbPT premises by payment of rent fixed as per 1980's valuation report. All parties were made aware by Circular No.EM/ASG/F-361/5873 dated 28.12.2012 whereby it was informed to all the lessees, tenants and occupants that revision of compensation / rent in respect of all the leases / tenancies excepting subsisting long term leases of Port Trust premises is due from 01.10.2012 onwards. They were also informed that the lessees, tenants and occupants will be informed about the revised letting rates, rates of compensation, in due course of time. Also, all the lessees and tenants are billed as provisional compensation rates with footnote clearly indicating as follows – "THIS BILL IS PROVISIONAL AND WITHOUT PREJUDICE TO THE BOARD'S RIGHTS AND CONTENTIONS TO REVISE RENT/COMPENSATION w.e.f. 01/10/2012" Hence the contention raised are incorrect.
(ix).	The Port Trust ought to be conscious of the fact that there are tenants who are occupying properties since 80-100 years and there are complete eco systems and markets thriving on such properties. Rack renting would totally finish and eradicate running eco – systems which is against the public policy. "Housing for All" is a part of the national policy and it is surprising that where on the one hand the Central Government is coming up with schemes like "Pradhan Mantri Awaas Yojana", on the other hand, instrumentalities of the central government like the Board of Trustees for the Port of Mumbai are proposing rates which will lead to mass scale eviction of lakhs of tenants thereby running contrary to the national policy. Tenants are also adding to the exchequer by paying rent from time to time. Further, these tenants are not just directly but also indirectly contributing to the nation in the form of taxes. revenue and employment which is likely to suffer if tenants are put under such enormous stress.	In cases of subletting, assignment etc., by the tenants of the Port Trust ought not to be allowed to profiteer at the cost of the public exchequer and any tenant who has sublet or assigned his premises does not in any event, deserve any sympathy from this Honourable Authority. There is no violation of SC Judgement 2004 by effecting the revision as per SOR w.e.f. 01.10.2017 as per applicability of PGLM 2014-2015 issued by Ministry time to time which obligatory directives under Section 111 of MPT act and is bound by the said directives for implementation. Therefore, contentions raised are incorrect.
(x).	Moreover, please note that in so far as the Schedule of rates from 2012-2017 that is proposed is concerned, the same cannot be enhanced retrospectively as the same is opposed to the constitutional scheme. In recent judgements, the Hon'ble Supreme	Regarding MbPT refixing letting rates retrospectively after 30.09.2012, the matter was referred to respective MbPT advocate dealing in the matter in the Supreme Court for opinion and accordingly, letter dated 15.04.2014 addressed to MoS, GoI

	Court has struck down retrospective taxations. The same ratio is applicable to levy of retrospective rents. The legal opinions obtained by the Port Trust which have been referred to in the proposals are not shared on the website and hence in the interest of transparency, equity and fair play, the Port Trust is requested to put up all the relevant material on the official website of the Port Trust. It is not legally possible for the port trust to enhance rates and levy them retrospectively. The aspects of issuance of valid commercial invoices shall also have to be examined and the liability of MbPT as regards Goods and Service Tax (GST) etc. also has to be worked out. All this is only possible through physical meetings in a participatory manner by inviting representatives of stakeholder groups to sit and negotiate with the authorities of the Port Trust and the Shipping Ministry.	requesting them to forward copy of opinion from Ministry of Legal Affairs. Opinion from PT Advocate and AG (Mr. Mukul Rohatgi) was obtained by MbPT on applicability of Wadia Judgment Rates (SCJ) post 30.09.2012 and MbPT's rights to revise the rentals w.e.f 01.10.2012 onwards. The opinion received from PT Advocate and AG, GoI confirming the Port Trust's rights to revise rentals w.e.f 01.10.2012. Accordingly, then Chairman, directed to prepare SoR rates for Estate Lettings from 01.10.2012 onwards affected by SC Judgment. The letter dated 09.10.2014 was written to MoS, seeking Ministry's direction on revision of SoR on township areas of MbPT (Estate lettings). Meanwhile, vide TR No. 123 of 2014 committee of officers was constituted (Chairman, EM and FA) by MbPT for fixation of rentals w.e.f 01.10.2012 onwards. The Ministry sought further information from MbPT on 08.10.2015 which was forwarded to Ministry on 02.12.2015 and Ministry was once again requested to give directions on fixation of SoR from 01.10.2012 and also approve the cases settled under compromise policy by the Board interms of SC Judgment, 2004. However, neither such approval for renewal of settled cases under compromise formula (61 cases) had been received from Ministry nor any directions received from Ministry till the issuance of general clarification circular No. 01 of 2018, PGLM 2015 which was extended to the township areas of MbPT covering the lettings affected by SC Judgment 2004 i.e. MT, FML, Expired leases and licenses. Accordingly, Board vide TR 122/2021 forwarded SoR proposal approved by Board vide TR 222 of 2015 based on the LAC report dated 29.12.2014 which annexed as part of proposal for revision of SoR for the period 2012-17.
(xi).	In order to decide the further road map, we request the Port Trust to hold meetings so as to workout Compromise Proposals as has been done successfully earlier in the 1994. TAMP is requested to kindly fix up workable rates through participatory process. A win-win situation in the form of compromise proposal by and between the Port trust on the one hand and the Tenants on the other hand is the only way going forward and a second compromise formula can be arrived at taking the Supreme Court's formula of 2004 as a benchmark and guiding force.	There is no provision of compromise proposal in PGLM 2015 issued by MoSP&W, GoI. The validity of rates under S.C. judgement was up to 30.09.2012 and thereof MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoSP&W, GoI. The renewal of lease shall be granted as per the procedure laid down in Para 11, 12 and 13 of PGLM 2015 guidelines.

(xii).	We also observe that in order to avoid GST liability, the Port Trust has been reluctant in raising commercial invoices. Therefore, no interest nor liability can be fastened upon the tenants in the absence of any debit note/ commercial invoice raised by the Bombay Port Trust. Without prejudice to what has been stated above, we would like to submit that If 2012 is taken as a benchmark, the revision in rent from 2012 to 2013 should be reasonable and cannot be arbitrary. The rent suggested in 2013 cannot be exponentially higher than the rent of 2012. Taking ready reckoner calculations leads to preposterous results. In our opinion, the basis should be the Supreme Court compromise proposal and not ready reckoner rates/ ad-hoc market valuations.	The issues raised are already justified in para 4 and 5 above.
xiii).	In the circumstances stated hereinabove, it is requested to kindly upload the relevant material on the website of the Port Trust and work out the Schedule of rates based on the rents paid in 2012 and not based on ready reckoner values and then seek proposals from the Tenants.	The issue is irrelevant and cannot to be acceded too by MbPT as they are contrary to the PGLM 2015
(xiv).	Without prejudice to the above, it is also requested that pending the negotiation and decision making process, no coercive steps be taken based on new proposed rates in the interest of equity, justice and fair play.	So far, MbPT has not resorted to any litigation or coercive action for recovery of dues as per proposed SoR. As proposed by the Board in Para 4(c) of TR 122/2021 three months' time is given for payment of differential arrears as per the final approved SoR and not interest will be levied on the same for the said period. MbPT is duty bound and obligated to follow the due process of law for resorting to eviction action under PPE provision only in respect of major violation of breaches and default in payment of MbPT dues of lease terms. Legal action for recovery of dues as per proposed SoR notified by TAMP can be initiated if there is violation of orders of TAMP. MbPT is revising the charges payable for compensation for wrongful use of the premises even after the expiry of the lease and even though validity of occupation period is over for MT, FML and expired leases even after termination notices issued. The renewal of leases will be strictly in accordance with PGLM issued by MoSP&W, GOI and as per extant policy/rules.
(xv).	We request a physical meeting with the officers of the TAMP, the Shipping Ministry and the Port Trust so as to try to arrive at a win- win situation. For the purpose of records, the Schedule of Rates proposed	TAMP is requested cannot to entertain the demands from the stakeholders as they are contrary to provisions of PGLM, 2015.

(xvi)	for 2012-17 and 2017-22 are not acceptable to us for the reasons stated hereinabove and for other reasons that we shall argue in person or through our counsel, if a personal hearing is provided by TAMP. Needless to say, should the port trust seek to arbitrarily impose the schedule of rates suggested and should such arbitrary and unreasonable SOR be allowed without paying heed to any of the inputs received from tenant groups, leading to horrendously high unreasonable rents, we shall be left with no other option but to seek judicial recourse at the sole risks, costs and consequences of the Port Trust which please note.	Same as above.

3.	**Similar Representations received from Individual Tenants/ Lessees – Group 3.**	**Response of MBPT**
(i).	At the very outset, I/ we state that I/ we are most shocked and surprised that such onerous, retrospective, steep and arbitrary Proposal is being forwarded by MbPT for consideration by TAMP amidst a worldwide and on-going pandemic of COVID-19, which has so heavily impacted the entire world, our country, our people and our economy to such an extent that many have lost their lives, lost their loved ones, and also their livelihood, their homes, leaving many unemployed & depleted of cash to sustain themselves. Pertinently, several businesses (including mine/ ours) have been tremendously affected by the pandemic and they have either shut-down, or are on the verge of shutting down. Instead of being sensitive, sympathetic and considerate in these trying times; proposals have been framed by MbPT (which is an Instrumentality of the State within the meaning of Article 12 of the Constitution of India) seeking to exponentially and retrospectively increase/ hike and attempt to impose the Scale of Rates of rent to such an extent that, if given effect to;- it will be impossible for any commercial enterprise to survive. Even private landlords have, in most cases, shown a lot of benevolence and forbearance towards their tenants/ licensees/ lessees etc. in these trying times. By no stretch of imagination can retrospective fixation/ framing of steep, unlawful and arbitrary rates of rent be justified under present circumstances of the on-going pandemic of Covid-19. It is well settled that an Instrumentality of State such as MbPT has to be fair, just and reasonable	The SoR was due from 01.10.2012 and 30.09.2017 when there was no pandemic. Covid-19 pandemic started from March 2020 and as per present circumstances there has been substantial relaxation given by the Govt. to the trade and general public and most of the premises have been operational. Further (a) any relaxation which the Govt. of India extends under any special circumstances in the case would be applicable to the tenants/lessees, though presently there are no such directions and even in any clarification from MoPS&W, Govt. of India on giving any concession, relaxation, compensation and assistance during pandemic time. In this connection, attention is invited to Delhi High Court Judgement, Ramanad and others V/s. Dr. Girish Soni and others dated 21.05.2020 has held that the period of lockdown on account of Covid-19 does not excuse in payment of rental amounts and no concession in rental charges is admissible. b) As the parties have continued to occupy the premises and MbPT being Public body which continued to provide its services in COVID period and rendered the monthly invoices of compensation and also paid the GST on the invoice for the period there is no question of granting any relief. MbPT's expenditure on infrastructure and also liability towards salary/wages, maintainance etc. have continued even in COVID pandemic period. Since rentals from MbPT landed assets is important part of MbPT revenue which is essential for sustenance of MbPT, no such concessions are admissible on this ground in the proposed SoR w.e.f.

	in all their activities; and all their must be for public purpose and public good, and must not violate Article 14 of the Constitution. In this context, the real question which falls for TAMP's consideration is – what is the real effect of the Covid-19 pandemic on the economy, on the business of MbPT's lessees/ tenants/ occupants, on their ability to absorb the proposed heavy, steep, onerous, unlawful and unreasonable rentals; and whether in such circumstances or even otherwise should MbPT's captioned Proposal be accepted by TAMP? It may also be noted that MbPT permits us to carry out only fish-industry based activity (and no other activity) from our premises, and that the Government of India as well as MbPT shuts down the docks for a period of three (3) months during every monsoon season. During such a period, we are forced to shut down since there is no business. This aspect has been not at all been considered by MbPT under the Proposal under reply.	01.10.2012. The valuer while recommending the Fair Market Value (FMV) for respective zones had considered the present infrastructure and facilities in the area and recommended certain discounts ranging from 10-40 % compared to the transaction rates which are prevailing in the adjoining outside Port Trust areas while recommending the Fair Market Value (FMV). All the relevant facts were examined by Land Allotment Committee (LAC) and LAC had recommended revision of SoR 2017-22 .Based on LAC recommendations Board approved the said revision of SoR rates for respective zones for Monthly, Fifteen Monthly Lease (FML), Expired Leases, licenses and vacant plots (for fresh allotment) falling in the respective RR Zones. In case of Sasson Dock (RR zone 1/6A), the valuer in his valuation report had recommended to consider 80 % of land rate of Ready Reckoner (i.e. 20% reduction on the Ready Reckoner rate) in view of the Sassoon Dock is reserved for Fishing Industries in the Development Plan. LAC had considered the valuers recommendation and recommended only 80% land rate of Ready Reckoner rate and same was approved by Board.
(ii)	(a). At the further outset, it is submitted that the issue of rent revision by MbPT (which finds its roots since the early 1980's) has plagued its lessees/ tenants/ occupants for decades; and the same was finally set to rest and adjudicated upon (after more than 20 years) by the Hon'ble Supreme Court in its said judgement dated 13.01.2004 in the matter of *Jamshed Hormusji Wadia Vs. The Board of Trustees of the Port of Mumbai*, *(2004) 3 SCC 214* (viz. "**Wadia's Case**"); wherein, the Hon'ble Supreme Court has *inter alia* upheld with (downward revision in rent and interest) MbPT's own "Compromise Proposals", further holding that the said "Compromise Proposals" would be applicable to all the lessees of MbPT even if they were not parties to the proceedings. As such, MbPT is therefore obligated under the law declared by the Hon'ble Supreme Court in Wadia's Case (supra) to strictly adhere to the ratios, principles and directions set out therein and settle the cases and grant lease for a period of 30 years w.e.f. 1.04.1994 with annual 4%	Present monthly rental are as per valuation report of 1980's which are no way comparable with present market rate. An average Kirloskar land values of Rs. 1406/- per sqm for FSI 1.33 has increased to Rs. 1,75,718/- per sqm for FSI 1.00 as on 2017, i.e. increase of almost 125 times of the land values of 1980's. Rentals as per Supreme Court Judgement dt. 13.01.2004 as on 01.10.2017 was on an average of Rs. 35/- per sqm per month for FSI 1.00 which will be revised to on an average of Rs. 878 per sqm per month for FSI 1.00 i.e. increase by almost 25 times. Infact, MbPT had fixed rent as 2 times of the applicable letting rates i.e. 10% return on Kirloskar land values with 4% every year from 01.10.1994 onwards in terms of Supreme Court Wadia Judgment. However, the rental returns from 01.10.2017 onwards will be just 6% of the FMV given by valuer and the depreciated cost of the port trust structure based on the age of building and type of construction in MbPT estate areas. Apart from the fact that the Port Trust tenancies have never been covered by the Rent Control Legislation that all the

	increases on rents as set out in the Compromise Proposals even beyond 2012 right upto 31.03.2024. ***What is shocking to say the least is <u>that the said judgement of the Hon'ble Supreme Court in Wadia's Case (supra) (& its ratios, principles and directions) has not even been referred to, or followed by the MbPT in the Proposal under reply</u>.***	entities that have now been exempted under Section 3(1)(b)of the Maharashtra Rent Control Act 1999 would otherwise have been covered by and enjoyed the protection of the Rent Control Legislation then in force ,even if the quondam Rent Act had applied to the Port Trust tenancies . The important factor to be considered is that the tenants of the Port Trust who have been exempted from the Maharashtra Rent Control Act are legislatively mandated, inter alia, not to have any statutory or other limitations or constraints in the fixation of payment of rents . It is further submitted that to continue to insist on levy of letting rates frozen on the basis of land values of 1980 in the year 2006-2007 or such exempted persons despite the fact such persons do not any longer enjoy even the protection of the Rent Act would be extremely unfair to the Port Trust and would be in effect be contrary to the principle laid down by the Supreme Court in the Wadia Judgement. (b) Even though the Maharashtra Rent Control Act (and the old Bombay Rent Act) would not and does not apply to the lettings by the Port Trust, the fact that such entities have lost the protection of the Rent Act and are now legislatively mandated to face the open market in land and rentals ,such revise the letting rates for such categories of tenants.
	(b) Under the said judgement, the Hon'ble Supreme Court whilst examining the question (@ para 13 thereof), viz. *"What is the status of BPT as landlord? Is it free to charge any rent from its lessees as it pleases in view of its having been exempted from the operation of rent control law or is it only to act in a fair and reasonable manner in the matter of dealing with its lessees and charging rent from them? "* - has in express terms, and whilst upholding a catena of earlier judgments; categorically held that the position of law is well settled, viz. that State and its authorities including instrumentalities of State (such as MbPT) have to be *just, fair and reasonable* in all their activities, including those in the field of contract. Even whilst playing the role of landlord and tenant, the State and its authorities continue to remain so and cannot be heard or even seen causing displeasure or discomfort to Article 14 of the Constitution of India. It may be noted that the Hon Supreme Court, has further and in express terms at para 18 thereof, held that:- "*18……The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent, so as to compensate themselves against the loss cost by inflationary tendencies. They can - and rather must – also save themselves from negative balances caused by the cost of maintenance, payment of taxes and cost of administration…………However, the State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical and unreasonable evictions or bargains."* The aforestated ratio in the Hon'ble Supreme Courts' Judgment in Wadia's case circumscribes the principles for fixation of rent in respect of MbPT properties- which has not only clearly been lost sight of, but has clearly been ignored	

	and transgressed.	
(iii)	It is pertinent that MbPT themselves by their own T. R. No. 31 dated 10th March 2004 (**"T.R. 31 of 2004"**) had *inter alia* resolved to implement the aforesaid judgment of the Hon'ble Supreme Court in Wadia's case (supra); and had expressly accepted therein that the rates fixed under their own Compromise Proposals as upheld in Wadia's case; would be applicable to their landed estates from 1.04.1994 **upto 31st March 2024,** with 4% annual increases *"thereby extending the application of the proposals to 2024"*. By not settling cases in terms thereof, and by seeking approval of the above referred Proposal under reply, it seems that MbPT is attempting to circumvent the directions and ratios of the Hon'ble Supreme Court in Wadia's Case (supra), and is also going back on its promises for settlement of matters under its own said "Compromise Proposals". These were the very proposals propounded by MbPT before the Hon'ble Bombay High Court, and thereafter, before the Hon'ble Supreme Court, under several sworn Affidavits of its own officers.	Jamshedji Wadia judgement is the Hon'ble Supreme Court Judgement dated 13.01.2004 by which Hon'ble Supreme Court upheld the Board compromise policy rates which were valid for 20 years w.e.f. 01.10.1992 to 30.09.2012. Though the SC concluded the dispute with regard to rates only for the period upto 31.03.2000, the Board decided to continue the said rate for the period upto 30.09.2012. Further the said facts have been confirmed by Attorney General's of India (AG) Shri Mukul Rohatgi by opinion dated 29.07.2016 wherein AG stated that MbPT is legally empowered to fix revised rates w.e.f. 01.10.2012 and also as per guidelines issued by MoPS&W, GoI, and rates are to be approved by TAMP. The TAMP is authorised to approve the SoR retrospectively w.e.f. 01.10.2012, subject to withdrawal of Writ Petition 1153 of 2000 filed by MbPT against TAMP, which is withdrawn on 08.08.2019. These facts were rightly pointed out in para 3 of proposal for SoR 2012-17. Thus there is no violation of S. C. Judgement dt. 13.01.2004 and MbPT is legally within its rights and empowered to revise the rates w.e.f. 01.10.2012 onwards. TR 31/2004 is only direction for implementation of the SC judgement and the rates where valid only till 30.09.2012. Therefore TR 31/2004 and TR 127/2006 are not applicable There is no provision of compromise proposal in PGLM 2015 issued by MoPS&W, GoI. The validity of rates under S.C. judgement was upto 30.09.2012 and thereafter MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoPS&W, GoI. TAMP is given power for framing the rate/ rectify the rates. As per PGLM's guidelines of 2014, MbPT has adopted highest value among the 5 factors.
(iv).	Further, ***it is also shocking that even MBPT's own said T.R. No. 31 of 2004 has not been mentioned by MbPT under the captioned Proposal.***	
(v).	TAMP may kindly examine (in letter and spirit);- the content, purport and the true effect of the said judgement of the Hon'ble Supreme Court in Wadia's case (supra), MbPT's said T.R. 31 of 2004, as also all of the sworn Affidavits of the MbPT's officers before the Hon'ble Supreme Court and the Hon'ble Bombay High Court – filed in the matter of its General Rent Revision litigation.	
(vi).	Pertinently, under the MbPT's own T. R. 105 of 2018; it has been recorded that the Shipping Ministry vide its letter dated 18.02.2014 (bearing reference No. PD-11020/34/2013.MbPT), had:- *"conveyed the opinion of the Ministry of Legal Affairs that the order of the Hon'ble Supreme Court dated 13.01.2004 should be implemented in letter and spirit and also clarified that the matter being an important public issue, any interpretational issue arising out of the Apex Court judgement the Administrative Department should seek clarification from Supreme Court to avoid any legal complications";*	The MoS Letter dated 18.02.2014 bearing no. PD/11020/34/2013 MbPT, directing MbPT to seek clarification in respect of interpretational issues such as refixing letting rates after 30.09.2012, the matter was referred to respective MbPT advocate dealing in the matter in the Supreme Court for opinion and accordingly, letter dated 15.04.2014 addressed to MoS, GoI requesting them to forward copy of opinion from Ministry of Legal Affairs. Opinion from PT Advocate and AG (Mr. Mukul Rohatgi) was obtained by MbPT on applicability of Wadia Judgment Rates (SCJ) post 30.09.2012 and MbPT's rights to revise the

	and that *"The Shipping Ministry has further directed that Mumbai Port Trust to initiate necessary steps for immediate implementation of the order of the Hon'ble Supreme Court dated 13.01.2004 without any further delay.";* and further that *"the Port should also seek clarification from the Hon'ble Supreme Court in respect of any interpretational issues such as re-fixing the letting rates after 30.09.2012 arising out of the said judgement"* It is submitted that despite the clear direction from the Ministry in the year 2014; MbPT appears not to have taken heed of the aforesaid directions, but has (on the contrary) now sought TAMP's approval to its Proposal under reply which are not only in the teeth of the Hon'ble Supreme Court's judgement in Wadia's case, and also in teeth of the clear directions of the Ministry of Shipping/ Ministry of Legal Affairs;- but also are patently unlawful, illegal, retrospective, steep, exorbitant, arbitrary and capricious.	rentals w.e.f 01.10.2012 onwards. The opinion received from PT Advocate and AG, GoI confirming the Port Trust's rights to revise rentals w.e.f 01.10.2012. Accordingly, then Chairman, directed to prepare SoR rates for Estate Lettings from 01.10.2012 onwards affected by SC Judgment. The letter dated 09.10.2014 was written to MoS, seeking Ministry's direction on revision of SoR on township areas of MbPT (Estate lettings). Meanwhile, vide TR No. 123 of 2014 committee of officers was constituted (Chairman, EM and FA) by MbPT for fixation of rentals w.e.f 01.10.2012 onwards. The Ministry sought further information from MbPT on 08.10.2015 which was forwarded to Ministry on 02.12.2015 and Ministry was once again requested to give directions on fixation of SoR from 01.10.2012 and also approve the cases settled under compromise policy by the Board interms of SC Judgment, 2004. However, neither such approval for renewal of settled cases under compromise formula (61 cases) had been received from Ministry nor any directions received from Ministry till the issuance of general clarification circular No. 01 of 2018, PGLM 2015 which was extended to the township areas of MbPT covering the lettings affected by SC Judgment 2004 i.e. MT, FML, Expired leases and licenses. Accordingly, Board vide TR 122/2021 forwarded SoR proposal approved by Board vide TR 222 of 2015 based on the LAC report dated 29.12.2014 which annexed as part of proposal for revision of SoR for the period 2012-17.
(vii).	On a thorough reading of the said Proposal under reply, it is apparent that MbPT has overlooked the very directions, ratios, dictates and guiding principles set out in the said judgment Wadia's Case; and has completely summersaulted on its promises made under the said "Compromise Proposals" as were upheld with modifications by the Hon'ble Supreme Court in Wadia's Case, and as admitted (and approved for implementation) in its own T.R. 31 of 2004.	
(viii).	What is truly unfair and absurd is that MbPT having gone before the Hon'ble Supreme Court and Hon'ble Bombay High Court with sworn affidavits of their Officer viz. Shri A.D. Vasaigara dated 9th July 1998 and 29th June 2000, seeking approval of the Compromise Proposals to bring an end to decades of litigation; is itself acting contrary to its obligations and promises thereunder, & is thereby seeking to take advantage of its own wrong. Had the MbPT settled the matters as aforesaid there would be no necessity of seeking fixation / framing of SOR till 2024**.**	
(ix).	Moreover, and considering that the said "Compromise Proposals" are applicable till 2024 (as stated hereinabove), and in any event; the subsequent guidelines issued by the Ministry cannot override and/ or	

	supersede and/ or circumvent the ratios, dictates and directions of the Hon'ble Supreme Court in Wadia's Case, and in particular - qua the MbPT's own "Compromise Proposals".	
(x).	The fact that the return of 6% is based on the PGLM 2015 has been accordingly applied by the MbPT's Board does not bless it with any legality so far as the law declared by the Hon'ble Supreme Court and the Hon'ble High Courts and particularly by the Judgment of the Hon'ble Supreme Court in Wadia's case is concerned – which law will prevail over any such policy/ guidelines. The SOR's therefore proposed by the MbPT are neither fair nor reasonable nor permissible in law. The Ready Reckoner rates published by the State Govt. cannot be accepted as a parameter or criteria for fixation of the lease rents as has been proposed by MbPT; and that too certainly not with retrospective effect.	
(xi).	It may be appreciated that on account of the failure of MbPT to abide by the said judgement in Wadia's Case and by its own promises under its own said "Compromise Proposals"; no less than 41 Writ Petitions (Writ Petition No. 2085 of 2009 being the lead Petition) have been filed before the Hon'ble Bombay High Court challenging:- MbPT's failure to settle matters as directed by the Hon'ble Supreme Court in Wadia's Case, and MbPT's T.R. 127 dated 22.08.2006 ("T.R. 127 of 2006") attempting to wrongfully modify the terms of the said "Compromise Proposals", and thereby seeking to levy higher rates of rent (on sitting tenants/ lessees), based on hypothetical market values of lands, viz. the very action that the Hon'ble Supreme Court, and the Courts below prohibited MbPT from doing.	Pending Writ Petitions challenging TR 127/2006 are not relevant to the proposed SoR revision. There is no stay from any court for the recovery of rent/ compensation from any court based on SoR rates under PGLM 2015 by MoS, GoI.
(xii).	In the abovementioned Writ Petitions, the Hon'ble Bombay High Court has been pleased to issue Notice under Order 1 Rule 8 of the Code of Civil Procedure, 1908, making the outcome of the aforesaid 41 Writ Petitions applicable to all lessees/ tenants/ occupants of MbPT, whether they were/ are before the Hon'ble Bombay High Court or not. Further, these Petitions, including the Writ Petitions filed by several obstructionists, and by lessees/ tenants not on record with the MbPT; have all been admitted by the Hon'ble High Court, and are to come up for final hearing. For this	The contentions are irrational. Pending Writ Petitions are not relevant to SoR revision. The revision of rates are strictly in accordance with the provision of PGLM 2014-2015.

	and other several reasons set out herein;- the objections (though invited only from registered lessees/ tenants), would also impact obstructionists and occupants of MbPT Lands, whose cases ought to have already been settled by MbPT under their own said "Compromise Proposals" (as upheld by the Hon'ble Supreme Court). Hence, they are also entitled to submit their comments/ objections on the said Proposal/s and be heard by TAMP. It would be highly unfair to call for objections only from registered lessees. MbPT cannot take advantage of its own wrongs.	
(xiii).	It may be further appreciated that MbPT had filed its **Cross-Objections** before the Hon'ble Supreme Court in Civil Appeal No. 5559 of 2001 (viz. the aforesaid Wadia's Case) and the other connected Appeals before it. In the said Cross-Objections, MbPT had *(at the very first ground (A) thereof)* sought to contend that *"there is no legal bar on the Port Trust to charging rent which may be necessary even equal to market rent"*; and had also sought to resile from the said "Compromise Proposals". The Hon'ble Supreme Court in its said judgement in Wadia's Case not only dismissed MbPT's said cross-objections as being *"not maintainable"*, but also expressly held them to be *"devoid of merit"*. Thus, as is well and clearly cemented by the Hon'ble Supreme Court;- there is no question of any increase in rents by MbPT (much less retrospectively) w.e.f. 2012 and onwards based on any hypothetical and exploitative increases in market values of land, and or otherwise till 31.03.2024.	The compromise formula modified under Wadia Judgement/Supreme Court Order dated 13.11.2004, was valid for the period of 20 years, i.e. from 1992 to 30.09.2012. MbPT had sought advice of P.T. advocate, Supreme Court regarding applicability / validity of S.C. judgement before LAC report dated 29.12.2014 and before TR 222 of 2015 were passed, which has categorically confirmed that MbPT is not bound to levy lease rentals beyond 30.09.2012 at the SoR rates applied by the Supreme Court (Wadia Judgement). The said advice was based on Addl. Solicitor General of India, Shri Trivedi opinion dated 07.02.2005 which clearly stated that compromise proposal was for period ending 2012 and therefore fresh revision is expected to be fair and reasonable, thereafter. MbPT had obtained the opinion of learned Attorney General of India Shri Mukul Rohatgi on 29.07.2016 confirmed that SC judgment Rate was valid only upto 30.09.2012 and opined that the Board is empowered to re-fix the rentals / compensation rates w.e.f. 01.10.2012. MbPT is governed by policy guidelines issued by Ministry from time to time and MbPT has honoured the Supreme Court judgement till its validity, i.e. 30.09.2012.Also as per guidelines issued by MoSP&W, GoI, and rates approved by TAMP. The TAMP is authorised to approve the SoR retrospectively w.e.f. 01.10.2012 onwards, subject to withdrawal of Writ Petition 1153 of 2000 filed by MbPT against TAMP, which is withdrawn on 08.08.2019. These facts were rightly pointed out in para 3 of proposal for SoR 2012-17 simultaneously submitted to TAMP. Thus, there is no violation of S. C. Judgement dt. 13.01.2004 and MbPT is legally within its rights and empower to revise the rates w.e.f. 01.10.2012 onwards. There is no provision of compromise proposal in PGLM 2015

		issued by MoSP&W, GoI. The validity of rates under S.C. judgement was only upto 30.09.2012 and thereof MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoSP&W, GoI. PGLM 2015 guidelines are very clear in fixation of SoR/Revision of SoR as per Para 13 and MbPT is following the same. Hence the contentions raised are irrelevant.Supreme court judgement is not an indefinite licence to lessees and tenants to go on committing the major breaches of lease terms and occupying the premises even after the expiry indefinitely and multiple transfers and still want to enjoy meagre/ concessional lease rentals based on 1980 land values and regularisation of breaches as per compromise rates of 1982 and restrict Port Trust to major revenue return on its let out land. Therefore, contentions raised are incorrect.
(xiv).	In fact, at least in our particular case (as is in most of the cases), there is no necessity for framing of any Proposal/s whatsoever for any SOR right up to 31st March 2024. This is because as per MbPT's own understanding of the Hon'ble Supreme Court's judgement in Wadia's case and the rents chargeable (right upto 2024) under their own T.R. 31 of 2004; *had the MbPT settled cases* and granted fresh lease of 30 years; then the rents chargeable by MbPT in terms of the said "Compromise Proposals" would continue right up to 2024 with 4% increases over the previous year. MbPT's failure to do so is a manifest wrong, which does not entitle them to take any advantage thereof, much less by framing proposal/s for fresh SOR retrospectively w.e.f. 2012 and beyond. In fact, as already stated hereinabove, this failure to abide by the directions of the Hon'ble Supreme Court to settle the cases has been challenged in the aforestated batch of 41 Writ Petitions. Thus, in light of the aforesaid, it is reiterated that **MbPT cannot and ought not be permitted to propose any such new SORs and that too with retrospective application w.e.f. 2012.**	Already stated in para 14 above.
(xv).	In light of the aforesaid, these Proposal under reply, therefore, *warrant* ***immediate and outright rejection*** *by TAMP*.	The contention are denied and the SoR as proposed needs to be approved.
(xvi).	Without prejudice to our aforesaid contentions/ objections; we further wish to point out that under Section 49 of the Major Port Trust Act, 1963 ("**MPT Act**"), it is the	The contentions are incorrect. The letting rates under the Compromise Proposal had been fixed taking into account the market values of the land rates prevailing in the

	TAMP who has the power to, from time to time, by notification in the Official Gazette '*frame*' SORs, and a statement of conditions for any property belonging to, or in the possession or occupation of the Board or any place within the limits of the Port or the Port approaches. From a bare perusal of the Proposal under reply and its enclosures thereto, it appears that it is the LAC who has "formulated" the Proposal in terms of PGLM 2015 and has forwarded the same for MbPT's Board's "approval", who in turn have forwarded the same to TAMP for its "approval for fixation of SORs". Thus, in the present case, the statutory obligation of "framing" of SOR by TAMP, under the MPT Act, 1963, - appears not only to be hollow and illusory; but a hurried and unlawful attempt to seek approval of TAMP under the MPT Act, 1963; knowing fully well that :- The MPA Act, 2021 has been passed by both Houses of Parliament, assented to by the President, and also Gazetted; The MPA Act, 2021 prohibits (in clear terms) any retrospective fixation of rents / SOR's, TAMP will cease to exist once the MPA Act, 2021 will come to effect. MbPT had itself (in its WP 1153 of 2000 filed before the Hon Bombay High Court);- challenged the Order issued by TAMP dated 15th March 2000 upholding its Jurisdiction to frame Scale of Rates; wherein it had decided that:- "4. In the result, and for the reason given above, based on a collective application of mind, this authority hereby decides as follows:- For purposes of framing Scale of Rates and Statement of Conditions, this Authority has jurisdiction over all the properties and assets, wherever located, of a Major Port Trust. Under section 49(1) of the Major Port Trust Act, this Authority will frame Scale of Rates and Statement of Conditions for use of the following categories of properties :- Property belonging to the Board. Property in possession of the Board. Property in occupation of the Board. Property in any place within the limits of the ort area or Port Approaches. For purpose of framing Scale of Rates and Statement of Conditions, all lease cases (irrespective of any time limitation) relating	year 1980. Apart from the fact that the Port Trust tenancies have never been covered by the Rent Control Legislation that all the entities that have now been exempted under Section 3(1)(b) of the Maharashtra Rent Control Act 1999 would otherwise have been covered by and enjoyed the protection of the Rent Control Legislation then in force ,even if the quondam Rent Act had applied to the Port Trust tenancies. The important factor to be considered is that the tenants of the Port Trust who have been exempted from the Maharashtra Rent Control Act are legislatively mandated, inter alia, not to have any statutory or other limitations or constraints in the fixation of payment of rents. It is further submitted that to continue to insist on levy of letting rates frozen on the basis of land values of 1980 in the year 2006-2007 or such exempted persons despite the fact such persons do not any longer enjoy even the protection of the Rent Act would be extremely unfair to the Port Trust and would be in effect be contrary to the principle laid down by the Supreme Court in the Wadia Judgement. (b) Even though the Maharashtra Rent Control Act (and the old Bombay Rent Act) would not and does not apply to the lettings by the Port Trust, the fact that such entities have lost the protection of the Rent Act and are now legislatively mandated to face the open market in land and rentals ,such revise the letting rates for such categories of tenants.

	to all the properties of the Major Port Trust shall be seen to fall within the jurisdiction of this Authority. 5. This order shall come into force with immediate effect after notification in the Gazette of India." (Hence the very authority and jurisdiction of TAMP to frame scale of rates in respect of properties of the MbPT (wherever located) had been challenged by MbPT themselves. This Order impugned under the said W.P. came to be stayed by the Hon Bombay High Court by its Order dated 2nd May 2000, and the stay continued until recently and for reasons which are now apparent; the MbPT thought it now fit to withdraw the said W.P. – which request for withdrawal came to be allowed by the Hon Bombay High Court by its Order dated 8th August 2019.) The aforesaid decision to withdraw the said challenge and their WP 1153 of 2000, is also indicative of MbPT's undue haste & convenient positioning - in proceeding unlawfully.	
(xvii).	(a). Assuming, whilst emphatically denying, that MbPT (through LAC) may be entitled to, or frame of any fresh SOR *other than* in consonance with the directions and within the principles and ratio of the judgment of the Hon'ble Supreme Court in Wadia's Case, and other than under the umbrella of the "Compromise Proposals" as upheld with downward modifications by the Hon'ble Supreme Court;- we are strongly opposed to the same, and place on record our further strong objections in respect to MbPT's Proposal/s under reply, as follows:- 1. Any attempt, as contained in the Proposal/s under reply to frame such steep and exorbitant SORs from 2012 (retrospectively), and based on hypothetical market values of lands; would not only be unlawful, but violative of Article 14 of the Constitution of India.	There is no provision of compromise proposal in PGLM 2015 issued by MoSP&W, GoI.
	(b). There is no provision in the MPT Act, 1963 or the Rules thereunder, or under any delegated/ subordinate legislation thereunder; enabling the framing/ fixation of the SORs retrospectivity.	The MPA Act 2021 is yet to be notified for its implementation and hence not relevant to present proposal
(xviii).	A perusal of MbPT's T.R. 122 of 2021 would reveal that the MbPT is well aware that TAMP would cease to function after	

	coming into force/effect of the Major Ports Authorities Act, 2021 - on the appointed date. It is public knowledge that the MPA Act 2021 has received Presidential assent on 17.02.2021 and has been published, for general information in the official gazette on 18.02.2021. Thus, it is a matter of time before its effective date would be notified. There appears to be an undue haste even in seeking TAMP's approval of MbPT's proposals when Parliament has (under the said MPA Act, 2021); expressly inter alia provided (under the proviso to Sec. 27 thereof) that fixation and implementation of scale of rates, fees shall be in consonance with the norms as may be prescribed, and that the same shall not be with retrospective effect, and also shall not be inconsistent with the provisions of any other law for the time being in force. The legislative intent of the Parliament is thus manifest and clear in this regard; and clearly not only frowns upon but also bars any retrospective fixation and also bars any fixation contrary to Statute or settled law. In the light of the aforestated, it may be appreciated that in the Land Allocation Committee Report dated 18.08.2021 it is stated (at para 4 thereof) that :- "4. However, since till date new Township Policy from Ministry of Shipping, Govt. of India and the matter of seeking approval of TAMP fo the SoR 2012-2017 and 2017-22 has remained pending and the TAMP is likely to cease to function after the notification of Major Port Authorities Act, 2021 comes into effect and it is necessary to obtain approval of TAMP to the SoR for the period 2012-2017 and 2017-22 for one sq. mtr. of land for each RR zone with FSI 1.00 as a base rate " From the above statement it is abundantly clear that the very reasoning and basis (for MbPT hurriedly and on legally unsustainable grounds); seeking approval of TAMP to the SOR for the said 2 periods - are fallacious and misconceived viz. that : a) New Township Policy is not received, and b) Matter of seeking approval of TAMP to the SOR for the two periods has remained pending, and c) TAMP is likely to cease to function after coming into effect of MPA Act, 2021. Merely because Township Policy is not received is no reason at all for the proposed action. The fact that matter of	

	seeking approval has remained pending is also no reason at all much less to penalise the tenants / lessees for MbPT's own wrongs. And the fact that TAMP is likely to cease to function is also no ground to make a hurried and unlawful decision in the matter, particularly when the MbPT had itself challenged the very jurisdiction and authority of TAMP to fix scale of rates by its WP 1153 0f 2000 before the Hon Bombay High Court in the aforesaid terms.	
(xix).	A Division Bench of the Hon'ble Bombay High Court in *Ratti Pallonji Kapadia v. State of Maharashtra & Ors.,* (1992 Mh. L.J. 1356) – (whilst examining the revision of lease Rent in cases of renewals of leases of Govt. Land) has held that: *"22. What is worse, although the leases have expired on 1-1-1981, they were not renewed till 1986 or later and the increased rent is being charged retrospectively from 1-1-1981. This in our view is also unfair."*	Mumbai Port Trust is facing great difficulty to meet overall expenditures of the organisation because of the non-paying attitude of rent / compensation of lessees and tenants by taking the undue advantage of the various legal means and making Port Trust to invest huge amounts of money in the litigation. Because of this attitude the Port Trust is in huge loss. There is no question of any profit in the scenario as contended in this para. There are about 5000 employees and 35000 pensioners to whom port trust has to pay every month, thereby MbPT has to carry responsibilities of about 40,000 families. Port Trust is providing Free-medical facility to all the family members of these families. Even Port Trust is giving concession to the Government Organisations like BEST, MGCM, Defence, Police etc. and most of the land of the MbPT is occupied by them.
(xx).	The said judgment in Ratti Pallonji's Case has been cited with approval by the Hon'ble Supreme Court in the said Wadia's case (supra). The Hon'ble Supreme Court at para 17 therein specifically holds in respect thereof that: *"A Division Bench of the Bombay High Court presided over by Mrs. Sujata Manohar J. (as her Lordship then was) held in Ratti Pallonji Kapadia v. State of Maharashtra that the exemption from the provisions of the rent control casts an obligation on the State and its instrumentalities and authorities to comply with public policy of ensuring a fair return of investments without charging exorbitant rates based on the prevalent market prices of land…".*	
(xxi).	Further, it may be appreciated that the rationale behind enacting the Taxation Laws Amendment Act, 2021 (which has been Gazetted on 13th August 2021 after receiving Presidential assent on the same day), was also that retrospective effect given to amendments militate against the principles of tax certainty and damage India's reputation as an attractive destination, and that the Country today stands at a juncture when quick recovery of the Country after the COVID-19 pandemic is the need of the hour to promote faster economic growth and employment. Trite to say that the same principle applies vis-à-vis the said Proposal/s under reply which are also retrospective, and would have the very	The SoR was due from 01.10.2012 and 30.09.2017 when there was no pandemic. Covid-19 pandemic started from March 2020 and as per present circumstances there has been substantial relaxation given by the Govt. to the trade and general public and most of the premises have been operational. Further (a) any relaxation which the Govt. of India extends under any special circumstances in the case would be applicable to the tenants/lessees, though presently there are no such directions and even in any clarification from MoPS&W, Govt. of India on giving any concession, relaxation, compensation and assistance during pandemic time. In this connection, attention is invited to Delhi High Court

	same effect that Parliament is now consistent in not only frowning upon, but even legislatively barring any such effects.	Judgement, Ramanad and others V/s. Dr. Girish Soni and others dated 21.05.2020 has held that the period of lockdown on account of Covid-19 does not excuse in payment of rental amounts and no concession in rental charges is admissible. b) As the parties have continued to occupy the premises and MbPT being Public body which continued to provide its services in COVID period and rendered the monthly invoices of compensation and also paid the GST on the invoice for the period there is no question of granting any relief. MbPT's expenditure on infrastructure and also liability towards salary/wages, maintenance etc. have continued even in COVID pandemic period. Since rentals from MbPT landed assets is important part of MbPT revenue which is essential for sustenance of MbPT, no such concessions are admissible on this ground in the proposed SoR w.e.f. 01.10.2012.
(xxii).	Considering that it is well settled that increase/ fixation of rents based on hypothetical market values of land, and that too retrospectively from 2012 - is itself unlawful, unsustainable in law and violative of Art. 14 of the Constitution of India; there is no question of TAMP approving the scale of rents under MbPT's Proposal under reply. It may be appreciated by TAMP that the tenants/ lessees/ occupants have neither been permitted to, nor were in a position to enjoy all the incidents of the lease. All the leases which had expired, were subject to onerous conditions thereby substantially diminishing their earning potential. Even after the express directions of the Hon'ble Supreme Court judgment in Wadia's case MbPT failed to renew the lease/s. Returns on MbPT lands can thus be nowhere near, nor be compared with other freehold / leasehold occupations enjoying all the incidents of ownership / leasehold rights, as well as security of tenure.	
(xxiii).	The said Proposal under Reply does not even consider the State Governments / Collectors / MCGM's Lease renewal policy/ies for expired leases which fixes much much lower rates as compared to the rates sought to be approved under the Proposal under reply - which are not only unlawful, but artbitrary, capricious, discriminatory and utterly unaffordable.	The contents are incorrect and unacceptable as already stated in earlier para 4, MbPT is bound by PGLM 2015 issued by MoPS&W, GoI which have been scrupulously followed by MbPT while computing SoR. The comparison with the practice followed by Collector of Mumbai, State Govt. and any other PSUs is irrelevant and not applicable in this present case.
(xxiv).	10. We do not therefore accept the principles/s, the basis, the computation of SOR etc, and /or the valuation reports either considered, justified, or recommended by the LAC for approval by TAMP - as being unsustainable in law.	The contentions are denied and the SoR as proposed needs to be approved.
(xxv).	5. In the light of our aforestated objections/ comments, which may be kindly appreciated by TAMP in their true light, it is humbly requested that MbPT's Proposal No.1 under reply be outright rejected by TAMP; as being unlawful, arbitrary, capricious, exorbitant, unaffordable, ultra vires and unconstitutional. 6. I/We reserve our right to alter, amend, add, modify and/or delete any and all of our reasons, comments and/or objections. 7. I/We also crave leave for a personal hearing in the matter before any final decision is taken in respect of the	

	Proposal under reply. 8. Nothing contained in the Proposal under reply (including the documents annexed thereto and/ or referred to therein, and/ or uploaded on the MbPT Website in connection thereto, and/or their content thereof), - shall be deemed to have been admitted by us or accepted as applicable in our case - for want of specific traverse. 9. Needless to submit that, if you do proceed to impose the above schedule of revised rates as proposed by MbPT, I/we shall be constrained to take legal recourse as may be advised in law which shall be entirely at your cost and consequence - which may please be noted.	
4	**Specific comments from Shri Kamal Kawad.**	
(i).	I am in exclusive lawful use, occupation and possession of the commercial premises, situated on the Plot/R.R. No.32 & 32A, Street No.121-14, area 98.01/ sq. már, Near Standard Building, Customer Code:31202224, Unit No. 12. Sassoon Dock Estate, Colaba, Mumbai 400 005, much prior to 1990 and continued uninterruptedly in use, occupation and possession of your then lessee Mr. Alisaheb A. Thakur, and paying lease rent of the said promises to the Estate Dept. of MbpT since then till date.	The comment is third party and unauthorised occupant in the premises. The 15-monthly lease/tenancy of Plot/R.R. No.32 & 32A, Sassoon Dock Estate is in the name of HEIRS & LEGAL REP.OF LATE SHRI ALISHAHEB A.THAKUR. No rent bills are issued only monthly compensation bills in the name of HEIRS & LEGAL REP.OF LATE SHRI ALISHAHEB A.THAKUR are raised for wrongful use & occupation of the premises.
(ii).	I record my sincere objection for any kind of increase and/or Revision of Schedule of Rates for Ready Reckoner Zones for the premises/ plot/land, let out by the MbpT, in form of lease rent monthly rent, as proposed or requested by the Tariff Authority of Major Ports (TAMP) constituted under the Major Port Trust Act. 1963, for the period as mentioned in subject notice dated 06.10.2021.	
(iii).	I say & submit that the Ready Reckoner Rates of the current market cannot be made the parameter to be charged to the occupants/residents/tenants of the BPT lands/premises. The Hon'ble Supreme Court of India had already passed judgment in the case of Jamshed H. Wadia V/s. The Board of Trustee of the Port of Bombay (2004) (3) SCC 214 and have suggested 4% increment of the lease rent/rent in a year as per the Compromise Proposal.	(a) Jamshedji Wadia judgement is the Hon'ble Supreme Court Judgement dated 13.01.2004 by which Hon'ble Supreme Court upheld the Board compromise policy rates which were valid for 20 years w.e.f. 01.10.1992 to 30.09.2012. Though the SC concluded the dispute with regard to rates only for the period upto 31.03.2000, the Board decided to continue the said rate for the period upto 30.09.2012. Further the said facts have been confirmed by Attorney General's of India (AG) Shri Mukul Rohatgi by opinion dated 29.07.2016 wherein AG stated that MbPT is legally empowered to fix revised rates w.e.f. 01.10.2012 and also as per guidelines issued by MoPS&W, GoI, and
(iv)	I submits that the subject Plot/R.R. No.32 & 32-A, Unit No. 12, Sassoon Dock Estate is belongs to MbpT (hereinafter referred to as the said premises") and in the year May, 1974, The Board of Trustee of the Port of	

	Bombay, has granted 15 months lease to one Mr. Alisaheb Abubaker Thakur, as their lessee.	rates are to be approved by TAMP. The TAMP is authorised to approve the SoR retrospectively w.e.f. 01.10.2012, subject to withdrawal of Writ Petition 1153 of 2000 filed by MbPT against TAMP, which is withdrawn on 08.08.2019. These facts were rightly pointed out in para 3 of proposal for SoR 2012-17. Thus there is no violation of S. C. Judgement dt. 13.01.2004 and MbPT is legally within its rights and empowered to revise the rates w.e.f. 01.10.2012 onwards. There is no provision of compromise proposal in PGLM 2015 issued by MoPS&W, GoI. The validity of rates under S.C. judgement was upto 30.09.2012 and therafterf MbPT is bound to follow the guidelines as per PGLM, 2015 issued by MoPS&W, GoI. TAMP is given power for framing the rate/ rectify the rates. As per PGLM's guidelines of 2014, MbPT has adopted highest value among the 5 factors.
(v)	I say that, after the grant of said lease, Mr. A. A. Thakur have constructed the super structure on the said plouRR No. 32 & 32A. Since, 1990 I am in exclusively use, occupation and possession of the said premises and carrying on business of fresh fish supply and fishing accessories and equipments under name and style of M/s. Dilip Trading and Suppliers. I am paying the lease rent as per the order dated 13.01.2004 passed by the Hon'ble Supreme Court of India. I had paid the lease rent of the said premises to the Estate Dept. of MbpT since then till date. I am paying property tax to MCGM. My brother Mr. Sakharam Baban Tanpure and his son Mr. Dyaneshwar Sakharam Tanpure were working with me. My brother Mr. Sakharam Baban Tanpure died on 28.12.2008.	
(vi)	I say that, 20 September, 2017, the MbpT has filed an eviction proceeding against me under the PPE Act and the same is pending for hearing and final disposal before the Ld. Estate Officer. I say that, I have paid all the lease rent/increased lease rent till date and continuously depositing the same with the Estate Dept as and when demanded. I have paid till date the property tax of the said plot to the MCGM.	Eviction proceedings under PPE Act are filed for breaches of tenancy terms and recovery of PT arrears of compensation /damages/mesne profit.
(vii)	I say that, the BPT is well aware and have regularized the actual occupancy on my name by accepting the transfer fees. I am therefore submits that, I am lawful tenants/occupants of the said premises and are protected by the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and/or by the Maharashtra Rent Control Act, 1999.	Maharashtra Rent Control Act does not apply to the lettings by the Port Trust.
(viii)	I say that, the BPT is a Public Authority cannot behave like a private landlord and cannot impose or increase such high rates and make profit out of it. Therefore, such imposition of rents based on market value and ready reckoner rates is not feasible of the solution to the current issue.	MbPT is bound by PGLM 2015 issued by MoPS&W,GoI and accordingly SoR proposal is submitted to TAMP in terms of para 13 of PGLM 2015.
(ix)	1 say that, it would be appreciated that the BPT shall consider the Compromise Formula as per the verdict of the Hon'ble Supreme Court of India or as per the increments of collectors land/lease rent.	1. MbPT is bound by PGLM 2015 issued by MoPS&W,GoI and accordingly SoR 2017-2022 as per para 13 is computed. 2. Comparison with practices followed by PSU, Collector of Mumbai are irrelevant. As MbPT is under MoPS&W, GoI and not under state govt and therefore state govt policies and BMC policies are not applicable to

		MbPT.
(x)	Limitation: I say and submit that the aforesaid proposal is barred by law and the same is beyond limitation	Bills are sent along with footnote (THIS BILL IS PROVISIONAL AND WITHOUT PREJUDICE TO BOARDS RIGHTS AND CONTENTION TO REVISE THE RENT/COMPENSION W.E.F 01.10.2012). Circular No.EM/ASG/F-361/5873 dated 28.12.2012 vide which it was informed to all the lessees, tenants and occupants that revision of compensation / rent in respect of all the expired leases, monthly tenancies and fifteen monthly tenancies and licences / tenancies excepting subsisting long term leases of Port Trust premises is due from 01.10.2012 onwards.Vide clarification no 1 of 2018 dated 14.06.2018 issued under sec 111 of MoS, GoI extended the PGLM 2015 guidelines to the Township area. Matter was taken up with Ministry for withdrawal of notification dtd 15.03.2000. MoS,GoI vide their no secy(s)/visit-Mumbai/land management/2018(333915) letter dated 15.05.2019 directed TAMP to fix the SoR for Mumbai port Trust land w.e.f. 01.10.2012 onwards. Accordingly TAMP vide Their letter dated 15.07.2019 issued a clarification that in view of PGLM 2015 guideline the TAMP notification 28.03.2000 has become infructuous so far as MbPT is concerned and it is not applicable for MbPT for period prior to 01.10.2012 and same may be treated as withdrawn by the TAMP. . High Court writ petition no 1153 of 2000 filed by MbPT challenging TAMP notification was withdrawn vide HC order dated 08.08.2019. The LAC recommendation dated 13.08.2019 was placed before the Board, however same was deferred by Board by TR 114 of 20.08.2019, TR 149 dated 24.09.2019 and TR 169 dated 01.11.2019. Finally, Board gave approval to submit the proposal of SoR 2012- 17 to TAMP vide TR 122 dated 03.08.2021. Accordingly, immediately after Board approval the said proposal was submitted to TAMP on 06.08.2021. Contention raised in this para is not correct. After expiry of the lease since there was no renewed clause revised lease rental as per SoR is levied in term of PGLM guidelines.
(xi)	Constructive Res-Judicata: I say that the aforesaid proposal is fall under the constructive res-judicata, as I am already before the Ld. Estate Officer and paying the lease rent upto date. I therefore submit, that any fresh proposal of the BPT without the	The contentions are denied. Eviction proceedings under PPE Act are filed for breaches of tenancy terms and for recovery of PT arrears of compensation /damages/mesne profit.

	order of the Ld. Estate Officer amounting to supersede the Hon'ble Authority.	
(xii)	Finally, I say that, the matter between MbPT with me is sub-judice before the Ld. Estate Officer and any decision or proposal or increment in lease rent by BPT will be interfering in the administration of justice. Inspite, of all this aforesaid, the BPT/TAMP, proceeds further in the matter, I shall be left with no other option but to approach the Hon'ble Court for further recourse at the sole risk, costs and consequences of the Trustees of the Port of Bombay, which please take a note of it.	

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