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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 173 **New Delhi,** **12 April 2021**

NOTIFICATION

In exercise of the powers conferred under Sections 48 and 50 of the Major Port Trusts Act, 1963 (38 of 1963) and in compliance of the Order dated 07 August 2020 passed by the Hon'ble High Court of Bombay in the Commercial Admiralty Suit(L) no.7 of 2020, the Tariff Authority for Major Ports hereby disposes of the reference made by the Nan Lian Ship Management LLC to adjudicate the dispute concerning the Port Anchorage Dues payable by the Nan Lian Ship Management LLC to Mumbai Port Trust (MBPT), as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/36/2020-MBPT

The Nan Lian Ship Management LLC - - - Applicant

QUORUM

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

O R D E R

(Passed on this 16th day of March, 2021)

This matter deals with an application filed by Nan Lian Ship Management LLC ["Applicant" and Purchaser of the Vessel MT Prem Mala (IMO No. 9209972)] for adjudication of the dispute concerning the Port Anchorage Dues payable by the Purchaser of the vessel to Mumbai Port Trust (MBPT).

2.1. The learned Advocate on behalf of the purchaser of the vessel vide a communication dated 05 September 2020 has filed an Application, impleading MBPT as a Respondent. The contents of the email are as follows:

(i). Our client viz., Nan Lian Ship Management LLC ("Purchaser") of the Defendant Vessel (M.T. Prem Mala (IMO No. 9209972)) vide an Order dated 4th August 2020, passed by Hon'ble Mr. Justice S.C. Gupte of the Bombay High Court in the captioned matter, was directed to deposit the Port Anchorage Dues as raised by MbPT vide an email dated 3rd August 2020, with Deputy Sheriff of Mumbai.

(ii). Subsequently, the Purchaser deposited the requisite sum under protest with the Deputy Sheriff of Mumbai as directed by the aforesaid Order.

(iii). Thereafter, vide an Order dated 7th August 2020 passed by Hon'ble Mr. Justice S.C. Gupte of the Hon'ble Bombay High Court directed the Purchaser to file an application with The Tariff Authority of Major Ports within a period of one month from the date of the Order which concludes on 7th September 2020, for adjudication of the dispute concerning the Port Anchorage Dues payable by the Purchaser to MbPT.

2.2. The relevant main grounds on which the Applicant has filed the application impleading MBPT as the Respondent are brought out below :

(i). On or about 17 January 2020, the Vessel M.T. Prem Mala (IMO No. 9209972) ("Vessel") arrived at Mumbai Anchorage and begun accruing anchorage charges since then.

(ii). Vide an order dated 18 January 2020 passed by the Hon'ble Bombay High Court (Coram: Mr. Justice K.R. Shriram), in Commercial Admiralty Suit (L) No. 3 of 2020 filed by one Engineering Appliances Corporation and vide an order dated 31 January 2020 passed by Hon'ble Bombay High Court (Coram: Mr. Justice K.R. Shriram), in Commercial Admiralty Suit (L) No. 7 of 2020 filed by one Axis Trustee Services Ltd., the said Vessel was arrested. (Copies of both the abovesaid orders are furnished.)

(iii). In the auction process of the Vessel, vide order dated 26 May 2020 passed by Bombay High Court, M.T. Prem Mala (IMO No. 9209972) ("Vessel") Nan Lian Ship Management LLC ("Applicant") was the highest bidder and the Applicant successfully deposited the entire sum of INR 36,40,00,000 (INR Thirty-Six Crores Forty Lakhs).

(iv). It is pertinent to note that the Applicant has in fact bought the Vessel vide a court sale, free of all charges and encumbrances in accordance with Section 10 of The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017"). Subsequently, a Bill of Sale dated 7 July 2020, was issued in favour of the Applicant through the High Court Admiralty Registrar, High Court of Bombay ensuring transfer of the ownership of the Vessel in favour of the Applicant, since the Applicant had successfully deposited the amounts with the Hon'ble Court. (A copy of the Bill of Sale dated 7 July 2020, is furnished.)

(v). On having received an original copy of the Bill of Sale, the Applicants as the rightful owners of the Vessel preferred to replace the crew on board the Vessel with their own crew. Unfortunately, the crew on-board the Vessel was unsupportive due to unpaid wages since the early months of 2020. Thereafter, on 9 July 2020, the hardships faced by the Applicant were brought to the notice of the Hon'ble Court and in light of the same, vide an order dated 9 July 2020, passed by the Hon'ble Bombay High Court (Coram: Hon'ble Mr. Justice B.P. Colabawalla), the crew on board the Vessel was directed to ensure that a smooth takeover is ensured whilst handing over the charge of the Vessel to the Applicant's appointed crew. Pursuant to the order dated 9 July 2020, the Applicant was only able to attain possession and have its crew placed on board the Vessel on 13 July 2020. (A copy of the Order dated 9 July 2020 is furnished.)

(vi). It is pertinent to note that, the Vessel was imported sometime in the midst of this decade by the erstwhile owners. The Vessel at the time of import had its status converted from a Foreign Going Trade Vessel to a Coastal Trade Vessel. The Applicant on purchase of the Vessel, wished to have the status of the Vessel reinstated as that of a Foreign Going Trade Vessel from its current status as a Coastal Trade Vessel. Accordingly, to change the status of the Vessel, the Applicant would require clearances from both the Port Authorities as well as the Customs Authorities.

(vii). The erstwhile agents of the Applicant apprised the Applicant of a list of certain Vessel Import Documents, that would be absolutely necessary to change the Vessel's status from that of a Coastal Trade Vessel a Foreign Trade Vessel. Pursuant to the same, the Applicants sought assistance of the Office of the Sheriff to obtain the requisite documents. The representatives of the Applicants approached the Customs Authorities on multiple occasions apprising them of the fact that the Applicant has purchased the Vessel vide a court sale, and shall not possess the Import Documents.

(viii). In the meanwhile, Office of the Sheriff issued a supporting letter dated 13 July 2020 clearly enumerating and directing all necessary authorities to act in accordance with the Order and provide all necessary clearances to the Vessel for change in its status. Therefore, it is an undisputed fact that the Port is aware of the change of ownership.

(ix). On 27 July 2020, the agents and representatives of the Applicant approached the Port Authorities yet again to seek clarity on the issue concerning the payment of outstanding Port Dues. The Port Disbursement Account ("PDA") issued to the Applicant envisaged that the Applicant had been wrongly placed in a slab which is leviable only after the first 30 days of the Vessel being at Anchorage ("Highest Slab"). In fact, the Applicant ought to have been treated as a new Owner and the Port Charges ought to have been levied on the Applicant (in the lowest slab), i.e. from 13th July 2020 as Day 1 of the arrival of the Vessel. It is pertinent to note that, the Applicant is not liable to pay any dues, let alone the ones levied under the highest slab.

(x). Pursuant to the above, advocates for the Applicants addressed an email to the Deputy Sheriff thereby requesting necessary directions to be given to the Port to proceed against the sale proceeds deposited in Court.

(xi). Pursuant to the email, the Deputy Sheriff brought to the notice of the Hon'ble Bombay High Court the discrepancies at hand, and sought directions on behalf of the Applicant directing the authorities to act in accordance to the Orders of the Hon'ble Bombay High Court. On 28th July 2020, vide an order passed by the Hon'ble Bombay High Court (Coram: Hon'ble Mr. Justice S.C. Gupte) the Port authorities were directed as follows:

> **"***5. So far as Port dues are concerned, the statutory lien of the Port obviously cannot be claimed vis-a-vis the suit vessel, which has already been transferred to the Applicant in pursuance of a court sale. The Applicant takes a vessel free of charges and encumbrances. The Port may, instead, have a lien on the sale proceeds of the vessel lying in this court. Learned Counsel appearing for Mumbai Port Trust has no objection if the Port's lien is considered in respect of the sale proceeds.***"**

(xii). In light of the above, it is categorically stated and amply clear that the Port shall proceed against the sale proceeds of the vessel lying in Court, that have been deposited by the Applicant (which is claimed by the Port for any outstanding Port Dues). It is pertinent to note that, at this juncture the Counsel appearing on behalf of the Port in-fact acknowledged the same and agreed to it so long as the Port could proceed against the proceeds for its outstanding dues; A copy of the Order dated 28th July 2020 passed by Hon'ble Mr. Justice S.C. Gupte is furnished.

(xiii). In light of the Order dated 28 July 2020, advocates for the Applicants vide an email addressed to the advocates appearing for and on behalf of the Port, requested them to convey to the Deputy Conservator, Mumbai Port Trust and other authorities that:

(a). the Applicant has purchased MT Prem Mala (the Vessel) vide a court sale, free from all encumbrances and/or charges/ claims;
(b). any outstanding port dues ought to be claimed against the sale proceeds that have been deposited in the Court by the Applicant;
(c). accordingly, the Port Authorities and the Deputy Conservator, Mumbai Port Trust to assist the Applicant and provide any clearances that may be required from their end at the earliest.

(xiv). Amidst the above, the Applicant and its agents and representatives approached the Port Authorities seeking clearance of the Vessel, so as to ensure that the status of the Vessel is changed and that the Vessel sails out at the earliest hour. Unfortunately, due to numerous objections and illegitimate issues, the Vessel has not been granted its due clearance since 13 July 2020 (date of possession).

(xv). Thereafter the Port issued a PDA enlisting calculations of Anchorage Dues that the Port levied on the Applicant from 13 July 2020 upto 5 August 2020. It is pertinent to note that the Port has in-fact incorrectly placed the Applicant in the highest slab of the Coastal Vessel (Status) Anchorage Dues, whilst justifying it by saying that the Vessel has been at anchorage since February 2020, and all costs levied shall be in line with the time frame since February 2020. The Applicant has been wrongly placed under the highest slab, even though the possession of the Vessel has only been taken on 13 June 2020. In view of the same, an email dated 1 August 2020 was addressed by the Advocates to Mumbai Port enlisting the detailed issues and concerns at hand. A copy of the email dated 1 August 2020 along with the PDA and Excel Sheet showing the difference in calculation are furnished.

(xvi). Subsequently, the Port authorities vide an email dated 3 August 2020, informed the agents of the Applicant of the Port dues pending which amounted to INR 47,49,593.

The said email, and amounts were brought to the notice of the Hon'ble Bombay High Court by way of an affidavit dated 4 August 2020, filed for and on behalf of the Applicants.

(xvii). Thereafter, the Applicants agreed to deposit the said amount of INR 47,49,593 with the Office of the Sheriff under protest, as directed vide an Order dated 4 August 2020, of the Hon'ble Bombay High Court (Coram: Hon'ble Mr. Justice S.C. Gupte). A copy of the Order dated 4 August 2020 is furnished.

(xviii). The Applicants successfully converted the Vessel from an Indian Trade Vessel to a Foreign Trade Vessel whilst acquiring all necessary clearances from the Customs Department on 7 August 2020, and should have been placed under the lowest slab of the Foreign Trade Vessel heading as per the tariff rates.

(xix). Thereafter, vide an Order dated 7 August 2020 passed by the Hon'ble Court, the Bombay High Court (Coram: Hon'ble Mr. Justice S.C. Gupte) acknowledged the submissions made by the Applicant seeking directions from the Hon'ble Bombay High Court for adjudication of the Applicant's claim. The Applicant was accordingly directed to prefer an application before the Hon'ble Authority, and the Applicant has thus preferred the present application. Furthermore, vide the same order the Hon'ble Bombay High Court directed that the Port dues of the Respondent in the present application for the period during which the ship was under arrest and till her possession was handed over to the Applicant amounting to INR 2,26,10,857 to be paid out of the sale proceeds deposited in the Hon'ble Bombay High Court by the Applicant. In light of the same, it is infact amply clear that all previous dues of the Respondent have been settled by the Hon'ble Bombay High Court, and there is absolutely no reason whatsoever for the Respondent to levy unsolicited charges on the Applicant. A copy of the Order dated 7 August 2020 is furnished.

(xx). Thereafter, on 8 August 2020, the Applicant obtained the necessary No Objection Certificates from the Bureau of Immigration, Sea Check Post, Mumbai and on 9 August 2020, at about 1030 hours the Vessel was allowed to set sail.

(xxi). It is pertinent to note that the discrepancy and vast difference between the amounts that are actually to be levied by the Port on the new Owner (being INR 10,41,903.5), and the amounts that have been levied by the Port (being INR 51,17,132.) amounts to INR 40,75,228.5. The workings in this regard is as follows:

Anchorage Charges as should be levied from 1st day upto 30th day i.e. 13.07.2020 upto 09.08.2020			
GRT	28522		
NRT	12385		
Exch Rate 1USD = INR	70.58		
Statement	**USD**	**INR**	**Remarks**
Anchorage Dues – COASTAL: GRT x INR 0.0746 per hour x 601 hours	18118	12,78,772	As per Port tariff
Anchorage Dues: GRT x INR 0.0047 per hour x 41 hours	5496	3,87,921	As per Port tariff
Pilotage Charges: GRT x USD 0.0493	1406	99,245	As per Port tariff
18% GST on above	4504	3,17,869	As per Government rule
TOTAL	**29524**	**20,83,807**	
Minimum Payable Amount as per S-50B of MPT Act, 1963.	14762	10,41,903.50	

Anchorage Charges levied by the Port beyond 30th day i.e. 13.07.2020 upto 09.08.2020			
GRT	28522		
NRT	12385		
Exch Rate 1USD = INR	70.58		
Statement	**USD**	**INR**	**Remarks**
Anchorage Dues – COASTAL: GRT x INR 0.1865 per hour x 601 hours	45295	31,96,931	As per Port tariff
Anchorage Dues: GRT x INR 0.0118 per hour x 41 hours	13799	10,34,231	As per Port tariff
Pilotage Charges: GRT x USD 0.0493	1406	1,05,390	As per Port tariff
18% GST on above	10890	7,80,579	As per Government rule
TOTAL	**71390**	**51,17,132**	

(xxii). It is the case of the Applicant that the Applicant has bought the vessel vide a Court auction free of all encumbrances, all claims and charges qua the Vessel are dropped and the Vessel ought to be treated as if it has come to the Port at the behest of the new Owners for the first time post the sale. Furthermore, the Applicant ought to be placed in the lowest slab and that the date of possession of the vessel / arrival of the vessel ought to be taken into consideration as “Day 1 of the arrival of the vessel” and thus the date of initiation for all necessary calculations.

(xxiii). Furthermore, the Port has also erred in placing the Applicant in the highest slab of the Foreign Going (Status) Anchorage Dues. It is pertinent to note that the Vessel’s status had in-fact only been changed on 07 August 2020. All costs levied on the Applicant under the Foreign Going (Status) Anchorage Dues, have also been levied under wrongful assumptions that the initiation date for all calculations should be taken from February, 2020.

(xxiv). It is not only unfair to place the Applicant under the highest slab, even though the possession of the Vessel has only been taken on 13 July 2020, but also of utmost importance to note that the Applicant is in no way concerned with the previous dues and/or original date of arrival of the Vessel. The Applicant cannot be charged on the basis of the stay of the vessel. Since, after the Judicial auction of the vessel, the vessel ought to be considered as if arrived on 13 July 2020, which is the date on which the possession of the vessel was in fact handed over to the Applicant.

(xxv). It is pertinent to note that, the Applicant has infact wrongly been placed under the highest slab leviable as per the Tariff Rates as applicable to Port Anchorage Dues.

(xxvi). It is pertinent to note that, it was only on 18 August 2020, i.e. 9 days after the Vessel sailed out did the Port issue its invoice for the Port Anchorage Dues amounting to INR 51,17,132. It is pertinent to note that, the Port has infact erred in placing the Applicant in the Highest Slab of the leviable Port Anchorage Charges on the Applicant from 13th July 2020 to 7th August 2020. Furthermore, the Port has also erred in levying the Highest Slab of the Port Anchorage Charges for a Foreign Trade Vessel, from 7th August 2020 to 9th August 2020. The Applicant submits that the Port has erred in doing so, since the Vessel was only converted to a Foreign Trade Vessel on 7th August 2020, and ought to be treated as the vessel has only entered the Port Anchorage on 7th August 2020 and not continue the same slabs.

(xxvii).Furthermore, the Port has also erred in placing the Applicant in the highest slab of the Foreign Going (Status) Anchorage Dues. It is pertinent to note that the Vessel’s status had in-fact only been changed on 7 August 2020. All costs levied on the Applicant under the Foreign Going (Status) Anchorage Dues, have also been levied under wrongful assumptions that the initiation date for all calculations should be taken from February 2020.

(xxviii). In any event, the Port is not entitled to claim the amounts from the Applicant as enlisted in its Invoice dated 17 August 2020 amounting to INR 51,17,132, from the period between 13 July 2020 to 9 August 2020. Alternatively, and without prejudice to the rights and contentions of the Applicant, assuming the Applicant is liable to pay the Port for dues post 13 July 2020, the same has to be as per the slab as if the vessel came into Port on 13 July 2020 amounting to INR 10,41,932.5 and not as per the highest slab levied basis the stay of the vessel amounting to INR 51,17,132.

(xxix). The Port refused to allow the Applicant' agent to act on behalf of the vessel. The Port could have issued its invoice immediately but did not do so. This compelled the Applicant to move the Hon'ble Bombay High Court on 28 July 2020, seeking directions to allow the Applicant's agent to act on behalf of the Vessel and issue an invoice immediately. Even after the order of the Hon'ble Bombay High Court dated 28 July 2020, the Port did not issue any invoice.

(xxx). The Port has erroneously placed the Applicant under the wrong slab of Port Anchorage Dues, which is has resulted in loss of capital and has affected the professional status of the Applicant in the market.

(xxxi). The Applicant has paid the amount of ₹.36.40 Cores promptly and has acted with clarity. The vessel continued to stay in Port not on account of the Applicants, but as is evident above on account of the Port's wrongful act of withholding clearance. The Port authorities initially sought to foist the liability of the erstwhile owners on the Applicant. Later, no invoices were issued by the Port until 3 August 2020, and thereafter an invoice was issued only on 18 August 2020, i.e. 9 days after the Vessel sailed away.

(xxxii). Section 50B of the Major Port Trusts Act, 1963 states as follows:

"When a vessel enters a port but does not discharge or take in any cargo or passengers therein, with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the Authority and not exceeding half the rate with which she would otherwise be chargeable."

It is clear that if a vessel is not involved in discharge and/or taking in any cargo or passenger the rate levied shall not exceed 50% of the leviable rate. It is infact clear from the facts above that, whilst the Vessel was not involved in any loading and/or discharge operations, the Vessel ought to have been charged at a rate determined by the Authority AND not exceeding half the rate which would otherwise be chargeable.

Contrary to the above, the Applicant has been charged the entire amount whilst having been wrongly placed in the highest chargeable slab.

In view of the same, the Applicant should be placed in the lowest chargeable slab while ensuring that the rates do not exceed 50% of the chargeable rates in the lowest chargeable slab which shall amount to ₹.10,41,932.5.

2.3. On the grounds mentioned above, the Applicant has made the following main prayers before this Authority:

(a). The Hon'ble Authority direct the Respondent i.e. MBPT to re-calculate the Port Anchorage Dues and charge the Applicant as per the lowest slab applicable to the Applicant and in accordance with Section 50B of the Major Port Trusts Act, 1963.

(b). The Hon'ble Authority direct the Respondent i.e. MBPT to retract the Invoice dated 17 August 2020 amounting to ₹.51,17,132, and issue a fresh invoice amounting to ₹.10,41,932.5 as per the lowest slab calculations whilst levying a rate not exceeding 50% of the chargeable rates in accordance with Section 50B of the Major Port Trusts Act, 1963.

(c). The ad-interim reliefs in terms of prayers above be granted;

(d). Such other order(s) as the Hon'ble Authority may deem fit and proper in the facts and circumstances of the case be granted.

2.4. Accordingly, the learned Advocate has made a request to take on record the application under Section 48 of the Major Port Trusts Act, 1963.

2.5. On perusal of the Order dated 7 August 2020 passed by Hon'ble Mr. Justice S.C. Gupte of the Hon'ble Bombay High Court, the Hon'ble Bombay High Court has *interalia* at para no. 9 (xi) of the Order directed the Purchaser to file an application with the Tariff Authority for Major Ports within a period of one month from the date of the Order which concluded on 7th September 2020, for adjudication of the dispute concerning the Port Anchorage Dues payable by the Purchaser to MBPT. The operative portion of the Hon'ble High Court of Bombay Order with regard to the application made before the TAMP by the applicant is given below:

> **"***The amount deposited by the purchaser of the suit vessel in accordance with the order passed by this court on 4 August 2020 shall be retained by the Sherif. Disbursement of this amount shall be in accordance with the decision of the Tariff Authority for Major Ports acting under Section 48 of the Major Port Trusts Act, 1963, before whom the purchaser and MbPT have agreed to take their dispute concerning charges payable by the purchaser to MbPT. The purchaser has agreed to make a suitable application in that behalf to the Tariff Authority within a period of one month from today. In the meantime, the amount deposited by the purchaser with the Sherif shall be invested in Fixed Deposit of a Nationalised Bank for a period of 90 days initially to be renewed thereafter from time to time till at least two weeks after the decision of the Tariff Authority.***"**

3.1 In pursuance to the prescribed consultation process, a copy of the communication dated 05 September 2020 received from Advocate on behalf of M/s. Nan Lian Ship Management LLC was forwarded to MBPT vide letter dated 11 September 2020 seeking their comments. In response, the MBPT vide its letter No. DC/C-Prem Mala/ TAMP/ 2810- dated 8 October 2020 has furnished its reply.

3.2. A copy of the comments received from MBPT vide its letter dated 8 October 2020 was forwarded to M/s. Nan Lian Ship Management LLC for its specific comments on each of the paragraph vide letter dated 13 October 2020. After a reminder dated 05 November 2020, M/s. Nan Lian Ship Management LLC vide its email dated 16 November 2020 has responded.

3.3. Subsequently, the MBPT (through its Advocate) vide its letter dated 27 November has filed its Reply to the response filed by Nan Lian Ship Management LLC vide its letter dated 16 November 2020.

3.4. A comparative position of the submissions made by Nan Lian Ship Management LLC in its initial application dated 05 September 2020, Comments of MBPT thereon vide its letter dated 8 October 2020, comments of Nan Lian Ship Management LLC thereon vide its letter dated 16 November 2020 and comments of MBPT thereon vide its letter dated 27 November 2020 is tabulated and attached as **Annex**.

4. In view of the outbreak of COVID – 19 and in pursuance of the then Ministry of Shipping (MOS) letter No. 11053/30/2020-Coord. dated 16 April 2020 to hold virtual meetings, a joint hearing on the case in reference was held on 17 November 2020 through Video Conferencing with MBPT and the Nan Lian Ship Management LLC. Both the parties have made their submissions in the Joint hearing. The submissions made by the both the parities in the Joint hearing are given below:

Learned Advocate on behalf of Nan Lian Ship Management LLC

(i). Nan Lian Ship Management LLC (NLSML) is the purchaser of Vessel Prem Mala through public auction carried out by Bombay High Court in accordance with Section 10 of The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. The Vessel bought is free of all encumbrances and is also free from any lien or charges. The possession of the vessel was handed over to NLSML on 13 July 2020.

(ii). Though the Vessel had come to Port in February 2020, NLSML was nowhere in picture then and came into picture only on 13 July 2020, when the possession was handed over to NLSML.

(iii). All claims and charges are to be dropped and the Vessel ought to be treated as if it has come to the Port at the behest of the new Owners for the first time post the sale. 13 July 2020 ought to have been considered as Day 1 by MBPT, so as levy various Vessel related charges. The charges accruing for the period from February 2020 and upto the time the possession was handed over to the NLSML, has been recovered from the auction sale proceeds.

(iv). In this backdrop, we basically have three issues with MBPT.

(a). The Port has erred in placing the NLSML in the highest slab of the Foreign Going (Status) i.e. ‘Beyond 30 days’ bracket, while calculating the Port Anchorage Dues. The NLSML ought to have been placed in the lowest slab i.e. ‘1 - 30 days’ bracket and that the date of possession of the vessel / arrival of the vessel i.e. 13 July 2020 ought to have been taken into consideration as “Day 1 of the arrival of the vessel” and thus the date of initiation for all necessary calculations. The Applicant is in no way concerned with the previous dues and/ or original date of arrival of the Vessel.

(b). The Port has also erred in levying the Highest Slab of the Port Anchorage Charges for a Foreign Trade Vessel from 7^{th} August 2020 to 9^{th} August 2020. The Port has erred in doing so, since the Vessel was converted to a Foreign Trade Vessel only on 7^{th} August 2020 and ought to be treated as the vessel has only entered the Port Anchorage on 7^{th} August 2020 and not continue the same slabs.

(c). As per section 50B of the Major Port Trusts Act, 1963, when a vessel enters a port but does not discharge or take in any cargo or passengers therein, with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the Authority and not exceeding half the rate with which she would otherwise be chargeable. Thus, while the Vessel was not involved in any loading and/ or discharge operations, the Vessel ought to have been charged not exceeding half the rate which would otherwise be chargeable. However, contrary to the above, the MBPT has charged the full rate and by also wrongly placing it in the highest chargeable slab.

TAMP in one of its Order no. TAMP/5/97-BPT in the case of Ispat Industries Limited v/s MBPT has also held that MBPT should charge only 50% of the rates and not full rates.

Learned Advocate on behalf of MBPT

(i). The said Vessel in question has been charged as per the Scale of Rates of MBPT duly approved by TAMP. The SOR framed by TAMP is for the use of the Respondent's services/ property by the vessel. If the length of the user of the Respondent's services/ property exceeds 30 days, then higher rate is attracted irrespective of whether the vessel has changed several owners. The sale of the vessel from one owner to another does not set the clock back and does not result in start of a fresh period of 30 days. The charges continue to accrue from the time the Vessel enters the port irrespective of the ownership.

(ii). Anchorage charges are not governed by Section 50B of the Major Port Trusts Act, 1963.

(iii). MBPT has charged them for the period beginning from 13 July 2020 and charged foreign rates only for a period of 2 days, as can be seen from the bill raised by MBPT. There is no error in the bill raised by MBPT.

5. After the Joint Hearing, the Learned Advocate on behalf of Nan Lian Ship Management LLC vide its e-mail dated 17 November 2020 in support to its arguments made during the Joint Hearing, has submitted a copy of the TAMP Order No. TAMP/8/2000-Genl dated 4 February 2000 about implementation of Section 50A and Section 50B of the Major Port Trust Act (1963) uniformly by all the Major Ports. The relevant extract from the said Order is reproduced below:

"*5. Taking all the relevant facts into consideration, and after a collective application of mind, the Authority hereby decides as follows:*

(i). In terms of Section 50A of the Major Port Trusts Act, a vessel entering any port in ballast and not carrying passengers shall be charged with only 75% of the Port Dues with which she would otherwise be chargeable.

(ii). In terms of Section 50B of the Major Port Trusts Act, a vessel entering a port but not discharging or taking in any cargo or passenger therein shall be charged with only 50% of the Port Dues with which she would otherwise be chargeable.

*(iii). A LASH vessel making a 'second call' to pick up empty LASH barges shall be treated as a vessel entering a port but not discharging or taking any cargo or passengers therein, as described in Section 50B of the Major Port Trusts Act, and shall not be charged any Port Dues.***"**

6.1. Subsequent to the Joint hearing, the MBPT through its Learned Advocate vide its letter dated 24 November 2020 has furnished the outline of Arguments made by MBPT during the joint hearing, as given below.

A. Facts:

(i) In Commercial Admiralty Suit (L) No. 7/2020 ***(Axis Trustee Services Ltd. v/s. M.T. Prem Mala)*** an urgent application was moved by the Applicant / Auction Purchaser ***viz. Nan Lian Ship Management LLC.***

(ii) The Respondent / MBPT had initially raised a Provisional Bill for the sum of ₹.47,49,593/- for the period after the date of delivery of possession of M.T. Prem

Mala, now re-christened M.T. Marine Gracious upto the purported date of departure i.e. 05/08/2020.

(iii) The issue raised by the Applicant was that the Bill is raised at rates which are higher than what would otherwise have been payable. In other words, if the vessel is billed as per the slab as if the vessel came into Port on 13/07/2020, then only an amount of ₹.10,41,932.50 would be payable and not an amount of ₹.51,17,132/- which is as per the higher slab levied on the basis that the vessel has been lying at A2 Anchorage since 12/02/2020.

(iv) The Applicant ought to have deposited the entire amount *viz. ₹.51,17,132/-* as demanded by the Respondent in the Bill @ *Exhibit 1 to the Reply filed by the Respondent* to the present application (page21) with the Sheriff of Mumbai pursuant to an Order dated 04/08/2020 passed by His Lordship Mr. Justice S.C.Gupte *(Exhibit T to the Application dated 05/09/2020*). The Respondents verily believe that the Applicants have deposited only ₹.47,49,593/- with the Sheriff of Bombay and despite the Undertaking to the Court, do not appear to have deposited the balance sum of ₹.3,67,539/-.

(v) Vide Order of His Lordship Mr. Justice S. C. Gupte *(Exhibit U to the Application dated 05/09/2020)* as enumerated below in paragraph 9 and sub-paragraph (xi), the Hon'ble Members of TAMP have been called upon to decide about the quantum of Anchorage Fees and Pilotage that ought to be paid by the Applicant:

"(xi) The amount deposited by the purchaser of the suit vessel in accordance with the order passed by this court on 4 August 2020 shall be retained by the Sheriff. Disbursement of this amount shall be in accordance with the decision of the Tariff Authority for Major Ports acting under Section 48 of the Major Port Trusts Act, 1963, before whom the purchaser and MbPT have agreed to take their dispute concerning charges payable by the purchaser to MbPT. The purchaser has agreed to make a suitable application in that behalf to the Tariff Authority within a period of one month from today……"

Preliminary Objection :
Time was sought by the Respondent to consider the Rejoinder of the Applicant, a soft copy of which was served on them on a holiday and less than 24hrs. before the hearing fixed by the Authority, vide an email on Monday 16/11/2020 at 5.30pm.

B. **No Cause of Action** :

(i) The Application does not disclose any cause of action to substantiate the allegation that there was an unsupportive outlook by the Board of Trustees of the Port of Mumbai, in revising the slab of rates to be paid by an Auction Purchaser in a Court Sale. No Port Dues as per Clause 2.16 of the SOR have been charged to the Applicant. Port Clearance was never withheld by the Respondent. Port Clearance under Section 42 of the Customs Act is granted by the Customs Authorities and not by the Respondent.

(ii) The Board of Trustees of the Port of Mumbai are a creation of a statute and are entitled to charge from the shipowner or his agent, Anchorage fees and Pilotage or other statutory dues, in respect of the periods during which the shipowner or his agent, were unable to clear the vessel from the port premises/anchorage, for whatsoever reason. The Bill raised by the Respondents is as per the Scale of Rates sanction by TAMP which has the force of law. The Supreme Court has in the case of *Board of Trustees of the Port of Bombay Vs. Indian Goods Supplying Co.* reported in *1977 (2) SCC 649* has held in *Para 7* thereof that Scale of Rates have the force of law. (A copy of the said Judgment is furnished by MBPT.)

(iii) The Statutory charges levied by the Respondents is based on length of use of the Respondent's services/ use of property irrespective of whoever is the owner of the vessel. The Respondent has never raised any objection on unpaid and outstanding Anchorage charges of the previous owner as the pre-Court Auction sale statutory dues have been paid by the Sheriff of Mumbai to the tune of ₹.2,26,10,857/- at the increased rate after one month from 12/02/2020.

(iv) Admittedly, the vessel Marine Gracious, ex-Prem Mala, had made use of the Respondent's facilities and properties, for which the Respondents have charged rates as per the Scale of Rates approved by TAMP, which not only approves rates but lays down statement of conditions under which these rates are chargeable. Under Sections 48 & 49, TAMP has sanctioned the Scale of Rates and laid down the conditions under which the services/ property of the Respondents are used. Accordingly, Respondents have framed a Scale of Rates which was duly sanctioned by TAMP on 03/09/2019. The Respondents have charged as per the Scale of Rates sanctioned by TAMP i.e. Section 2.15 at increased rate on the stay of the vessel after 30 days from 12/02/2020.

(v) As the vessel's stay at the anchorage exceeded 30 days, she was charged at the rate prescribed by TAMP for coastal vessel. For the 1st 30 days, she was charged at the rate of Rs.0.0746 per GRT per hour or part thereof and after 30 days at the rate of Rs.0.1865 per GRT per hour or part thereof. The Scale of Rates do not lay down that in case of change of ownership or sale of the vessel, a lower rate is to be charged. If the length of the use of the Respondent's services/ property exceeds 30 days, then higher rate is attracted irrespective of whether the vessel has changed several owners.

(vi) There is no basis for the submission that Respondent has to vary the rates depending on the change of ownership of any vessel and that the Scale of Rates levied on a Court Auction Sale, Purchaser should be considered as though the vessel has entered the port premises on the day of the Bill of Sale for taking possession is given to the Auction Purchaser in a Court sale till the vessel sails out viz. 09/08/2020 at about 1030 hours.

(vii) When the Applicants purchased the vessel in an auction sale, they ought to have been aware of the provisions of law i.e. Sections 48 & 49 of the said Act as well as the Scale of Rates framed by TAMP. The charges levied by the Respondents are from 13/07/2020 to 09/08/2020 for which the agents of the vessel i.e. the Applicants are liable to pay as per the Scale of Rates approved by TAMP.

(viii) The Application does not disclose any cause of action for the reliefs as claimed in the application that Respondent has incorrectly charged Anchorage dues from the vessel *M.T. Marine Gracious* ex *Prem Mala* under a wrongful assumption that the foreign going vessel was lying at the port premises for more than 30 days i.e. lying at A2 Anchorrage from 12/02/2020 at 0148 hrs. The Respondent had charged the vessel at the Coastal Rate upto the date of conversion from coastal to foreign and after conversion, from coastal to foreign at the Foreign Rate.

C. **<u>No case made out that Section 50B of the Major Port Trusts Act, 1963 should be applied to them when they are charged Port Dues</u>**:-

(i) The Applicant has incorrectly alleged that the Respondent has charged them the entire amount of Port Dues, when infact no Port Dues have been charged to the Applicant.

(ii) Port Dues under Clause 2.16 of the Scale of Rates notified on 03/09/2019, has not been charged to the Applicant.

(iii) Section 50B of The Major Port Trusts Act, 1963 has been incorporated in sub-clause4A of Clause 2.16 which reads as under:-

"4A. Port Dues shall be levied at 50% of the rates specified at Section 2.16 above in the following case:-
A vessel which enters the Port but does not discharge or take in any cargo or passenger (with the exception of such unshipment and re-shipment of cargoes as may be necessary for purpose of repairs)."

Further, in the course of arguments made by the Applicant that TAMP has held in the case of M/s. Ispat Industries Limited (IIL) Vs. the Mumbai Port Trust (MBPT) [Case No.TAMP/5/97-BPT] that **the benefit of Section 50B cannot be claimed in respect of Anchorage fees and can only be claimed for Port Dues**– In this case, the Authority has decided as follows: "The levy of vessel-related charges on IIL vessels in connection with operations at the anchorage is justifiable subject to the modification that the port due shall be only 50% of the normally chargeable rate as stipulated in Section 50B of the Major Port Trust Act." This Order was relied upon by TAMP while exercising powers under Section 50 of The Major Port Trusts Act, 1963 in Order dated 04/02/2000 in Case No. TAMP/9/2000 Genl.

6.2. Based on the above, the MBPT has pleaded that the Application of Nan Lian Ship Management LLC is liable to be dismissed for no cause of action.

6.3. The MBPT has further stated that in any event, and without prejudice, since the Application proceeds on an ex facie incorrect premise that the billing cycles have to be revised each time there is a change of hands in the vessel's ownership, this would amount to an unsustainable assertion that the Respondents will have to look into all glorified partnerships that may be created to show a change in ownership for the purpose of restarting the billing cycle and to avoid the higher slab applicable to long stay vessels. This relief is unsustainable in law and fact, and, therefore, as the entire premise of the Application is unfounded and baseless, the Application must fail.

7. The Nan Lian Ship Management LLC vide its email dated 01 December 2020 has also made available its written submission on the matter. The submissions made the Nan Lian Ship Management LLC are given below:

(i) It is to bring to the notice that the present Application arises from an Order of the Hon'ble Court Bombay High Court dated 7th August 2020 passed by (Coram: Hon'ble Mr. Justice S.C. Gupte) wherein the Applicant was directed to prefer an application before this Hon'ble Authority towards the disputed Port Dues. Furthermore, this Hon'ble Authority that the regulations issued by this hon'ble authority does not contemplate a situation of this sort. Nowhere in the regulations is there a provision which contemplates a situation which deals with the charges that are to be levied by the Port, on a Vessel purchased free of any and all charges and/or encumbrances vide a judicial sale.

(ii) **Preliminary objections to the invoice of MBPT**

a) **Vessel purchased through a judicial sale, free from all charges and encumbrances**.

(i). The effect of a judicial sale of a Vessel by an order of a Court ensures that all liens, charges and encumbrances previously attached to the *res* are cleared. The buyer, such as the Applicant in the present case obtains a clean title on the Vessel free of all liens, charges and encumbrances.

(ii). Section 8 of The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Act") states that:
"*8. Vesting of rights on sale of vessels— On the sale of a vessel under this Act by the High Court in exercise of its admiralty jurisdiction, the vessel shall vest in the purchaser free from all encumbrances, liens, attachments, registered mortgages and charges of the same nature on the vessel."*

(iii). The Applicant's submit that it is amply clear from Section 8 of the Act that, a Vessel purchased by a Buyer through a judicial sale is bought free of any and all charges and encumbrances.

(iv). It is the Applicant's case that the Vessel ought to be treated as a freshly arrived vessel from 13th July 2020, i.e. date of possession of the vessel, as all previous connections with the erstwhile owners were discarded and disregarded once the judicial sale concluded. Therefore, all defendants of the ship on account of the actions of the erstwhile Owners which at the highest can be an encumbrance on the vessel or charges on the Vessel are extinguished by Judicial Sale.

(v). The Respondent treats the Vessel to be in default and proceeds on the basis that the vessel continued to stay at the anchorage beyond 30 days (calculating it from the month of February 2020). It is abundantly clear from the miscalculations and misinterpretations of the Respondent that the Respondent has erred in charging a higher slab to the Applicant who has purchased the Vessel from the Court. The Respondent overlooks that vessel was brought into MbPT by Mercator Ltd, i.e. the erstwhile owner. The Respondent has claimed and recovered its claim from the sale proceeds of the Vessel. However, ever since the Applicant purchased the Vessel from Court, the Vessel ought to have been treated as if the Vessel came into the Port on 13th June 2020 (i.e. date of the possession given to the Applicant) at the instance of the Applicant. The Vessel sailed away only on 9th August 2020. The Vessel was not in the Port at the instance of the Applicant beyond 30 days, and the Applicant is charging rates for default of the erstwhile owners and/or agents. Therefore, the action of the Port is contrary to Section 8 of the Act, which contemplates that the purchaser purchases the Vessel free from any and all encumbrances or charges.

(vi). In light of the same, the Vessel should be placed under the lowest slab as a Coastal Vessel levying the rate of 0.0746 USD per GRT per Hour instead of 0.1865 USD per GRT per Hour from 13th June 2020 till 7th August 2020. And thereafter levy rates to the effect of 0.0047 USD per GRT per Hour instead of 0.0118 USD per GRT per Hour, under the heading of a Foreign Run Vessel.

(vii). The Applicant's also place their reliance on an excerpt from Admiralty Law and Practice by Toh Kian Sing, SC (attached herewith for your reference) which clearly mentions that maritime liens travel with the property secretively and unconditionally and is not extinguished even if the property is transferred to a bonafide purchaser without notice except where the transfer is the result of a judicial sale. (QUOTE) This infact supports the stand of the Applicant.

(viii). Furthermore, vide a reference to another an excerpt from Admiralty Law and Practice by Toh Kian Sing, SC (attached herewith for your reference) it is clear that termination of a statutory lien (that the Respondent had claimed) can be extinguished is in the following ways:

i. Destruction of the Res;
ii. Purchase vide a Judicial Sale, which vests the purchaser with a title clean of all liens and encumbrances;
iii. Where satisfaction or settlement of claim has taken place.

With reference to the above, the Respondent has failed to consider the reasoning behind levying of rates under the lowest slab as the Vessel is to be handed over as a freshly arrived Vessel, free of any and all liens, encumbrances and charges, and has erred whilst placing the Applicant in the highest slab.

The Respondent levying rates under the highest slab has infact resulted in the Vessel's past encumbrances being transferred to the Applicant, and the Vessel not being considered as a newly arrived vessel on 13th June 2020.

b). Non-Application of Section 50B of the Major Port Trusts Act:

(i). It is the Applicant's case that the Respondent has misinterpreted Section 50B of the Major Port Trusts Act. The Respondent has infact erred in submitting that Section 50B is only applicable to the Port Dues under Clause 2.16 of the Scale of Rates.

(ii). The Respondent has failed to appreciate the fact that there is absolutely no reference to "Anchorage Charges" under the Major Port Trusts Act. The Respondent's argument overlooks that anchorage dues are a part of Port Dues. There cannot be any artificial distinction in the statute. It is pertinent to note that on bare reading of Section 50B of the Major Port Trusts Act it is amply clear that any and all rates, charges, tolls, dues, fee or rent fall within the purview of "Port Dues" as mentioned in Section 50B. The Respondent has failed to appreciate the fact that Port Dues is infact a genus (a set) and Anchorage Charges is a specie (a subset) that falls within the purview of the genus that is Port Dues.

(iii). The Respondent conveniently seeks to slide its misinterpreted submissions before this Hon'ble Authority, it is of utmost importance to bring to the notice of this Hon'ble Authority that the Hon'ble Bombay High Court vide its orders and more specifically Order dated 4th August 2020 [Exhibit T to the Application], in its opening paragraph refers to the charges levied by the Respondent as Port Dues. The Respondent's submissions have also been recorded in the same as "The Port, however, claims that there have been Port dues in respect of the suit vessel after the date of delivery of its possession to the purchaser." The aforesaid being one of the instances amongst many, wherein the Respondent has addressed the disputed charges as "Port Dues" before the Hon'ble Bombay

High Court and has now conveniently resorted to creating a false distinction between Port Dues and Anchorage Charges. Therefore, it is clear that the Respondent was clear that what it claims from the Applicant were infact Port Dues, therefore, it is not permissible for the Respondent to now carve out an artificial distinction to hold that the Respondent's dues are difference from Port Dues. Therefore, Section 50B is clearly applicable. The Respondent is now trying to mislead this Hon'ble Authority.

(iv). Furthermore, without prejudice to the aforesaid the Applicant submits that if the Respondent's argument is to be accepted the same would be a direct cause resulting in the rates levied under Clause 2.15 of the Scale of Rates infructuous. If the Respondent's argument is considered, the same shall render Clause 2.15 of the Sale of Rates as there is no mention of the term "Anchorage Charge" in the Major Port Trust Act.

(v). The Respondent has also erred in submitting that Section 50B cannot be claimed in respect of anchorage charges and can only be claimed for Port Dues. The relevant case cited by the Applicant in favour of their arguments (M/s. Ispat Industries Limited (IIL) Vs. the Mumbai Port Trust (MBPT) [Case No.TAMP/5/97-BPT]), this Hon'ble Authority decided as follows

"The levy of vessel-related charges on IIL vessels in connection with operations at the anchorage is justifiable subject to the modification that the port due shall be only 50% of the normally chargeable rate as stipulated in Section 50B of the Major Port Trust Act.".
The Applicant submits that from the reading of the aforesaid excerpt of the Order it is amply clear that the levy of the anchorage charges were subject to charging only 50% of normally chargeable rates. Thus, even an order of this Hon'ble Authority makes it clear that anchorage due falls within Section 50B which makes it mandatory for Port to charge only 50% of the applicable rates.

c) Vessel was only converted to a Foreign Going Vessel on 7th August 2020:

(i). Applicant's state that the vessel was converted from its initial status of an Indian Trade Vessel (Coastal Run) to a Foreign Trade Vessel (Foreign Run) whilst acquiring all necessary clearances from the Customs Department on 7th August 2020.

(ii). The aforesaid fact of conversion of the Vessel on 7th August 2020 is infact an admitted fact in the Respondent's Reply to the Applicant's Application as can also be seen in Exhibit 1 of the Respondent's Reply (being the Invoice raised on the Applicant's agents).

(iii). The Invoice clearly demonstrates that the Vessel was under the status of a Foreign Run Vessel only for 2 days. The Respondent has in its invoice applied the rate on the Vessel as a Foreign Run Vessel, as if the Vessel was at the anchorage as a Foreign Run Vessel for more than 30 days. This is clearly an error and contrary to the invoice. The Respondent cannot charge a higher rate which is applicable to a vessel which is at anchorage for over 30 days as a Foreign Run Vessel, when infact the Vessel was at the anchorage as a Foreign Run Vessel only for a period of 2 days. The Respondent has erred in placing the Vessel in the slab considering that the Vessel has stayed at the anchorage for more than 30 days as a foreign flagged vessel and is levying rates under the rates of 0.0118 USD per GRT per Hour.

(iv). The Respondent whilst admitting the fact that the Vessel was only converted on 7th August 2020 from an Indian Flagged Vessel to a Foreign Run Vessel ought to have placed the Vessel under the lowest slab, and levy rates to the extent of 0.0047 USD per GRT per Hour.

(v). The Respondent has failed to consider the fact that the Vessel since purchased from a Judicial Sale is free from any and all charges and encumbrances. There ought not to be any connections to the default of the erstwhile owners and/or their agents, resulting in previous charges having been continued on the Applicant, considering the fact that the Vessel has been purchased vide a Judicial Sale and is infact not a usual change in ownership in lieu of a vessel's sale-purchase.

d) Vessel charged under the highest slab of the S.O.R. under the coastal run:

(i). The Respondent vide its invoice dated 17th August 2020 has erroneously placed the Vessel in the highest slab with the rates being 0.1865 USD per GRT per Hour instead of 0.0746 USD per GRT per Hour, whilst failing to appreciate the fact that the Vessel has been purchased free of all charges and encumbrances.

(ii). The Respondent has erroneously sought to justify its action of placing the Vessel in the highest slab by saying that the Vessel has been at anchorage since February 2020, and all costs levied shall be in line with the time frame since February 2020.

(iii). The Respondent has yet again failed to consider the very essence of a judicial sale and the provision of Section 8 of the Act, which clearly provides that a Vessel sold by way of a judicial sale is bought by the new owner free from any and all charges and/or encumbrances.

(iv). In any event, the Vessel was in Port at the instance of the Applicant only from 13th June 2020 to 9th August 2020. The Vessel prior to 13th June 2020 was at the anchorage at the instance of the erstwhile owners for which it has collected its dues from the sale proceeds deposited with the Hon'ble Court, by the Applicant. Therefore, the Respondent cannot charge a higher slab solely on the notion that the vessel is at anchorage beyond 30 days at the Applicant's instance.

(iii) **Fallacies in the respondent's arguments:**

(a). Though the Respondent harps on the fact that change in ownership does not affect the levying of Port Anchorage Charges, it completely fails to appreciate the fact that the Vessel was purchased vide a judicial sale, free of all charges and encumbrances. Free of charges and encumbrances, includes but is not limited to any and all dues, errors, connections, defaults, etc. of the erstwhile owners or their agents, which wholly encompasses the wrongfully levied rates on the Vessel at the erstwhile owner’s default of non-payment.

(b). The Respondent fails to appreciate the fact that the Vessel has been sold under extraordinary circumstances in the present case, which is not contemplated in the provisions of the Major Port Trusts Act, since the Vessel in the present case has not been subject to a usual sale-purchase contract, resulting in change of ownership.

(c). The Applicant’s submit that it may not be the absolute case that each time there is a change in ownership of a vessel, a new billing cycle ought to be initiated. But it is also pertinent to note that, given the extraordinary situation of a judicial sale, which as contemplated by Section 8 of the Act, makes it amply clear that no previous charges and/or encumbrances shall be passed on to the new buyers, which the Respondent has failed to take note.

(d). In view of the same, the Applicant submits that since the present scenario has not been sought after or contemplated in the Major Port Trusts Act, the charges to be levied on the Vessel ought to be under the lowest slab for both, i.e. its status as a Coastal Run Vessel, as well as that of a Foreign Run Vessel.

(e). The Respondent by way of its Reply has also made submissions stating that, the Port Clearance Certificate is not issued by the Respondent, but is infact issued by the Customs Authorities. Whilst stating the same, the Respondent has failed to bring to the notice of this Hon’ble Authority that the Port Clearance Certificate is only issued once the “No Dues Certificate” is issued by the Respondent, which the Respondent issued only after an incessant delay pursuant to the Order passed by the Hon’ble Bombay High Court on 7th August 2020 [Annexed to the Application as Exhibit U].

(f). It is pertinent to note that, thought the Vessel was in possession of the Applicant on 13th June 2020, the Respondent Authorities required formal orders for the minutest details and only issued the No Dues Certificate in August, following which the Clearance Certificates were obtained immediately on 8th August 2020. It is amply clear from the above that, though the Applicant’s representatives and advocates were liaising with the Respondent Authorities, no proper actions were taken by the Respondent and/or its representatives or officers, which resulted in the incessant delay to obtain the necessary Certificate from the Respondent and the Clearance Certificate thereafter from the Customs Authorities.

(iv) **Distinguishing points in the judgment:**

(a). The judgment relied upon by the Respondent ought not to be considered since the judgment relied upon has been passed under the Bombay Port Trusts Act, Act 6 of 1879 (which is now repealed), whereas the present issue at hand is to be adjudicated under the provisions of the Major Port Trusts Act, 1963.

(b). The Applicant appreciates and does not contest the fact that TAMP has sanctioned the Scale of Rates applicable under Section 48 and 49 of the Major Port Trusts Act, 1963 (though the Applicant’s submission is also that this Hon’ble Authority does not contemplate the present situation in the approved scale of rates). In any event, the primary contention of the Applicant pertaining to the issue at hand is that of having placed the Applicant’s Vessel in a higher slab of inapplicable rates, rather than having placed the Applicant’s Vessel in the right slab.

(c). Furthermore, the judgment relied upon by the Respondent deals with a situation that pertains to importers, and not new buyers who have purchased the res vide a judicial sale.

(d). In the judgment relief upon by the Respondent, the delay in clearance of the cargo was due to the cargo being held back by the Customs Authorities/Import Trade Control, which resulted in the accrual of demurrage levied by the Port Authorities. In the present case, the delay in obtaining the Customs Clearance Certificate was a causative effect of the delay caused by the Port Authorities in issuing the No Dues Certificate.

(e). Furthermore, the judgment relied upon deals with the aspect of demurrage which lies under the umbrella of being liquidated damages (referred to in Paragraph 11 of the judgment), since demurrage is infact a pure creation under a contract. The Respondent whilst trying to equate the judgment relied upon and the present situation fails to consider the very essence of a judicial sale.

(f). With reference to Paragraph 11 of the judgment, the same refers to *Aktieselskabet Reidar v. Arcos Limited*, following which the Hon'ble Judge opines that the Port's Claim for demurrage cannot be denied unless it is proved that the delay was due to the Port itself. In regards to the same, and in reference to Paragraphs 5 and 6 above, it is abundantly clear that the delay in the sailing of the Vessel was solely on account of the lackadaisical approach of the Respondents and the unceasing delay in issuance of the No Dues Certificate, even though the Applicant through its Advocates and representatives and even through the Office of the Sheriff sought the issuance of the No Dues Certificate to obtain the necessary Port Clearance for the Vessel to sail.

8. In the meanwhile, the learned Advocate on behalf of Nan Lian Ship Management LLC vide email dated 12 January 2021 has forwarded the Order dated 6 January 2021, passed in Interim Application (L) No. 6531 of 2020 in Sheriff's Report No. 53 of 2020 in Commercial Admiralty Suit (L) No. 3579 of 2020; in favour of the Purchaser M/s. NKD Maritime Ltd., and has made the following submissions:

(i). The Hon'ble Bombay High Court vide the aforesaid order records that, as per Section 8 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 which states as follows:

"*8. Vesting of rights on sale of vessels.---- On the sale of a vessel under this Act by the High Court in exercise of its admiralty jurisdiction, the vessel shall vest in the purchaser free from all encumbrances, liens, attachments, registered mortgages and charges of the same nature on the vessel.***"**

(ii). On a bare reading of the above, it is clear that, any and all charges and expenses that are incurred by the vessel after its purchase under the Court Sale, would have to be borne by the purchaser. The Purchaser would be liable to incur charges from the date of issuance of the Bill of Sale, even though the Invoice raised by the Port records otherwise.

(iii). In light of the same, in the present case of Nan Lian Ship Management LLC and the Vessel MT Marine Gracious, any charges that ought to be levied on Nan Lian Ship Management LLC shall be at the lower rate as under the Scale of Rates issued by this Hon'ble Authority. Furthemore, the Vessel ought to be charged at the lowest slab for both a Coastal Trading Vessel and a Foreign Trading Vessel (since the conversion was for a period less than 30 days).

(iv). It is thus clear that any excess charges that ought to be levied by the Port authorities (which exceeds the lowest slab of the Scale of Rates) cannot be recovered from the auction purchaser (in the present case being Nan Lian Ship Management LLC) under any circumstances. If at all, the Port can claim/ recover from the sale proceeds of the Vessel deposited in Court is subject to the Port making a claim by way of an application against the sale proceeds of the Vessel.

(v). From the above, it is amply clear that under no circumstances is the Purchaser liable to pay any charges exceeding the calculations under the lowest slab as per the Scale of Rates.

9. Given that the NAN Lian Ship Management LLM has furnished the Order passed in the KARNIKA matter as a reference to its case, a copy of the said Order was forwarded to MBPT vide letter dated 14 January 2021 seeking their views. Simultaneously, MBPT was also requested to clarify as to whether the MBPT would be filing any appeal in the matter of M/s. NKD Maritime Ltd., and if yes, the MBPT was requested to make available the copy of the said appeal.

10.1. In response to our letter dated 14 January 2021, the learned Advocate on behalf of MBPT vide its letter No. 5241/12 dated 20 January 2021 has forwarded a copy of the Commercial Appeal and Interim Application filed by MBPT in the matter of M/s. NKD Maritime Ltd. appealing against the Order dated 06 January 2021 passed by Justice Shri B.P. Colabawalla of Bombay High Court.

10.2. From the copy of the Appeal, it is seen that the grounds of appeal of MBPT against the Order dated 06 January 2021 passed by the Hon'ble Bombay High Court in the matter of M/s. NKD Maritime Ltd. is as follows:

(i). The Learned Judge failed to appreciate that the Vessel was brought on 'as is where is' basis and hence the rate which was being by MBPT would continue to apply.

(ii). The Learned Judge failed to appreciate that the charges are levied on the length of the stay of the vessel at the anchorage and has no nexus with the change in the ownership, as the Vessel was purchased on 'as is where is' basis. Thus, the rates has been levied by MBPT on the basis of stay of the vessel in the port and not on the basis of change in ownership of the vessel. The change in ownership of the vessel does not affect the billing cycle as the Vessel is to be charged for the length of the stay of the Vessel at anchorage.

(iii). The Learned Judge failed to appreciate that the Scale of rates of MBPT has been framed by the Tariff Authority for Major Ports (TAMP), which has the force of law and which cannot be modified by the Hon'ble Court.

(iv). The Learned Judge failed to appreciate that that the Purchaser of the Vessel, when it had purchased the Vessel was aware that the Vessel had anchored from 23 March 2020 onwards and that after the lapse of 30 days it was incurring anchorage charges at a higher rate as per SOR fixed by TAMP.

(v). The Learned Judge failed to appreciate that none of the conditions under which the said services are provided/ property is required to be used, mention that incase of the sale of the Vessel, the lower rate is required to be charged from the date of sale and not the higher rate.

(vi). The Learned Judge failed to appreciate that on the date of sale of a vessel, the clock cannot be set back and a fresh period of 30 days cannot begin.

(vii). The Learned Judge failed to appreciate that when the Purchaser had purchased the vessel in an auction sale, they ought to have been aware of the provisions of law i.e. Section 48 and 49 of the Major Port Trusts Act, 1963, as well as the Scale of rates framed by TAMP and the ignorance of law is no defence.

11. Subsequently, the Advocate on behalf of MBPT vide letter dated 26 February 2021 has forwarded a copy of the order/ judgment dated 12 February 2021 passed by the Hon'ble Division Bench in the abovesaid matter and has conveyed that the Hon'ble High court of Bombay has upheld the MBPT's contention that the Auction Purchaser is liable to pay at the increased rate if the vessel's stay in Mumbai Port exceeded 30 days prior to the auction sale. The operative portion of the Order dated 12 February 2021 is given below :

"

4. It is submitted by the Applicant, relying on Section 8 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act"), that on the date of its sale to the Applicant by this court in exercise of its admiralty jurisdiction, the vessel vested free from all encumbrances, liens, attachments, registered mortgages and charges of the same nature on the vessel. Learned Counsel for the Applicant submits that the charge beyond 30th day of anchorage is in the nature of a penalty; it is attracted by reason of prior docking of the vessel at the anchorage point. Learned Counsel submits that the penal rate beyond 30th day is, thus, in the nature of an encumbrance, of which the Applicant must be spared by reason of Section 8 of the Admiralty Act.

5 The argument has no merit. It is quite far fetched to suggest that prior anchorage of the vessel under sale and the rate that it attracts as a result of such prior anchorage, are in the nature of encumbrance for the purposes of anchorage fees to be applied after the date of bill of sale and till the vessel sails at the instance of the purchaser. It is rather a matter pertaining to the condition of the vessel. When the vessel was sold under orders of the court, its condition included its having been docked at the particular anchorage point. The purchaser took the vessel on "as is where is" basis, that is to say, with this condition. If as a result of such condition, namely, its having been docked at the particular anchorage point for more than 30 days, the vessel attracts a particular rate under the scale of rates fixed by the Tariff authority, it is for the purchaser to pick up the tab. By no means, this can be described as an encumbrance on the vessel. It is only the charges which accrued for anchorage of the vessel till the date of bill of the sale and the lien created in favour of MbPT as a result of such charges, which are in the nature of an encumbrance. And that encumbrance is notwhat is sought to be enforced here against the purchaser. What MbPT is recovering from the purchaser is charges accruing from anchorage of the vessel after the date of bill of sale and delivery of its possession unto the purchaser. If as a result of the vessel being docked at a particular anchorage point for over 30 days at the point of its sale, a particular rate is attracted for further anchorage, such rate is a concomitant of the vessel's condition rather than its encumbrance. Section 8 of the Admiralty Act, thus, has no application here.

6 As the Supreme Court has clarified in the case of The Trustees of the Port of Madras vs. M/s. Aminchand Prarelal1, anyone desiring to have the benefit of the Board's services in behalf of cranage or storage as specified in Clauses (c) and (d) of Section 42 is liable to pay for such services at the prescribed rates. These rates are in the nature of a contract between the Board and the user of these services. It is immaterial whether the services are, from the point of view of the user optional in the sense that he may or may not require them or that he has no option except to avail himself of them. If these services are not paid for, the Board may exercise its statutory lien on the goods subject to such services themselves and enforce it. Even if the purchaser, in the present case, can be said to have been driven to make use of the Board's services with effect from the date of bill of sale inasmuch as it was not at his instance that the vessel was docked at the particular anchorage point, he *would nevertheless have to pay for the services of anchorage offered by the Board and such payment would have to be at a rate fixed under the scale of rates by the Tariff authority for such services.*

7 *The learned Single Judge, in his impugned order, has proceeded on the basis of Section 8 of the Admiralty Act for ordering rectification of the bill of anchorage fees. As we have demonstrated above, Section 8 has indeed no role to pay in the matter of anchorage fees payable after the date of bill of sale. The impugned order, accordingly, cannot be sustained so far as it relates to ordering of rectification of anchorage charges.*

8. *The Applicant in the present case has filed a cross objection. The cross objection involves two submissions. Firstly, it is submitted that anchorage charges are subsumed within the expression "port dues" under Section 50-B of the Major Port Trusts Act. Under Section 50-B, when a vessel enters a port but does not discharge or take in any cargo or passengers, she is charged with port dues at a rate to be determined by the Authority, which, in any event, should not exceed half the rate with which she otherwise would be chargeable. Under this provision, it is submitted, MbPT could not have charged more than half the rate under the scale of rates for anchorage charges. Relying on Section 50-B, learned Counsel submits that port dues not having been defined under the Act, all charges payable within the premises of the port should be subsumed within the broad expression "port dues". Whether port dues within the meaning of Section 50-B of the Major Port Trusts Act include other charges leviable within the port premises (i.e. charges other than port entry charges) is beside the point. What we are concerned with in the present case is the scale of rates fixed by the Tariff Authority for use of services within the port premises, and that scale separately provides for port dues, which are a one time charge payable upon entry into port, in Clause 2.16 of the notification, whereas anchorage fees are separately provided for lying of the vessel at or alongside any particular anchorage point within the port premises, in Clause 2.15 of the notification. Dealings between parties as also pleadings respectively filed by them also indicate the same understanding on the part of both stakeholders; both MbPT and Applicant have understood port dues and anchorage fees as separate charges governed by separate individual clauses of the Tariff notification.*

9. *The second aspect of the cross-objection concerns pilotage charges, which is an insignificant part of the total bill raised by MbPT with the purchaser. The impugned order does not find any reference to pilotage charges. It is, however, submitted that the order provides for liberty reserved unto the Applicant to raise an issue concerning these charges in case an appeal is filed by MbPT challenging the impugned order. It is submitted that such liberty includes leave to file cross objection about pilotage charges. The liberty reserved for cross objection of the Applicant concerns the issue of charging of half anchorage fees under Section 50-B of the Act; there is no indication that any liberty was reserved on the issue concerning pilotage charges. We, therefore, find no merit even in this aspect of the cross objection.*

10. *Accordingly, the commercial appeal is allowed by quashing and setting aside the impugned order of the learned Single Judge. The amount deposited by the Applicant as a condition of interim relief in its favour may now be withdrawn by MbPT. Such withdrawal, however, shall not be made for a period of four weeks from today. The cross objection is dismissed. Costs to be costs in the cause.*
"

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

(i). Based on an Order dated 7 August 2020 passed by Hon'ble High Court of Bombay, directing the Nan Lian Ship Management LLC (NLSM - Applicant) to file an application with this Authority within a period of one month from the date of the Order of the Court, the NLSM-Applicant has filed an application dated 05 September 2020 for adjudication of the dispute concerning the Port Anchorage Dues payable by the NLSM - Applicant to Mumbai Port Trust (MBPT), in connection with purchase of the Vessel MT Prem Mala (IMO No. 9209972).Therefore, the Application filed by the NLSM-Applicant is taken up for disposal so as to comply with the direction of the Hon’ble High Court.

(ii). Consultation proceeding was initiated with both the parties relating to the subject matter viz., NLSM - Applicant and the MBPT. A joint hearing was also accorded to the parties on 17 November 2020.

(iii). The brief facts of the case are that the Vessel M.T. Prem Mala arrived at Anchorage of MBPT on or about 17 January 2020. The anchorage charges began accruing since then. After the arrest of the Vessel, when the Vessel was auctioned, the NLSM-Applicant bought the Vessel on 07 July 2020 vide the court sale, free of all charges and encumbrances in accordance with Section 10 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, and took possession of the Vessel on 13 July 2020.

It is the case of the Applicant that the Applicant has bought the vessel vide a Court auction free of all encumbrances, all claims and charges qua the Vessel are dropped and the Vessel ought to be treated as if it has come to the Port at the behest of the new Owners for the first time post the sale. Furthermore, the Applicant ought to be placed in the lowest slab and that the date of possession of the vessel / arrival of the vessel ought to be taken into consideration as “Day 1 of the arrival of the vessel” and thus the date of initiation for all necessary calculations. Thus, as per the Applicant, it is liable to pay the Port for dues amounting to ₹10,41,932.50 post 13 July 2020, as if the vessel came into Port on 13 July 2020 and not as per the highest slab as levied by MBPT on the basis of the stay of the vessel amounting to ₹ 51,17,132/-.

(iv). The point that arises before this Authority in the matter in reference is whether the MBPT is entitled to its charges at the higher rate of anchorage charges as per the approved tariff/ scale of rates in the facts and circumstances of the present case, where the vessel came to be purchased in a judicial sale by the Applicant; or it would have to be deemed that the vessel entered the MBPT anchorage only on the day when the Court had confirmed the sale of the vessel in favour of the Applicant and liable to pay anchorage charges at the lower rate and whether the Applicant is entitled to 50% waiver under Sections 50-A and 50-B of the Major Port Trusts Act, 1963, as claimed by the Applicant.

(v). Whilst considering the respective submissions by both the parties, copies of the Sheriff’s notice issued for the sale of the vessel pursuant to the Court’s orders; the terms and conditions of such sale; and copies of the advertisements published in the local newspapers by the office of the Sheriff of Mumbai, have also been obtained from the Applicant and considered.

(vi). The NLSM-Applicant has vehemently submitted that they have purchased the vessel free of all liens, claims, encumbrances, etc. and, therefore, as and from the date of the confirmation of the sale in their favour, it has to be treated as if that the vessel has just arrived on that date and the liability of the Applicant to pay anchorage charges ought to be calculated taking that date as the first date. And that being so, the vessel was at the anchorage for less than 30 days and, consequently, the NLSM-Applicant is liable to pay only at the lower rate of tariff, and not the higher rate of tariff — which would apply only if the period of stay was beyond the 30^{th} day.

(vii). There is no doubt whatsoever that judicial sale of vessels by the Court, are free of all claims, liens, encumbrances, etc. on the vessels. This would mean that whatever and whoever had any claims and/ or liens and/ or any encumbrances and/ or charge on the vessel; all of it would stand extinguished as against the vessel as on the date of the confirmation of the sale of the vessel by the Court. In this connection, it is to state that all that this would mean is that neither the purchasers of the vessel pursuant to the Court's orders, nor the vessel shall be responsible and/ or liable for any claims, liens, charges, encumbrances that existed against the vessel prior to the date of the confirmation of the sale in favour of the auction purchaser; and that the vessel is free from all previous claims, liens, encumbrances whatsoever.

(viii). However, the above has nothing whatsoever to do with the dues/ liabilities of the vessel as and from the date of confirmation of the sale of the vessel by the Court. A perusal of the terms and conditions of the sale of the vessel by the Court indicates that the sale is subject to the terms and conditions of the sale and subject to confirmation by the Court. It is clear from clause 5 of the terms and conditions of the sale of the vessel, that the vessel *PREM MALA*, was sold in the condition in which she existed, i.e. on 'as-is-where-is' and 'what-is-there-is' basis. If that was the term/ condition of the sale of the vessel, it can only lead to one conclusion that whatever was the applicable anchorage fees and/ or tariff on the vessel, which was due and payable by the vessel to MBPT as on the date of the confirmation of sale, the vessel/ the successful auction purchaser had to pay the same to the MBPT, and the same shall continue to be payable by the purchaser as and from the date of confirmation of sale in his favour.

(ix). The words, 'condition in which she exists' can only mean that there is no stopping of the running of the applicable charges and/ or tariff, which will be 'as-is'. In other words, there shall be no change in the calculations and/ or quantum of charges that would be applicable, which would be as per the applicable tariff of the Port. Clause 5 further would mean that the buyer will get the vessel in the physical and/ or legal state/ condition as exists when sale is confirmed. This can be construed to include the Port's applicable tariff in force leviable on the vessel then, in respect of the applicable charges. There is nothing in the terms and conditions of the sale which would support the Applicant's contention that it has to be deemed that the vessel came into the anchorage only on the date of confirmation of sale/ Bill of sale in its favour, and that should be taken as the first day, and that the anchorage charges to be calculated accordingly.

(x). A harmonious reading of Clauses 5 and 16 of the terms and conditions of the sale of the vessel, *PREM MALA*, makes it clear that the purchaser will not be liable for any claims or charges payable on or by the vessel prior to the date of the confirmation of sale. But, whatever is the applicable charges as per the tariff, as and from the date of confirmation of sale, shall be the responsibility and liability of the purchaser.

(xi). In view of the above, it is found that there is no legal basis to support the Applicant's contention/ submissions, and the same are contrary to and inconsistent with the terms and conditions subject to which the buyer had purchased the vessel, and the sale was confirmed in his favour by the Court.

(xii). The NLSM-Applicant, as the buyer/ purchaser of the vessel, has lost sight of the fact that he has purchased the vessel on 'as-is-where-is'. If so, it is clear that whatever are the Port dues/ Port charges/ anchorage charges applicable on the vessel as on the date of the confirmation of the sale, the same, as and from that date, shall be payable by the purchaser/ new owner of the vessel.

(xiii). In this regard, on perusing the Scale of Rates of MBPT, as approved by this Authority vide its Order no. TAMP/5/2019-MBPT dated 24 July 2019, which shows that it makes no exceptions in respect of the liability of the purchaser to pay applicable anchorage charges to the MBPT. It is very clear from Section 2.15 that, if any vessel remains at any anchorage point, shown in column No. 2 of the table, anchorage fees <u>shall be</u> levied as per column 3; and the notes thereunder also make it clear that the anchorage fees shall be levied from the time a vessel drops anchor till the time it leaves the anchorage berth with certain exclusions. The exclusions provided at Section 2.15 do not include sale of the vessel. Accordingly, there is nothing in the SOR that would come to the rescue of NLSM-Applicant.

(xiv). The extract from the commentary produced by Nan Lian Ship Management itself does not anywhere say that, in respect of Port charges, it is required that the confirmation of sale of the vessel has to be treated as the date when the vessel entered the Port. In any event, this can never be the case inasmuch as, in view of the terms and conditions of such sale, a bidder / prospective purchaser (*even before he submits his bid*) knows what would be the Port charges / anchorage charges, etc. payable by him, as and from the date of confirmation of sale of the vessel by the High Court. Accordingly, *estoppel* would also operate.

(xv). Section 8 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 has been referred and extracted in the submissions of the NLSM-Applicant. Undoubtedly, as already stated hereinbefore, on the confirmation of sale of the vessel by the High Court, the property of the vessel vests in the purchaser, free from all encumbrances, liens, attachments, registered mortgages and charges of the same nature on the vessel. All that Section 8 does is to confirm that statutorily the purchaser gets the vessel free of all liens, etc. This <u>does not</u> mean, nor has the effect, of the Port having to treat the vessel as having called at the Port only as on the date of confirmation of sale, or any such thing for purposes of calculations of *port dues/ anchorage charges.* That does not appear to be the intention of the Statute or of the said clause; and, it can never be. The underlined portion in the submission, i.e. 'charges of the same nature on the vessel' relates to any charge, like encumbrances, lien or a registered mortgage; and not to the charges, rates, etc., otherwise payable by the vessel to the Port and/ or any statutory authority as and from the date of confirmation of sale by the High Court, onwards. There is nothing to support the submission that the vessel is required to be treated as having come into the Port only on 13 July 2020, as wrongly contended by the NLSM-Applicant.

(xvi). From the point of view of the Admiralty Act and Admiralty practices in relation to the judicial sale of the vessel, it is to state that the submission/ contention of the Applicant, is not correct — and is not supported in law; and MBPT is certainly entitled to charges as per its invoice raised in this behalf.

(xvii). It may also be noted that MBPT is clear that it is only for the last 2 days that they have levied anchorage charges as foreign-going vessel and, prior thereto, they have only charged as coastal vessel. It is seen that there is no infirmity in the demand of MBPT, and the same is as per the approved tariff or SOR.

(xviii). There is nothing in any statute and / or law and / or any commentary relating to this issue which brings about a requirement and / or a legal fiction by which it has to be deemed that the vessel entered the Port only on the date of confirmation of sale by the High Court. Whatever were the charges applicable on the vessel under the approved tariff of the Mumbai Port, the purchaser is bound and liable to pay that charge, as and from the date of confirmation of sale of the vessel. All that section 8 of the Act does is that it protects the purchaser / vessel from payment of the previously accumulated charges, for which the purchaser would have no liability.

(xix). Undoubtedly, the sale is free of liens, encumbrances, etc.; however, the sale is also 'as-is-where-is' basis; and there is nothing in the terms and conditions of the sale and / or in the scale of rates and / or in the tariff that would require the Port to treat the date of confirmation of sale / date of the Bill of Sale as the first date of the vessel under the new ownership of the purchaser as the date on which the vessel came to anchorage; and the vessel will continue to incur and be liable to pay the anchorage charges as applicable, if she has been at the anchorage for more than 30 days.

(xx). In relation to the submissions relating to Sections 50-A and 50-B of the Major Port Trusts Act, 1963, it is an admitted position that when the vessel called at the Mumbai Port, she had called for discharging of cargo, and she was not in ballast. Subsequent to the discharge of the cargo, the vessel was arrested and she continued to remain at the anchorage since the time of her arrest. In view thereof, this Authority is of the view that Sections 50-A and 50-B do not apply to the facts of the present case.

(xxi). Post conclusion of the submissions and hearing in the matter, and while considering the matter, the Applicant informed us that the Bombay High Court has passed an Order dated 6 January 2021 in another Interim Application (L) No. 6531 of 2020 in Sheriff's report No. 53 of 2020 in Commercial Admiralty Suit (L) No. 3579 of 2020, in favour of the auction purchaser of the vessel in that matter, holding that the purchaser there cannot be foisted with the liability to pay anchorage charges at the rate which was stipulated for a period beyond 30 days and MBPT cannot apply the higher rate which would be applicable for period beyond 30 days. The honourable Single Judge held that the Applicant there is liable to pay anchorage charges only on the lower rate of tariff for period less than 30 days, i.e. from the date of confirmation of the sale by the Court till the sailing away of the vessel. According to the said decision, as far as the Applicant (Buyer) is concerned, the starting point for incurring anchorage charges is the date and time of issuance of the Bill of Sale, and not prior thereto, and the rate that would be applicable would have to be determined from this date. The said order goes on to state that the Port can recover the shortfall, if any, from the sale proceeds (*based on the higher rate of charges*).

On perusal of the said order, it is noted with respect that the issue of the sale being '*as-is-where-is*' basis, and the terms & conditions of the sale, has not been considered by the Court in the said order dated 6 January 2021. However in an appeal filed by the MBPT to the Division Bench of the Bombay High Court, impugning the order dated 06 January 2021, the Order of the Single Judge has been quashed and set aside by Division Bench.

(xxii) This Authority is inclined to conclude on the basis of the fact that the sale was on 'as-is-where-is' basis, which has also been upheld by the Division Bench of the Hon'ble High Court in its aforesaid decision / order.

13. In the result, and for the reasons given above, and based on a collective application of mind, this Authority does not find merit in the application dated 05 September 2020 filed by NLSM LLC before this Authority. The NLSM LLC is, therefore, liable to pay the Port Charges as per the MBPT's invoice dated 17 August 2020 amounting to ₹ 51,17,132/- for the period between 13th July 2020 to 9th August 2020.

(T.S. Balasubramanian)
Member (Finance)

ANNEX.

Comparative statement of the submissions made by M/s. Nan Lian Ship Management LLC in its application, the comments of MBPT thereon, the counter remarks made by M/s. Nan Lian Ship Management LLC thereon in their rejoinder and the MBPT reply / sur-joinder on the rejoinder of the NLSMLLC are tabulated below:

Sr. No.	**M/s. Nan Lian Ship Management LLC Application dated 05.09.2020**	**Comments of MBPT vide its letter dated 08.10.2020**	**Comments of M/s. Lian Ship Management LLC in its letter dated 16.11.2020**	**Comments of MBPT vide its letter dated 27.11.2020**
1.	The Applicant in the present Application is a company incorporated under the laws of United Arab Emirates, having its registered office at the address mentioned in the cause title above. The Applicant is a company engaged in ship management both Technical and Commercial, Inspections, Technical Superintendence, etc. since 2015.	The Respondents are not aware of and do not admit the statements made therein as they are within the personal knowledge of the Applicants and put the Applicants to the strict proof thereof.	It is a matter of record that the Applicant in the present Application is a company incorporated under the laws of United Arab Emirates, having its registered office at the address mentioned in the cause title above. The Applicant is a company engaged in ship management both Technical and Commercial, Inspections, Technical Superintendence, etc. since 2015, and the same is corroborated by the Orders of the Hon'ble Bombay High Court.	-
2	The Respondent in the present Application is a body incorporate constituted under the provisions of the Major Port Trust Act, 1963 having its office at the address mentioned in the cause title above.	The Respondents state that the statements made therein are correct.	The same warrants no comments.	-
3	The present Application is filed by the Applicant under the directions of the Order passed by Hon'ble Mr. Justice S.C. Gupte of Hon'ble			

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	Bombay High Court dated 7th August 2020, wherein the Applicant was directed to prefer an application before this Hon'ble Authority for adjudication of the quantum of Port Anchorage Charges, and the Applicant has thus preferred the present application.			
4	On or about 17th January 2020, the Vessel M.T. Prem Mala (IMO No. 9209972) ("**Vessel**") arrived at Mumbai Anchorage, Mumbai Port Trust Marine Department, and begun accruing anchorage charges since then.	The Respondents deny that the respondents started levying anchorage charges from 17/01/2020 as wrongly stated by the Applicants. The Respondents state that the said vessel arrived within the port and harbour of Mumbai on 17/01/2020 at 2142 hours at JD-2 (VCN : 2001314) under the Agency of Indian Oil Corporation Ltd. (IOCL) for cargo operation. The said vessel was shifted to A2 anchorage on 20/01/2020 at 1630 hours as the vessel was arrested by Court and again was shifted to ZI anchorage on 05/02/2020 at 0154 hours. The vessel then was shifted to JD-2 on 10/02/2020 at 1454 hours. The vessel again on completion of cargo at JD-2, was shifted to A2 anchorage on 12/02/2020 at 0148 hours under the agency of M/S. Argosy Shipping Agency Pvt. Ltd. The agency of the vessel was transferred to M/S. Argosy Shipping Agency Pvt. Ltd. from IOCL on 11/02/2020 at 1830 hours. The vessel was at A2 anchorage under the agency of M/S.	It is denied that the Respondents started levying charges on the vessel only from 12th February 2020. The Applicants submissions have been misinterpreted by the Respondent in a rather unusual way. The Applicant vide its application only brought to the notice of this Hon'ble Authority that the vessel arrived at the Port and Harbour of Mumbai sometime in January 2020. It is incorrect on the part of the Respondent to state that charges were only levied from 12th February 2020. The charges were being levied on the vessel since its arrival on 17th January 2020, though at a different anchorage position.	No specific remarks furnished by MBPT.

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		Argosy Shipping Agency Pvt. Ltd. till 13/07/2020 at 1700 hours. Then the agency was transferred to M/S. J. M. Baxi & Co. on 13/07/2020 at 1301 hours. The vessel sailed on 09/08/2020 at 1054 hours. Therefore, the above said vessel was at anchorage A2 from 12/02/2020 at 0148 hours to 09/08/2020 at 1030 hours.		
5	On 18th January 2020, vide an order passed by the Hon'ble Bombay High Court (Coram: Mr. Justice K.R. Shriram), the Vessel, was arrested by one Engineering Appliances Corporation in Commercial Admiralty Suit (L) No. 3 of 2020. Subsequently on 31st January 2020, vide an order passed by Hon'ble Bombay High Court. (Coram: Mr. Justice K.R. Shriram), the Vessel was arrested by one Axis Trustee Services Ltd. in Commercial Admiralty Suit (L) No. 7 of 2020. Copies of the said orders are annexed hereto and marked as	The Respondents state that the statements made therein are a matter of record.	The same warrants no comments	-

Sr. No.	M/s. Nan Lian Ship Management LLC Application dated 05.09.2020	Comments of MBPT vide its letter dated 08.10.2020	Comments of M/s. Lian Ship Management LLC in its letter dated 16.11.2020	Comments of MBPT vide its letter dated 27.11.2020
	Exhibit "A" and **Exhibit "B"** respectively.			
6	Thereafter, vide an order dated 26th May 2020, passed by the Hon'ble Bombay High Court (Coram: Mr. Justice G.S. Kulkarni), Nan Lian Ship Management LLC ("**Applicant**") was the highest bidder in the auction process of the Vessel, M.T. Prem Mala (IMO No. 9209972) ("**Vessel**"). Thereafter, the Applicant successfully deposited the entire sum of INR 36,40,00,000 (INR Thirty-Six Crores Forty Lakhs) with the Court, which is confirmed vide an order dated 3rd July 2020 passed by Hon'ble Mr. Justice S.C. Gupte. Copies of the Orders dated 26th May 2020 and 3rd July 2020, are annexed hereto and marked as **Exhibit "C"** and **Exhibit "D"** respectively.			
7	It is pertinent to note that the Applicant has in fact bought the Vessel vide a court sale, free of all charges and	The said vessel was sold free from all encumbrances i.e. encumbrances prior to the sale of the said vessel. The Respondents state that their statutory dues which had	The contents thereof are matters of record and thus warrant no comments. It is denied that the charges as per Exhibit-1 in the sum	No specific comments furnished by MBPT.

Sr. No.	M/s. Nan Lian Ship Management LLC Application dated 05.09.2020	Comments of MBPT vide its letter dated 08.10.2020	Comments of M/s. Lian Ship Management LLC in its letter dated 16.11.2020	Comments of MBPT vide its letter dated 27.11.2020
	encumbrances in accordance with Section 10 of The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (**"Admiralty Act, 2017"**).	accrued prior to the sale have been paid from the sale proceeds of the said vessel. The charges as per Exhibit — 1 in the sum of ₹51,17,132/- are for the period from 13/07/2020 till 09/08/2020 i.e. after the date the Applicant became the owner of the said vessel. The said charges are levied as per the SOR which is approved by TAMP	of RS. 51,71,132 (for the period from 13th July 2020 till 9th August 2020, i.e. after the date the Applicant became the owner of the Vessel) are levied as per the SOR which is approved by TAMP. It is pertinent to note that the Respondent has placed the Applicant in the highest slab and has levied charges which are encumbered by the actions and default of the erstwhile owners/agents of the owners.	
8	Subsequently, a Bill of Sale dated 7th July 2020, was issued in favour of the Applicant through the High Court Admiralty Registrar, High Court of Bombay ensuring transfer of the ownership of the Vessel in favour of the Applicant, since the Applicant had successfully deposited the amounts with the Hon'ble Court. A copy of the Bill of Sale dated 7th July 2020, is annexed hereto and marked as **Exhibit "E"**.	The statements made therein are a matter of record.	The same warrants no comments.	-
9	On having received an original copy of the Bill of Sale, the Applicants as the rightful owners of the Vessel	The Respondents are not aware of and do not admit the statements made therein as they are within the personal knowledge of the Applicants. The Order dated 09/07/2020	It is denied that the Respondents are not aware of the statements made in paragraph 9 of the Application since the same has been mentioned and	-

Sr. No.	M/s. Nan Lian Ship Management LLC Application dated 05.09.2020	Comments of MBPT vide its letter dated 08.10.2020	Comments of M/s. Lian Ship Management LLC in its letter dated 16.11.2020	Comments of MBPT vide its letter dated 27.11.2020
	preferred to replace the crew on board the Vessel with their own crew. Unfortunately, the crew on-board the Vessel was unsupportive due to unpaid wages since the early months of 2020. Thereafter, on 9th July 2020, the hardships faced by the Applicant were brought to the notice of the Hon'ble Court and in light of the same, vide an order dated 9th July 2020, passed by the Hon'ble Bombay High Court (Coram: Hon'ble Mr. Justice B.P. Colabawalla), the crew on board the Vessel was directed to ensure that a smooth takeover is ensured whilst handing over the charge of the Vessel to the Applicant's appointed crew. Pursuant to the order dated 9th July 2020, the Applicant was only able to attain possession and have its crew placed on board the Vessel on 13th July 2020. A copy of the Order dated 9th July 2020, passed by Hon'ble Mr. Justice B.P. Colabawalla is	passed by the Hon'ble High Court is a matter of record.	taken into consideration in the Order passed by the Hon'ble Bombay High Court (Coram: Hon'ble Mr. Justice B.P. Colabawalla) as annexed to the Application.	

Sr. No.	M/s. Nan Lian Ship Management LLC Application dated 05.09.2020	Comments of MBPT vide its letter dated 08.10.2020	Comments of M/s. Lian Ship Management LLC in its letter dated 16.11.2020	Comments of MBPT vide its letter dated 27.11.2020
	annexed hereto and marked as **Exhibit "F"**.			
10	It is pertinent to note that, the Vessel was imported sometime in the midst of this decade by the erstwhile owners. The Vessel at the time of import had its status converted from a Foreign Going Trade Vessel to a Coastal Trade Vessel. The Applicant on purchase of the Vessel, wished to have the status of the Vessel reinstated as that of a Foreign Going Trade Vessel from its current status as a Coastal Trade Vessel. Accordingly, to change the status of the Vessel, the Applicant would require clearances from both the Port Authorities as well as the Customs Authorities.	The Respondents are not aware of and do not admit that the Vessel was imported sometime in the midst of this decade by the erstwhile owners and put the Applicants to the strict proof thereof. The Respondents are not aware of and do not admit that the Vessel at the time of import had its status converted from a Foreign Going Trade Vessel to a Coastal Trade Vessel and put the Applicants to the strict proof thereof. The Respondents deny that a change of the vessel status from Coastal Trade Vessel to Going Trade Vessel requires permission of both the Port Authorities as well as the Customs Authorities.	It is denied that the Respondents are unaware of the status change of the vessel and the time when the vessel was imported. Furthermore, it is a known fact that Customs Authorities for providing necessary clearances for the sailing and/or conversion of the vessel require necessary documents and/ or clearances from the Respondent. Failure to provide such documents on the part of the Respondent infact resulted in the delay for the vessel to have its clearances and the other required certificates in order to set sail.	The Respondents deny that charges which are levied as per SOR are encumbered by the actions and default of the erstwhile owners / agents of the owners as alleged.
11	The erstwhile agents of the Applicant vide an email dated 16th July 2020, apprised the Applicant of a list of certain Vessel Import Documents, that would be absolutely necessary to change the Vessel's status from that of a	The Respondents are not aware of and do not admit the statements made therein as they are within the personal knowledge of the Applicants and put the Applicants to the strict proof thereof.	The emails, documents and instances referred to in paragraph 11 and 12 of the Application are matters of record and have shall not be reiterated for ease of reference. It is pertinent to note that the aforesaid emails have been brought on record before the Hon'ble Bombay High	-

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	Coastal Trade Vessel a Foreign Trade Vessel. Pursuant to the same, vide email dated 16th July 2020, by the advocates of the Applicants to the Deputy Sheriff, Mumbai sought assistance of the Office of the Sheriff to obtain the requisite documents as enumerated in the email by the Applicant's erstwhile agents. Copies of the email dated 16th July 2020, from the Applicant's erstwhile agents to the Applicant and by the Applicant's advocates addressed to the Deputy Sheriff, Mumbai are annexed hereto and marked as **Exhibit "G"** and **Exhibit "H"**, respectively.		Court and this Hon'ble Tribunal through an affidavit and the present Application.	
12	Whilst having tried to acquire the necessary Import Documents, the representatives of the Applicants approached the Customs Authorities on multiple occasions apprising them of the fact that the Applicant has purchased the Vessel vide a court sale, and			

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	shall not possess the Import Documents			
13	The Customs Authorities were apprised of the relevant excerpts from the Order dated 3rd July 2020 passed by the Hon'ble Bombay High Court (Coram: Hon'ble Mr. Justice S.C. Gupte) and a supporting letter dated 13th July 2020, issued by the Office of the Sheriff clearly enumerating and directing all necessary authorities to act in accordance with the Order and provide all necessary clearances to the Vessel for change in its status. Therefore, it is an undisputed fact that the Port is aware of the change of ownership.	As regards the correspondence between the Applicants and the Customs is concerned, the Respondents are not aware of and do not admit the statements made therein as they are within the personal knowledge of the Applicants and put the Applicants to the strict proof thereof. As regards the change of ownership of the vessel is concerned, the Respondents state that the statutory charges are based on length of user of the Respondents' services / use of property irrespective of whoever is the owner of the vessel, in this connection the Respondents invite attention of the Tribunal to para 6.1 (i) of the above.	It is denied that the statutory charges are based on length of user of the Respondent's services/use of property irrespective of whoever is the owner of the vessel. It is pertinent to note that the Respondent has failed to appreciate the fact that the vessel has been purchased vide a judicial auction and free of all encumbrances. Levying charges as per the scale of rates as the Respondent has done in the present case only shows the lackadaisical attitude of the Respondent, whilst having failed to take into consideration that the new buyer cannot be held liable and/or face the flak of the Respondent.	It is surprising that the Applicants are contending that the Respondents should not charge as per the scale of rates approved by TAMP.
14	Pursuant to the submission of the Order dated 3rd July 2020 and letter dated 13th July 2020 and on perusal of same, the authorities opined that the said order and letter only direct the authorities to assist the Applicant in taking possession of the Vessel, and no more. Furthermore, the Port authorities raised	The Respondents do not understand the import of the following: "Pursuant to the submission of the Order dated 3M July 2020 and letter dated 13th July 2020 and on perusal of the same, the authorities opined that the said order and letter only direct the authorities to assist the Applicant in taking possession of the Vessel, and no more. ' The Respondents do not know which particularly "authority" they are referring to	It is clear from paragraph 14 of the Application that the authorities referred to in the said paragraph are both the Respondent and the Customs Authorities. The Respondent as well as the Customs Authorities sought orders wherein excessively specific orders were granted directing the authorities to act in accordance with the same. The said authorities failed to appreciate	The Respondents deny that it is solely due to the delay on account of the actions of the Respondents and not due to the negligence of the Applicants as alleged. The Respondents deny that the Respondents failed to provide the necessary documents required by the Applicants to convert the vessel from a coastal vessel to a foreign vessel in time which in tum resulted in the delay in obtaining necessary clearances from

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	objections regarding unpaid and outstanding Port Dues and sought clarification on the same. The Customs authorities raised certain objections on the Import Documents yet again and in-fact orally conveyed to the agents and representatives of the Applicant that, since the matter is listed on a subsequent date, they shall await the Order passed on the next date.	i.e. the Customs, DG Shipping or any other authority. The Respondents deny that the Respondents had raised any objection on unpaid and outstanding Port charges and sought clarification on the same as alleged. the Respondents point out that the pre-sale statutory charges have already been paid by the Sheriff of Mumbai to the Respondents to the tune of ₹.2,26,10,857/-. The Respondents had called upon the Applicants to pay the anchorage charges and other statutory dues of the Respondents on the basis of the SOR. The Respondents are not aware of and do not admit the so called objections raised by the Customs as they are within the personal knowledge of the Applicants and put the Applicants to the strict proof thereof.	the orders and only acted on the particular wordings of the order, and no more than the same, which constrained the Applicant to move the Hon'ble Bombay High Court for trivial issues that were being raised by the authorities including the Respondent. Furthermore, it is infact pertinent to note that the Respondents deny raising any objections on unpaid and outstanding dues (in accordance to the orders dated 3rd July 2020 and 13th July 2020), since the pre-sale statutory dues were already paid by the Sheriff of Mumbai to the Respondents. It is pertinent to note that the pre-sale dues owed to the Respondents were only sanctioned and/or cleared by the Sheriff of Mumbai on a later date in accordance with subsequent orders.	the Customs Authorities as alleged. The Respondents deny that the Respondents sought to levy all the past dues on the Applicants as falsely alleged by the Applicants as alleged.
15	Aggrieved by the actions and unsupportive outlook of the Port as well as Customs Authorities, the Applicant's advocates addressed an email dated 21st July 2020 to the Deputy Sheriff, Mumbai to provide necessary assistance to the Applicant so as to obtain necessary	It is pertinent to point out that letter/email dated 21/07/2020 was addressed by the Applicants to the Deputy Sheriff of Mumbai, behind the back of the Respondents without even forwarding a copy of the said letter/email to the Respondents. The said email dated 21/07/2020 has several false and misleading statements in as much as change of registry of the vessel from the former owners to the Applicants cannot be done by	It is denied that the letter/email dated 21st July 2020 was addressed by the Applicants to the Deputy Sheriff of Mumbai, behind the back of the Respondents without even forwarding a copy of the said letter/email to the Respondents. It is denied that the said email dated 21st July 2020 has several false and misleading statements in as much as	No specific remarks furnished by MBPT.

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	clearances from both the authorities. In light of the same, the Deputy Sheriff was pleased to place before the Hon'ble Bombay High Court, a Sheriff's Report enlisting the issues faced by the Applicant and seeking orders accordingly from the Hon'ble Bombay High Court. A copy of the email dated 21st July 2020, is annexed hereto and marked as **<u>Exhibit "I"</u>**.	the DC/Harbour Master of the Respondents. The change of registry of the Vessel to the name of the Applicants is effected by DG Shipping and the conversion of the vessel from coastal to foreign is done by the Customs authorities. The Respondents state that the Port clearance is granted by the Customs and not by the Respondents. The Respondents state that the new Agents of the Applicants iM. Baxi were directed to deposit the advance Vessel Related Charges from the date of transfer of agency of the said vessel i.e. from 13/07/2020 till the expected date of the sailing of the said vessel as per the existing SOR which was disputed by the said Agents. According to the said Agents the Anchorage charges should be levied @ 0.0746 instead of the correct rate i.e. 0. 1865 on the alleged ground that the agency has been transferred on 13/07/2020 at 1700 hrs. It was verbally explained to the said Agents that under the SOR, the charges are based on the length of use of the anchorage irrespective of change of ownership and that <u>as the vessel stay had exceeded 30 days at the said anchorage it has been charged at a higher rate.</u>	change of registry of the vessel from the former owners to the Applicants cannot be done by the DC/Harbour Master of the Respondents. It is pertinent to note that the Respondent was neither a party to the suit in which the Applicant sought necessary orders and did not need any intimation whatsoever. Furthermore, it is pertinent to note that the Applicant sought directions from the Hon'ble Court in so far as directions to the Respondents to issue all clearances and/or documents to ensure that the Applicant could pursue the change of registry of the vessel with the concerned authorities. It is pertinent to note that there are documents necessary for the conversion of the vessel which need to be sanctioned in favour of the Applicant by the Respondents. It is denied that the rate of 0.1865 is to be levied by the Respondent on the Applicant and/or its agent instead of 0.0746. it is denied that it was verbally explained to the agents that under the SOR, the charges are based on the length of the anchorage irrespective of change of ownership and that as the vessel stay had exceeded 30 days at the	

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			said anchorage it has been charged at a higher rate. It is pertinent to note that, levying of rates at 0.1865 instead of 0.0746 on the Applicant and/or its agents is only due to the default of the erstwhile owner and/or its agent and is in no way the concern of the Applicant in the present case, since the vessel is bought free of all encumbrances.	
16	Thereafter, vide an order dated 21st July 2020, passed by the Hon'ble Bombay High Court (Coram: Hon'ble Mr. Justice S.C. Gupte), the Harbour Master, Port and Customs authorities were directed to co-operate with the Applicant for procurement of all the necessary documents as may be required to obtain necessary clearances from the authorities. A copy of the order dated 21st July 2020 passed by Hon'ble Mr. Justice S.C. Gupte is annexed hereto and marked as **Exhibit "J"**. Unfortunately, the Applicant could not obtain any further documents from the	The Respondents state that as regards the Order dated 21/07/2020 is concerned the same is a matter of record. The Respondents are not aware of and do not admit that the Applicants could not obtain any further documents from the erstwhile owners of the said vessel and/or any other sources as they are within the personal knowledge of the Applicants and put the Applicants to the strict proof thereof.	The contents thereof are matters of record and thus warrant no comment. It is denied that the Respondents are not aware of the fact that the Applicants could not obtain any further documents from the erstwhile owners and/or any other sources since the same has been recorded in the order dated 21st July 2020.	No specific remarks furnished by MBPT.

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	erstwhile owners and/or any other sources, to obtain the necessary clearances.			
17	Further to the said Order dated 21st July 2020, the agents and representatives of the Applicant approached the authorities yet again to obtain necessary clearances for change of status of the Vessel, but all in vain.	The Respondents deny that the agents and representatives of the Applicants approached the authorities yet again to obtain necessary clearances for change of status of the Vessel, but all in vain as alleged. The Respondents repeat that the change of registry is not within the purview of the Port.	It is pertinent to note that the Respondents were approached by the Applicants representatives and agents seeking clearances which would enable them to further ensure that all the required documents are in order, for change of registry of the vessel. It was due to the non-approachable attitude of the Respondents that the Applicant was constrained to yet again move the Hon'ble Court seeking appropriate orders pertaining to the same.	No specific remarks furnished by MBPT.
18	On 24th July 2020, advocates for the Applicants addressed an email to the Sheriff of Mumbai requesting that necessary directions be given to: a). the Port, to ensure that the requisite port clearances be given to the Applicant for the Vessel to sail out and transfer of agency be granted to JM Baxi from the Applicant's erstwhile agents;	It is pertinent to point out that letter/email dated 24/07/2020 was addressed by the Applicants to the Deputy Sheriff of Mumbai, behind the back of the Respondents without even forwarding a copy of the said letter/email to the Respondents. The said email dated 24/07/2020 has several false and misleading statements inasmuch as the port clearance under Section 42 of the Customs Act is granted by the Customs Authorities and not by the Respondents. The Respondents state that the change of status of the said vessel from coastal to foreign is granted by the Customs Authorities and not by the Respondents. The Respondents state that the agency of the vessel was transferred to	It is denied that the letter/email dated 24th July 2020 was addressed by the Applicants to the Deputy Sheriff of Mumbai, behind the back of the Respondents without even forwarding a copy of the said letter/email to the Respondents. It is denied that the said email dated 24th July 2020 has several false and misleading statements in as much as change port clearance under Section 42 of the Customs Act being granted by the Customs Authorities and not by the Respondents. It is pertinent to note that the Applicant approached the Respondents seeking necessary	No specific remarks furnished by MBPT.

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	b). the Commissioner of Customs be directed to act in accordance with the letters, orders and communications by the Court and the officers of the Court to ensure quick transfer of the Vessel's status, without emphasis on the Import Documents whilst waiving the unavailability of certain Import Documents which would not be available with the Applicant under any circumstances. A copy of the email dated 24th July 2020 is annexed hereto and marked as **<u>Exhibit "K"</u>**.	M/S. J. M. Baxi & Co. on 13/07/2020 and the vessel sailed only on 09/08/2020 at 1030 hours as per the seaworthiness certificate received from the authorities on 6/8/2020.	clearances and documents which would inturn enable the Applicant to obtain the necessary port clearance from the Customs Authorities. It is pertinent to note that the Respondent was neither a party to the suit in which the Applicant sought necessary orders and did not need any intimation whatsoever. It is pertinent to note that whilst the vessel sailed only on 9th August 2020 at 1030 hours as per the seaworthiness certificate received from the authorities on 6th August 2020, the delay in obtaining the certificates and thereafter sailing on 9 th August 2020 is solely due to the lackadaisical approach of the Respondents and the delay in issuing the no-dues certificate in favour of the Applicant.	
19	On 27th July 2020, the agents and representatives of the Applicant approached the Port Authorities yet again to seek clarity on the issue concerning the payment of outstanding Port Dues. The Port Disbursement Account ("**PDA**") issued by JM Baxi to the Applicant envisaged that the Applicant had been	The Respondents deny that the PDA issued by JM Baxi to Applicant envisaged that the Applicants had been wrongly placed in a slab which is leviable only after the first 30 days of the vessel being at Anchorage (Highest Slab) as alleged. The Respondents deny that the Applicant ought to have been treated as a new Owner and the Port Charges ought to have been levied on the Applicant (in the lowest slab), i.e. from 13/07/2020 as Day I of the arrival of the vessel as alleged. The	It is denied that since the vessel has been at A2 anchorage since 12th February 2020 the charges applicable shall be as under the highest slab of provision 2.15 in the Schedule of Anchorage. It is denied that the letter/email dated 27th July 2020 was addressed by the Applicants to the Deputy Sheriff of Mumbai, behind the back of the Respondents without even	No specific remarks furnished by MBPT.

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	wrongly placed in a slab which is leviable only after the first 30 days of the Vessel being at Anchorage ("**Highest Slab**"). In fact, the Applicant ought to have been treated as a new Owner and the Port Charges ought to have been levied on the Applicant (in the lowest slab), i.e. from 13th July 2020 as Day 1 of the arrival of the Vessel. Pursuant to the above, advocates for the Applicants addressed an email to the Deputy Sheriff thereby requesting necessary directions to be given to the Port to proceed against the sale proceeds deposited in Court. It is pertinent to note that, the Applicant is not liable to pay any dues, let alone the ones levied under the highest slab. The email further requested the office of the Sheriff to direct the Customs Authorities to waive the requirements of the Import Documents which as enumerated vide various	Respondents state that in July/ August 2020, the agent and the representatives approached the Deputy Conservator to seek the clarity on the issue concerning payment of anchorage charges. However, it was clarified that the vessel was at A2 anchorage from 12/02/2020 under the same VCN No.2001314. Hence, the charges as applicable under the provision of 2.15 Schedule of Anchorage will be chargeable to the vessel. Accordingly, an approximate amount of ₹.47,49,593/- till the sailing of the vessel on 07/08/2020considering the pilotage in foreign rate as per the status of the vessel being changed as foreign was intimated vide email dated 03/08/2020 to the Applicant's Agent. It is pertinent to point out that letter/email dated 27/07/2020 was addressed by the Applicants to the Deputy Sheriff of Mumbai, behind the back of the Respondents without even forwarding a copy of the said letter/email to the Respondents. The said email dated 27/07/2020 has several false and misleading statements inasmuch as it wrongly alleges that the Respondents had wrongfully withheld the said vessel and that increase in the charges was on account of the alleged wrongful action of the Respondents in levying charges as per SOR. The said email also falsely records that the port clearance is not being granted by the Respondents. In fact the port clearance is granted by Customs	forwarding a copy of the said letter/email to the Respondents. It is denied that the said email has false and misleading statements in as much as it wrongfully alleges that the Respondents had wrongfully withheld the said vessel. It is pertinent to note that though the Port clearance as under Section 42 of the Customs Act is granted by the Customs Authorities, there are infact documents that need to be issued by the Respondent in favour of the Applicant which would assist the Applicant in obtaining the required port clearance from the Customs Authorities, which was delayed by the Respondent. Whilst reiterating the Applicant's submissions, it is pertinent to note that the Respondent whilst having failed to consider the fact that the vessel is purchased vide a judicial sale (free of any and all encumbrances and previous connections) has placed the Applicant in the highest slab applicable.	

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	emails and personal meetings, were not in the possession of the Applicant or the erstwhile owners. A copy of the email dated 27th July 2020 is annexed hereto and marked as **<u>Exhibit “L”</u>**.	Authorities under Section 42 of the Customs Act. The Respondents deny that the Applicants are not liable to pay any dues, let alone the ones levied under the highest slab as alleged. The Respondents repeat the submissions mentioned in para 6.1 (i) above.		
20	Pursuant to the email dated 27th July 2020, the Deputy Sheriff brought to the notice of the Hon’ble Bombay High Court the discrepancies at hand, and sought directions on behalf of the Applicant directing the authorities to act in accordance to the Orders of the Hon’ble Bombay High Court. On 28th July 2020, vide an order passed by the Hon’ble Bombay High Court (Coram: Hon’ble Mr. Justice S.C. Gupte) the Port authorities were directed as follows: “*<u>5. So far as Port dues are concerned, the statutory lien of the Port obviously cannot be claimed vis-a-vis the suit vessel, which has already been transferred to the Applicant in pursuance of a</u>*	The Respondents deny that the Deputy Sheriff brought to the notice of the Hon'ble Bombay High Court the discrepancies at hand, and sought directions on behalf of the Applicant directing the authorities to act in accordance to the Orders of the Hon'ble Bombay High Court as alleged. The Respondents submit that the Applicants are trying to misconstrue the Order dated 28/07/2020 of the Hon'ble High Court, by purporting to contend that the words 'The Purchaser takes a vessel free of charges and encumbrances' would include even the Port charges incurred by the Vessel after possession of the arrested vessel has been handed over to Applicants by the Sheriff. Such a construction of the Order proceeds on the misconceived premise that the Applicants are not liable to pay any Port charges after taking possession of a vessel in Court Auction held by the Admiralty Court irrespective of the time it stays within the port and harbour of Mumbai. The Respondents state that the said vessel was sold by the Hon'ble High Court vide its Order dated 26/05/2020 read with Orders	It is denied that the Applicants are trying to misconstrue the order dated 28th July 2020 if the Hon’ble High Court by purporting to contend that the words ‘The Purchaser takes a vessel free of charges and encumbrances’ would include even the port charges incurred by the vessel after possession of the arrested vessel has been handed over to the Applicants by the Sheriff. It is denied that such a construction of the order proceeds on the misconceived premise that the Applicants are not liable to pay any Port charges after taking possession of a vessel in court auction held by the Admiralty Court irrespective of the time it stays within the port and harbor of Mumbai. It is denied that the Applicants have misconstrued the order dated 28th July 2020 is clear from the subsequent orders dated 4th August and 7th August 2020, passed by the Hon’ble Court.	No specific remarks furnished by MBPT.

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	court sale. The Applicant takes a vessel free of charges and encumbrances. The Port may, instead, have a lien on the sale proceeds of the vessel lying in this court. *Learned Counsel appearing for Mumbai Port Trust has no objection if the Port's lien is considered in respect of the sale proceeds."* In light of the above, it is categorically stated and amply clear that: the Port shall proceed against the sale proceeds of the vessel lying in Court, that have been deposited by the Applicant (which may be claimed by the Port for any outstanding Port Dues). It is pertinent to note that, at this juncture the Counsel appearing on behalf of the Port in-fact acknowledged the same and agreed to it so long as the Port could proceed against the proceeds for its outstanding dues; A copy of the Order	dated 03/07/2020 & 28/07/2020 to the Applicants for a price of ₹.36.40 crores. The Sheriff of Mumbai was directed to bill for necessaries supplied to the vessel, crew wages and port trust dues and whose maritime lien has been transferred to the sale proceeds of the said vessel for past dues i.e. till the date of handing over possession to the Auction Purchaser. The misconstruction of the order dated 28/07/2020 is clear from the subsequent Orders dated04/08/2020 & 07/08/2020 (Exhibits "S" & "U" respectively to the said Application) passed by the Hon'ble Bombay High Court. The Respondents deny that it is amply clear that the Port shall proceed against the sale proceeds of the vessel lying in Court, that have been deposited by the Applicants (which may be claimed by the Port for any outstanding Port charges) as alleged. the Respondents state that the Order dated 28/07/2020 and subsequent orders dated 04/08/2020 and 07/08/2020 make it amply clear that the Port charges which the Port was referring to in the order of 28/07/2020 was prior to the possession being handed over to the Applicants. These dues totalling to ₹.2,26,10,857/- has already been paid by the Sheriff to the Respondents. The dues subsequent to the possession being handed over to the Applicants are still lying with the Sheriff of Mumbai pending determination by	The remaining contents of the paragraph are a matter of record and thus do not warrant any comment.	

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	dated 28th July 2020 passed by Hon'ble Mr. Justice S.C. Gupte is annexed hereto and marked as **Exhibit "M"**.	this Authority i.e. TAMP. The Respondents state that the Port charges levied in the Invoice dated 17/08/2020 in respect of the said vessel for ₹.51, 17,132/- by applying SOR is in order. The Respondents shall crave leave to refer to and rely upon the Order dated 28/07/2020 passed by the Hon'ble high Court for its true meaning and legal effect when produced.		
21	In light of the Order dated 28th July 2020, on 30th July 2020 advocates for the Applicants vide an email addressed to the advocates appearing for and on behalf of the Port, requested them to convey to the Deputy Conservator, Mumbai Port Trust and other authorities that: a). the Applicant has purchased MT Prem Mala (the Vessel) vide a court sale, free from all encumbrances and/or charges/claims; b). any outstanding port dues ought to be claimed against the sale proceeds that have been deposited in the Court by the Applicant;	The Respondents admit the receipt of Email dated 30/07/2020 but deny correctness of its contents. email was replied to by the Respondent's Solicitor's by its email dated 03/08/2020. Hereto annexed and marked Exhibit — "6" is a copy of the said email dated 03/08/2020.	The contents thereof are matters of record and thus warrant no comments	

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	c). accordingly, the Port Authorities and the Deputy Conservator, Mumbai Port Trust to assist the Applicant and provide any clearances that may be required from their end at the earliest. A copy of the email dated 30th July 2020 is annexed hereto and marked as **Exhibit "N"**.			
22	Amidst the above, the Applicant and its agents and representatives approached the Port Authorities seeking clearance of the Vessel, so as to ensure that the status of the Vessel is changed and that the Vessel sails out at the earliest hour. Unfortunately, due to numerous objections and illegitimate issues, the Vessel has not been granted its due clearance since 13th July 2020 (date of possession).	The Respondents deny that the Port Authorities have power to change the status of the vessel from Coastal to Foreign run as alleged. The status of the vessel can only be changed by the Customs authorities. The Respondents deny that due to numerous objections and illegitimate issues, the Vessel has not been granted its due clearance since 13/07/2020 as alleged. The Respondents state that the said vessel was allowed to sail out on 09/08/2020 after completion of the necessary formalities.	It is pertinent to bring to the notice of this Hon'ble Authority that the Respondent has misconstrued the submissions of the Applicant, to the effect that the Applicant sought change in status from the Respondent. The Applicant approached the Respondent seeking clearances, certificates and documents in its favour which would assist the Applicant to approach the Customs Authorities for the necessary change in status. Whilst it is a matter of record that the vessel was allowed to sail out only on 9th August 2020 after completion of the necessary formalities, it is pertinent to note that the delay since the issuance of Bill of Sale till the sailing of the vessel was solely due to the	No specific remarks furnished by MBPT.

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			lackadaisical and inefficient approach of the Respondent.	
23	Thereafter the Port issued a PDA to JM Baxi, which was further shared with the Applicant enlisting calculations of Anchorage Dues that the Port levied on the Applicant from 13th July 2020 up to 5th August 2020. It is pertinent to note that the Port has in-fact incorrectly placed the Applicant in the highest slab of the Coastal Vessel (Status) Anchorage Dues, whilst justifying it by saying that the Vessel has been at anchorage since February 2020, and all costs levied shall be in line with the time frame since February 2020.	The Respondents deny that the Respondents has incorrectly placed the Applicant in the highest slab of the Coastal Vessel (status) Anchorage dues, whilst justifying it by saying that the vessel has been at an anchorage since February, 2020 and all costs levied shall be in line with the time frame since February, 2020 as alleged. The Respondents state that the tentative port charges informed on 03/08/2020 to the Agent by email were as per the exiting SOR and considering the vessel would sail on 05/08/2020.	It is pertinent to bring to the notice of this Hon'ble Authority that the Respondent has misconstrued the submissions of the Applicant, to the effect that the Applicant sought change in status from the Respondent. The Applicant approached the Respondent seeking clearances, certificates and documents in its favour which would assist the Applicant to approach the Customs Authorities for the necessary change in status. Whilst it is a matter of record that the vessel was allowed to sail out only on 9th August 2020 after completion of the necessary formalities, it is pertinent to note that the delay since the issuance of Bill of Sale till the sailing of the vessel was solely due to the lackadaisical and inefficient approach of the Respondent.	No specific remarks furnished by MBPT.
24	The Applicant has been wrongly placed under the highest slab, even though the possession of the Vessel has only been taken on 13th June 2020. In view of the same, an email dated 1st August 2020 was addressed by the	The Respondents deny that the Applicants have been wrongly placed under the highest slab, even though possession of the Vessel has only been taken on 13/06/2020 as alleged. The Respondents admit the receipt of Email dated 01/08/2020 addressed by the Applicant's Advocates but deny the correctness of its contents. The said email	The contents thereof are matters of record and thus warrant no comments.	No specific remarks furnished by MBPT.

Sr. No.	M/s. Nan Lian Ship Management LLC Application dated 05.09.2020	Comments of MBPT vide its letter dated 08.10.2020	Comments of M/s. Lian Ship Management LLC in its letter dated 16.11.2020	Comments of MBPT vide its letter dated 27.11.2020
	Advocates for the Applicant to the Deputy Conservator, Mumbai Port Trust and Harbour Master, Mumbai Port enlisting the detailed issues and concerns at hand. A copy of the email dated 1st August 2020 along with the PDA issued by JM Baxi and Excel Sheet showing the difference in calculation are annexed hereto and marked together as **Exhibit "O".**	was replied to by the Respondent's Solicitor's by its email dated 03/08/2020.		
25	Subsequently, the Port authorities vide an email dated 3rd August 2020, informed the agents of the Applicant of the Port dues pending which amounted to INR 47,49,593. The said email, and amounts were brought to the notice of the Hon'ble Bombay High Court by way of an affidavit dated 4th August 2020, filed for and on behalf of the Applicants. A copy of the email dated 3rd August 2020, the said Tariff Rates and the affidavit dated 4th August 2020 are annexed hereto and marked us	The Respondents admit having addressed an email dated 03/08/2020 (Exhibit "P" to the said application). The Affidavit of Applicants (Exhibit "R " to application) is a matter of record. However, the Respondents deny the correctness of the contents of the said affidavit as alleged. The Respondents shall crave leave to refer to and rely upon the SOR(Exhibit "Q" to the said application) for its true meaning and legal effect when produced.	The contents thereof are matters of record and thus warrant no comments	No specific remarks furnished by MBPT.

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	Exhibit "P", Exhibit "Q" and Exhibit "R".			
26	Thereafter, the Applicants agreed to deposit the said amount of INR 47,49,593 with the Office of the Sheriff under protest, as directed vide an Order dated 4th August 2020, of the Hon'ble Bombay High Court (Coram: Hon'ble Mr. Justice S.C. Gupte). A copy of the Order dated 4th August 2020 is annexed hereto and marked as **Exhibit "S".**	The Respondents state that the Orders dated 04/08/2020 and 07/08/2020 passed by the Hon'ble High Court mentioned in the said paras are a matter of record. The Respondents state that the said vessel was converted from coastal run to foreign run on 07/08/2020. The Respondents state that the Customs Clearance document as Exhibit "T" mentioned in para 27 of the Application is not annexed to the said application.	The contents thereof are matters of record and thus warrant no comments.	No specific remarks furnished by MBPT.
27	The Applicants successfully converted the Vessel from an Indian Trade Vessel to a Foreign Trade Vessel whilst acquiring all necessary clearances from the Customs Department on 7th August 2020, and should have been placed under the lowest slab of the Foreign Trade Vessel heading as per the tariff rates. A copy of the Customs Clearances documents is annexed hereto and marked as **Exhibit "T".**			
28	Thereafter, vide an Order dated 7th August 2020	The Respondents state that the Orders dated 04/08/2020 and 07/08/2020 (Exhibit— "U" to	It is pertinent to note that the Respondent whilst contradicting	No specific remarks furnished by MBPT.

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	passed by the Hon'ble Court Bombay High Court (Coram: Hon'ble Mr. Justice S.C. Gupte) acknowledged the submissions made by the Applicant seeking directions from the Hon'ble Bombay High Court for adjudication of the Applicant's claim. The Applicant was accordingly directed to prefer an application before this Hon'ble Authority, and the Applicant has thus preferred the present application. Furthermore, vide the same order the Hon'ble Bombay High Court directed that the Port dues of the Respondent in the present application for the period during which the ship was under arrest and till her possession was handed over to the Applicant amounting to INR 2,26,10,857 to be paid out of the sale proceeds deposited in the Hon'ble Bombay High Court by the Applicant. In light of the same, it is infact amply clear that all previous dues of the Respondent have	the said application) passed by the Hon'ble High Court mentioned in the said paras are a matter of record. The Respondents deny that it is amply clear that all previous dues of the Respondents have been settled by the Hon'ble Bombay High Court as alleged. The Respondents deny that there is absolutely no reason whatsoever for the Respondents to levy alleged unsolicited charges on the Applicants as alleged.	itself has admitted that all previous dues have been settled by the Hon'ble Bombay High Court.	

Sr. No.	M/s. Nan Lian Ship Management LLC Application dated 05.09.2020	Comments of MBPT vide its letter dated 08.10.2020	Comments of M/s. Lian Ship Management LLC in its letter dated 16.11.2020	Comments of MBPT vide its letter dated 27.11.2020
	been settled by the Hon'ble Bombay High Court, and there is absolutely no reason whatsoever for the Respondent to levy unsolicited charges on the Applicant. A copy of the Order dated 4th August 2020 is annexed hereto and marked as **Exhibit "U".**			
29	Thereafter, on 8th August 2020, the Applicant obtained the necessary No Objection Certificates from the Bureau of Immigration, Sea Check Post, Mumbai. A copy of the N.O.C. for sailing of the Vessel dated 8th August 2020 is annexed hereto and marked as **Exhibit "V".**	The Respondents state that the No Objection Certificate dated 08/08/2020 obtained by the Applicants from the Bureau of Immigration, Sea Check Post, Mumbai is a matter of record.	The contents thereof are matters of record and thus warrant no comments. It is pertinent to note that the No Objection Certificate dated 8th August 2020 obtained by the Bureau of Immigration, Sea Check Post, Mumbai though a matter or record is evidence enough that there was a delay in the issuance of the No Objection Certificate due to the delay on account of the Respondents lackadaisical approach towards the same.	No specific remarks furnished by MBPT.
30	On 9th August 2020, at about 1030 hours the Vessel was allowed to set sail.	The Respondents state that the statement made therein is substantially correct.	The contents thereof are matters of record and thus warrant no comments.	No specific remarks furnished by MBPT.
31	It is pertinent to note that the discrepancy and vast difference between the amounts that are actually to be levied by the Port on the new Owner (being INR	The Respondents deny that there is any discrepancy in the calculations made by the Respondents as alleged. The Respondents state that the Invoice bearing No.2021M2370598 dated 17/08/2020 for ₹.51,71,132/- raised in respect of vessel	It is denied that the charges under the SOR are based on the length of the stay of the vessel at the anchorage and not on change of the ownership. It is denied that the calculations made by the Applicants	No specific remarks furnished by MBPT.

Sr. No.	M/s. Nan Lian Ship Management LLC Application dated 05.09.2020	Comments of MBPT vide its letter dated 08.10.2020	Comments of M/s. Lian Ship Management LLC in its letter dated 16.11.2020	Comments of MBPT vide its letter dated 27.11.2020
	10,41,903.5), and the amounts that have been levied by the Port (being INR 51,17,132.) amounts to INR 40,75,228.5. A copy of the excel sheet showcasing the calculations as per the rate as should have been levied by the Port, and the rate actually levied by the Port under the highest slab is annexed hereto and marked as **Exhibit "W".**	under the agency of M/S. J. M. Baxi & Co. is as per the SOR and in order. The Respondents deny that the Respondents have levied wrong charges on the Applicants as alleged. The Respondents repeat and reiterate that the charges under SOR are based on the length of the stay of the vessel at the anchorage and not on change of the ownership. The calculations made by the Applicants in Excel Sheet (Exhibit "W" to the said application) are wholly incorrect. The Respondents state that the vessel was at anchorage for the period more than 30 days and was charged as per the higher slab of anchorage i.e. Section 2.15 of Schedule of Anchorage. Therefore, the charges levied in the invoice as stated hereinabove were as per existing SOR approved by TAMP effected from 03/10/2019 and are in order.	in the Excel Sheet are wholly incorrect. It is denied that the vessel was at anchorage for a period more than 30 days and was changed as per Section 2.15 of the Schedule of Anchorage. It is denied that the charges levied in the invoice as stated hereinabove were as per existing SOR approved by TAMP effected from 3rd October 2019 and are in order. It is pertinent to note that, the Respondent has admittedly placed the Applicant in the highest slab as per the SOR. It is pertinent to note that the Respondent has failed to appreciate the fact that the vessel was purchased vide a judicial sale free of all encumbrances	
	GROUNDS			
A.	It is infact the case of the Applicant that, as the Applicant has bought the vessel vide a Court auction free of all encumbrances, all claims and charges qua the Vessel are dropped and the Vessel ought to be treated as if it has come to the Port at the behest of the new Owners for the first time post	The Respondents deny that the Applicants are not liable to pay the charges incurred after the sale of the vessel to the Applicants just because the vessel has been sold free from all encumbrances as alleged. The word "free of encumbrances" refers to past maritime lien and charges and not to the fresh charges incurred due to the stay of the vessel at the anchorage. The Respondents deny that all claims and charges qua the vessel are dropped and the vessel ought to be treated	It is denied that the vessel ought not to be treated as if it has come to the Port on behest of the new owners for the first time post the sale as alleged. It is pertinent to note that, though the words "free of encumbrances" refers to past maritime lien and charges, the Respondent has failed to comply with the same and has erred in placing the Applicant in the highest	No specific remarks furnished by MBPT.

Sr. No.	M/s. Nan Lian Ship Management LLC Application dated 05.09.2020	Comments of MBPT vide its letter dated 08.10.2020	Comments of M/s. Lian Ship Management LLC in its letter dated 16.11.2020	Comments of MBPT vide its letter dated 27.11.2020
	the sale. Furthermore, the Applicant ought to be placed in the lowest slab and that the date of possession of the vessel/arrival of the vessel ought to be taken into consideration as "Day 1 of the arrival of the vessel" and thus the date of initiation for all necessary calculations.	as if it has come to the Port on behest of the new owners for the first time post the sale as alleged. The Respondents deny that the Applicants ought to be placed in the lowest slab and that the date of possession of the vessel/arrival of the vessel ought to be taken into consideration as "Day I of the arrival of the vessel" and thus the date of initiation for all necessary calculations as alleged.	slab. It is reiterated and pertinent to note that, any previous connections and or liabilities ought to be set aside and the vessel ought to be treated as a freshly arrived vessel.	
B.	Furthermore, the Port has also erred in placing the Applicant in the highest slab of the Foreign Going (Status) Anchorage Dues. It is pertinent to note that the Vessel's status had in-fact only been changed on 7th August 2020. All costs levied on the Applicant under the Foreign Going (Status) Anchorage Dues, have also been levied under wrongful assumptions that the initiation date for all calculations should be taken from February 2020.	The Respondents deny that the Respondents have erred in placing the Applicants in the highest slab of Foreign Going (status) Anchorage dues as alleged. The Applicants have been charged the Anchorage dues on foreign going vessel only for 2 days i.e. after the vessel was converted from Coastal Run to Foreign Run as per the rate applicable in S.O.R.	It is admitted that the Applicant has been charged the Anchorage dues on foreign going vessel only for 2 days, i.e. after the vessel was converted from Coastal Run to Foreign Run as per the rate applicable in SOR. It is pertinent to note that the Respondent has erred in levying rates of the highest slab for a Foreign Run vessel even though it was only converted on 7 th August 2020, and should have been placed in the lowest slab under the status of a Foreign Run vessel.	No specific remarks furnished by MBPT.
C.	It is not only unfair to place the Applicant under the highest slab, even though the possession of the Vessel has	The Respondents deny that it is not only unfair to place the Applicant under the highest slab even though the possession of the Vessel has only been taken on 13/06/2020, but also of	The Respondent has blatantly denied the contents of Ground C of the Application and has failed to provide any form of evidence and or	No specific remarks furnished by MBPT.

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	only been taken on 13th June 2020, but also of utmost importance to note that the Applicant is in no way concerned with the previous dues and/or original date of arrival of the Vessel. The Applicant cannot be charged on the basis of the stay of the vessel. Since, after the Judicial auction of the vessel, the vessel ought to be considered as if arrived on 13th July 2020, which is the date on which the possession of the vessel was in fact handed over to the Applicant.	utmost importance to note that the Applicant is in no way concerned with the previous dues and/or original date of arrival of the Vessel as alleged. The Respondents deny that the Applicants cannot be charged on the basis of the stay of the Vessel as alleged. The Respondents deny that the vessel ought to be considered as if arrived on 13th July, 2020 as alleged.	supporting submissions pertaining to the denials pertaining to the same.	
D.	It is pertinent to note that, the Applicant has infact wrongly been placed under the highest slab leviable as per the Tariff Rates as applicable to Port Anchorage Dues.	The Respondents deny that the Applicants has been wrongly placed under the highest slab leviable as per the Tariff Rates as applicable to Port Anchorage dues as alleged.	The Respondent has blatantly denied the contents of Ground D of the Application and has failed to provide any form of evidence and or supporting submissions pertaining to the denials pertaining to the same.	No specific remarks furnished by MBPT.
E.	It is pertinent to note that, it was only on 18th August 2020, i.e. 9 days after the Vessel sailed out did the Port issue its invoice for the Port	The Respondents deny that the Port has erred in placing the Applicant in the highest slab of the leviable Port Anchorage Charges on the Applicant from 13 thJuly, 2020 to 7th August, 2020 as alleged. The Respondents	It is admitted that the Applicant has been charged the Anchorage dues on foreign going vessel only for 2 days, i.e. after the vessel was converted from Coastal Run to	No specific remarks furnished by MBPT.

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	Anchorage Dues amounting to INR 51,17,132. It is pertinent to note that, the Port has infact erred in placing the Applicant in the Highest Slab of the leviable Port Anchorage Charges on the Applicant from 13th July 2020 to 7th August 2020. Furthermore, the Port has also erred in levying the Highest Slab of the Port Anchorage Charges for a Foreign Trade Vessel, from 7th August 2020 to 9th August 2020. The Applicant submits that the Port has erred in doing so, since the Vessel was only converted to a Foreign Trade Vessel on 7th August 2020, and ought to be treated as the vessel has only entered the Port Anchorage on 7th August 2020 and not continue the same slabs.	deny that the port has erred in levying the highest slab of the Port Anchorage charges for a Foreign Trade Vessel from 7h August, 2020 to 9th August, 2020 as alleged. The Respondents deny that the Respondents have erred in any manner whatsoever as alleged. The Respondents state that the vessel has been charged as foreign vessel as per the rate applicable in S.O.R for anchorage charges only for two days from 7th August, 2020 to 9th August, 2020.	Foreign Run as per the rate applicable in SOR. It is pertinent to note that the Respondent has erred in levying rates of the highest slab for a Foreign Run vessel even though it was only converted on 7th August 2020, and should have been placed in the lowest slab under the status of a Foreign Run vessel.	
F.	Furthermore, the Port has also erred in placing the Applicant in the highest slab of the Foreign Going (Status) Anchorage Dues. It is pertinent to note that the	The Respondents deny that the Port has also erred in placing the Applicant in the highest slab of the Foreign Going (Status) Anchorage Dues as alleged. The Respondents deny that all costs levied on the Applicant under the Foreign Going (Status) Anchorage Dues,	The Respondent has blatantly denied the contents of Ground F of the Application and has failed to provide any form of evidence and or supporting submissions pertaining	No specific remarks furnished by MBPT.

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	Vessel's status had in-fact only been changed on 7th August 2020. All costs levied on the Applicant under the Foreign Going (Status) Anchorage Dues, have also been levied under wrongful assumptions that the initiation date for all calculations should be taken from February 2020.	have also been levied under wrongful assumptions that the initial date for all calculations should be taken from February, 2020 as alleged.	to the denials pertaining to the same.	
G.	In any event, the Port is not entitled to claim the amounts from the Applicant as enlisted in its Invoice dated 17th August 2020 amounting to INR 51,17,132, from the period between 13th July 2020 to 9th August 2020. Alternatively, and without prejudice to the rights and contentions of the Applicant, assuming the Applicant is liable to pay the Port for dues post 13th July 2020, the same has to be as per the slab as if the vessel came into Port on 13th July 2020 amounting to INR 10,41,932.5 and not as per the highest slab levied basis the stay of the vessel amounting to INR 51,17,132.	The Respondents deny that the Port is not entitled to claim the amounts from the Applicants as enlisted in its Invoice dated 1 7th August,2020 amounting to INR 51, 17, 132 from period between 13 th July, 2020 to 9th August,2020 as alleged. The Respondents deny that the Applicant is liable to pay port charges post 13th, July,2020 as per the slab as if the vessel came into port on 13 th July,2020 amounting to ₹.10,41,932.50 and not as per the highest slab levied on the basis of stay of the vessel as alleged.	The Respondent has blatantly denied the contents of Ground D of the Application and has failed to provide any form of evidence and or supporting submissions pertaining to the denials pertaining to the same. It is pertinent to note that the port charges leviable on the Applicant ought to be as thought the vessel only arrived on 13th July 2020 amounting to INR 10,41,932.50, since the vessel was purchased vide a court auction free of all encumbrances. Furthermore, it is pertinent to note that any and all previous dues and/or defaults of the erstwhile owners and/or agents ought not to be considered as a ground for placing the Applicant in the highest slab of the SOR.	No specific remarks furnished by MBPT.

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H.	The Port refused to allow the Applicant' agent to act on behalf of the vessel. The Port could have issued its invoice immediately but did not do so. This compelled the Applicant to move the Hon'ble Bombay High Court on 28th July 2020, seeking directions to allow the Applicant's agent to act on behalf of the Vessel and issue an invoice immediately. Even after the order of the Hon'ble Bombay High Court dated 28th July 2020, the Port did not issue any invoice.	The Respondents deny that the Port refused to allow the Applicant's agent to act on behalf of the vessel as alleged. The Respondents deny that the Port could have issued its invoice immediately but did not do so as alleged. The Respondents state that it is the practice of the port to issue final invoice only after the vessel sailed. The Respondents deny that this compelled the Applicant to move the Hon'ble Bombay High Court on 28th July, 2020 seeking directions to allow the Applicant's agent to act on behalf of the vessel and issue invoice immediately as alleged. The Respondents deny that the Hon'ble High Court directed the Respondents to issue an invoice immediately as alleged.	The Respondent has blatantly denied the contents of Ground H of the Application and has failed to provide any form of evidence and or supporting submissions pertaining to the denials pertaining to the same.	No specific remarks furnished by MBPT.
I.	The Port has erroneously placed the Applicant under the wrong slab of Port Anchorage Dues, which is has resulted in loss of capital and has affected the professional status of the Applicant in the market.	The Respondents deny that the Port has erroneously placed the Applicants under the wrong slab of Port anchorage dues, which has resulted in loss of capital and has affected the professional status of the Applicant in the market as alleged.	The Respondent has blatantly denied the contents of Ground I of the Application and has failed to provide any form of evidence and or supporting submissions pertaining to the denials pertaining to the same.	No specific remarks furnished by MBPT.
J.	The Applicant has paid the amount of ₹.36.40 Cores promptly and has acted with clarity. The vessel continued to stay in Port not on account of the Applicants, but as is evident above on account of	The Respondents deny that the vessel continued to stay in Port not on account of the Applicants, but on account of the Port's wrongful act of withholding clearance as alleged. The Respondents repeat and reiterate that the vessel could not leave as the same was not converted from costal vessel to	It is denied that the vessel could not leave as the same was not converted from coastal vessel to a foreign run vessel by the Customs authorities due to the negligence of the Applicants. It is pertinent to note that, it is solely due to the delay on	No specific remarks furnished by MBPT.

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	the Port's wrongful act of withholding clearance. The Port authorities initially sought to foist the liability of the erstwhile owners on the Applicant. Later, no invoices were issued by the Port until 3rd August 2020, and thereafter an invoice was issued only on 18th August 2020, i.e. 9 days after the Vessel sailed away.	a foreign run vessel by the Customs authorities due to the negligence of the Applicants. Further, the change of ownership from the former owners of the vessel to the Applicants was also not forthcoming from D.G. Shipping due to the negligence of the Applicants. The Respondents repeat and reiterate that the port clearance is granted by the Customs and not by the Respondents. The Respondents deny that the Port authorities initially sought to foist liability of the erstwhile owners on the Applicant as alleged. The Respondents state that it is the practice of the Port to issue final invoice only after the vessel sailed, however the Applicants were informed o fthe charges upto 5th August 2020	account of the actions of the Respondent and not due to the negligence of the Applicants. The Respondents failed to provide the necessary documents required by the Applicants to convert the vessel from a coastal vessel to a foreign run vessel in time, which inturn resulted in the delay in obtaining necessary clearances from the Customs Authorities. It is denied that the change of ownership from the former owners of the vessel to the Applicants was also not forthcoming from D.G. Shipping due to the negligence of the Applicants. It is denied that it is the practice of the Port to issue final invoice only after the vessel sailed. It is pertinent to note that, the Respondents initially sought to levy all past dues on the Applicant as the new buyer of the vessel. In lieu of the same, the Applicant was constrained to approach the Hon'ble Court seeking necessary directions directing the Respondent to look towards the sale proceeds of the vessel (deposited by the Applicant) for all past Port anchorage dues.	
K.	It is of utmost importance to bring to your notice that as	The Respondents say that section 50B of the Major Port Trust Act, 1963 relied by the	It is denied that Section 50B of the Act relied upon by the Applicants	The Respondents deny that the port dues envisage all forms of charges levied by

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	per section 50B of the Major Port Trusts Act, 1963 which states as follows: *"When a vessel enters a port but does not discharge or take in any cargo or passengers therein, with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the Authority and not exceeding half the rate with which she would otherwise be chargeable."* It is clear that if a vessel is not involved in discharge and/or taking in any cargo or passenger the rate levied shall not exceed 50% of the leviable rate. It is infact clear from the facts above that, whilst the Vessel was not involved in any loading and/or discharge operations, the Vessel ought to have been charged at a rate determined by the Authority	Applicants only deals with Port charges and not anchorage charges. The Respondents state that they have charged as per the scale of rates. The Respondents state that the said section is not relevant as the vessel arrived in Mumbai Port under the Agency of IOCL, the 1 st Agent of the Vessel on 17th January, 2020 to discharge cargo. Hence, Port dues as applicable as per SOR 2.16 were levied to the I st Agent of the Vessel and also paid by the agent. The Respondents state that they levy various charges on the vessel such as pilotage dues, port dues, anchorage charges, berth hire charges/pier dues, garbage reception charges etc. In the instant case, the Invoice (Exhibit-I) issued by the Respondents to the Vessel Agent is only for Pilotage dues and for Anchorage charges for the period under the Agency of M/S J. M. Baxi. The Respondents deny that the Applicant has been charged the entire amount whilst having been wrongly placed in the highest chargeable slab as alleged. The Respondents deny that the Applicants should be charged in the lowest chargeable slab while ensuring that the rates do not exceed 50% of the chargeable slab which shall amount to ₹.10,41,935.50 as alleged. Hereto annexed and marked Exhibit '7' is a copy of Cargo Declaration / I.G.M. Hereto annexed and Marked Exhibit '8' is a copy of Report of Dock Master Jawahar Dweep.	only deals with Port Charges and not Anchorage Charges. It is denied that the Respondents state that they have charged as per the scale of rates. It is denied that as per the said section is not relevant as the vessel arrived in Mumbai Port under the Agency of IOCL, the 1st Agent of the Vessel on 17th January 2020 to discharge cargo. It is denied that the Port Dues as applicable as per SOR 2.16 were levied to the 1st Agent of the vessel and also paid by the agent. It is denied that various charges levied on the vessel such as pilotage dues, port dues, anchorage charges, berth hire charges/pier dues, garbage reception charges etc. it is denied that in the instant case the invoice issues by the Respondents to the vessel agent is only for pilotage dues and for anchorage charges for the period under the agency of M/s. J.M. Baxi. It is pertinent to note that whilst the contents relating to the 1st Agent of the Vessel are irrelevant in the facts of the present scenario, section 50B of the Act relates to Port-Dues. It is pertinent to note that Port-Dues envisage all forms of charges levied by the port on a	the Port on a vessel, its agents and/or its owners as alleged.

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	AND not exceeding half the rate which would otherwise be chargeable. Contrary to the above, the Applicant has been charged the entire amount whilst having been wrongly placed in the highest chargeable slab. In view of the same, the Applicant should be placed in the lowest chargeable slab while ensuring that the rates do not exceed 50% of the chargeable rates in the lowest chargeable slab which shall amount to INR 10,41,932.50		vessel, its agent and/or its owner. The Respondent has erred in submitting that the aforesaid charges under Section 50B only pertain to port charges and not anchorage charges	
		(i). the charges require to be recalculated by the Respondent as alleged. (ii). It is denied that section 50B is applicable in the instant case, as alleged. (iii). the charges at the lower rates are applicable to the Applicant as alleged is also denied	The Respondent has blatantly denied the contents of Ground I of the Application and has failed to provide any form of evidence and or supporting submissions pertaining to the denials pertaining to the same.	No specific comments furnished by MBPT.
		The Application dated 05/09/2020 of the Applicants (hereinafter referred to as the "said Application") is misconceived, bad in law and not maintainable interalia for the following reasons :	The Applicant humble submits that it is entitled to the reliefs sought in the application and the same may be granted by the Hon'ble Authority.	The Respondents say and submit that the Application should be dismissed with costs

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<tr><th>Sr. No.</th><th>M/s. Nan Lian Ship Management LLC Application dated 05.09.2020</th><th>Comments of MBPT vide its letter dated 08.10.2020</th><th>Comments of M/s. Lian Ship Management LLC in its letter dated 16.11.2020</th><th>Comments of MBPT vide its letter dated 27.11.2020</th></tr>
<tr><td></td><td></td><td>The Bill bearing no.2021N2370598 dated 13/08/2020 raised on M/S J. M. Baxi & Co., the Agents of the Vessel MT Marine Gracious ex Prem Mala, is in the sum of ₹.51,17,132/- is as per the Scale of Rates duly approved by TAMP and which is in force from 03/10/2019. The Scale of Rates have the force of law. The relevant portion of the Scale of Rates is reproduced hereunder :
"2.15Schedule of anchorage Fees
(A)If any vessel or self propelled barge except Lash Barge or Dumb Barge remains at any anchorage points shown in column No.2 of the table below, anchorage fees shall be levied as per column 3 ibid.
<table>
<tr><td>1</td><td>2</td><td colspan="3">3</td></tr>
<tr><td></td><td></td><td colspan="3">Rates per GRT per hour or part thereof</td></tr>
<tr><td>Sr .N o</td><td>Anchorage Point</td><td>Period of stay</td><td>Foreign going Vessel in USS)</td><td>Coastal /Inland vessel (in ₹.)</td></tr>
<tr><td rowspan="2">(a)</td><td rowspan="2">A, B, C, D, E, F, G, TAI, TA2, New explosive Karanja.</td><td>From 1 st day upto 30th day</td><td>0.0047</td><td>0.0746</td></tr>
<tr><td>Beyon d 30th day</td><td>0.0118</td><td>0.1865</td></tr>
<tr><td>(b)</td><td>H,I,J,K,V, W,X,Y,Z</td><td>From 1st day onwar ds</td><td>0.0047</td><td>0.0746</td></tr>
</table></td><td>The stand taken by the Respondent in its Reply is untenable, unconscionable and contrary to law</td><td>Neither the Application nor the Rejoinder discloses any cause of action to substantiate the allegation that there were wrong rates charged by the Board of Trustees of the Port of Mumbai i.e. the Respondents herein which are a creation of a statute and are entitled to charge from the shipowner or his agent anchorage fees or rates or statutory dues in respect of the periods during which the shipowner or his agent were unable to clear the vessel from the port premises i.e. for the period from 13/07/2020 at 17.01 hours to 09/08/2020 at 10.30 hours.</td></tr>
</table>

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<tr><td></td><td></td><td><table>
<tr><td></td><td></td><td>Beyond 30th</td><td>0.0118</td><td>0.1865</td></tr>
<tr><td rowspan="2">(c)</td><td rowspan="2">L.M.(N1, N2, N3 at New Pirpav N I (Buoy), N2 (Buoy), North N3, O, P, Q, R L/F 2 OFF DARU-KHANA OFF COAL BUNDER OFF HAY BUNDER OFF KASARA BASIN OFF FERRY WHARF OFF MAZGAO AND P&V CHANNEL</td><td>From 1st day upto 30th day</td><td>0.0038</td><td>0.0577</td></tr>
<tr><td>Beyond 30th day</td><td>0.0118</td><td>0.1865</td></tr>
<tr><td rowspan="2">(d)</td><td rowspan="2">Port Lighterage Anchorage Area</td><td>From 1st day upto 30th day</td><td>0.0038</td><td>0.0577</td></tr>
<tr><td>Beyond 30th day</td><td>0.0118</td><td>0.1865</td></tr>
</table></td><td></td><td></td></tr>
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<tr><td></td><td></td><td>Note: Port Lighterage Anchorage area encompasses the following co-ordinates:
Point A — Latitude 18^{0} 57' N Longitude 72' 37'E
Point B - Latitude 18 ^{0} 55'N Longitude 72'37'E
Point C — Latitude 18'55'N Longitude 72'43.5'E
Point D - Latitude 18'57'N Longitude 72'43.5'E
(B).lf any Lash Barge or Dumb Barge remains at any of the anchorage points mentioned in column No. I of table below, anchorage fees shall be levied as per column No.2 ibid.
<table>
<tr><td></td><td colspan="3">Rates per GRT per hour or part thereof</td></tr>
<tr><td>Anchorage Point</td><td>Period of stay</td><td>Foreign going vessel in (US S)</td><td>Coastal/ Inland Vessel (in ₹.)</td></tr>
<tr><td>1</td><td>2</td><td></td><td></td></tr>
<tr><td rowspan="2">OFF DARUKHANA OFF COAL BUNDER OFF HAY BUNDER OFF KASARA BASIN OFF FERRY WHARF OFF MAZAGAO AND CHANNEL</td><td>From 1st day upto 60th day</td><td>0.0019</td><td>0.0289</td></tr>
<tr><td>Beyond 60th day</td><td>0.0059</td><td>0.0933</td></tr>
</table>
</td><td></td><td></td></tr>
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		(C).Every Vessel, Boat, Barge and craft irrespective of the size or the GRT, engaged in Lighterage operations in midstream and in Port Lighterage Anchorage Area for conveyance of cargo to the Ports other than Mumbai Port shall during the period of their not working cargo be charged anchorage fees as per section 2.15 (A) above depending on the place of anchorage. This differential tariff will not apply to barges coming into the Mumbai Port. Notes:- For the purpose of calculating the period of stay of a vessel at an anchorage: (1). The anchorage fees shall be levied from the time a vessel drops the anchor till the time it leaves the anchorage berth; (2). In the event of a vessel which had stayed at an anchorage taking berth or entering a dry dock and returning thereafter either to the same anchorage or to another anchorage, the number of hours the vessel was away from the anchorage will be excluded, but the period of occupation except for such exclusion will be treated as a continuous period for computing the Anchorage Fees; (3). For levy of anchorage fees, a barge is a craft operating within the limits of Mumbai Port (including extended port limit) for the purpose of lighterage of cargo or supply of		

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		fuel, water and provisions but shall not include lash or any other type of barges/boats discharged or loaded by mother ships outside the limit of Mumbai Port (including extended port limit) for all purposes of conveyance of cargoes; (4). No anchorage fees will be recoverable from the vessel, boat, barge and craft (including lash barge) which has paid the licence fees for water conveyance as per Section 2.1 1 above; (5). No anchorage fees will be charged to the vessel classified as Indian Naval vessels and Coast Guard Vessels. (6). No Anchorage Fees will be charged to the vessel/ship anchored outside the Mumbai port limits notified by the Central Government.		
		Hereto annexed and marked Exhibit — "1" is a copy of the Bill bearing no. 2021N2370598 dated 13/08/2020 for the sum of ₹. 51,17,132/- (b). The Applicant's vessel Prem Mala now known as M. T. Marine Gracious has undoubtedly made use of the Respondent's services and property for which TAMP has framed rates and conditions under which services/ property of the Respondents may be used by the vessels. Pursuant to the provisions of Sections 48 & 49 of The Major Port Trusts Act 1963 (hereinafter referred to	There are no regulations/ scale of rates framed by this authority exercising powers under Section 48, 49 or any other provisions of the Major Port Trusts Act, 1963 (“Act”) dealing with scenarios as existing in the present case. Infact, the very contention of the Applicant is that there are no regulations/scale of rates which contemplate a situation like in the present case where a vessel is sold under a judicial sale and is continued to be treated as a	The Major Port Trusts Act, 1963 (hereinafter referred to as the "said Act") deals with the maintenance of Seaports, the facilities to be provided thereat and the charges to be recovered for occupation of port premises, which would be payable by the shipowner or his agent, until the vessel sails out from the Respondent's premises. The Scale of Rates fixed by the Respondents are sanctioned by the TAMP and these sanctioned Scale of Rates have the force of law.

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		as 'the said Act"),TAMP has sanctioned the Scale of Rates and laid down the conditions under which the services / property of the Respondents are used. The relevant portion of the said Sections state as under : "48.**Scale of rates for services performed by Board or other person** – (1) The Authority shall from time to time, by notification in the Official Gazette, frame a scale of rates at which, and a statement of conditions under which, any of the services specified hereunder shall be performed by a Board or any other person authorised under section 42 at or in relation to the port or port approaches (a) transhipping of passengers or goods between vessels in the port or port approaches; (b) landing and shipping of passengers or goods from or to such vessels to or from any wharf, quay, jetty, pier, dock, berth, mooring, stage or erection, land or building in the possession or occupation of the Board or at any place within the limits of the port or port approaches; (c) cranage or porterage of goods on any such place; (d) wharfage, storage or demurrage of goods on any such place; (e) any other service in respect of vessels passengers or goods,	vessel under default for the Respondent to charge a higher scale from day 1 of the purchase. Absence such a provision, the Respondent cannot charge a higher rate under a scale which treats or continues to treat a vessel under default (though purchased in a court auction free from encumbrances) for a liability of its erstwhile owner. Thus, the Respondent charging the Applicant at a higher scale, is unjustifiable in law.	

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		(2) Different scales and conditions may be framed for different classes of goods and vessels. **49**. **Scale of rates and statement of conditions for use of property belonging to Board** — (1)The Authority shall from time to time, by notification in the Official Gazette, also frame a scale of rates on payment of which, and a statement of conditions under which, 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 may be used for the purposes specified hereunder: (a). approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or place as aforesaid by vessels; (b) entering upon or plying for hire at or on any wharf, quay, pier, dock, land, building, road, bridge or place as aforesaid by animals or vehicles carrying passengers or goods; (c) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents; (d) any other use of any land, building, works, vessels or appliances belonging to or provided by the Board. (2) Different scales and conditions may be framed for different classes of goods and vessels. (3)……."		

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		The said vessel was lying at A2 anchorage from 12/02/2020 at 0148 hours till she left the port and harbour of Mumbai on 09/08/2020 at 1030 hours. Under Section 2.15 of the Scale of Rates 2019, coastal vessel is charged @ ₹.0.0746 per GRT per hour or part thereof for the first 30 days. If the vessel's stay at the anchorage exceeds 30 days, then higher charges @₹.0.1865 is payable per GRT per hour or part thereof. The rates are charged for the use of anchorage place by the vessel and the Respondent is not concerned with the change of ownership of the vessel. In fact, none of the conditions under which the said services are provided / property is required to be used mention that in case of the sale of the vessel, the lower rate is required to be charged from the date of sale and not the higher rate. In other words, the Scale of Rates does not lay down that on the sale of the vessel, from one owner to another, the clock is set back and a fresh period of 30 days begins. The scale framed by TAMP is for the use of the Respondent's services/ property by the vessel. If the length of the user of the Respondent's services/ property exceeds 30 days, then higher rate is attracted irrespective of whether the vessel has changed several owners.	The Respondent is trying to dishonestly and unjustly enrich itself. The Anchorage Dues under the Act are part and parcel of the Port Dues. Therefore, the Respondent cannot ignore the provision 50B of the Act which they are bound by in entirety. Therefore, the Respondent at the highest and without prejudice to what is stated in the Application, could not charge more than 50% of the chargeable slab. The Respondent is trying to dishonestly make a distinction between Anchorage Charges and Port Charges, with the sole intention of overcharging and unjustly enriching itself.	Since the Application proceeds on an ex facie incorrect premise that the billing cycles have to be revised each time there is a change of hands in the vessel ownership, this would amount to an unsustainable assertion that the Board will have to look into all glorified partnerships that may be created to show a change in ownership for the purpose of restarting the billing cycle and to avoid the higher slab applicable to long stay vessels. This relief is unsustainable in law and fact, and, therefore, as the entire premise of the Application is unfounded and baseless, thus the Application must fail.

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		When the Applicants purchased the vessel in an auction sale, they ought to have been aware of the provisions of law i.e. Sections 48 & 49 of the said Act as well as the Scale of Rates framed by TAMP. Ignorance of law is no defence. The vessel was undoubtedly purchased by the Applicants free of encumbrances, existing maritime liens and claims i.e. claims and liens prior to the purchase of the vessel. However, the charges levied by the Respondents are for the period from 13/07/2020 at 1701 hours to 09/08/2020 at 1030 hours for which the Agents of the Vessel of the Applicants are liable to pay.	The Reply of the Respondent makes it amply clear that there is a deliberate attempt to confuse and hoodwink this Hon'ble Authority by mentioning the acts on the part of the agents of the erstwhile owner. Those actions are irrelevant for the purposes of the current controversy. Since, the vessel has been sold through a court sale, the actions of the agents of the erstwhile owner is irrelevant and not binding on the Applicant who has purchased the vessel from the auction conducted by the Admiralty Court. The Respondent cannot charge the Applicant to pay for any defaults on the part of the erstwhile owners or the agents. The agreements of the erstwhile owner or agents is not binding in the current situation. The claim against the Applicant has to be on a clean slate. Therefore, reliance on the Scale of Rates in the present situation is inapposite and baseless.	The Respondents state that the Bill raised on the Applicants for the sum of Rs.51,71,132/- itself shows that the same has been raised only for anchorage and pilotage charges and not for Port dues. Hence, the application taken out by the Applicants is wholly misconceived, bad in law and not maintainable. The Respondents state that the anchorage charges are levied for using the place / property of the Respondents and these charges are levied as per Scale of Rates, Section 2.15; whereas Port dues are levied under Sections 50A & 50B of the said Act for the entry of the vessel into the Port and harbour of Mumbai and as per the Scale of Rates Section 2.16. The rest of this Rejoinder is filed without prejudice to the aforesaid submissions, which are in themselves without prejudice and in the alternative to one another. The Respondents reiterate the submissions made in paragraph 1 of its Reply dated 08-10/2020 and are not dealing with each and every allegation contained in the Rejoinder as this Sur-rejoinder is filed only for the purpose of opposing the fresh allegations made and for opposing the grant of any reliefs to the Applicant. Nothing should be deemed to be admitted by the Respondents unless specifically done so, herein.

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		The Respondents say that the rates are levied by the Respondents on the basis of the stay of the vessel in the port and not on the basis of change of Ownership of the Vessel. Any transfer of Ownership of the Defendant vessel has to be registered with the relevant authorities for a change in the Certificate of Registration. However, this has no effect in the billing cycles as the Defendant vessel has been at Anchorage i.e. occupying the Respondent's facilities, ever since 12/02/2020.	It is denied that the Application is misconceived, bad in law and not maintainable.	The Respondents deny that the stand taken by the Respondents in their Reply is untenable, unconscionable and contrary to law as alleged.
		By Order dated 26/05/2020 passed by the Hon'ble High Court, the said vessel Prem mala now M. T. Marine Gracious was sold to the Applicants at a price of ₹.36.40 crores. After taking into account the earnest money deposited by the Applicants and 10% of the purchase price, the balance sum of ₹.31.86 crores was directed to be deposited with the Sheriff of Mumbai within 3 weeks. The balance sum of ₹.31.86 crores was paid to the Sheriff of Mumbai on or about 03/07/2020 and the sale was confirmed on 03/07/2020. The Bill of Sale was issued by The Prothonotary & Senior Master on 07/07/2020 to the Applicants and the Applicants became the owners of the Defendant vessel. The vessel departed only on 09/08/2020 at 1054 hours as the vessel was not ready to depart prior thereto for the	It is denied that the Bill bearing No. 2021N23705 98 dated 13th August 2020 on M/s. J.M. Baxi & Co., the Agents of the Vessel MT Marine Gracious ex Prem Mala, is as per the Scale of Rates duly approved by TAMP and in force from 3rd October 2019. As elaborately submitted in the Application and reiterated hereinabove in this Rejoinder, the Respondent has erred in placing the Applicant in the highest slab of the Scale of Rates. It is pertinent to note that, whilst having agreed that the Vessel has been bought free of all encumbrances, continuing rates and charging rates as per the increasing slab rate is also an encumbrance on the Vessel, which the Respondent	The Respondents deny that there are no regulations/scale of rates framed by this authority exercising powers under Sections 48, 49 or any other provisions of the Major Port Trusts Act, 1963 ("Act") dealing with scenarios as existing in the present case as alleged. The Respondents deny the very contention of the Applicants is that there are no regulations/scale of rates which contemplate a situation like in the present case where a vessel is sold under a judicial sale and is continued to be treated as a vessel under default for the Respondents to charge a higher scale from day 1 of the purchase as alleged. The Respondents state that when the vessel was purchased by the Applicants, they ought to have known that the vessel was lying from 12/02/2020 and that increased charges as per the scale of rates would be continued to be levied by the

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		reasons best known to the Applicants. Hereto annexed and marked Exhibit — "2" is a copy of the aforesaid Order dated 26/05/2020. Hereto annexed and marked Exhibit — "3" is a copy of the aforesaid Order dated 03/07/2020. Hereto annexed and marked Exhibit — "4" is a copy of the aforesaid Certificate dated 07/08/2020 issued by Customs authorities converting the vessel from Coastal to foreign run. Hereto annexed and marked Exhibit — "5" is a copy of the aforesaid Port Clearance Certificate bearing P.C.No.F-504 dated 07/08/2020 issued by the Customs authorities.	deliberately does not acknowledge. Furthermore, the Respondent has erred in levying charges at its maximum rates, being 100% whereas, as per Section 50B of the Act, rates that should be levied cannot be more than 50% of the slab that the Applicant ought to be placed in. The remaining contents are excerpts from the Act, and thus warrant no comments.	Respondents irrespective of who is the owner and/or whether the vessel is sold through a court sale or otherwise. The Applicants failed to appreciate that increased charges are levied on the vessel for its stay beyond 30 days in order to avoid congestion of vessels within the port and harbour of Mumbai which would impede free flow of vessels to and from the Port and harbour of Mumbai. The Applicants failed to appreciate that the clock does not tum back on change of ownership of the vessel in as much as the vessel's stay has exceeded the prescribed limit under SOR i.e. 30 days. Had the Respondents cleared the vessel immediately on delivery of the vessel to them, these charges would not have become payable. The Respondents deny that the Respondents cannot charge a higher rate under a scale which treats or continues to treat a vessel under default (though purchased in a court auction free from encumbrances) as alleged. The Respondents deny that the Applicants are made to pay for the liability of the former owners as alleged. The Respondents state that the charges payable by the former owners to the Respondents had already been paid to the Respondents by the Hon'ble High Court from the sale proceeds of the said vessel which charges were worked out upto the time the said vessel was delivered to the Applicants by the former owners i.e. upto 13/07/2020. The Respondents deny that the

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				Respondents have charged the Applicants at a higher scale which is unjustifiable in law as alleged.
			The same are matters of record and thus warrant no comments	The Respondents deny that the Respondents are trying to dishonestly and unjustly enrich itself as alleged. The Respondents de9y that the Anchorage Dues under the Act are part and parcel of the Port Dues as alleged. The Respondents state that the anchorage dues are levied under Section 49 of the said Act whereas port dues are levied under Sections 50A and 50B of the said Act. The Respondents state that Section 2.15 of SOR deals with anchorage charges whereas Section 2.16 of SOR deals with Port Dues. The Respondents deny that the Respondents had ignored the provision of Section 50B of the said Act which they are bound by in entirety as alleged. The Respondents deny that they could not charge more than 50% of the chargeable slab as alleged. the Respondents state that the port dues are levied only on the vessel's entry into the port and harbour of Mumbai; whereas anchorage charges are levied for anchoring of the vessel within the port and harbour of Mumbai. The Respondents deny that they are trying to dishonestly make a distinction between Anchorage charges and Port charges with the sole

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				intention of overcharging and unjustly enriching itself as alleged.
			We do not admit that the said vessel was lying at A2 anchorage from 12th February 2020 at 0148 hours. It is a matter of record that the vessel left the port and harbor of Mumbai on 9th August 2020 at 1030 hours, and thus warrants no comments. It is a matter of record that under section 2.15 of the Scale of Rates 2019, coastal vessel is charged at @0.0746 per GRT per hour or part thereof for the 1st 30 days, and that if the vessel's stay at the anchorage exceeds 30 days, then higher charges @0.1865 is payable per GRT per hour or part thereof, and thus warrants no comments. It is pertinent to note that, though the aforementioned provisions are acknowledged by the Applicant, the same are not to be levied on the Applicant in the present case, since the vessel was purchased vide a judicial auction (free from all encumbrances), and placing the Applicant in a higher slab is infact an erroneous action on the part of the Respondent. we do not admit that the rates are charged for the use of	The Respondents deny that the Reply of the Respondents make it amply clear that there is a deliberate attempt to confuse and hoodwink this Hon 'ble Authority by mentioning the acts on the part of the agents of the earstwhile owner as alleged. Infact, it is the Applicants who are trying to hoodwink this Hon'ble Tribunal. The Respondents deny that the stay of the vessel beyond 30 days and/or the actions of the agents in not removing the vessel within the period of 30 days is irrelevant and not binding on the Applicants who has purchased the vessel from the auction conducted by the Admiralty Court as alleged. The Respondents deny that the Respondents have charged the Applicants for the default on the part of the erstwhile owners or their agents as alleged. The Respondents deny that the Respondents have relied on any agreement of the erstwhile owners/agents for levying charges on the Applicants as alleged. The Respondents deny that the claim of the Respondents should be on a clean slate as alleged. The Respondents state that the vessel stay beyind 30 days cannot be ignored whilst levying statutory dues. The Respondents deny that reliance on the scale

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			the anchorage place by the vessel and the Respondent is not concerned with the change of ownership of the vessel. It is denied that, none of the conditions under which the said services are provided/property is required to be used mention that in case of the sale of the vessel, the lower rate is required to be charged from the date of sale and not the higher rate. Whilst the Respondent clearly states that the Scale of Rates is silent on the situation wherein a vessel is sold under a judicial sale and is continued to be treated as a vessel under default for the Respondent to charge a higher scale, from day 1 of the purchase. In the absence of such a provision, the Respondent cannot charge a higher rate under a scale which treats or continues to treat a vessel under default (though purchased in a court auction free from encumbrances) for a liability of its erstwhile owner. The Respondent in the aforementioned paragraph admits that the Sale of Rates do not lay down that on the sale of the vessel from one owner to another, the clock is set back and a fresh period of 30 days begins.	of rates in the present situation is inapposite and baseless as alleged.

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			Furthermore, it is a matter of record that the scale framed by TAMP is for the use of the Respondent's services/ property by the vessel. We do not admit that if the length of the user of the Respondent's services/property exceeds 30 days, then a higher rate is attracted irrespective of whether the vessel has changed several owners. It is pertinent to note that the vessel was purchased vide a judicial sale, free of all encumbrances and previous connections. It is amply clear from the above that, the vessel ought not to be placed under a higher rate slab, for the higher rate slab is only an extended effect of the default on the part of the erstwhile owners and the Applicant is in no way concerned with the same.	
			It is a matter of record that the Applicants bought the Vessel vide a judicial auction, and thus warrants no comments. Furthermore, the Respondent has erred in making statements that the Applicant ought to have been aware of the provisions of law, i.e. Section 48 & 49 of the Act, as week as the Scale of Rates framed by TAMP. It is infact the Applicant's case that the Applicant is	The Respondents state that most of the sub paragraphs are a mere denial of the Respondents' reply and therefore do not require any traverse.

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			sufficiently equipped with the legal standings and whereabouts of the Act and the applicable rates under the Scale of Rates as framed by TAMP. Hence, the present Application has been moved before the appropriate authority. It is a matter of record and is not disputed that, the vessel was purchased by the Applicants free of all encumbrances, existing maritime liens and claims, i.e. claims and liens prior to the purchase of the vessel, and thus warrants no comments. Whilst acknowledging the fact that the charges levied by the Respondents on the Applicant are for the period from 13th July 2020 at 1701 hours to 9th August 2020 at 1030 hours, it is pertinent to note that the Applicant has been wrongly charged rates under a higher slab. It is pertinent to note that, the Respondent in the aforesaid paragraph has admitted that the vessel is purchased free from all encumbrances, any previous connections and/or determination of rates levied are inturn a form of encumbrance on the Applicant as the new buyer, since the Applicant is	

Sr. No.	M/s. Nan Lian Ship Management LLC Application dated 05.09.2020	Comments of MBPT vide its letter dated 08.10.2020	Comments of M/s. Lian Ship Management LLC in its letter dated 16.11.2020	Comments of MBPT vide its letter dated 27.11.2020
			facing repercussions of the default actions of the erstwhile owners.	
			It is denied that the scale of rates are levied by the Respondents on the basis of the stay of the vessel in the port and not on the basis of change of Ownership of the Vessel. It is denied that transfer of ownership of the defendant vessel has to be registered with the relevant authorities for a change in the certificate of registration and that the same has no effect in the billing cycles as the Defendant Vessel has been at Anchorage, i.e. occupying the Respondent's facilities, ever since 12th February 2020. It is pertinent to note that the Respondent has failed to appreciate and/or take into consideration the very fact that the vessel has been purchased by a judicial auction (which is not a normal scenario). Whilst acknowledging and admitting the fact that the purchase is made free from all encumbrances, levying rates that are solely due to the default of the erstwhile owner shows that the Respondent has gone beyond the scope of its powers and levied charges wrongfully on the vessel.	The Respondents deny that they have erred in placing the Applicants in the highest slab of Scale of Rates as alleged. The Respondents deny that whilst having agreed that the Vessel has been bought free from all encumbrances continuing rates and charging rates as per the increasing slab rate is also an encumbrance on the vessel which the Respondents deliberately does not acknowledge as alleged. The Respondents deny that the Respondents had erred in levying charges at its maximum rates being 100% as alleged. The Respondents repeat that Section 50B of the said Act is wholly inapplicable as alleged. The Respondents repeat that the Respondents have levied charges towards anchorage dues and not port dues. Port dues are levied when the vessel enters the port.

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			The statements pertaining to the auction of the vessel are matters of record and thus warrant no comments. It is denied that the vessel departed only on 9th August 2020 at 1054 hours as the vessel was not ready to depart prior thereto for the reasons best known to the Applicants. It is infact the case of the Applicant that the Respondent at multiple instances (through meetings held with the representatives of the Respondents), did not grant the necessary documents and/or clearances necessary for the Applicant to ensure the early sailing of the vessel. The Respondents were infact uncooperative and demanded orders from the court specifically addressing their concerns, for which the Applicant was constrained to move the Hon'ble High Court of Bombay at each and every such instance as corroborated by the multiple orders annexed along with the Application	-
				The Respondents deny that they have charged erroneous charges on the Applicants as alleged. The Respondents state that the increased charges are levied if the stay of the vessel at anchorages exceed 30 days. The

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				Respondents state that they are not concerned wih the change of ownership of the vessel within the Port and harbour of Mumbai. The change of ownership within the port and harbour of Mumbai cannot stop billing cycles as the increased charges are levied with a view to avoid congestion in the port and harbour of Mumbai. The Applicants are not concerned with the change of ownership whilst levying charges on the vessel. The Respondents deny that the Applicants are made to pay for the liability of the former owners/agents of the said! vessel as alleged. The Respondents state that the increased rate chargeable on the vessel's stay over 30 days is not an encumbrance as falsely alleged by the Applicants. The Respondent deny that the higher rate is only extended effect of the default on the part of the erstwhile owners and the Applicants is in no way concerned with the same as alleged.
				it is pertinent to point out the admission of the Applicants that they are aware of the sections of the said Act and the Scale of Rates. The Respondents state that if this is so, the Applicants ought to have known that as the vessel's stay had already exceeded 30 days, increased charges would continue to be levied on the Applicants till the said vessel sailed from the Port and harbour of Mumbai. The Respondents state that continuation of increased rate of anchorage charges

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				is not an encumbrance or a lien. The Respondents deny that the Applicants are facing repercussions of the default actions on the part of erstwhile owners as alleged.
				The Respondents deny that the judicial auction is not a normal scenario as alleged. The Respondents deny that the Respondents has gone beyond the scope of its powers and levied charges wrongfully on the vessel as alleged.
				The Respondents deny that the Respondents did not grant the necessary documents I clearances as alleged. The Respondents deny that the Respondents were uncooperative as alleged or otherwise.

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