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Tariff Authority for Major Ports

G.No. 253 **New Delhi,** **03 July 2020**

NOTIFICATION

This Authority, in exercise of the powers conferred on it under Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from TM International Logistics Limited (TMILL) for general revision of its Scale of Rates (SOR) under Tariff Guidelines, 2019. Considering the time involved for notifying the (Speaking) Order along with the Scale of Rates approved by this Authority, this Authority decided to notify only the revised Scale of Rates immediately. Accordingly, the Scale of Rates approved by this Authority on 01 June 2020 was notified in the Gazette of India on 18 June 2020 vide Gazette No.215. It was stated in the said Notification that this Authority will notify the Speaking Order, in due course of time. Accordingly, this Authority hereby notifies the Speaking Order disposing of the proposal of the TMILL for general revision of its Scale of Rates as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/53/2019-TMILL

TM International Logistic Limited … Applicant

QUORUM

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

O R D E R

(Passed on this 1st day of June 2020)

This case relates to a proposal received from TM International Logistics Limited (TMILL) for general revision of its Scale of Rates (SOR).

2.1. The SOR of the TMILL was last approved by this Authority vide Order No. TAMP/8/2016-TMILL dated 17 September 2016. This Order was notified in the Gazette of India on 10 October 2016 vide Gazette no. 369. Vide the said Order the then prevailing rates were reduced by 7%, except for the wharfage rate and on board handling charge in respect of Project cargo and the per tonne rate for on board equipment assistance charges.

2.2. Subsequently, based on the review application filed by TMILL on 22 November 2016, this Authority vide its Order no. TAMP/83/2016-TMILL dated 21 July 2017 effected a reduction of 4.85% in tariff prevailing prior to September 2016 Order, with effect from 01 September 2017 to 31 March 2019.

3.1. In this connection, considering that the validity of its tariff is expiring on 31 March 2019, the TMILL had filed a proposal dated 8 January 2019 for general revision of its SOR for the three year tariff cycle from 1 April 2019 to 31 March 2022, based on the Tariff Guidelines 2005. The case was taken up for consultation with the Licensor port i.e. Kolkata Port Trust as well as the relevant stakeholders. The joint hearing on the subject case was also held on 19 February 2019.

3.2. Since revision of SOR of TMILL was to take some more time and considering that the validity of the SOR was expiring on 31 March 2019 and based on the request made by TMILL, this Authority vide its Order no. TAMP/8/2016-TMILL dated 26 February 2019 had extended the validity of the existing tariff of TMILL during the conduct of proceedings relating to its tariff proposal dated 8 January 2019 for a period of 3 months i.e. from 01 April 2019 to 30 June 2019 or till the revised rates fixed based on the proposal filed by TMILL comes into force, whichever is earlier.

4.1. In the meantime, the Ministry of Shipping (MOS), in exercise of powers conferred on it by Section 111 of the Major Port Trusts Act, 1963, has vide its letter No.PR-14019/20/2009-PG (Pt-IV) dated 5 March 2019 issued Tariff Guidelines, 2019, for BOT operators who were previously governed by 2005 Tariff Guidelines. The Tariff Guidelines, 2019, has been notified in the Gazette of India on 7 March 2019 vide Gazette No.92. The Tariff Guidelines, 2019 has come into effect from 7 March 2019. The said Tariff Guidelines 2019 was forwarded to all the BOT operators who are previously governed under Tariff Guidelines, 2005 including TMILL vide our letter TAMP/61/2018-Misc dated 8 March 2019.

4.2. Thereafter, as per Clause 1.7 of the Tariff Guidelines, 2019, Working Guidelines to operationalize the Tariff Guidelines, 2019, has been notified in the Gazette of India on 11 July 2019, vide Gazette No.244. A communication with regard to notification in the Gazette of India was sent to all BOT operators who were previously governed under Tariff Guidelines, 2005 including TMILL vide our letter No TAMP/61/2018-Misc. dated 15 July 2019.

4.3. Considering that the proposal filed by TMILL for general revision of SOR for 2019-22 was based on 2005 guidelines, the TMILL vide its email dated 19 March 2019 conveyed that they intended to file a new proposal based on 2019 Tariff Guidelines. Thus, TMILL made a request to consider the proposal filed by TMILL vide its letter dated 8 January 2019 as closed and agreed to file a new proposal based on Tariff Guidelines, 2019.

4.4. Since the tariff fixation model envisaged in the Tariff Guidelines of 2019 was significantly different from the tariff fixation method stipulated in the Tariff Guidelines of 2005, the

Authority vide its Order no. TAMP/7/2019-TMILL dated 29 March 2019, closed the proposal dated 8 January 2019 filed by TMILL for general revision of its SOR, as infructuous.

5.1 In this backdrop, the TMILL has filed a proposal dated 1 October 2019 for general revision of SOR for the three year tariff cycle from 1 April 2019 to 31 March 2022, under Tariff Guidelines, 2019.

5.2. The main points as seen from the proposal filed by the TMILL vide its letter no.TMILL/059/19-20 dated 1 October 2019 are summarized below:

(i). The proposal is for a period of three years viz., 2019-20, 2020-21 and 2021-22.

(ii). The tariff proposal has been prepared in accordance with the 2019 Tariff Guidelines.

(iii). The proposal is based on the actuals for the years 2016-17 to 2018-19.

(iv). TMILL has carefully gone through the Tariff Guidelines, 2019 issued by the Ministry of Shipping and notified by the Tariff Authority for Major Ports (TAMP) (bearing no. TAMP/61/2018-Misc vide Gazette Notification No.92 dated 7 March 2019 and the Working Guidelines, 2019 issued by TAMP in consultation with concerned BOT operators and Major Port Trusts and have prepared the proposal for fixation of tariff in accordance with the said Tariff Guidelines and Working Guidelines, in the formats and supporting documents as prescribed by the Tariff Authority for Major Ports. The proposed tariff will have a validity period of three years from 1 April 2019 to 30 March 2022 and they would submit a suitable proposal at least three months before the expiry of the validity period.

5.3. The TMILL has furnished detailed computation of Annual Revenue Requirement (ARR) under Form-1 and Revenue estimation at the proposed rate in Form-4.

(i). A summary position of ARR computation furnished by TMILL is tabulated below:

Sl. No.	**Description**	**Y1- 2016-17**	**Y2- 2017-18**	**Y3- 2018-19**
(1).	**Total Expenditure (As per Audited Annual Accounts)**			
(i).	Operating expenses (including depreciation)	528179213	718943327	793111517
(ii).	Finance and Miscellaneous expenses (FME)	21831705	4949154	5423192
	Total Expenditure 1=(i)+(ii)	**550010918**	**723892481**	**798534709**
(2).	**Adjustments in respect of items where there is variation in figures reported as per INDAS (as per Audited Accounts) and IGAAP**			
(i).	Saving in Depreciation due to movement of Opening Tangible block as Intangibles	18941440	28959154	39613220
(ii).	Replacement Obligation of Berth#13 assets	61292434	-11307166	-13143172
(iii).	Unwinding of Berth#13 replacement Obligation	-21831705	-4949154	-5423192
(iv).	Loss on dismantling of hoppers	-	2683543	-
	Total of Adjustments 2=(i)+(ii)+ (iii)+(iv)	58402169	15386377	21043856
(3).	**Less Adjustments:**			
(i).	Actual Royalty / Revenue share paid to the port	79091765	88460415	104795882
(ii).	Interest on loans			
(iii).	Interest on finance lease			
(iii).	Provision for bad and doubtful debts			
(iv).	Provision for slow moving inventory			
(v).	Construction cost-IFRIC 12			
(vi)	Other provisions, if any			
	Total of 3 = [3(i)+3(ii)+3(iii)+3(iv)+3(v)+3(vi)]	**79091765**	**88460415**	**104795882**

Sl. No.	Description	Y1- 2016-17	Y2- 2017-18	Y3- 2018-19
(4).	**Add: Admissible Royalty/ Revenue Share as per Clause 2.2. of the Tariff Guidelines, 2019**	60717967	67464039	79922228
(5).	**Total Expenditure after Total Adjustments (5 = 1+2+4-3)**	590039289	718282482	794704911
(6).	Average Expenses of Sl. No.5 = [Y1 + Y2 + Y3] / 3	701008894		
(7).	**Capital Employed**			
	(i). Gross Fixed Assets (Property, Plant & Equipment) as on 31st March Y3 or 31 December of Y3 followed by the BOT operator (As per IGAAP)	1104259006		
	(ii). Add: Capital Work in Progress as on 31st March Y3 or 31 December of Y3 followed by the BOT operator (As per Audited Annual Accounts)	33650686		
	(iii). Add: Working Capital as per norms prescribed in clause 2.6 of the Tariff Guidelines, 2019			
	(a). Inventory	-		
	(b). Sundry Debtors	-		
	(c). Cash	63455880		
	(d).Sum of (a)+(b)+(c)	**63455880**		
	(iv). Total Capital Employed [(i)+(ii)-(iii)]	**1201365571**		
(8).	**Return on Capital Employed 16% on Sl. No.7(iv)**	192218491		
(9).	**Annual Revenue Requirement (ARR) as on 31 March 2019 as applicable [(6)+ (8)]**	893227385		
(10).	**Indexation in the ARR @ 100% of the WPI applicable for the year Y4 for example, if Y4 is 2019-20, then the applicable WPI is 4.26% and the indexed ARR for the year Y4 will be (9) x 1.0426)**	**924043730**		
(11).	**Ceiling Indexed Annual Revenue Requirement (ARR)**	**924043730**		
(12).	**Revenue Estimation at the Proposed indexed SOR within the Ceiling indexed ARR estimated at Sl. No.11 above**	899979627		
(13).	**Revenue gap**	**240,64,103**		

5.4. The TMILL has furnished in Form 4, the working of revenue estimation for the existing tariff as well as the proposed tariff for the average of the actual traffic handled by TMILL during the years 2016-17, 2017-18 and 2019-20. As per the said form, the total revenue estimated at the proposed level of tariff is ₹ 8,999.80 lakhs.

5.5. The TMILL has furnished a copy of the segregated Audited Annual Accounts for the year 2018-19. [Segregated Audited Annual Accounts for the year 2016-17 & 2017-18 were already made available by TMILL in an earlier occasion.]

5.6. As per its proposal, TMILL has sought increase in some tariff items, reductions in some tariff items and status quo in some tariff items. The TMILL is also seen to have introduced a new section in the proposed SOR with regard to prescription of shore handling charges for various types of cargo. This section is reported to have been prescribed by TMILL, to bring similarity with Licensor port SOR. A comparative statement showing percentage increase/decrease and status quo is as follows:

Sl. No.	Description	Existing tariff	Proposed Tariff	% increase over the existing tariff
(1)	(2)	(3)	(4)	(5) = (4-3)/3
A.	Limestone/Pyroxinite - rail			
	- Wharfage	63.06	67.47	7%
	- OBC	47.29	49.65	5%
	- OBS	22.96	7.00	-70%
	- Shore handling	83.09	99.93	20%
	- Equipment On Board	6.50	6.96	7%
	- Heaping/High Heaping	35.98	14.45	-60%
	- Loading at plot or hook point for delivery	31.53	33.74	7%
	- Despatch related service	10.51	21.31	103%
	- Cleaning of Jetty/hatch/deck and water sprinkling for bulk Cargo Handling	7.23	7.23	0%
B.	Limestone/Pyroxinite - road			
	- Wharfage	63.06	67.47	7%
	- OBC	47.29	49.65	5%
	- OBS	22.96	7.00	-70%
	- Shore handling	83.09	99.93	20%
	- Equipment On Board	6.50	6.96	7%
	- Heaping/High Heaping	35.98	14.45	-60%
	- Loading at plot or hook point for delivery	31.53	33.74	7%
	- Cleaning of Jetty/ hatch/ deck and water sprinkling for bulk Cargo Handling	7.23	7.23	0%
C.	Iron Ore Import			
	- Wharfage	31.53	33.74	7%
	- OBC	47.29	49.65	5%
	- OBS	22.96	7.00	-70%
	- Shore handling	83.09	99.93	20%
	- Equipment On Board	6.50	6.96	7%
	- Heaping/High Heaping	35.98	14.45	-60%
	- Loading at plot or hook point for delivery	31.53	33.74	7%
	- Despatch related service	10.51	21.31	103%
	- Cleaning of Jetty/ hatch/ deck and water sprinkling for bulk Cargo Handling	7.23	7.23	0%
D.	Steel Export by Rail			
	- Wharfage	94.59	99.32	5%
	- OBC	126.13	132.44	5%
	- On-board supervision	227.72	160.00	-30%
	- Shore handling	212.84	223.48	5%
	- on-board equipment assistance	13.00	13.65	5%
	- Despatch Related services	10.51	21.31	103%
	- Placement and removal of dunnages	17.52	18.40	5%
	- Unloading / Loading of break bulk cargo like steel coils from / to Railway wagons including shifting from siding or handling at siding	157.68	144.87	-8%
E.	Steel Export by Road			
	- Wharfage	94.59	99.32	5%
	- OBC	126.13	132.44	5%
	- On-board supervision	227.72	160.00	-30%
	- Shore handling	212.84	223.48	5%
	- on-board equipment assistance	13.00	13.65	5%
	- Placement and removal of dunnages	17.52	18.40	5%

Sl. No.	Description	Existing tariff	Proposed Tariff	% increase over the existing tariff
(1)	(2)	(3)	(4)	(5) = (4-3)/3
	- Loading / Unloading / Re-Stacking: Iron and Steel Hot Rolled Coils, Cold Rolled Coils, Galvanized Coils, Steel Slabs	78.84	82.78	5%
F.	Steel Coastal by Rail			
	- Wharfage	56.75	59.59	5%
	- OBC	75.68	79.46	5%
	- On-board supervision	136.63	96.00	-30%
	- Shore handling	127.70	134.09	5%
	- on-board equipment assistance	7.80	8.19	5%
	- Despatch Related services	6.31	12.79	103%
	- Placement and removal of dunnages	10.51	11.04	5%
	- Unloading / Loading of break bulk cargo like steel coils from / to Railway wagons including shifting from siding or handling at siding	94.61	86.92	
G.	Steel Coastal by Road			
	- Wharfage	56.75	59.59	5%
	- OBC	75.68	79.46	5%
	- On-board supervision	136.63	96.00	-30%
	- Shore handling	127.70	134.09	5%
	- on-board equipment assistance	7.80	8.19	5%
	- Placement and removal of dunnages	10.51	11.04	5%
	- Loading / Unloading / Re-Stacking: Iron and Steel Hot Rolled Coils, Cold Rolled Coils, Galvanized Coils, Steel Slabs	47.30	49.67	5%
H.	Steel HR/CR Coil Imports Hook Point Delivery			
	- Wharfage	94.59	99.32	5%
	- OBC	126.13	132.44	5%
	- On-board supervision	141.90	120.00	-15%
	- Loading / Unloading / Re-Stacking:Iron and Steel Hot Rolled Coils, Cold Rolled Coils, Galvanized Coils, Steel Slabs	78.84	82.78	5%
	- on-board equipment assistance	13.00	13.65	5%
I.	Steel HR/CR Coil Import Ex Plot Delivery			
	- Wharfage	94.59	99.32	5%
	- OBC	126.13	132.44	5%
	- On-board supervision	141.90	120.00	-15%
	- Shore handling	212.84	223.48	5%
	- on-board equipment assistance	13.00	13.65	5%
	- Loading at plot or hook point for delivery	78.84	82.78	5%
J.	Steel Pipes / Sheets / Plates / WR Coils Import Hook Point Delivery			
	- Wharfage	94.59	99.32	5%
	- OBC	126.13	132.44	5%
	- On-board supervision	141.90	120.00	-15%
	- on-board equipment assistance	13.00	13.65	5%
	- Loading at plot or hook point for delivery	78.84	90.67	15%
K.	Steel Pipes / Sheets / Plates / WR Coils Import Ex Plot Delivery			
	- Wharfage	94.59	99.32	5%

Sl. No.	Description	Existing tariff	Proposed Tariff	% increase over the existing tariff
(1)	(2)	(3)	(4)	(5) = (4-3)/3
	- OBC	126.13	132.44	5%
	- On-board supervision	141.90	120.00	-15%
	- Shore handling	212.84	244.77	15%
	- on-board equipment assistance	13.00	13.65	5%
	- Loading at plot or hook point for delivery	78.84	90.67	15%
L.	Project Cargo/ Machinery without shore handling			
	- Wharfage	290.00	310.30	7%
	- OBC	80.00	160.00	100%
	- On-board supervision	262.78	275.92	5%
	- Loading	78.84	90.67	15%
M.	Project Cargo / Machinery with shore handling			
	- Wharfage	290.00	310.30	7%
	- OBC	80.00	160.00	100%
	- On-board supervision	262.78	275.92	5%
	- Shore handling	212.84	244.77	15%
G.	Income from Plot Rent			
	-Hard Stand Plot open yard	71.11	74.67	5%
H.	Harbour Mobile Crane Revenue			
	Quantity handled for Limestone	53.52	77.82	45%
	Quantity handled for Steel Export	107.05	112.40	5%
	Quantity handled for Steel Export-Coastal	64.23	67.44	5%
	Quantity handled for Steel Import	129.74	136.23	5%
	Quantity handled for Project Cargo	503.72	528.91	5%

5.7. The Average increase in tariff works out to ₹.8.82% as reported by TMILL.

6. In accordance with the consultative procedure prescribed, a copy of the TMILL proposal dated 1 October 2019 was forwarded to the Licensor port KOPT and to the concerned users/ user organizations vide our letters dated 9 October 2019, seeking their comments. No comments were received from any of the users/ user organizations, till the case was finalized.

7.1 Based on a preliminary scrutiny of the proposal, the TMILL was requested to furnish additional information/ clarification vide letter dated 19 December 2019. The TMILL has responded vide its e-mails dated 10 February 2020, 20 February 2020 and 24 February 2020. The information / clarification sought by us and the response of TMILL thereon are tabulated below:

Sr. no	Information/ clarification sought by us	Reply of TMILL
A.	**General**	
1.	As stipulated in Clause 1.9 of the Tariff Guidelines, 2019, the TMILL to execute a Separate Agreement with the Licensor port KOPT and forward a copy of the said Agreement duly signed by TMILL and KOPT.	TMILL is in discussion with HDC of KOPT for execution of the Separate Agreement.
2.	During the last revision, the analysis of the past performance of the TMILL for the year 2015-16 was based on the draft segregated Accounts for the year 2015-16. In para no. 12(vi) (c) of the Order no.	We have submitted our revised proposal for 2016-19, after updating 2015-16 financials based on Segregated accounts. Further, Reconciliation between the Surplus given at Form-3B and Segregated accounts is also

<table>
<tr><td></td><td>TAMP/8/2016-TMILL dated 17 September 2016, it is stated that the analysis pertaining to the year 2015-16 will be reviewed based on the final audited segregated Accounts for the year 2015-16. Therefore, the TMILL to furnish the 2015-16 actuals as per draft segregated accounts considered during the last revision vis a vis the actuals as per the Audited Accounts to comply with the decision of the last tariff Order.</td><td>furnished. The copy of Audited Segregated Accounts of 2015-16 is furnished.</td></tr>
<tr><td>3.</td><td>The reasons for substantial increase in operating expenses and FME for the year Y2 and Y3 as compared to Y1 to be clarified.</td><td>Throughput of B#13 has increased substantially between FY’17 and FY’19. Increase in tonnage is 18% from FY’17 to FY’18 and 22% between FY’18 and FY’19. This has impacted the variable and management overhead cost. Gross Block has increased by ₹.38 Crs. between FY’17 and FY’18. New equipment was commissioned with concomitant increase in manpower headcount and operating expenses. Moreover, due to new Wage Agreement (Charter of Demand), cost of labour has also increased substantially between FY’18 and FY’19 to the tune of ₹. 3.5 Crs. on aggregate basis.</td></tr>
<tr><td>B.</td><td>ARR Computation</td><td></td></tr>
<tr><td>(i).</td><td>In Form no. 1 under sl. No. 2, the TMILL has considered an amount of ₹. 5.84 crores, ₹.1.54 crores and ₹.2.10 crores, for adjustment, being addition to expenditure during the years 2016-17 to 2018-19 respectively. This amount for adjustment is seen to be arising due to the difference in the amount of depreciation and other expenses (comprising of operating and overhead costs, unwinding of berth no. 13 replacement obligation, replacement obligation of berth no. 13 assets and loss of dismantling of hopper) as considered based on the IGAAP vis-à-vis that as captured in Annual Accounts as per IND AS from Form no. 6A. In this connection, the TMILL to furnish the workings in support of the amount for each of the four head of expenditure as discussed above, as considered, as per IGAAP in Form no. 6A, for all the years under consideration, with an explanatory Note for each item of adjustment</td><td>A. Year wise details of replacement obligation and Unwinding: -
<table>
<tr><th><u>Heads</u></th><th><u>FY 16-17</u></th><th><u>FY 17-18</u></th><th><u>FY 18-19</u></th></tr>
<tr><td>Replacement Obligation of Berth#13 assets</td><td>(6.12 Crore)</td><td>1.13 Crore</td><td>1.31 Crore</td></tr>
<tr><td>Unwinding of Berth#13 replacement obligation</td><td>2.18 Crore</td><td>0.49 Crore</td><td>0.54 Crore</td></tr>
</table>
To Explain each line item under replacement obligation under Service Concession Arrangement we have tried to explain requirement under Accounting Standard: -
(i). During Implementation of Ind AS in our company as on 1st April’2015 (though first Ind AS account was published in FY 2016-17, and for determining previous year (FY 2015-16) number we need to adopt Ind AS from 1st April’2015), if, for any particular service arrangement, it is not practical for an operator to apply this standard on SCA (Service Concession arrangement) retrospectively at the date of transition to Ind ASs, it shall:
(a) recognize financial assets and intangible assets that existed at the date of transition to Ind ASs;
(b) use the previous carrying amounts of those financial and intangible assets (however previously classified) as their carrying amounts as at that date; and </td></tr>
</table>

		(c) test financial and intangible assets recognized at that date for impairment, unless this is not practicable, in which case the amounts shall be tested for impairment as at the start of the current period. Based on applicability of Service Concession arrangement a Gross amount of ₹.26.59 Crore which was grouped under Tangible Assets under I Gaap (B#13-earlier B#12) was transferred as Intangibles Assets. Thereafter, management determined the replacement obligations of the equipment under project facilities and services, which was requirement under License arrangement of Berh#13 (earlier Berth#12). During 1st April'2015 management projected replacement obligation during the entire project life cycle as ₹.68.46 Crore, having Present Value of ₹.52.83 Crore. Depending on the year lapsed, from 2002 (date of entering into license agreement) till 2015, present value of replacement obligation was charged to "Ind AS Translation Reserve" for an amount of ₹.42.77 Crore [TMILL has attached the calculation of deriving the amount] and accordingly created a liability for the same amount as on 1st April'2015. As per the requirement of Accounting Standard the above closing liability needs to be reviewed every year. We need to review: ✓ The Cost of replacement based on quotation from vendors. ✓ The Year of replacement. ✓ Discounting rate to consider deriving present value. ✓ Reduction of any actual purchase/replacement from closing liability. Hence there will be no addition in the Fixed assets for new purchase but there will be movement of closing and opening liability in Berth#13 replacement obligation. Thus, as per requirement of the standard, future replacement obligation was reviewed on FY 2015-16. After review of the Present Value of Replacement obligation the closing liability comes to ₹. 49.29 Crore. In this regard, the TMILL has furnished its workings. Further, the projection was reviewed in FY 2016-17. After review of the Present Value of Replacement obligation the closing liability comes to ₹.40.17 Crore. The closing liability was derived after-

- ✓ Reduction in gross liability of future replacement by ₹.5.18 Crore, cost of four big loaders and four small loaders which was transferred under Replacement Obligation.

- ✓ Unwinding of Replacement obligation of ₹.2.18 Crore.
- ✓ Reversal of Maintenance Charge by ₹.6.12 Crore, since while determining of FY 2015-16 liability cost of replacement cost of equipment was considered on a higher side (mainly Harbor Mobile Crane).

Attaching the file for determining liability of **₹. 40.17 Crore**

Particulars	**Amount**	**Unit**
Liability as on 31st March'2016	49.29	Crore
Reduction in liability-cost of equipment's	(5.18)	Crore
Unwinding of Replacement Obligation	2.18	Crore
A.	**46.29**	**Crore**
Closing Liability as on 31st March'2017	40.17	Crore
B.	**40.17**	**Crore**
Reversal of Maintenance Charge C=A-B	**6.12**	**Crore**

The above reversal of ₹.6.12 Crore was considered under preparation of Ind AS Accounts, thus reduced cost to that extent, but while preparation of accounts under I Gaap this is not required to be considered.

Further attaching calculation file for determining Replacement Cost and Unwinding of replacement obligation for FY 2017-18, FY 2018-19.

Difference between Asset wise depreciation under I Gaap and depreciation as per certified segregated accounts as disclosed under Berth#12 against each year is disclosed under "Saving in depreciation due to movement of Opening Tangible block as Intangibles and further due to addition of assets but not considered as Assets under Ind AS accounting"

B. **Year wise details of depreciation under I Gaap and Ind AS based on segregated accounts: -**

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During FY 2017-18 various equipment were purchased/replaced but these assets were not reflected as addition to fixed assets.

<table>
<tr><th><u>Heads</u></th><th><u>FY 2016-17</u></th><th><u>FY 2017-18</u></th><th><u>FY 2018-19</u></th></tr>
<tr><td>Depreciation under Ind AS-Segregated Accounts under Berth#13</td><td>2.46 Crore</td><td>2.55 Crore</td><td>3.16 Crore</td></tr>
<tr><td>Depreciation as per I Gaap-for asset wise depreciation calculation (working has been attached by TMILL)</td><td>4.35 Crore</td><td>5.45 Crore</td><td>7.12 Crore</td></tr>
<tr><td>Difference as stated as Adjustments in depreciation due to lower depreciation considered under Ind AS accounting</td><td>1.89 Crore</td><td>2.90 Crore</td><td>3.96 Crore</td></tr>
</table>

C. Loss on dismantling of Hopper: - During Financial Year FY 2017-18 hopper which was installed in Berth#13 (earlier B#12) was dismantled. For consideration we have considered the date as on 31st July'2017.
On 31st July the details of Hopper were as: -

<table>
<tr><th><u>Particulars</u></th><th><u>Amount</u></th><th><u>Unit</u></th></tr>
<tr><td>Gross Block as on 31st July'2017</td><td>1.22</td><td>Crore</td></tr>
<tr><td>Accumulated depreciation as on 31st July'2017</td><td>0.95</td><td>Crore</td></tr>
<tr><td>Net Block</td><td>0.27</td><td>Crore</td></tr>
</table>

The Net Block of ₹.0.27 Crore as on 31st July'2017 have been considered as Loss on dismantling of Hopper.
</td>
</tr>
<tr>
<td>(ii).</td>
<td>The figures of Gross Fixed Assets as per IGAAP and Capital Work in Progress as on 31 March 2019 as considered in Form no. 1 is seen to be based on Form no. 7 furnished by TMILL. With regard to Form no. 7, the TMILL to furnish the following:</td>
<td></td>
</tr>
<tr>
<td>(a).</td>
<td>A reconciliation statement to reconcile the Opening Balance of the Gross Fixed Assets for each of the asset category viz., Plant and Machinery, Building and Structures, Furniture and Fixtures, Office equipment, Computers, Hardware Network, Vehicles and any other Fixed Assets for the year 2016-17 as per IGAAP and INDAS.</td>
<td>To derive previous year numbers opening balance sheet under Ind AS was prepared on 01st April'2015 and thereafter full year financial was prepared under Ind AS for FY 2015-16 to derive previous year numbers and company prepared and published its first financial under Ind AS for FY 2017-18.
Thus, to prepare reconciliation TMILL need to start reconciliation of opening balance from FY 2015-16 onwards. In this regard, TMILL has attached the reconciliation of opening</td>
</tr>
</table>

		balance as on 01st April'2015 & 01st April'2016**.** (Reconciliation has been furnished by TMILL).
(b).	Workings in support of the Opening balance of Gross fixed asset and depreciation as of the year 2016-17 for each of the asset category viz., Plant and Machinery, Furniture and Fixtures, Office equipment, Computers, Vehicles and any other Fixed Assets.	For Opening Balance of Gross Fixed Assets, Calculation of depreciation, the figures of addition and disposal you can derive from Asset wise Fixed asset register in respect of Equipment involved in Berth#13 (earlier Berth#12) operation**.**
(c).	Workings in support of the Depreciation for the year considered in respect of each of the asset category viz., Plant and Machinery, Furniture and Fixtures, Office equipment, Computers, Vehicles and any other Fixed Assets, for each of the years 2016-17 to 2018-19.	
(d).	The figure of additions and disposal shown under gross fixed assets as considered in Form no. 7 for the years 2016-17, 2017-18 and 2018-19 are not seen to be as per the Annual Accounts of the respective years as furnished by TMILL. The TMILL to furnish workings in support of the figures considered in Form no. 7.	
(e).	The list of items considered under capital Work-in-Progress as on 31.03.2019 with value for each item to be furnished.	A piece of land measuring 4,300 sqm was taken on lease by TMILL from Haldia Dock complex in the month of September, 2017. TMILL has deposited an amount of ₹.1.51 Crs. as an upfront premium with HDC and further incurred an amount of ₹.1.85 Crs. for development of the plot/land. This cost as of now is shown under Capital Work in progress, which would be capitalized as development of land, once the plot/ land is ready for operation.
(iii).	With regard to the Working Capital in Form no. 3, the TMILL to explain the reason for not estimating any allowable Inventory in respect of capital spares as well as other inventory excluding fuel and customized spares as well as Sundry Debtors as part of Working Capital as per clause 2.5 of the Tariff Guidelines, 2019.	As per clause 2.6 of the 2019 Tariff Guidelines, Sundry debtor would include advance payment of Revenue share/ Royalty/ Lease rental/ License fee to Landlord from the contractual obligations. However, TMILL does not have any such contractual obligations. TMILL has not considered Debtor arising out of Sales. TMILL does not have any capital spares as on date. However, subsequently, the TMILL vide its e-mail dated 20 February 2020 has furnished details of the working capital considered by TMILL: (a). Inventory – ₹ 1.53 crores – 1 month repairs cost. (b). Sundry Debtors – ₹ 1.48 crores – Security deposit for 14000 sqm backup land & 54000 + 9000 sqm bare land and power supply at Berth no. 12. (c). Cash balance – ₹ 6.35 crores – 1 month cash expenses
(iv).	As per clause 2.8 of Tariff Guidelines 2019, the assessed ARR as per clause	Considering WPI as 4.26% for 2019-20, the revised ARR for 2019-20 will be ₹.93.13

	2.1 to 2.7 is to be indexed by 100% of the Wholesale price index (WPI) applicable as communicated by TAMP to arrive at the indexed ARR for the immediate subsequent year. For example, if Y4 is 2018-19, then the applicable WPI is 3.45% and the indexed ARR for the year Y4 will be (9) x 1.0345). In the Instant case, the Y1 is 2016-17, Y2 is 2017-18 and Y3 is 2018-19 and the immediate subsequent year (Y4) is 2019-20. However, for the purpose of indexation of ARR, TMILL has considered the indexation factor 3.45% as applicable for the year 2018-19 instead of applying indexation factor of 4.26% as applicable for the year 2019-20. The TMILL to revise the figure of ARR.	Crores in place of ₹. 92.40 Crs. The same may be considered. However, subsequently, the TMILL vide its e-mail dated 20 February 2020, while conveying consideration of working capital components has stated that based on the increase in working capital as brought out above and considering WPI of 4.26%, the revised ARR for 2019-20 will be ₹.93.62 Crores and has requested to consider the same.
C.	**Revenue Estimation:**	
(i).	In the revenue estimation at proposed rates, the TMILL has considered the income from Shore handling charges as per Clause 9.1.1 at ₹.99.93 per MT. In addition to the above shore handling charge, TMILL has also considered the revenue from the charges for Loading at plot or hook point for delivery of ₹.33.74 per MT. In this connection, it is to state that the definition of Shore Handling Charges as proposed by TMILL indicates composite charges for supply of labor with / without equipment for transportation of cargo from hook point to stacking point (including loading at hook point), unloading of the same at the stacking point and subsequent loading for delivery for import cargo and vice versa in case of export cargo. The TMILL to clarify why additional revenue on account of Loading at plot or hook point for delivery has been considered, when the said activity is already included in the Shore Handling charges as per the definition proposed by TMILL.	Shore Handling definition is now amended as per definition given in the Stevedoring and Shore Handling Policy, 2016 issued by the Ministry of Shipping. The definition is comprehensive for all activities, however, for the purpose of tariff, the rates are broken in line with KOPT SOR and also as per actual activities as explained in our answer to D (v). Since the activities are different for various types of cargo, export or import, mode of receipt or despatch, that is why the charges are given under different sections and no additional revenue has been considered.
D.	**Scale of Rates**	
(i).	The TMILL to explain the rationale behind amending the existing definition in respect of 'On-board supervision' and 'Transhipment' in the proposed SOR.	**(i) Rationale behind amendment of existing definition in respect of On Board Supervision and Transhipment in proposed SOR:** The underlined statement is added to the existing definition: 'On-board supervision' shall mean certain services, both on-board and on-shore, rendered by TMILL during ship to shore/shore to ship transfer operation of cargo <u>which are not included within the purview of On-board handling charges or loading / unloading charges or Miscellaneous charges and are</u>

		<u>ancillary in nature and some of which are needed for achieving better productivity / efficiency during vessel operation.</u> This has been done in order to bring more clarity to show the difference between On Board Charges and On-Board Supervision Charges. While On-Board Charges mean only providing in the form of supply of manpower for ship loading / unloading operation, there are many additional services required during ship operation like: - Loading or discharging as per stowage plan provided by Master - Checking of vessel cranes and loose gears - Providing slings and gears required to carry out loading / unloading operation - Tally of cargo loaded or discharged from ship - Providing dunnage and lashing materials for loading of export vessels - Providing manpower for lashing in export vessels or unlashing in import break bulk vessels - General supervision of cargo discharge or loading operation including deploying supervisors for safety of operation Some other services are also mentioned in the relevant section. These services do not fall under the purview of On-Board Charges. Hence the definition has been amended in order to bring more clarity. "Transhipment'' Definition of transhipment has now been retained same as previous SOR.
(ii).	The rationale behind introducing a definition of "Shore Handling Charges" at Section 2 (xv) in the proposed SOR to be explained. The proposed definition may be reviewed and modified in line with definition given in the Stevedoring and Shore handling Policy, 2016 issued by the Ministry of Shipping. Consequently, the need felt by TMILL to prescribe charges for Shore handling at Section 9 of the proposed SOR to be explained	**Rationale behind introducing a definition of "Shore Handling Charges"** Presently no definition of "Shore Handling" exists in TMILL SOR. "Shore Handling" definition and rates exist in the KOPT SOR. Since services are similar in nature and shore handling services are being provided by TMILL it is felt to introduce this definition as well as applicable charges in TMILL SOR. Presently TMILL is charging activity wise as specified in the existing SOR of TMILL. However, in order to align with the SOR of KOPT and to have comparable items for the purpose of ROYALTY payment to KOPT it is proposed to introduce the definition of "Shore Handling" and charges for the same. The definition is being modified in line with the definition given in the "Stevedoring and Shore

<table>
<tr><td></td><td></td><td>Handling Policy, 2016" issued by the Ministry of Shipping.</td></tr>
<tr><td>(iii).</td><td>In the existing SOR, the TMILL had a residual entry of 'Any other cargo not specified above' under each Section of Schedule of Wharfage charges and On Board charges. The TMILL has now proposed to delete the said entry in the said Schedules in the proposed SOR. However, it has been retained Clause 3 (viii) of the SOR which gives the procedure to be followed before classifying any cargo under unspecified category. The TMILL to clarify what tariff it will levy on unspecified cargo.</td><td>The charges for 'any other cargo not specified above' have been included along with "project cargo and machinery and spares" for all items</td></tr>
<tr><td>(iv).</td><td>The TMILL has proposed additional rate at Clause 12.1 Sr. no. 8 towards equipment hire charges for forklifts above 25 MT. However, it is seen that the TMILL has not captured the revenue impact on account of the said proposed rate in Form – 4. The TMILL to capture the revenue in the Form -4 accordingly.</td><td>TMILL already had one 32 MT capacity forklift. Further during the previous tariff cycle, TMILL has commissioned 2 numbers 45 MT capacity Reach-stacker cranes for break bulk cargo handling.

Sometimes such equipment are required for purpose beyond normal shore handling activities, e.g., repairing of packages, transhipment from trailer to trailer etc. Since such requirements cannot be predicted in normal course of activity, no revenue has been shown.</td></tr>
<tr><td>(v).</td><td>The proposed SOR includes Onboard supervision, Loading/ Unloading/ Restacking charges and Transportation charges. As per the definition proposed by TMILL for Shore Handling Charges, Shore handling includes services for which charges are levible as per the itemized rates mentioned above. That being so, the reason for proposing separate schedule for Shore Handling Services may be clarified. The TMILL to also clarify the circumstances under which itemized rates will be levied and the circumstances under which composite Shore Handling Charges will be levied.</td><td>TMILL has to pay royalty to KOPT as per KOPT SOR and KOPT SOR includes shore handling rates.

The relevant portion of KOPT SOR is quoted below:

<u>Quote</u>

<table>
<tr><td><u>S.6</u></td><td colspan="3"><u>Shore Handling Charges</u></td></tr>
<tr><td><u>S.6.1</u></td><td colspan="3">Shore Handling Charges for foreign cargo shall be levied at the following rates</td></tr>
<tr><td><u>Sl No</u></td><td><u>Description</u></td><td colspan="2"><u>Rates in ₹ per tonne or part thereof</u></td></tr>
<tr><td></td><td></td><td>Shore Handling Services involving transfer of cargo from / to Hook Point to / from Storage point (including loading point and unloading at storage point for imports and loading at storage point and unloading at hook point for export)</td><td>Shore Handling Service involving Loading at storage point for delivery or unloading at storage point during receiving</td></tr>
<tr><td></td><td></td><td>Handled at HDC</td><td>Handled at HDC</td></tr>
<tr><td>2</td><td>Iron and Steel; Pipes & Tubes</td><td>112.93</td><td>55.62</td></tr>
<tr><td>3</td><td>All other break bulk cargo for which rates otherwise not specified – (per</td><td></td><td></td></tr>
</table>
</td></tr>
</table>

	Pkg. Or Unit weight)		
i)	Less than 5 tonne	37.65	18.54
ii)	5 tonne to Less than 10 tonne	70.58	34.76
iii)	10 tonne to less than 20 tonne	141.16	69.53
iv)	20 tonne to less than 40 tonne	188.21	92.70
v)	40 tonne and above	376.43	185.41
6	All types of dry bulk cargo not specified (other than the cargo landed from or shipped/ to be shipped through mechanical system)		
i)	When the cargo landed at a berth is stored at the immediate back up area / of the same berth and finally delivered from the said storage area, or vice versa (in case of exports); without requiring additional loading / unloading and/or transportation over those covered under the definition of shore handling charge.	84.70	41.71
ii)	When the cargo landed at a berth is stored at any area (within the dock), other than in the immediate back up area of the same berth, and finally delivered there from, or vice versa (in case of Exports); without requiring additional loading/unloading and/or transportation over those covered under the definition of shore handling charges.	103.49	41.71

S.6.3	**Charges for Heaping / High heaping and/or Despatch Related Services for dry bulk cargo:**	
	Charges for heaping/high heaping and/or despatch related services for dry bulk cargo shall be levied at the following rates:	
Sl No.	**Description**	**Rates in ₹ per tonne**

			or part thereof
S.6.3.1	Heaping/high heaping of Dry Bulk Cargo at storage area / Hook Point at HDC		14.45 per MT
Sl No.	**Description**		**Rates in ₹ per tonne or part thereof**
S.6.3.2	a)	Despatch related services for rail borne cargo handled through MHC berths of HDC, including cleaning, trimming, labelling, lime spraying and weighments. Note: If due to any reason, the service of weighment cannot be provided by the port, the prescribed rate for weighment charge available at Sl. No. 6 of S.16.1 in the SOR of KOPT may be considered as a discount.	21.31 per MT
	b)	Despatch related services for road bound cargo, handled through MHC Berths of HDC including weighments. Note: If due to any reason, the service of weighment cannot be provided by the port, the prescribed rate for weighment charge available at Sl. No. 6 of S.16.1 in the SOR of KOPT may be considered as a discount.	8.67 per MT

Unquote

In light of the above the clarifications are as given below:

(i) In order to align the TMILL SOR with KOPT SOR to avoid anomalies and discrepancies in royalty payment, the above structure has been proposed.

(ii) The SOR proposed by TMILL is drawn in similar line with KOPT SOR.

The applicable services, charges and sections applicable of proposed SOR can be tabulated below

Cargo details	Services	Applicable section of SOR
Import Dry Bulk	Hook Point to Storage Point including loading at hook point, transfer and unloading at storage point	Section 9.1 (1)
	Stacking / Heaping / High Heaping at Storage Point	Section 9.3 (2)
	Loading for delivery by road	Section 7.1 (1) or (2)
	Loading for delivery by rail	Section 7.1 (1) or (2)
	Despatch related services for delivery by rail	Section 9.3 (1)

<table>
<tr><td></td><td></td><td>
<table>
<tr><td></td><td>Cleaning of Jetty / Deck and water sprinkling</td><td>Section 9.3 (3)</td></tr>
<tr><td>Import Break Bulk</td><td>Hook Point to Storage Point including loading at hook point, transfer and unloading at storage point</td><td>Section 9.1 (2) or (3)</td></tr>
<tr><td></td><td>Loading for delivery by road</td><td>Section 7.1 (3) or (4)</td></tr>
<tr><td></td><td>Loading for delivery by rail</td><td>Section 7.1 (6) or (7)</td></tr>
<tr><td></td><td>Despatch related services for delivery by rail</td><td>Section 9.3 (1)</td></tr>
<tr><td></td><td>Stacking with wooden dunnages / sand bags etc at the time of storage</td><td>Section 9.3 (4)</td></tr>
<tr><td>Export Break Bulk</td><td>Unloading at the time of receiving by rail and handling at siding</td><td>Section 7.1 (6) or (7)</td></tr>
<tr><td></td><td>Despatch related services for receiving by rail</td><td>Section 9.3 (1)</td></tr>
<tr><td></td><td>Unloading at the time of receiving by road</td><td>Section 7.1 (3) or (4)</td></tr>
<tr><td></td><td>Shore Handling services from storage point to hook point including loading at storage point, transfer and unloading at hook point</td><td>Section 9.1 (4) or (5)</td></tr>
<tr><td></td><td>Stacking with wooden dunnages etc. at the time of storage</td><td>Section 9.3 (4)</td></tr>
<tr><td>Export Dry Bulk</td><td>Unloading at the time of receiving by rail and handling at siding</td><td>Section 7.1 (8)</td></tr>
<tr><td></td><td>Despatch related services for receiving by rail</td><td>Section 9.3 (1)</td></tr>
<tr><td></td><td>Stacking with payloader at storage yard at the time of receiving by rail or road</td><td>Section 7.1 (1)</td></tr>
<tr><td></td><td>Shore Handling services from storage point to hook point including loading at storage point, transfer and unloading at hook point</td><td>Section 9.1 (1)</td></tr>
<tr><td></td><td>Cleaning of Jetty / Deck and Water Sprinkling</td><td>Section 9.3 (3)</td></tr>
</table>
</td></tr>
<tr><td>(vi).</td><td>The note no. 9.2 under Section 9 (Shore Handling Services) states that Shore Handling Services involving loading at storage point for delivery by road/rail or unloading at storage point during receiving by road/rail will be charged separately as per Section 7 (Loading/Unloading /Stacking). It is seen that the proposed note no. 9.2 is in conflict with the definition of Shore Handling Charges proposed at Section 2(xv). The TMILL is to review the note no. 9.2 in line with the definition of Shore Handling Charges, which is also to be reviewed as requested by us in earlier paragraph.</td><td>Already explained above.</td></tr>
<tr><td>D.</td><td>Past Period Surplus:</td><td></td></tr>
</table>

	Clause 3.1.2 of the Tariff Guidelines, 2019 stipulates that in case of operators who have not approached Courts, the surplus/deficit upto the period of first tariff fixation under this Guidelines shall be dealt with as per Clause 2.13 of the 2005 Tariff Guidelines as reproduced below: *The actual physical and financial performance will be reviewed at the end of the prescribed tariff validity period with reference to the projections relied upon at time of fixing the prevailing tariff. If performance variation of more than + or - 20% is observed as compared to the projections, tariff will be adjusted prospectively. While doing so 50% of the benefit/ loss already accrued will be set off while revising the tariff."* The TMILL is, therefore, to furnish the statement reviewing the actual physical and financial performance vis-à-vis the estimates relied upon in the previous tariff cycle as done in earlier tariff revision under erstwhile Tariff Guidelines, 2005 and make necessary adjustments from the estimated ARR in case there is variation in both physical and financial parameters by +/-20%.	As per the workings for Past period surplus for the period from 2016-17 to 2018-19, it can be seen that the Authority assumed a surplus of ₹.6.88 Crs. and accordingly reduced the rates in the last order issued (Order issued in September, 2017) based on review application of TMILL. However, the actual surplus is ₹.2.09 Crs. for the corresponding period. (The TMILL has furnished the past period workings.)

7.2. While furnishing additional information/ clarification, the TMILL has furnished the revised Form – 1, incorporating the figures of Inventory and Sundry Debtors as discussed above. The revised ARR computation as furnished by TMILL is given below:

(Amount in ₹)

Sl. No.	Description	Y1- 2016-17	Y2- 2017-18	Y3- 2018-19
(1).	**Total Expenditure (As per Audited Annual Accounts)**			
(i).	Operating expenses (including depreciation)	528179213	718943327	793111517
(ii).	Finance and Miscellaneous expenses (FME)	21831705	4949154	5423192
	Total Expenditure 1=(i)+(ii)	**550010918**	**723892481**	**798534709**
(2).	**Adjustments in respect of items where there is variation in figures reported as per INDAS (as per Audited Accounts) and IGAAP**			
(i).	Saving in Depreciation due to movement of Opening Tangible block as Intangibles	18941440	28959154	39613220
(ii).	Replacement Obligation of Berth#13 assets	61292434	-11307166	-13143172
(iii).	Unwinding of Berth#13 replacement Obligation	-21831705	-4949154	-5423192
(iv).	Loss on dismantling of hoppers	-	2683543	-
	Total of Adjustments 2=(i)+(ii)+ (iii)+(iv)	58402169	15386377	21043856
(3).	**Less Adjustments:**			
(i).	Actual Royalty / Revenue share paid to the port	79091765	88460415	104795882
(ii).	Interest on loans			
(iii).	Interest on finance lease			
(iii).	Provision for bad and doubtful debts			
(iv).	Provision for slow moving inventory			
(v).	Construction cost-IFRIC 12			

Sl. No.	Description	Y1- 2016-17	Y2- 2017-18	Y3- 2018-19
(vi)	Other provisions, if any			
	Total of 3 = [3(i)+3(ii)+3(iii)+3(iv)+3(v)+3(vi)]	**79091765**	**88460415**	**104795882**
(4).	**Add: Admissible Royalty/ Revenue Share as per Clause 2.2. of the Tariff Guidelines, 2019**	60717967	67464039	79922228
(5).	**Total Expenditure after Total Adjustments (5 = 1+2+4-3)**	590039289	718282482	794704911
(6).	Average Expenses of Sl. No.5 = [Y1 + Y2 + Y3] / 3	701008894		
(7).	**Capital Employed**			
	(i). Gross Fixed Assets (Property, Plant & Equipment) as on 31st March Y3 or 31 December of Y3 followed by the BOT operator (As per IGAAP)	1104259006		
	(ii). Add: Capital Work in Progress as on 31st March Y3 or 31 December of Y3 followed by the BOT operator (As per Audited Annual Accounts)	33650686		
	(iii). Add: Working Capital as per norms prescribed in clause 2.6 of the Tariff Guidelines, 2019	93528228		
	(a). Inventory	15280348		
	(b). Sundry Debtors	14792000		
	(c). Cash	63455880		
	(d).Sum of (a)+(b)+(c)	**93528228**		
	(iv). Total Capital Employed [(i)+(ii)-(iii)]	**1231437919**		
(8).	**Return on Capital Employed 16% on Sl. No.7(iv)**	197030067		
(9).	**Annual Revenue Requirement (ARR) as on 31 March 2019 as applicable [(6)+ (8)]**	898038961		
(10).	**Indexation in the ARR @ 100% of the WPI applicable for the year Y4 for example, if Y4 is 2019-20, then the applicable WPI is 4.26% and the indexed ARR for the year Y4 will be (9) x 1.0426)**	**936295421**		
(11).	**Ceiling Indexed Annual Revenue Requirement (ARR)**	**936295421**		
(12).	**Revenue Estimation at the Proposed indexed SOR within the Ceiling indexed ARR estimated at Sl. No.11 above**	899979627		
13	**Revenue gap**	**36315794**		

8.1. A joint hearing in this case was held on 17 October 2019 at the KOPT premises. At the joint hearing, the TMILL and KOPT have made their submissions.

8.2. As discussed at the joint hearing, the KOPT vide its email dated 10 March 2020 has furnished its comments. The comments of KOPT was forwarded to TMILL vide our letter dated 11 March 2020, for feedback comments. The TMILL has responded vide its letter dated 18 March 2020.

9. Further, some information/ clarification were sought from KOPT vide our letter dated 19 December 2019, on the following points. Even after reminders, the KOPT has not furnished the requisite information.

- (i). Comments on Computation of ARR.
- (ii). Confirmation of average traffic at 17.14 Lakh tonnes for the years 2016-17 to 2018-19.
- (iii). Comments on the estimation of revenue at the proposed level of tariff.

(iv). Comments on Comparative statement furnished by TMILL highlighting the changes/ amendments proposed by TMILL in its proposed Scale of Rates vis-a-vis the existing Scale of Rates.

(v). To coordinate with TMILL to enter into a Separate Agreement as per the stipulation contained in Clause 1.9 of the 2019 Guidelines. The copy of the Agreement to be entered by TMILL with KOPT, duly signed by both the parties to be furnished.

10. In the meanwhile, the TMILL vide its email dated 7 January 2020 made a request to extend the validity of the existing tariff of TMILL from 1 July 2019 till 31 March 2020 or till new rates are approved, whichever is earlier. Based on the request made by TMILL and in order to avoid a vacuum in the tariff, the Authority vide its Order no. TAMP/8/2016-TMILL dated 11 February 2020 has extended the validity of the existing tariff of TMILL from 1 July 2019 till 31 March 2020 or till new rates are approved, based on a proposal filed by TMILL, whichever is earlier.

11. The proceedings relating to joint hearing held in this case are available on records at the office of this Authority. An excerpt of the arguments made by the parties will be sent separately to the relevant parties. These details will also be made available at our website http://tariffauthority.gov.in

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

(i). The Scale of Rates of TM International Logistics Ltd (TMILL) was last approved by this Authority vide Order No. TAMP/8/2016-TMILL dated 17 September 2016. This Order was notified in the Gazette of India on 10 October 2016 vide Gazette no. 369. Vide the said Order the then prevailing rates were reduced by 7%, except for the wharfage rate and on board handling charge in respect of Project cargo and the per tonne rate for on board equipment assistance charges. Subsequently, based on the review application filed by TMILL on 22 November 2016, this Authority vide its Order no. TAMP/83/2016-TMILL dated 21 July 2017 effected a reduction of 4.85% in tariff prevailing prior to September 2016 Order, with effect from 01 September 2017 to 31 March 2019.

(ii). The Ministry of Shipping (MOS), as a policy direction under Section 111 of the Major Port Trusts Act, 1963, has issued Tariff Guidelines, 2019, for BOT operators who were previously governed by 2005 Tariff Guidelines. Consequent to the issue of the Tariff Guidelines, 2019, by the MOS, the tariff fixation exercise in respect of the TMILL is to be governed by the stipulations contained in the Tariff Guidelines, 2019 and the Working Guidelines issued to operationalize the Tariff Guidelines, 2019.

(iii). In this backdrop, the TMILL has come up with its proposal dated 1 October 2019 for general revision of its SOR under the Tariff Guidelines, 2019 and Working Guidelines to operationalize the Tariff Guidelines, 2019. The said proposal of TMILL alongwith the information/ clarification furnished by TMILL during the processing of the case are considered in this analysis.

(iv). The KOPT has stated with regard to the issues relating to incorporation of TMILL as a Special Purpose Vehicle (SPV), and segregated accounts in respect of Berth no. 12, that the submissions made by it earlier in the previous general revision of TMILL is still valid. Accordingly, the KOPT has requested this Authority to issue appropriate direction to TMILL. The issues relating to incorporation of TMILL as a SPV and submission of segregated accounts by TMILL, have already been addressed by this Authority in detail in the TMILL's past general revision Orders. In this connection, as already indicated in the earlier Orders passed in respect of TMILL, it is reiterated that the need to prepare Segregated Accounts arises since the Licensee operates in many other areas, apart from the licensed premises and the Accounts drawn up by the operator include the results of all his operations. The basic requirement of BOT cases is that the successful bidder to a port project has to form a SPV to discharge his obligations under the Licence Agreement. It is incumbent upon the Landlord port to ensure that such SPV has been formed and then enter into a Licence Agreement with such separate entity created. For reasons not known to us, KOPT does not appear to have followed this established procedure. It was necessary for KOPT to take appropriate steps to ensure such SPV is formed. Till KOPT ensures its Licensee forms a separate SPV and maintains separate accounts, this Authority relies upon the segregated accounts furnished by TMILL, given that the KOPT has not expressed any serious objection to the Segregated Accounts presented by TMILL. However, relying upon the Segregated Accounts of TMILL by this Authority should not be construed as to endorsing the Segregated Accounts submitted by the TMILL.

(v). (a). Clause 2.1 of the Tariff Guidelines, 2019, requires each BOT Operator to assess the Annual Revenue Requirement (ARR) which is the average of the sum of Actual Expenditure as per the final Audited Annual Accounts of the immediate preceding three years (Y1), (Y2) and (Y3) at the time of submitting the proposal subject to certain exclusions as prescribed in Clause 2.2, 2.3.1 and 2.3.2 of the Tariff Guidelines, 2019 and the Working Guidelines issued by this Authority plus Return at 16% on Capital Employed obtaining as on 31st March Y3, duly certified by a practicing Chartered Accountant/ Cost Accountant.

(b). The TMILL has assessed the ARR based on Segregated audited Annual Accounts for three years i.e. 2016-17 (Y1), 2017-18 (Y2) and 2018-19 (Y3) duly certified by a practicing Chartered Accountant. The total operating expenditure considered by TMILL for the years 2016-17, 2017-18 and 2018-19 for arriving at the average sum of the Actual Expenditure for the respective years is seen to be as per the segregated audited Annual Accounts of TMILL for the respective years, drawn following INDAS.

(c). Clause 2.3.2 stipulates that in case there is variation in the expenditure reported under IND AS and IGAAP, then necessary adjustments is to be done in the ARR computation by excluding IND AS figures and considering figures as per IGAAP. The segregated audited Annual accounts of TMILL are IND AS compliant. Thus, the TMILL has shown addition aggregating to the tune of ₹ 5.84 crores, ₹ 1.54 crores, and ₹ 2.10 crores, during the years 2016-17 to 2018-19 respectively, in the computation of ARR on account of, adjustment in depreciation due to movement of Opening Tangible block as Intangibles, Replacement Obligation of Berth no. 13 assets, Unwinding of Berth no. 13 replacement obligation and Loss on dismantling of hoppers to capture these items as per IGAAP to comply with the Guideline position. The TMILL has furnished the requisite working in this regard. Considering the workings furnished by the TMILL and also since the quantum of the said adjustments as made by TMILL has been certified by a practicing Chartered Accountant, the amount considered by TMILL towards adjustments as discussed above is relied upon.

(d). While assessing the ARR, the TMILL has made exclusions of the expenses not admissible in ARR computation, as prescribed in Clause 2.2, 2.3.1 and 2.3.2 of the Tariff Guidelines, 2019. The following adjustments done by TMILL in line with provisions prescribed in Clause 2.2, 2.3.1 and 2.3.2 of the Tariff Guidelines, 2019 and the Working Guidelines are brought out for specific mention:

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

TMILL is a BOT operator, who falls in the pre July 2003 era. Thus, in case of TMILL, the Revenue share paid by TMILL to the Licensor port KOPT is admissible as an item of cost to the extent of the next highest bidder. Accordingly, 76.77% of the Revenue share as reflected in the segregated audited Annual Accounts of TMILL for the year 2016-17 and 76.26% of the Revenue share as reflected in the segregated audited Annual Accounts of TMILL each for the years 2017-18 and 2018-19 , has been considered by the TMILL in the computation of ARR, in line with the clause 2.2 of the tariff guidelines of 2019, which was also followed when the tariff of TMILL was being fixed under 2005 Tariff Guidelines.

(ii). As per Clause 2.3.1 (ii) of the Tariff Guidelines, 2019, Interest on loans, provision for bad and doubtful debts, provision for slow moving inventory etc., are to be excluded. The TMILL has not reported any expenditure on account of Interest on loans, provision for bad and doubtful debts, and provision for slow moving inventory in its Segregated Audited Annual Accounts.

(e). Following the provisions prescribed at Clause 2.2, 2.3.1 and 2.3.2 of the Tariff Guidelines, 2019 and the Working Guidelines and based on the adjustments as discussed above, the TMILL has arrived at average expenses for the years 2016-17 to 2018-19 at ₹ 70.10 crores, as per the stipulation prescribed in clause 2.4 of the Tariff Guidelines, 2019.

(vi). (a). Based on the stipulation contained in Clause 2.5 of the Tariff Guidelines of 2019, the TMILL has worked out the figure of Capital Employed. Capital employed comprises of Gross Fixed assets as arrived as per IGAAP to the tune of ₹ 110.43 crores plus capital work in progress to the tune of ₹ 3.37 crores, as on 31 March 2019. The working furnished by TMILL in Form 7 has been duly certified by a Chartered Accountant.

(b). Clause 2.6. of the Tariff Guidelines, 2019 prescribes the norms for determining the working capital comprising of Inventory, Sundry debtors and Cash balances. Limit on inventory for capital spares will be one year's average consumption and in case of other items of inventory the limit will be six months' average consumption of stores excluding fuels. Limit on cash balance will be one month's cash expenses. Advance payment of Revenue Share/ royalty and lease rental / license fee to the landlord port flowing from the contractual obligations is to be treated as sundry debtors.

(c). (i). The TMILL has considered Inventory excluding fuel and customized spares to the tune of ₹. 1.53 crores, which is seen to be six months Repairs to Machinery as reflected in the segregated audited Annual Accounts for the year 2018-19 (i.e. ₹ 3.06 crores /2= 1.53 crores). The same is considered in the analysis. The TMILL has confirmed that it does not have any capital spares as on date.

(ii). The TMILL has not considered any advance payment of Revenue Share, as it has confirmed to not have any such contractual obligations. However, an aggregate amount of ₹. 1.48 crores made towards security deposit made by TMILL with KOPT towards the initial allotment of 14000 sq. mtrs for backup land and subsequent allotment of 54000 sq. mtrs and 9000 sq. mtrs of bare land by KOPT to TMILL and; security deposit on power supply has been considered as sundry debtors by TMILL.

In this regard it is to state that Payment of Security Deposit by TMILL to KOPT cannot be taken as part of sundry debtors since the payment was made to KOPT during the initial allotment of land to TMILL and has not been specifically made during the years 2016-17 to 2018-19, the years which are under consideration for assessment of ARR.

(iii). The TMILL has considered cash balance to the tune of ₹. 6.34 crores, which is seen to be one month average operating expenditure excluding deprecation as reflected in the Audited Annual Accounts for the year 2018-19 [(79.31 crores – 3.16 crores)/ 12 = ₹. 6.34 crores).

(d). Thus, based on the above, the Working Capital has been considered at ₹ 7.87 crores instead of ₹. 9.35 crores as considered by TMILL.

(e). As explained above, the total capital employed including working capital works out to ₹ 121.66 crores instead of ₹. 123.14 crores as proposed by TMILL.

(vii). As per Clause 2.7 of the Tariff Guidelines, 2019, Return on Capital Employed (ROCE) at 16% is worked out on the Capital Employed, which works out to ₹ 19.47 crores, which is considered in the ARR computation.

(viii). The ARR comprises of the average of the expenditure for the three financial years 2016-17 to 2018-19 plus 16% ROCE. Accordingly, the ARR has been worked out to ₹ 89.57 crores. Further, as per Clause 2.8 of Tariff Guidelines, 2019, the said ARR needs to be indexed @ 100% of the WPI applicable for the year 2019-20 which is 4.26%. After applying the said indexation factor, the ceiling indexed ARR as modified by us works out to ₹. 93.38 crores, as against the ceiling indexed ARR worked out by TMILL at ₹ 93.63 crores.

(ix). Clause 3.1.2 of the Tariff Guidelines, 2019 stipulates that in case of operators who have not approached Courts, the surplus/ deficit upto the period of first tariff fixation under this Guidelines shall be dealt with as per Clause 2.13 of the 2005 Tariff Guidelines as reproduced below:

"The actual physical and financial performance will be reviewed at the end of the prescribed tariff validity period with reference to the projections relied upon at time of fixing the prevailing tariff. If performance variation of more than + or - 20% is observed as compared to the projections, tariff will be adjusted prospectively. While doing so 50% of the benefit/ loss already accrued will be set off while revising the tariff."

The tariff of TMILL was last fixed vide tariff Order no. TAMP/8/2016-TMILL dated 17 September 2016 and subsequently reviewed vide Order no. TAMP/83/2016-TMILL dated 21 July 2017, by relying upon the estimates for the years 2016-17 to 2018-19. Thus, the estimates as relied upon in the Review Order dated 21 July 2017 for the years 2016-17 to 2018-19 vis-à-vis actuals for the corresponding period are to be analyzed to assess the surplus/ deficit, to comply with clause 3.1.2. of the Tariff Guidelines 2019.

(x). TMILL has furnished past period workings for the years 2016-17 to 2018-19. The same is discussed as given below:

(a). The actual traffic handled by TMILL during the years 2016-17 to 2018-19 is reported to be 1.42 MMTPA, 1.67 MMTPA and 2.05 MMTPA respectively, aggregating to 5.14 MMTPA ,as against the aggregate traffic of 3.60 MMTPA as estimated in the tariff Order of July 2017 for the corresponding period. Inspite of a specific request, the KOPT has not furnished its comments on the traffic figures given by TMILL. In the absence of any contradicting views of KOPT, the traffic as reported by TMILL is considered. The positive variation in traffic is seen to be 42.97%.

(b). The opinion of Attorney General for India conveyed by Ministry of Shipping (MOS) vide its letter dated 12 June 2015 is that the actual income earned by the operator based on their Audited Accounts should be considered and not any notional income. Therefore, for the purpose of analysis of the past period, the actual income as reported in the segregated audited Annual Accounts of TMILL for the years 2016-17 to 2018-19 has been considered. To have like to like comparison between actual income and estimated income, the estimated operating income considered in the review order is reduced by 4.85%, the reduction ordered in the review order.

(c). The Expenses have been considered as reflected in the segregated audited Annual Accounts of TMILL for the years 2016-17 to 2018-19, except for the following:

(i). In line with the stipulation contained in clause 2.8.1 of the tariff guidelines of 2005 and in line with the approach adopted in the last tariff Order, Revenue share has been considered as a cost item by TMILL to the extent of the revenue share quoted by the second highest bidder.

(ii). The TMILL has considered depreciation as per IGAAP, keeping in view that during the last revision of tariff of TMILL, estimates of depreciation were based on IGAAP

(d). As per the provisions of the Licence Agreement, the terminal value payable by KOPT to TMILL is ₹2.30 crores. Recognising that the payment would be due for 30 years, while fixing tariff under 2005 Guidelines vide the Order of July 2017, the annualised present value for the years 2016-17 to 2018-19 had been estimated then. The same has been considered by TMILL in the actuals for the years 2016-17 to 2018-19, which is considered in the analysis.

Also, in line with the approach adopted during the last review based on 2005 Guidelines, the TMILL has not considered interest income on fixed deposits and liabilities no longer required to be returned back, under Finance and Miscellaneous Income.

(e). (i). In line with the approach adopted during the last review based on 2005 Guidelines, the Capital employed has been considered as Net Fixed Assets plus working capital as per the norms prescribed in the 2005 Guidelines.

(ii). The Net Fixed Assets as reported in the segregated audited Annual Accounts is based on IND AS. Therefore, based on the workings as made available by TMILL to determine the capital employed as per IGAAP for the years 2016-17 to 2018-19, duly certified by the practicing Chartered Accountant, the Net Fixed Assets has been considered by TMILL at ₹ 36.14 crores, ₹ 65.64 crores and ₹ 64.70 crores for the years 2016-17 to 2018-19 respectively.

(iii). The working capital has been considered in line with the stipulation at Clause 2.9.9 of the tariff guidelines of 2005, as discussed below:

(a). Sundry debtors has been considered as NIL, since there is no estate income or railway terminal handling charges. However, Security deposit amounting to ₹ 141.61 lakhs is considered for each of the years under consideration, as has been done during the last review of tariff of TMILL.

(b). Inventory has been considered at 50% of the Repairs and maintenance cost for the years 2016-17 to 2018-19 as for the said years.

(c). The cash balance is considered at one month cash expenses.

(d). The TMILL has not considered any current liabilities. However, current liabilities are also considered to arrive at Working capital. As done in the last general revision of TMILL, the proportion of Current liabilities of the Haldia Division to the Current Assets of Haldia Division as given in the Segregated Accounts is taken as base and applied to the figures of Current Assets as calculated above in the analysis. As a result, the working capital works out to be NIL for the year 2016-17 and ₹ 1.57 crores for 2017-18 and ₹ 2.90 crores for the year 2018-19.

(iv). Thus, the modified Capital Employed works out to at ₹ 36.14 crores, ₹ 67.22 crores and ₹ 67.60 crores for the years 2016-17 to 2018-19 respectively as against ₹ 43.17 crores, ₹ 75.37 crores and ₹ 74.05 crores for the years 2016-17 to 2018-19 respectively considered by the TMILL, due to modification in the working capital.

(f). A copy of the cost statement reviewing estimates of 2016-17 to 2018-19 vis-à-vis actuals of the corresponding period is attached as **Annex – I**. A summary of the comparison of the actuals vis-à-vis the estimates considered in the last tariff Order is tabulated below:

Particulars	**Aggregate for the years 2016-17 to 2018-19 (₹ in crores)**		**Variation in %**
	Estimates as per tariff Order	**Actuals**	
Traffic (in MMTPA)	3.60	5.14	42.78%
Total Operating Income	173.85	251.61	44.73%
Total Expenditure including FME less FMI, Depreciation and overheads	133.02	210.27	58.07%
Surplus/ deficit before Return	40.82	41.34	1.27
Capital Employed (Average)	53.05	64.14	7.42

The details regarding the Actual Return earned by TMILL on the Capital Employed are given in the following table:

(₹ In Crores)

Sr. no.	**Particulars**	**2016-17**	**2017-18**	**2018-19**	**Average**
(i).	Actual Surplus before Return earned by TMILL	14.44	9.57	17.33	13.78
(ii).	Actual Capital Employed	36.14	67.22	67.60	56.99
(iii).	Actual Return on Capital Employed as a percentage.	39.96%	14.23%	25.63%	24.18%
(iv).	Variation in Return on Capital Employed @ 16%	149.75%	-11.06%	60.19%	51.13%

(g). As per clause 2.13 of the tariff guidelines read with the opinion of AG, if review of actual physical and financial performance for the previous tariff cycle shows the variation of more than + 20%, then 50% of such accrued benefit / loss has to be adjusted in the next tariff cycle.

It can be seen from the above analysis that the variation in the physical parameter i.e., actual traffic handled and financial performance in terms of return on capital employed is positive and the same is more than 20%. Hence, there is a case for adjustment of past period surplus of TMILL for the years 2016-17 to 2018-19.

As per the opinion of the AG, if the variation in both the physical and financial parameters is more than 20%, then 20% of the surplus is to be allowed to be retained by the operator. It is only the surplus over and above the 20% that shall be shared equally i.e. 50:50 between the operator and the users. In nutshell, 60% of additional surplus is allowed to be retained with the operator and 40% additional is to be shared with users by considering adjustment in future tariff.

Accordingly, 40% of Net additional surplus for the years 2016-17 to 2018-19 i.e. ₹ 5.51 crores x 40% = ₹ 2.20 crores is to be considered for adjustment in the current tariff cycle by spreading it over three years. Thus, the impact of ₹ 0.73 crores is considered by reducing the indexed ARR, as assessed at ₹ 93.38 crores.

(xi). Accordingly, the revised ceiling indexed ARR works out to ₹ 92.65 crores. The detailed ARR calculation as modified by us attached as **Annex – II**. A summary of the ceiling indexation ARR furnished by the TMILL and revised ceiling indexed ARR after adjustment of the past period surplus as arrived by us is given below:

(**₹ in crores**)

Sr. No.	Particulars	ARR computation as furnished by the TMILL	ARR computation as considered in the analysis
1	Average admissible Expenses for the years 2016-17, 2017-18 and 2018-19	70.10	70.10
2	Capital employed as on 31.03.2019 including capital work in progress as on 31.03.2019 and working capital as per norms	123.14	121.66
3	Return on capital employed @ 16%	19.70	19.47
4	ARR as on 31 March 2019 (4=1+3)	89.80	89.57
5	Indexation in the ARR @ 100% of the WPI applicable for the year 2019-20 (4.26% for the year 2019-20)	93.63	93.38
6	**Less** Adjustment of past period additional surplus for the years 2016-17 to 2018-19 in the ARR computation.	-	(-) 0.73
7	Ceiling Indexed Annual Revenue Requirement (ARR)	93.63	92.65

(xii). (a). As per Clause 2.10 of Tariff Guidelines, 2019, for drawing the SOR, the traffic to be considered would be the average of the actual traffic handled by the BOT operator during the years Y1, Y2 and Y3, duly certified by the concerned port. The average traffic for the years 2016-17 to 2018-19 has been considered by the TMILL at 1.71 MMTPA. Inspite of a specific request, the KOPT has not furnished its comments on the traffic figures given by TMILL. In the absence of any contradicting views of KOPT, the traffic as reported by TMILL is considered in the analysis.

(b). As per Clause 2.11.1 of Tariff Guidelines, 2019, the BOT Operators have the flexibility to determine the rates to respond to the market forces based on commercial judgment and draw the SOR within the ceiling of indexed ARR, duly certified by a practicing Chartered Accountant.

While drawing up the proposed SOR, the TMILL is seen to have proposed to maintain status quo in some tariff items, proposed increase in some tariff items and proposed reduction in some tariff items. The overall impact of the proposed changes is seen to be an average increase of 8.82% over the existing tariff being levied by the TMILL.

The TMILL has given detailed working of revenue estimation indicating each of the tariff items in the proposed SOR for corresponding average traffic for the years 2016-17 to 2018-19, as required as per Clause 2.11.1. of the Tariff Guidelines, 2019, so as to realize revenue to the tune of ₹ 90 crores. The said revenue estimation statement as assessed by the TMILL has been duly certified by a Chartered Accountant.

(c). In the estimation of income from Coastal Steel by Road and Coastal Steel by Rail, the TMILL has considered 60% of the coastal concessional rate in respect of despatch related services and placement & removal of dunnages. As per the policy directions by the Government of India contained in the Order no. TAMP/4/2004-Genl dated 7 January 2005, in case of cargo related charges, the concession should be allowed on all the relevant handling charges for ship-shore transfer and transfer from quay to storage yard including wharfage. Despatch related services and placement & removal of dunnages do not fall within the scope of the coastal concessional policy. Therefore, while estimating income from Coastal Steel by Road and Coastal Steel by Rail, no concessional tariff in respect of Despatch related services and placement & removal of dunnages, has been considered. Owing to the said modification, the income estimation at the proposed level of tariff works out to ₹ 90.02 crores.

(d). As per the ARR computation as brought out in the preceding paragraph, the ceiling indexed ARR after adjustment of the past period surplus has been worked out to ₹ 92.65 crores. The revenue estimate at ₹ 90.02 crores at the proposed level of tariff is within the ceiling indexed ARR, thereby leaving a gap of ₹ 2.63 crores, which has been left uncovered by the TMILL.

(e). In its submissions, the KOPT has stated that as per License Agreement entered between KOPT and TMILL, TMILL is entitled to levy tariff at the rate provided in KOPT's SOR and whereas, the rates proposed by TMILL are seen to be higher than the KOPT rates. In this regard, it is conveyed to the KOPT that the proposal has been filed by TMILL in line with the stipulations contained in the Tariff Guidelines, 2019.

(xiii). Like in the earlier general revision of TMILL, the KOPT has stated that TMILL is not entitled to handle container at Berth no.13 (ex Berth No.12) as per licence agreement. In this regard, as already indicated in the earlier Orders passed in respect of TMILL, it is reiterated that the permissible cargo to be handled at Berth no. 12 as stipulated in the Licence Agreement includes containerized cargo and, therefore, it is for the KOPT and TMILL to sort out the issues amongst themselves.

(xiv). The comparative statement giving the existing conditionalities and the conditionalities wherever the TMILL has proposed modification in the existing conditionalities or has proposed introduction of new provisions, along with remarks/ reasoning as furnished by the TMILL for the proposed modification and with the reasoning furnished for recommending acceptance or refusal to the proposed amendments is attached as **Annex - III**. The proposed modification/ deletion in the existing conditionalities is approved taking into consideration the remarks/ reasoning furnished by the TMILL and our remarks/ analysis thereon given in the **Annex - III**.

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

(xvi). Based on the stipulation contained in Clause 1.9 of the Tariff Guidelines, 2019, the TMILL and the Licensor port KOPT have already been requested to enter into a Separate Agreement. From the submissions made by TMILL, it is understood that they are in talks with KOPT for executing the same. The TMILL and KOPT are advised to execute the Separate Agreement within one month from the date of notification of this Order passed in the Gazette of India and forward a copy of the same to this Authority.

(xvii). The validity of the existing SOR of the TMILL was last extended till 31 March 2020 or till the effective date of implementation of the revised SOR, whichever is earlier. By the time this Order comes into effect, it would be around June 2020. That being so, the validity of the existing SOR is deemed to have been extended from 01 April 2020 till the revised SOR comes into effect.

(xviii). In the Tariff Order no. TAMP/8/2016-TMILL dated 17 September 2016, as already indicated at para no. 12(vii), the excess surplus to the tune of ₹ 306.41 lakhs considered earlier is to be credited to TMILL in future tariff cycle, subject to the permission of the Hon'ble Court or provided the TMILL withdraws the Court case in Writ Petition no. 20969 (W) of 2011 or seeks the permission of the Hon'ble Court to allow this Authority to give effect to the said position.

(xix). It is also recalled that in the Review Order of TMILL in October 2011, an amount of ₹ 2352.43 lakhs was assessed as additional surplus over and above the admissible cost and permissible return for the period from 2002-03 to September 2007. The said amount is to be refunded by the TMILL to the concerned parties, subject to the outcome of the Writ Appeals of TMILL and cross objection of this Authority pending before the Hon'ble High Court of Calcutta.

13.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the revised SOR and the Conditionalities of the TMILL which have been notified separately. The effective date of the revised Scale of Rates and conditionalities governing the application of revised Scale of Rates will remain the same as already indicated in the separate Order dated 1 June 2020 and shall be in force for a period of 3 years from the date of effect of revised SOR. The approval accorded will automatically lapse thereafter unless specifically extended by this Authority.

13.2. As per clause 7 of the Tariff Guidelines 2019, the TMILL shall furnish to this Authority, annual reports on cargo traffic handled and ship berth day output. The annual reports shall be submitted by the TMILL within 90 days following the end of each of the year. Any other information which is required by this Authority from time to time shall also be furnished.

13.3. An analysis of variation in the tariff and revenue will also be made at the time of the next general review of tariff of TMILL at the end of the tariff validity period and adjustment of additional surplus will be made in the tariff to be fixed for the next cycle, subject to the provisions contained in Clauses 3.2.1 and 3.2.2 of the Tariff Guidelines, 2019.

(T.S. Balasubramanian)
Member (Finance)

Annex-I

TM International Logistics Limited (TMILL)

Consolidated Income & Cost statement for the Past Period Analysis for the years 2016-17 to 2018-19

(Amount in Rs.)

Sr. No.	Particulars	Estimates as considered in the Review Order no. TAMP/83/2016-TMILL dated 21 July 2017			Actuals		
		2016-17	2017-18	2018-19	2016-17	2017-18	2018-19
	Traffic (In MTs)	1,160,500	1,171,500	1,265,000	1,421,178	1,675,634	2,045,699
I	**Total Operating Income**	**562,974,139**	**568,024,612**	**607,466,465**	**734,345,241**	**813,871,075**	**967,834,677**
II	**Operating Costs**						
	Operating & Direct Labour	91,347,803	93,594,959	95,897,395	57,411,717	87,136,316	70,905,031
	Maintenance Labour	9,174,900	9,400,603	9,631,857	44,172,012	73,123,531	71,592,217
	Equipment Running Costs	37,622,160	38,547,665	40,599,412	37,278,545	40,784,904	54,954,729
	Royalty / revenue share	29,540,986	31,773,789	34,206,501	60,717,967	67,464,039	79,922,228
	Equipment Hire	610,662	625,684	641,076	-	-	-
	Lease Rentals	28,176,623	29,585,454	31,064,727	46,889,810	37,418,354	39,841,472
	Insurance	3,199,077	6,677,774	6,842,047	3,058,202	4,136,230	5,779,462
	Other expenses	77,978,880	80,588,648	91,952,120	14,726,977	14,345,268	18,105,863
	Depreciation	43,969,667	56,348,597	71,269,456	43,564,526	54,502,960	71,254,178
	Management & Administration overheads	85,220,702	87,317,131	89,465,133	269,868,259	309,444,117	365,894,321
	General Overheads	1,378,552	1,412,464	1,447,211	7,998,395	19,456,108	11,559,872
	Loss on sale of Property, Plant & Equip.						6,359
	Loss on dismantling of hoppers (not in Accounts, but considered since it is as per IGAAP)				-	2,683,543	-
	Total	**408,220,011**	**435,872,768**	**473,016,935**	**585,686,410**	**710,495,369**	**789,815,731**
V	**Operating Surplus / (Deficit) (I) – (II) – (III) - (IV)**	**154,754,128**	**132,151,844**	**134,449,530**	**148,658,831**	**103,375,706**	**178,018,946**
VI	**Finance & Miscellaneous Income (FMI)**						
	Discounted terminal value receivable as per the concession agreement.	93,556	106,705	121,693	93,556	106,705	121,693
	Other Income	-	-	-	-	-	-
	Total	**93,556**	**106,705**	**121,693**	**93,556**	**106,705**	**121,693**
VII	**Finance & Miscellaneous Expenses (FME)**						
	Contribution to Provident Fund	4,372,993	4,480,568	4,590,790	4,352,879	7,787,112	4,889,179
	Total	**4,372,993**	**4,480,568**	**4,590,790**	**4,352,879**	**7,787,112**	**4,889,179**
VIII	**FMI Less FME (VI) - (VII)**	**(4,279,436)**	**(4,373,864)**	**(4,469,097)**	**(4,259,323)**	**(7,680,407)**	**(4,767,486)**
IX	**Surplus Before Interest and Tax (V) + (VIII)**	**150,474,691**	**127,777,980**	**129,980,433**	**144,399,509**	**95,695,298**	**173,251,460**
X	Capital Employed	365,196,366	648,847,769	577,578,313	361,439,277	672,204,331	676,001,380
XI	Return on Capital Employed	58,431,419	103,815,643	92,412,530	57,830,284	107,552,693	108,160,221
XII	Capacity Utilization	101.80%	102.76%	110.96%	124.66%	146.99%	179.45%
XIII	Return adjusted for capacity utilization	58,431,419	103,815,643	92,412,530	57,830,284	107,552,693	108,160,221
XIV	**Net Surplus / (Deficit) after allowable ROCE (IX - XIII)**	92,043,273	23,962,337	37,567,903	86,569,224	(11,857,395)	65,091,239
XV	**Past deficit set off**	(28,240,088)	(28,240,088)	(28,240,088)	(28,240,088)	(28,240,088)	(28,240,088)
XVI	**Total Surplus/ (Deficit)**	**63,803,185**	**(4,277,751)**	**9,327,815**	**58,329,136**	**(40,097,483)**	**36,851,151**

	16-17	17-18	18-19
Net fixed assets	**361439277**	**656443475**	**647031785**
Working capital			
- Debtors	-	-	-
- Security deposit	14,161,000	14,161,000	14,161,000
- Inventory	13,544,836	24,753,201	15,280,348
- Cash	45,176,824	54,442,406	59,879,600
	72,882,659	93,356,607	89,320,948
Less: Current liabilities	101790455	77595750.77	60351352.92
	(28,907,796)	15,760,856	28,969,595
Working capital	**-**	**15,760,856**	**28,969,595**
Capital employed	**361,439,277**	**672,204,331**	**676,001,380**

Annex - II

Computation of Annual Revenue Requirement under Tariff Policy, 2019 for Determination of Tariff for TMILL operating at Haldia Dock Complex of Kolkata Port

(Amount in Rupees)

Sl. No.	Description	2016-17 (Y1)	2017-18 (Y2)	2018-19 (Y3)
(1).	**Total Expenditure (As per Segregated audited Annual Accounts)**			
(i).	Operating expenses (including depreciation)	528,179,213	718,943,327	793,111,517
(ii).	Finance and Miscellaneous expenses (FME)	21,831,705	4,949,154	5,423,192
	Total Expenditure 1=(i)+(ii)	**550,010,918**	**723,892,481**	**798,534,709**
(2).	**Adjustments in respect of items where there is variation in figures reported as per INDAS (as per Audited Accounts) and IGAAP**			
(i).	Saving in depreciation due to movement of Opening Tangible block as Intangibles	18,941,440	28,959,154	39,613,220
(ii).	Replacement Obligation of Berth#13 assets	61,292,434	(11,307,166)	(13,146,172)
(iii).	Unwinding of Berth#13 replacement obligation	(21,831,705)	(4,949,154)	(5,423,192)
(iv).	Loss on dismantling of hoppers	-	2,683,543	-
	Total of Adjustments 2=(i)+(ii)+ -----	**58,402,169**	**15,386,377**	**21,043,856**
(3).	**Less Adjustments:**			
(i).	Actual Royalty / Revenue share paid to the port	79,091,765	88,460,415	104,795,882
(ii).	Interest on loans	-	-	-
(iii).	Provision for bad and doubtful debts	-	-	-
(iv).	Provision for slow moving inventory	-	-	-
(v).	Other provisions, if any	-	-	-
	Total of 3 = [3(i)+3(ii)+3(iii)+3(iv)+3(v)]	**79,091,765**	**88,460,415**	**104,795,882**
(4).	**Add: Admissible Royalty/ Revenue Share as per Clause 2.2. of the Tariff Guidelines, 2019**	60,717,967	67,464,039	79,922,228
(5).	**Total Expenditure after Total Adjustments (5 = 1+2-3+4)**	**590,039,289**	**718,282,482**	**794,704,911**
(6).	Average Expenses of Sl. No.5 = [Y1 + Y2 + Y3] / 3			**701,008,894**
(7).	**Capital Employed**			
	(i). Gross Fixed Assets as on 31st March 2019 (As per IGAAP)			1,104,259,006
	(ii). Add: Capital Work in Progress as on 31st March 2019			33,650,686
	(iii). Add: Working Capital as per norms prescribed in clause 2.6 of the Tariff Guidelines, 2019			
	(a). Inventory			15,280,348
	(b). Sundry Debtors			-
	(c). Cash			63,455,880
	(d). Sum of (a)+(b)+(c)			78,736,228
	(iv). Total Capital Employed [(i)+(ii)-(iii)]			**1,216,645,919**
(8).	**Return on Capital Employed 16% on Sl. No.7(iv)**			**194,663,347**
(9).	**Annual Revenue Requirement (ARR) as on 31 March 2019 [(6)+ (8)]**			**895,672,241**
(10).	**Indexation in the ARR @ 4.26% [(9) x 1.0426]**			**933,827,878**
(11).	**Impact of theannual adjustment of past period surplus for the years 2016-17 to 2018-19 as per Clause 3.3.2 of Tariff Guidelines, 2019.**			**7,344,374**
(12).	**Ceiling Indexed Annual Revenue Requirement (ARR) [(10) - (11)]**			**926,483,504**
(13).	**Revenue Estimation at the Proposed indexed SOR within the Ceiling indexed ARR estimated at Sl. No.12 above**			**900,195,565**

Annex- III

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

Sr. No.	Existing SOR		Proposed SOR		Reasons/ justification for amendments in conditionalities, if any, proposed by TMILL	Analysis
	Section No.	Tariff and Conditionalities	Schedule No.	Tariff and Conditionalities		
1	2 (viii)	On board supervision' shall mean certain services, both on-board and on-shore, rendered by TMILL during ship to shore/shore to ship transfer operation of cargo for achieving greater productivity/ efficiency in vessel-operation.	2 (viii)	On board supervision shall mean certain services, both on-board and on-shore, rendered by TMILL during ship to shore/shore to ship transfer operation of cargo **which are not included within the purview of On-board handling charges or loading / unloading charges or Miscellaneous charges and are ancillary in nature and some of which are needed f**or achieving better productivity / efficiency during vessel operation.	The modificaton has been done in order to bring more clarity to show the difference between On Board Charges and On-Board Supervision Charges. While On-Board Charges mean only providing in the form of supply of manpower for ship loading / unloading operation, there are many additional services required during ship operation like: - Loading or discharging as per stowage plan provided by Master - Checking of vessel cranes and loose gears - Providing slings and gears required to carry out loading / unloading operation - Tally of cargo loaded or discharged from ship - Providing dunnage and lashing materials for loading of export vessels - Providing manpower for lashing in export vessels or unlashing in import break bulk vessels - General supervision of cargo discharge or loading operation including deploying supervisors for safety of operation Some other services are also mentioned in the relevant section. These services do not fall under the purview of On-Board Charges. Hence the definition has been amended in order to bring more clarity.	Considering the submission made by TMILL that the proposed change gives clarity to the users and since neither KOPT being Licensor Port nor the users have specifically objected the proposed modificaton, the proposed modification in the definition of "Onboard supervison" may be approved.
2 (a)	-	-	2 (xv)	Shore Handling includes arranging and receiving the cargo to/ from the hook point, intermodal transport from wharf to stackyard and vice-versa and also receiving and delivering of cargo from /to wagons/trucks.	Presently no definition of “Shore Handling” exists in TMILL SOR. “Shore Handling” definition and rates exist in the KOPT SOR. Since services are similar in nature and shore handling services are being provided by TMILL it is felt to introduce this definition as well as applicable charges in TMILL SOR. Presently TMILL is charging activity wise as specified in the existing SOR of TMILL. TMILL has to pay royalty to KOPT as per KOPT scale of rates and KOPT SOR includes shore handling rates. Inorder to align the TMILL SOR with KOPT SOR and to avoid anomalies and discrepancies in royalty payment and to bring similarity with KOPT SOR, a new section covering complete scope of shore handling to have comparable items for the purpose of ROYALTY payment to KOPT, it is proposed to introduce the definition of “Shore Handling” and charges for the same.	In view of the submission made by TMILL and since none of the users have objected to the introduction of the definition "Shore Handling" and for levy of Shore Handling Charges and also since the TMILL has estimated the income arising out of the proposed levy, the Authority may be inclined to approve the introduction of definition of "Shore Handling" and levy of Shore Handling Charges as proposed by TMILL.
2 (b)	-	-	9.1	Shore handling Services - Cargo wise shore handling charges have been introduced so as to cover transfer of cargo from hook point to storage point, loading at hook point, unloading at storage point incase of Import cargo. Likewise charges have been precribed for various cargo so as to cover transfer of cargo from storage point, loading at storage point and unloading at hook point incase of Export cargo.		
2(c)	-	-	9.2	Shore Handling Service involving loading at storage point for delivery by road / rail or unloading at storage point during receiving by road / rail will be charged separately as per section 7 (loading / unloading / stacking)		
3	3 (vii) (b)	The rate of penal interest will be 16.05%. The penal interest rate will apply to both the TMILL and the port users equally	3 (vii) (b)	The rate of penal interest will be 16.05%. The penal interest rate will apply to both the TMILL and the port users equally	-	Clause 5.4.1 of the Tariff Guidelines, 2019 stipulates simple interest @ 15% p.a. to be applicable to the Users and the BOT operator towards interest on delayed payments and refunds. The exisitng note is, therefore, suitably modified.

Sr. No.	Existing SOR		Proposed SOR		Reasons/ justification for amendments in conditionalities, if any, proposed by TMILL	Analysis
	Section No.	Tariff and Conditionalities	Schedule No.	Tariff and Conditionalities		
4	3 (x)	(a). Wherever a specific tariff for a service/ cargo is not available in the notified Scale of Rates, the TMILL can submit a suitable proposal to the TAMP. (b). Simultaneously with the submission of proposal, the proposed rate can be levied on an ad hoc basis with due notice to Kolkata Port Trust about levy of such rate, till the rate is finally notified. (c). The ad hoc rate to be operated in the interim period must be derived based on existing notified tariffs for comparable services/ cargo; and, it must be mutually agreed upon by the TMILL and the concerned user(s). (d). The final rate fixed by the TAMP will ordinarily be effective only prospectively. The interim rate adopted in an ad hoc manner will be recognised as such unless it is found to be excessive requiring some moderation retrospectively.	3 (x)	(a). Whenever a specific tariff for a new service/ cargo/ equipment/ facility is not available in the SOR of TMILL, the TMILL can approach TAMP for notification of tariff for the said new cargo/ equipment/ service adopting the tariff if any fixed for comparable cargo/ equipment/ service in any Major Port Trust or BOT operator governed under Tariff Guidelines, 2019. If there is no rate available in any Major Port Trust or BOT operator governed under Tariff Guidelines, 2019, or if the rate available is not representative enough of the proposed new cargo/ service/ equipment/ facility, then the TMILL may file the proposal for notification of tariff for the said new cargo/equipment/service/ facility with reference to optimal capacity assessed following the principles of 2008 guidelines or based on rated capacity or technical specification of service/facility/equipment. If determination of tariff based on the above prescribed options is not available, then the TMILL after giving sufficient reasons may propose rates based on cost plus 16% return formula. (b). Proposal for notification of rate for use of a new facility or a new service shall be forwarded to TAMP at least 60 days prior to the expected date of commissioning of the new cargo/ facility or a new service. For determination of tariff for new cargo/new service, TAMP will follow normal consultation process as prescribed. In case of prescription of tariff for new miscellaneous services, the BOT operator shall submit a proposal not later than 15 days from the date of introducing the services. (c). Simultaneously with the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified. (d). The ad hoc rate to be operated in the interim period must be based on the approach outlined in clause 5.6.1 of Tariff Guidelines, 2019. (e). The final rate fixed by the TAMP for new cargo/service for which rate is not prescribed in the SOR will ordinarily be effective only prospectively. The interim rate adopted in an ad hoc manner will be recognised as such unless it is found to be excessive requiring some moderation retrospectively.		The existing provisions are modified in line with Clause 5.4.1 of Tariff Guidelines, 2019.
5	**4.1**	**Wharfage on foreign cargo shall be levied as follows:**	4.1	**Wharfage on foreign cargo shall be levied as follows:**		
	1	Iron Ore, Iron Ore Pellets and Sand	1	Iron ore, Iron ore pellets, Sand, Fly Ash, Salt.	Similar category of cargo like KoPT, 7% increase proposed	Flexibility is available to the BOT Operators to determine the rates based on the market forces and commercial judgment as per the Tariff Guidelines, 2019. Further, there is no pointed objection from any of the users/ user organization on the proposed re-categorization of the commodities under the Wharfage Schedule. Therefore, the proposed re-categorization of the commodities as proposed by TMILL, may be approved.
	2	Limestone and all types of ore except iron ore	2	Limestone, Dolomite, Pyroxenite, Olivine and all other dry bulk not specified and all types of ore except iron ore; Sponge Iron; Pig Iron.		
	3	Fertilizer materials, MOP, Rock Phosphate, Soda, Sulphur, C.I. Goods, Cement clinker and other dry bulk not specified.	3	Mill Scale, Magnesite, Granite, all types of scrap, Oil cake; Bone & Bone Meal, Non Ferrous metals of all kinds, Fire Bricks and other refractory materials, Fertilizer raw materials, MOP, Rock Phosphate, Soda, Sulphur, C.I. Goods.		
	5	Project cargo and machinery & spares (immobile units) of various shapes and sizes	5	Project cargo and machinery & spares (immobile units) of various shapes and sizes, all other cargo not specified above.		
	9	All other cargo not specified above except those specified at Sec 3 xii.		Deleted	Deleted and put under sl no 5	
6	**5**	**On-Board Charges shall be levied on Foreign cargo at the rates as mentioned as follows:**	5	**On-Board Charges shall be levied on Foreign cargo at the rates as mentioned as follows:**		Flexibility is available to the BOT Operators to determine the rates based on the market forces and commercial judgment of the Operators as per the Tariff Guidelines, 2019. Further, there is no pointed objection from any of the users/ user organization on the proposed re-categorization of the commodities under the schedule of "On-Board Charges". Therefore, the proposed re categorization of of the commodities under the schedule of "On-Board Charges" may be approved.
	5.2	Tubes and pipes, iron and steel, Newsprint, HRC/CRC, Steel Slabs, Beams, Logs, Rails, Wheels, Sheets and bagged cargo.	5.2	Tubes and pipes, iron and steel, Newsprint, HRC/CRC, Steel Slabs, Beams, Logs, Rails, Wheels, Sheets.	Removed bagged cargo and put under sl no (5.3), proposed 5% increase only value added products	
	5.3	Project cargo and machinery & spares (immobile units)	5.3	Project cargo and machinery & spares (immobile units) & all other cargo not specified including bagged cargo.	Present rate is very low for project cargo which is usually voluminous and project cargo / bagged cargo has very low output	
	5.6	All other cargo not specified above except those specified at Sec 3. xii.		Deleted	Proposed under serial no 5.3	

Sr. No.	Existing SOR		Proposed SOR		Reasons/ justification for amendments in conditionalities, if any, proposed by TMILL	Analysis
	Section No.	Tariff and Conditionalities	Schedule No.	Tariff and Conditionalities		
7	**7.1**	**Following charges for supply of manpower and equipment for loading/ un-loading/ re-stacking of Foreign cargo shall be levied at the rates specified below:**	7.1	**Following charges for supply of manpower and equipment for loading/ un-loading/ re-stacking of Foreign cargo shall be levied at the rates specified below:**		Flexibility is available to the BOT Operators to determine the rates based on the market forces and commercial judgment of the Operators as per the Tariff Guidelines, 2019. Further, there is no pointed objection from any of the users/ user organization on the proposed re-categorization of the commodities and introduction of certain new tariff items in the schedule for levy of charges for supply of manpower and equipment for loading/ un-loading/ re-stacking of Foreign cargo. Also, the TMILL has estimated the income as per the proposed tariff at Schedule 7.1. In view of this position, the Authority may be inclined to approve re-categorization of of the commodities and introduction of certain new items in Schedule 7.1, as proposed by TMILL.
	1	1.Limestone, Pig Iron, Sugar and other Ferrous metals and all types of ore by using hoppers	1	Limestone, Olivine, Dolomite, Pyroxenite, Other flux materials, Clinker, Salt, Iron Ore, Pig Iron, Sugar and other Ferrous metals and all types of ore.	7% increase proposed for dry bulk cargo	
	2	Iron ore and all types of Ore (includes high stacking wherever necessary - double stacking will be avoided)		Deleted and put under sl no 1	Deleted and put under sl no 1	
			3	Iron and Steel Hot Rolled Coils, Cold Rolled Coils, Galvanized Coils		
	4	4. Tubes and pipes, Logs (₹. Per CBM), Iron and Steel, Newsprint.	4	Tubes, Pipes, Steel Billets, Wire Rod Coils, Plates & Sheets, Steel Rails, Beams and Structural, Newsprint, LOG (₹/CBM), Project cargo and machinery & spares including their packages, all other cargo not specified	5% increase proposed for steel cargo	
	5	Project cargo and machinery & spares including their packages.		Deleted and put under sl no 4	15% increase proposed for voluminous cargo as well as difficult packages.	
			6	Unloading/Loading of break bulk cargo like steel coils from/to railway wagons including shifting from siding or handling at siding.	New item includes unloading from wagons and shifting from siding. Proposed at 1.75 times unloading rate	
			7	Unloading / Loading of break bulk cargo like steel wire rod coils, billets, TMT bars, plates and sheets, pipes & tubes and other cargo **from / to Railway wagons** including shifting from siding to plot and unloading	New item includes unloading from wagons and shifting from siding. Proposed at 1.75 times unloading rate	
			8	Unloading of dry bulk cargo from **Railway wagons** including loading at siding and shifting from siding to plot and unloading	New item includes unloading from wagons and removal from siding. Proposed as follows: Unloading + Loading + Transportation + Stacking	
8			7.4	Despatch Related services for opening, cleaning and closing of wagons and miscellaneous services for export & import cargo will be charged separately.	(i) TMILL has to pay royalty to KOPT as per KOPT scale of rates and KOPT SOR includes shore handling rates. (ii) In order to align the TMILL SOR with KOPT SOR to avoid anomalies and discrepancies in royalty payment.. (iii) The SOR proposed by TMILL is drawn in similar line with KOPT SOR.	In view of the submission made by TMILL and since none of the users have objected to the proposed introduction of a separate rate for Despatch Related services for opening, cleaning and closing of wagons and miscellaneous services for export & import cargo, the Authority may inclined to approve for the proposed note.
9	**8**	**Transportation**	8	**Transportation**		Flexibility is available to the BOT Operators to determine the rates based on the market forces and commercial judgment of the Operators as per the Tariff Guidelines, 2019. Further, there is no pointed objection from any of the users/ user organization on the proposed re-categorization of the commodities under the schedule of "Transportation". In view of the above position, the Authority may be inclined to approve re-categorization of of the commodities under the schedule of "Transportation".
		New Item	2	Iron and Steel Hot Rolled Coils, Cold Rolled Coils, Galvanized Coils,	5% increase proposed for steel cargo	
	2	Tubes and pipes, Logs, Iron and Steel, Newsprint and bagged cargo.	3	Tubes, Pipes, Newsprint, LOG (CBM), Steel Billets, Wire Rod Coils, Plates & Sheets, Project cargo and machinery & spares including their packages, all other cargo not specified	15% increase proposed considering voluminous and low productivity cargo	
	3	Project cargo and machinery & spares including their packages weighing less than 20 tonnes.		Deleted	Included in the Item no. 3	
10	**10**	**Storage and Miscellaneous Charges**	12	**Storage and Miscellaneous Charges**		
	2	Lease rentals for short term allotment of Hard stand land	1	Lease rentals for short term allotment of Hard Stand Plot open yard	Change in the nomenclature proposed.	Since there is no pointed objection from any of the users/ user organization on the proposed modification in the nomenclature, the Authority may be inclined to approve change in nomenclature as proposed by TMILL.
	7	Equipment hire charges for Forklift of capacity below 10 MT	6	Equipment Assistance Charges for forklifts/integrated payloaders with fork of capacity below 10 MT		
	8	Equipment hire charges for Forklift of capacity between 10 MT and 20 MT	7	Equipment Assistance charges for forklifts of capacity between 10 MT and 25 MT		

Sr. No.	Existing SOR		Proposed SOR		Reasons/ justification for amendments in conditionalities, if any, proposed by TMILL	Analysis
	Section No.	**Tariff and Conditionalities**	**Schedule No.**	**Tariff and Conditionalities**		
	-	-	8	Equipment Assistance charges for forklifts of capacity above 25 MT (₹32000 per shift)	TMILL already had one 32 MT capacity forklift. Further during the previous tariff cycle, TMILL has commissioned 2 numbers 45 MT capacity Reach-stacker cranes for break bulk cargo handling. Sometimes such equipment are required for purpose beyond normal shore handling activities, e.g., repairing of packages, transhipment from trailer to trailer etc. Since such requirements cannot be predicted in normal course of activity, no revenue has been shown. New rate has been proposed at par with market rate	Flexibility is available to the BOT Operators to determine the rates based on the market forces and commercial judgment as per the Tariff Guidelines, 2019. Further, there is no pointed objection from any of the users/ user organization on the proposed rates. the propsoed rate may, therefore, be approved.
11	**10**	**Storage and Miscellaneous Charges**	11	**Mobile Harbor Crane Charges & Pay Loader / Forklift On Board**		Flexibility is available to the BOT Operators to determine the rates based on the market forces and commercial judgment as per the Tariff Guidelines, 2019. Further, there is no pointed objection from any of the users/ user organization on the proposed modification. Hence, the Authority may be inclined to approve the change as proposed by TMILL.
	10.9	On-board Equipment Operation (applicable on full parcel size)	11 (a)	On-board Equipment Operation (applicable on full parcel size)		
		All dry Bulk Cargo		All dry Bulk Cargo		
		HRC/CRC, Plates Sheets, WRC, Tubes/Pipes		HRC/CRC, Plates Sheets, WRC, Tubes/Pipes		
	10.13	Equipment Assistance Charges for Harbour Mobile Crane for 104 MT	11 (b)	Equipment Assistance Charges for Harbour Mobile Crane		
		Iron Ore			Included in item 2 of 11 (b)	
		Limestone		Limestone, dolomite, pyroxenite, olivine & other dry bulk cargo		
		Fertilizer and other bulk cargo			Included in item 2 of 11 (b)	
		HRC/CRC Imports		Steel Imports – HRC/CRC/Plates Sheets / Slabs/ WR Coils / Pipes / Tubes Etc..		
		Steel Exports		Steel Export – HRC / CRC / Plates Sheets / Slabs / WR Coils / Pipes / Tubes Etc.		
		Project Cargo		Project Cargo / Machinery Equipment		

SUMMARY OF THE COMMENTS RECEIVED FROM THE KOLKATA PORT TURST AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

F. No. TAMP/53/2019-TMILL		**Proposal received from TM International Logistics Limited (TMILL) for general revision of its Scale of Rates.**

A joint hearing in this case was held on 17 October 2019 at the Kolkata Port Trust (KOPT) premises. At the joint hearing, the TMILL made a brief power point presentation of its proposal. The presentation traces the history of the formation of TMILL, nature of its operations, scope of work of Berth No. 12, among other things. At the joint hearing, the TMILL and KOPT have made the following submissions:

TMILL

(i). Our last tariff was fixed in the year 2016. Our then prevailing tariff was reduced by 7%. We filed our Review application. Based on that, the tariff was reduced by 4.85% as compared to the earlier tariff cycle.

(ii). We submitted a proposal in January 2019 for the tariff cycle 2019-20 to 2021-22. A joint hearing was held on 19 February 2019. Thereafter, in March 2019, TAMP came up with new Guidelines for fixing tariff of BOT operators including TMILL, instead of the earlier 2005 Guidelines.

(iii). TMILL, therefore requested TAMP to close the proposal filed in January 2019 and agreed to file a proposal based on new Guidelines. Thus, we have filed a proposal on 01 October 2019.

(iv). We handled 1.66 Million Tonnes of cargo in 2017-18 and 2.05 Million Tonnes of cargo in 2018-19. During the current year 2019-20, we are targeting to cross 2 MMTPA.

(v). The highlights of the main points of difference between 2005 Guidelines and new Guidelines of 2019 are as follows:

(a). The 2005 Guidelines required traffic projections for the next three years, in line with the past total volume and with a flexibility to change the cargo mix for the future. The average of the past three years traffic will form the base. Likewise, cargo mix will be based on past handling.

(b). The 2005 Guidelines required estimation of revenue based on the projected traffic, with year on year increase in cost based on WPI plus 16% ROCE. The new Guidelines requires determination of the Annual Revenue Requirement (ARR), derived based on the average of audited actual expenditure of past three years and 16% ROCE.

(c). In the 2005 Guidelines, 16% ROCE was on net block of assets. In the new Guidelines of 2019, 16% ROCE is on gross block of assets plus capital work in progress.

(d). In the 2005 Guidelines, Tariff rates fixed are constant for 3 years. In the new Guidelines of 2019, the tariff is subject to increase by 60% of WPI every year.

(vi). We have furnished all the relevant workings as per the Forms made available by TAMP, duly certified by Chartered Accountant.

(vii). As against the ARR of ₹ 92.40 crores, we have proposed tariff, to realize only ₹ 90 crores.

(viii). We have proposed changes in various cargo handling rates to make it at par with market/ competition.

(ix). We have also introduced new tariff items and made changes in some existing items to facilitate ease of doing business based on market scenario.

(x). We are committed to provide benchmark service levels to customer at competitive rate.

(xi). To improve the infrastructure at the berth, TMILL has plans to commission new fork lifts, purchase new pay loaders and modify railway siding including extension, if land is available.

KOPT

(i). TAMP has sought our comments. We will respond shortly.

2. A summary of comments received from KOPT and reply of TMILL thereon is tabulated below:

<table>
<tr><th>Sl. No.</th><th>Comments of Kolkata Port Trust</th><th>Reply of TMILL</th></tr>
<tr><td>1.</td><td>The proposed rates of TMILL for handling cargo at Berth no.13 (Ex Berth No.12) such as, Wharfage charges, On Board charges, Loading/ Unloading/ Restacking charges, and Shore handling charges are found to be more than the rates proposed by KoPT for revision of its SOR. [The KOPT has attached a statement showing the above position]

As per License Agreement, for the services included in KoPT's SoR, TMILL is entitled to levy tariff at the rate provided in KoPT's SoR. Even though the tariff of TMILL is fixed by TAMP as per law, the levy of charge in excess of that of KoPT in a way against the basic tenets of the License Agreement. This is more so as TMILL does not have to bear the burden of huge administrative and financial overheads of a 150 year old port having thousands of old pensioners and thus</td><td>TMILL has proposed rates for various cargoes based on the 2019 Tariff Guidelines. It may be noted that the rates proposed are well within the permissible Annual Revenue Requirement (ARR) for B#13. Further following may be noted
(i). TMILL is earning only from cargo related charges and plot rent as per TAMP approved SOR and is not entitled for berth hire, marine dues, estate income, port permit, haulage and siding charges etc..
(ii). The volume handled at Berth 13 with permissible cargo (excluding Coal and other black cargo) is much less than MHC berths of HDC. While Berth 13 handled 2.045 Million MT during 18-19, other MHC berths handled cargo as given below:<table><tr><th>Berth No. (as per previous nomenclature)</th><th>Volume (in Million MT)</th></tr><tr><td>2</td><td>3.94</td></tr></table></td></tr>
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<tr><td></td><td>there is no apparent reason for them to levy charges in excess of KoPT.

In view of the above TAMP to review the proposal of TMILL proposing levy of rates in excess of that of KoPT.</td><td><table><tr><td>4B</td><td>4.05</td></tr><tr><td>8</td><td>3.91</td></tr><tr><td>13</td><td>3.5</td></tr></table></td></tr>
<tr><td>2.</td><td>The penal interest rate as per the Guidelines is 15% p.a and not 16.05% as proposed by TMILL.</td><td>16.05% interest rate has been suggested based on the existing SOR of TMILL.</td></tr>
<tr><td>3.</td><td>As per Audited Annual Accounts of Kolkata Port Trust, Haldia Dock Complex income booked on account of Royalty for Cargo operation at BOT Berth No.13 (Ex Berth No.12) based on payment received from TMILL stands at ₹. 64,364,300.00, ₹.74,296,618.00 and ₹. 92,336,396.00 for fiscal year 2016-17 (Y1), 2017-18 (Y2) and 2018-19 (Y3) respectively. However, the same has been shown as ₹.79091765.00, ₹. 88460415.00 and ₹.104795882.00 for Y1, Y2 and Y3 respectively in the Form-I of tariff proposal of TMILL. The reason for such discrepancy to be clarified by the operator.</td><td>Amount provided by us are correct. Please find the below details pertaining to the Royalty amount:<table><tr><th></th><th>16-17</th><th>17-18</th><th>18-19</th></tr><tr><td>Royalty as per segregated Accounts</td><td>791</td><td>885</td><td>1048</td></tr><tr><td>Monthly payment</td><td>644</td><td>743</td><td>923</td></tr><tr><td>Payment based on Independent auditor report of previous years</td><td>8</td><td>7</td><td>-</td></tr><tr><td>Provision of a/c of On-board Supervision charge recovered</td><td>139</td><td>135</td><td>125</td></tr><tr><td>Total</td><td>791</td><td>885</td><td>1048</td></tr></table></td></tr>
<tr><td>4.</td><td>The reason for inclusion of Replacement obligation of Berth 13 Assets and Unwinding of Berth 13 replacement obligation under Sl.No.2 OF Form-I along with basis for computation to be elaborated.</td><td>This is related to adjustment with respect to items where there is variations in figures reported as per IND-AS (as per audited accounts) vis-à-vis IGAAP. This issue has been already explained to the authority vide letter no. TMILL/111/19-20 dated 06.02.2020 in B (i).</td></tr>
<tr><td>5.</td><td>Gross Fixed Assets [As per IGAAP] for Y3 (2018-19) has been stated as ₹.113.79 crore in the statement. However, the same has been shown as ₹.110.43 crore in Form –I [Sl.No.7(i)]. TMILL may clarify the reason for discrepancy in gross fixed assets. Further, as per last SoR proposal of TMILL, filed in 2015-16, Estimates for Capital Employed for 2018-19 was considered as ₹.63.57 crore. Gross fixed assets have increased significantly as per present tariff proposal filed by TMILL. TMILL to furnish list of assets capitalized along with value since fiscal 2016-17.</td><td>₹.110.43 Crs. is Gross Fixed Asset before considering Capital Work in Progress. Please refer Form-7 where the break-up has been given as below:

Gross Block before Capital work in Progress: ₹.110.43 Crs
Capital Work in Progress: ₹.3.36 Crs
Total: ₹.113.79 Crs.

Detail of Fixed Asset register (Asset wise) alongwith capitalization date has been already shared with the authority vide letter no. TMILL/111/19-20 dated 06.02.2020 in Annexure-E (against B(ii) (b), (c) and (d)).</td></tr>
<tr><td>6.</td><td>TMILL is not entitled to handle container at Berth no.13 (ex Berth No.12) as per licence agreement entered with KoPT. However, they have proposed rates for handling containers in their SOR. The reason for proposing container handling rates despite not being entitled as per licence agreement to be clarified by TMILL.</td><td>As per licence agreement, TMILL can handle white cargo at B#12. Container falls under this category and hence TMILL has proposed rates for the same.</td></tr>
<tr><td>7.</td><td>As per the position maintained by KoPT, for the other services not included in KoPT's SoR, royalty should be considered on the basis of actual income of TMILL from such services. TAMP may see whether TMILL has done the 'Revenue Estimation at the Proposed SoR' at Form-3 considering the above.</td><td>It is not clear as Form-3 denotes "Computation of Working capital". However we would like to mention that this issue was under Arbitration and KoPT has moved to the Honorable Kolkata High Court against the preliminary order of the Arbitration Tribunal. This issue is subjudice.</td></tr>
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8.	The problems associated with TMILL's functioning as a general purpose company in contravention with the provision of the License Agreement as well as noncompliance of written commitment towards submission of Segregated Account as per the mutually agreed terms had been highlighted under KoPT's comments on TMILL's earlier proposal for revision of their tariff. The same position is still valid and may be considered by TAMP for issuing appropriate direction. TMILL has neither confined their activity as an SPV nor have they been submitting Segregated Accounts following the agreed terms.	TMILL, as clarified earlier also, has maintained separate accounts for B#12 operations. TMILL has been submitting the Segregated Accounts to HDC, KoPT as per their required format. Please note that Segregated accounts of B#12 gets audited by an independent auditor, who has been appointed by HDC, KoPT, on annual basis.
